

To the Point!

legal, operations, and strategy briefs for financial institutions

March 19, 2013



Corporate Governance and BSA/AML Compliance

Following the stunning HSBC, JP Morgan Chase and Citibank BSA/AML enforcement actions, Comptroller Curry recently testified before the Senate Committee on Banking, Housing & Urban Affairs regarding Bank Secrecy Act and Anti-money Laundering (“BSA/AML”) compliance and the Office of the Comptroller of the Currency’s (“OCC”) supervision and enforcement actions. He cautioned that while recent enforcement actions have involved large banks, BSA/AML compliance is a significant issue for all banks, and he expressed concern that smaller institutions may now be targeted by criminals who are unable to access large banks due to their strengthened BSA/AML compliance. In his testimony, Comptroller Curry identified four “root causes” of the recent BSA/AML compliance failures: (1) lack of a strong culture of compliance within a bank; (2) failure to commit sufficient and expert resources to BSA/AML compliance; (3) weaknesses in information technology and monitoring processes; and (4) lack of sound risk management. To assist banks in addressing these root causes, the OCC is in the process of drafting detailed guidance on sound corporate governance processes including business line accountability for BSA/AML compliance and the independence of the compliance function. Comptroller Curry’s written testimony included a list of nine corporate governance compliance requirements included in the recent BSA/AML enforcement actions and suggested that these requirements will be incorporated into the OCC guidance. They are:

1. A designated BSA Officer with sufficient knowledge, funding, authority, independence, compensation, and supporting staff to perform his or her assigned responsibilities and maintain effective compliance with the BSA and its implementing regulations;
2. An effective governance structure to allow the BSA Officer and the compliance function to administer the program independently by reporting directly to the board of directors, or a committee thereof, with clear lines of responsibility beginning with senior management and including each line of business that is required to comply with the BSA;
3. Clearly defined channels for informing the board of directors, or a committee thereof, and senior management of compliance initiatives, compliance risks, new product development, identified compliance deficiencies, and corrective actions undertaken;
4. Compliance staff with the appropriate level of authority and independence to implement the BSA/AML compliance program and, as needed, question account relationships, new products and services, and business plans;
5. Policies and procedures that clearly outline the BSA/AML responsibilities of senior management and relevant business line employees, and that hold senior management and line of business management accountable for effectively implementing bank policies and procedures and for fulfilling BSA/AML obligations;
6. A well-defined succession plan for ensuring the program’s continuity despite changes in management, staffing, or structure, and policies and procedures to ensure that problems with excessive turnover of compliance staff or the BSA Officer function are identified, investigated, and appropriately addressed by the board;

7. Policies and procedures to ensure that the bank's risk profile is periodically updated to reflect higher risk banking operations (products, services, customers, entities, and geographic locations) and new products and services;
8. An enterprise-wide management information system that provides reports and feedback that enables management to more effectively identify, monitor, and manage the organization's BSA risk on a timely basis; and
9. A strong BSA/AML audit function that ensures that identified deficiencies are promptly addressed and corrected.

While Comptroller Curry's comments directly affect national banks, it is important to remember that each of the federal banking agencies operates under the same framework for BSA/AML supervision and enforcement and that the bank regulatory agencies work closely together to deter moneylaundering, terrorist financing, and other-criminal acts and prevent themisuseof the financial institutions they regulate. The agencies have issued virtually identical regulations and have issued a joint Interagency Examination Manual on BSA/AML compliance. As a result, we recommend that all banks become familiar with this testimony and consider steps they can take to more closely align their BSA/AML compliance program with the requirements included in the enforcement actions and emphasized by Comptroller Curry in his testimony.

Chapman and Cutler LLP

Attorneys at Law • Focused on Finance®

To the Point! is a summary of items of interest and current issues for financial institutions with primary focus on regulatory, consumer, and corporate issues. Chapman and Cutler LLP maintains a dedicated practice group with expertise to counsel on these issues and other enterprise risk management matters facing financial institutions. If you would like to discuss any of the items contained in these briefings or other legal, regulatory, or compliance issues facing your institution, please contact one of the partners in our Bank Regulatory Group:

[Marc Franson](#) • 312.845.2988

[Scott Fryzel](#) • 312.845.3784

[Heather Hansche](#) • 312.845.3714

[Doug Hoffman](#) • 312.845.3794

[John Martin](#) • 312.845.3474

[David Worsley](#) • 312.845.3896

[Dianne Rist](#) • 312.845.3404

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© Chapman and Cutler LLP, 2013. All Rights Reserved. Attorney advertising material.

Chapman and Cutler LLP | 312.845.3000 | 111 West Monroe Street | Chicago | IL | 60603