

BSA/AML – Getting it Right

OTS Formal and Informal Enforcement
Actions

July 31, 2006





Summary

- Savings associations must establish and maintain procedures reasonably designed to assure and monitor their BSA compliance.
- Savings associations that violate BSA statutory and regulatory requirements are subject to the full range of OTS's enforcement authority, including formal and informal enforcement actions.
- OTS will take into consideration several factors in deciding whether, or what type of enforcement action, is appropriate.
- In certain circumstances, a cease and desist order is required by statute.



Key BSA Requirements

- 12 C.F.R. 563.177: “Core” BSA requirements – internal controls, independent testing, designated BSA compliance officer, and training.
- 12 C.F.R. 563.180: SAR filing requirements.
- 31 C.F.R. Part 103, Treasury reporting and recordkeeping requirements for SARs and CTRs.
- OTS examines a savings association to determine if the BSA compliance program is “effective,” i.e., does the program cover each of the statutory-required programmatic elements, and is it appropriate to the association’s BSA risk profile?



OTS Enforcement Authority

- OTS may take various enforcement actions to correct BSA violations, or to sanction a saving association or an individual for BSA violations.
- Informal actions include Board of Directors' Resolution, Supervisory Directive, or Memorandum of Understanding.
- Formal actions include Supervisory Agreement, Cease and Desist Order, Civil Money Penalties, or Removal or Prohibition Order.



OTS Enforcement Authority, cont.

- FinCEN also levies CMPs for failure to file SARs and CTRs, or ineffective BSA/AML programs.
- Treasury's Office of Foreign Assets Control (OFAC) assesses CMPs in cases involving blocked or prohibited financial transactions.
- Department of Justice – possible criminal prosecution in extreme cases for BSA violations.



Enforcement Action Factors

- Does BSA/AML program cover each of the programmatic elements, as written and as implemented? Is program effective for association's BSA risk profile?
- What is association's BSA risk profile? For example: high BSA risk profile will require more extensive training and transaction testing.
- Is compliance program fully implemented? Are association's policies and procedures being followed?
- Are there repeat violations previously cited by the OTS? What is the association's BSA compliance history?



Enforcement Action Factors, cont.

- Has the savings association's BSA compliance deteriorated since the previous OTS exam, or has progress in addressing violations been insufficient?
- OTS confidence level that management and the Board of Directors will take corrective actions.
- Do violations constitute a significant risk of money laundering, terrorist financing, or structuring?



Cease and Desist Orders

- Cease and Desist Order required by statute, 12 U.S.C. 1818(s)(3):
 - When an association has failed to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA; or
 - When an association has failed to correct any BSA/AML problems previously reported to the association by the OTS.
- OTS focuses on programmatic issues – is BSA compliance program “ineffective,” i.e., demonstrates systemic violations, or are violations isolated?



Cease and Desist Orders, cont.

- Problems need not be “identical” to constitute repeat BSA problems. For example, previous cited violation for failure to train back office personnel, and current failure to train tellers, is a repeat BSA problem.



Questions?

- Contact Regional Compliance Program Manager.
- OTS Enforcement Orders:
<http://www.ots.treas.gov/enforcement>.
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