

Compliance Officer or Financial Crime Investigator?

The duties of the compliance officer, or money laundering reporting officer within financial institutions (FIs) have been increasing in responsibility as regulations spanning varying areas of focus continue to emerge. In recent years, compliance officers have been called upon to take on additional duties such as those commensurate with the Foreign Account Tax Compliance Act (FATCA), and Data Protection laws, such as the General Data Protection Regulations (GDPR) in Europe, and the soon to be implemented Data Protection Act, 2020 in respect of Jamaica.

Financial Institutions, along with other designated businesses and professions are collaborators with law enforcement, to the extent that under existing legislation they are charged with reporting responsibilities to the Financial Intelligence Units (FIU), in their respective jurisdictions. Suspicious Activity Reports (SARs) operate as intelligence which unearths an investigation into possible financial crime. To this end, there has been increased emphasis placed on the quality of SARs generated by FIs and submitted to FIUs.

ACAMS Virtual Conference

While in attendance at the Association of Certified Anti Money Laundering Specialist (ACAMS) Virtual Hollywood Conference 2021, during the session Special Presentation, Question and Answers with David Lewis, Executive Secretary, Financial Action Task Force (FATF), the following question was posed. *“There appears to be a growing expectation that compliance analysts are expected to be investigators, thus greater emphasis being placed on the quality of SARs submitted to law enforcement. What is your take on this?”* Mr. Lewis responded to the effect that *‘there is scope for the compliance officer to apply more of their knowledge in suspicious activity reporting. However, law enforcement should remain on the front line. FIUs should be better resourced to do its job.’* The same question was posed at a later session during the conference. The panelist responded that *‘it depends on the size of the financial institution. Further, there is a need for compliance officers/analyst to be well trained with knowledge of investigation to leverage this skill in investigating suspicious activity and making SAR disclosures. Being guided by regulatory guidance in respect of SARs is essential.’*

Dev Odedra in his article *The Fault In Our SARs: The importance of realignment towards actionable intelligence*¹ noted that “aside from reform, there are immediate actions those involved in investigating money laundering and submitting SARs can take, namely improvement in the quality of intelligence provided in SARs.” Commenting on reforms to elements of the United Kingdom’s anti-money laundering regime, the writer recorded that the findings of a review agreed between the Law Commission and the Home Office found that the quality of SARs were poor, owing to confusion on the concept of suspicion. It

¹ <https://www.arachnys.com/the-fault-in-our-sars-the-importance-of-realignment-towards-actionable-intelligence/>



stated further that the “quality of the SAR is diminished when reporters do not understand the concept of suspicion.”

FINCEN Guidance

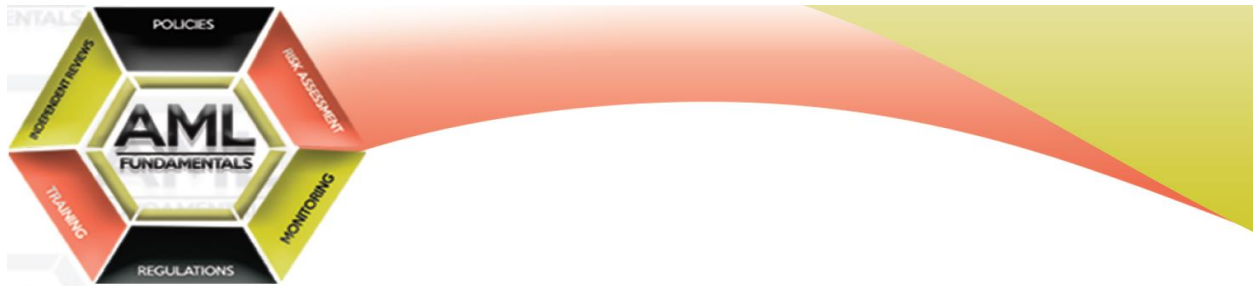
The Financial Crimes Enforcement Network (FINCEN) in the United States of America, in its Guidance on Preparing a complete and Sufficient Suspicious Activity Report Narrative, recommends the who, what, when, where and why of preparing a SAR.

- ✓ **Who:** details about the suspect or suspects involved in the suspicious activity, calling on the Know Your Customer (KYC) information available.
- ✓ **What:** the nature of the instrument or mechanism being used to facilitate the suspicious activity.
- ✓ **When:** details on the date and time period over which the suspicious activity took place.
- ✓ **Where:** the locations or branches of a financial institution where the activity was detected or carried out.
- ✓ **Why:** why does the filer of the SAR believe the activity is suspicious.

Compliance Officer or Financial Investigator

If the compliance officer is to remain relevant in protecting their organization against financial crimes, it appears apparent in keeping with the responses received during the ACAMS Conference that, at a minimum, financial investigating skills will need to be applied in assessing suspicious activity. Therefore, Compliance Officers and Analysts charged with such responsibilities will need to upskill to meet the expectation of FIUs in providing quality SARs, which act as intelligence and the foundation on which a successful investigation can be built. Like the criminals who are constantly seeking new ways to ply their craft, the compliance officer must not remain stagnant in an age where financial technology and the digital economy provides new avenues for bad actors to exploit financial institutions.

The compliance officer within an FI and the financial investigator in an FIU are however not equals in so far as access to information in assessing customer activity is concerned. Whilst the FIU has powers through legislation that allows its officers to gain access to information at different levels within the society at large, the compliance officer is confined to the narrow view of assessing a customer activity in keeping with KYC information obtained at the commencement of and duration of the customer relationship. Whilst open-source information may also aid the compliance officer in making their assessment, the heavy lifting is best placed with the officers of the FIU/law enforcement. Their reach in unearthing additional information, beyond the scope of what financial institutions are able to obtain under the laws



they are guided by, makes them far better positioned as financial investigators. Any expectation of compliance officers to be full-fledged financial investigators should be tempered to the extent that the

financial institution, based on its size and reach, determines that such a role is essential to manage its anti-money laundering risk, borne out of its own AML risk assessment.

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