

Anti-Money Laundering and Countering the Financing of Terrorism

FINRA Encourages Firms to Consider How to Incorporate the Government-wide Anti-Money Laundering and Countering the Financing of Terrorism Priorities Into Their AML Programs

Summary

The Financial Crimes Enforcement Network (FinCEN) has [issued](#) the first government-wide priorities for anti-money laundering and countering the financing of terrorism policy,¹ which was mandated by the Anti-Money Laundering Act of 2020 (AML Act).² FinCEN also issued a [statement](#) to provide covered non-bank financial institutions (NBFIs), including broker-dealers, with guidance on how to approach the AML/CFT Priorities.³

FINRA is issuing this *Notice* to inform member firms of the AML/CFT Priorities and the Statement, and to encourage member firms to consider how to incorporate the AML/CFT Priorities into their risk-based anti-money laundering (AML) compliance programs.

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Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topics

- ▶ Anti-Money Laundering
- ▶ Compliance Programs

Referenced Rules & Notices

- ▶ Bank Secrecy Act
- ▶ FINRA Rule 3310
- ▶ Regulatory Notice 19-18
- ▶ Regulatory Notice 21-03

Background and Discussion

The AML/CFT Priorities

The AML Act became law on January 1, 2021, and, among other amendments to the Bank Secrecy Act (BSA), requires FinCEN to issue the AML/CFT Priorities and update them at least once every four years.⁴ On June 30, 2021, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued its first government-wide AML/CFT Priorities. The AML/CFT Priorities are intended to assist covered financial institutions,⁵ including broker-dealers, in their efforts to meet their obligations under laws and regulations designed to combat money laundering and counter terrorist financing.⁶

The AML/CFT Priorities focus on threats to the U.S. financial system and national security and reflect longstanding and continuing AML/CFT concerns previously identified by FinCEN and other U.S. government departments and agencies.⁷ They include predicate crimes to money laundering that generate illicit proceeds that illicit actors may launder through the financial system.⁸ FinCEN set forth eight priorities: (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud (including securities and investment fraud and internet-enabled fraud); (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) proliferation financing. FinCEN provides details about each of the individual priorities and includes references to prior FinCEN advisories and guidance documents that identify related typologies and red flags that may help broker-dealers comply with their BSA obligations.⁹

Incorporation of AML/CFT Priorities Into Firms' Risk-Based AML Compliance Programs

The BSA, as amended by the AML Act, provides that the “review by a financial institution” of the AML/CFT Priorities and “the incorporation of those priorities, as appropriate” into the risk-based AML compliance programs established by the financial institution “shall be included as a measure on which a financial institution is supervised and examined for compliance.”¹⁰

FinCEN has clarified that the publication of the AML/CFT Priorities does not create an immediate change in the BSA requirements or supervisory expectations for covered NBFIs, including broker-dealers.¹¹ FinCEN has noted further that covered NBFIs are not required to incorporate the AML/CFT Priorities into their risk-based AML programs until the effective date of final regulations promulgated by it.¹² The BSA, as amended by the AML Act, requires that FinCEN promulgate any appropriate regulations regarding the AML/CFT Priorities within 180 days of their establishment.¹³

FinCEN has stated that the final regulations will specify how financial institutions should incorporate the AML/CFT Priorities into their risk-based AML programs,¹⁴ and that not every priority will be relevant to every covered institution.¹⁵ FinCEN has also stated that covered NBFIs may nevertheless wish to start considering how they will incorporate the AML/CFT Priorities into their risk-based AML programs, such as by assessing the potential risks associated with the products and services they offer, the customers they serve, and the geographic areas in which they operate.¹⁶

FINRA Rule 3310 requires every member firm to develop and implement a written AML program reasonably designed to achieve and monitor for compliance with the requirements of the BSA and the implementing regulations promulgated thereunder by the Department of the Treasury. Although the issuance of the AML/CFT Priorities does not trigger an immediate change in the BSA requirements or supervisory expectations for member firms, FINRA encourages member firms to begin to evaluate how they will incorporate and document the AML/CFT Priorities, as appropriate, into their risk-based AML programs. Member firms that are beginning to evaluate how they will do so may wish to begin considering potential updates to the red flags that they have incorporated into their risk-based AML compliance programs in light of the risks presented by factors such as their business activities, size, the geographic locations in which they operate, the types of accounts they maintain, and the types of transactions in which they and their customers engage.

Firms may also wish to begin considering any potential technological changes that may be appropriate in order to incorporate the AML/CFT Priorities into their risk-based AML compliance programs, including changes to the technology that they use to monitor and investigate suspicious activity. Upon the effective date of final regulations addressing the AML/CFT Priorities, member firms should be in a position to review and incorporate, as appropriate, the AML/CFT Priorities into their risk-based AML programs.¹⁷

FinCEN has acknowledged the need for revised regulations and timely guidance to assist covered NBFIs, including broker-dealers, in complying with the BSA and expressed its commitment to working with federal agencies to develop and publish such guidance.¹⁸

Additional information about FinCEN's implementation of the AML Act is available on the dedicated [AML Act webpage](#) on FinCEN's website.

Endnotes

1. [Anti-Money Laundering and Countering the Financing of Terrorism National Priorities](#) (AML/CFT Priorities) (June 30, 2021).
2. 31 U.S.C. § 5318(h)(4)(A) (as amended by AML Act § 6101(b)(2)(C)). The AML Act was enacted as Division F, §§ 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (2021) (enacted) (enrolled bill available at <https://www.govinfo.gov/content/pkg/BILLS-116hr6395enr/pdf/BILLS-116hr6395enr.pdf>).
3. [Statement on the Issuance of the Anti-Money Laundering/Countering the Financing of Terrorism \(AML/CFT\) National Priorities](#) (Statement) (June 30, 2021). FinCEN also issued a joint statement with other regulators to provide guidance to banks on the AML/CFT Priorities. See [Interagency Statement on the Issuance of the AML/CFT Priorities](#) (June 30, 2021).
4. 31 U.S.C. § 5318(h)(4)(A) and (B) (as amended by AML Act § 6101(b)(2)(C)). FinCEN was required to consult with the Attorney General, Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), relevant State financial regulators, and relevant national security agencies to establish the priorities and must continue to consult with these same parties when updating the AML/CFT Priorities. See *Id.*
5. Covered institutions are financial institutions required by BSA regulations to maintain an AML program. See 31 CFR §§ 1020.210(a) (banks); 1020.210(b) (banks without a Federal functional regulator); 1021.210 (casinos and card clubs); 1022.210 (money services businesses); 1023.210 (brokers or dealers in securities); 1024.210 (mutual funds); 1025.210 (insurance companies); 1026.210 (futures commission merchants and introducing brokers in commodities); 1027.210 (dealers in precious metals, precious stones, or jewels); 1028.210 (operators of credit card systems); 1029.210 (loan or finance companies); and 1030.210 (housing government sponsored enterprises).
6. AML/CFT Priorities, p. 1.
7. AML/CFT Priorities, pp. 2-3.
8. AML/CFT Priorities, p. 3.
9. AML/CFT Priorities. In [Regulatory Notice 19-18](#) (May 2019), FINRA provided a non-exhaustive list of red flags that may be applicable to the securities industry. In [Regulatory Notice 21-03](#) (February 2021), FINRA addressed additional red flags associated with potential fraud involving low-priced securities.
10. 31 U.S.C. § 5318(h)(4)(E) (as amended by AML Act § 6101(b)(2)(C)), 31 U.S.C. §§ 5321, 5324 and 5330(e) (2012); 12 U.S.C. §§ 1829b(j) and 1955 (2012).
11. Statement, p. 2.
12. Statement, p. 2. FinCEN also stated that until the effective date of final regulations, it will not examine covered NBFIs for the incorporation of the AML/CFT Priorities into their risk-based AML programs, and will not request that the staff of the U.S. Securities and Exchange Commission, Commodity Futures Trading Commission, Internal Revenue Service, or state financial regulators, or a self-regulatory organization (SRO) authorized to examine a covered NBF, examine any covered NBF for this requirement (or any related state requirement). *Id.*
13. 31 U.S.C. § 5318(h)(4)(D) (as amended by AML Act § 6101(b)(2)(C)).
14. AML/CFT Priorities, p. 2.
15. *Id.*
16. Statement, p. 2.
17. AML/CFT Priorities, p. 2.
18. Statement, p. 2.