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If It Ain't Broke, You May Still Need to Fix It

By Mitchell Levy

If your anti-money laundering program has been deemed acceptable by your bank and state and federal regulators, why change it?

Many clients tell me that they feel changing their AML program will raise red flags and invite questions from their bank. So what would be a good reason or good time to re-evaluate your AML program to make it even better, even though your current program is effective?

Your business does not stay the same, the world does not stay the same. We are all witnessing that big time right now. Keeping a static AML compliance program is a risk in and of itself.

By changing and upgrading your AML program, you are making improvements to your business in terms of enhanced methodology, new processes, enhanced due diligence and efficiencies. You might even increase your profits.

Even if auditors do question the changes, they will be glad to see you are staying on

top of the evolving business environment.

If your car is running fine with 10-year-old tires, just passed inspection and you do not see or feel a problem, it may seem everything is okay. Until a tire blows out because it was dry-rotted due to age, not wear and tear. Your AML program may look good and everything seem fine, but you don't want a blowout to happen in your business.

EVOLUTION AND CHANGE

One of the main priorities of your AML program is to satisfy and comply with all state and federal regulations in the most efficient way possible. State and federal regulations continue to evolve and change; your AML program must be able to shift with the changes and set priorities.

A good example of this is when the New York Department of Financial Services issued Part 504, Banking Division Transaction Monitoring and Filtering Program requirements in January 2017.

The NYDFS, through their many MSB examinations, identified problems with transaction monitoring and filtering systems. The rule imposes strict measures over transaction monitoring procedures and processes ranging from independent reviews, testing, supporting work papers, oversight and an annual board resolution certifying compliance to the rule.

The monitoring and filtering program must be based

on a company-wide risk assessment.

Companies that did not update their AML program to include their policies and procedures for transaction monitoring and filtering per Rule 504 were found to be deficient by regulators and their bank. While this is specific to New York, I expect it to be implemented in other states soon.

As an MSB owner, it is your and your Compliance Officer's responsibility to keep your AML program up to date.

FRAUD, FRAUD, FRAUD

Another example — fraud. Right now, we are experiencing COVID-19 fraud scenarios, unemployment fraud, PPP loan fraud, cybercrimes, and more. These fraud schemes are ever-evolving, and your AML program needs to evolve right along with them.

Does your current AML program include proper fraud prevention and SAR filing policies and procedures?

Other reasons to change you AML program are employee turnover and change in leadership. When there is a change in your compliance department personnel, this introduces an enhanced risk to a previously satisfactory program. That is always a good time to evaluate your staffing as well as your AML program.

What are the responsibilities of the exiting employee? Do you have someone to pick up those responsibilities?

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If the compliance officer is the one exiting, the next leader will have their own ideas, systems, controls, risk tolerance — these should be incorporated into your AML program. A new set of eyes is an opportunity to upgrade your program.

CHANGE = RE-ASSESSMENT

I would hope that everyone knows that you must re-assess your AML program when significant changes in your business take place. These include the addition or deletion of locations, change in products or services, a new bank relationship, adding commercial check cashing, change in entity structure, customer demographics, change in POS system (or enhancements to its functionality), change in independent auditor and changes in your risk assessment.

Failing to make these small and

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simple updates can cause you to have a deficiency.

It is critical that you take the time to research and stay educated to make your AML program changes or hire an industry professional to

help you. Change is inevitable, be ready for it, be proactive, be the best at your business.

If you are still not convinced about updating your AML program, take a look at recent enforcement actions by FinCEN. Protect yourself and your business.

On a side note, in the last issue I mentioned that state and IRS examinations will not stop, they would be happening virtually, so you needed to be prepared. Over the past two months, we have seen this to be true. Several state examinations now are taking place virtually, with the regulators asking the businesses to upload all the requested documents.

Compliance is not going away; it is just changing. A static program is a risky program.

Be well, be safe, and be compliant.