When Success Puts You in the Spotlight:
Strategies for Compliance Through Growth

Abstract

Personally and professionally, we all want success. At a financial institution, success is usually defined as creating increased value for the shareholders, clients, employees and society at large. But success, particularly through growth, can often put a financial institution straight in the regulatory spotlight.

This paper discusses the uptick in enforcement actions related to the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) since the early 2000s. It gives reasons behind the increased scrutiny and examples of banks that paid millions of dollars in penalties, despite having historically successful BSA/AML programs. It also discusses mergers and acquisitions as a strategy for growth.

Earning and keeping the trust of clients, employees and shareholders is critical to maintaining ongoing success. Therefore, it is important for a financial institution to successfully maintain growth without incurring regulatory criticism of its BSA program. Part one of this paper discusses the trends that led the industry to its current state. Part two will dive into avoiding regulatory actions and sustaining long-term success.

Since the Patriot Act was introduced, US regulators have imposed more than $5 billion in monetary penalties for alleged violations of BSA/AML procedures. Of that, approximately 80% have occurred since 2012. [(1)]

What is Causing the Increase in Regulatory Penalties?

As enforcement of The USA PATRIOT Act has increased, so has regulatory scrutiny. In recent years, regulators have targeted financial institutions for not maintaining strong BSA/AML programs. Futhermore, a recent study done by Banker's Toolbox showed a potential correlation between BSA-related enforcement actions and growth by merger or acquisition. Once an institution catches regulators' attention for gaps in its BSA program, it is often required to perform costly lookbacks and other corrective actions. Therefore, in order to keep growing successfully, a financial institution needs to proactively strengthen its program to avoid these penalties.

In 2013, during the upswing of BSA/AML-related enforcement actions, Comptroller of the Currency Thomas Curry reported to the Senate that BSA compliance is "inherently difficult."[(2)] He indicated that as BSA programs and technology have evolved over time, so has the sophistication of financial crime. As these changes have resulted in the need for greater BSA-related resources, the OCC significantly increased its attention in that area. Therefore, financial institutions should constantly update and evaluate their BSA programs.

Curry listed four root sources that examiners feel have contributed to many recent BSA compliance breakdowns *(see right).*

- **Culture of compliance within an organization**
- **Commitment of sufficient and expert resources**
- **Strength of information technology and monitoring processes**
- **Sound risk management**

In his address to the Senate, Curry also said that the OCC was looking into enhancing its ability to to take action against individuals.[2] While personal liability is not a new concern, it has come up in several cases recently. Plus, the scrutiny is coming from many directions. FinCEN, the attorney general's office and the state of New York have all expressed that they feel senior bank executives and BSA Officers should be held responsible for their actions and BSA programs. Possible actions include removal and prohibition from the banking industry and personal monetary penalties. A notable example is the $1 million penalty that was issued to Thomas Haider, the BSA Officer of MoneyGram, in 2015.[3]

With personal liability intensifying the pressure of increased regulatory scrutiny, it is more important than ever for institutions to avoid the costs and complications of penalties.

Thomas Curry

> “We are exploring the possibility of regulatory changes that would enhance our ability to take removal and prohibition actions against bank officers, directors, and employees that engage in violations of the BSA."
>
> *- Thomas Curry, Comptroller of the Currency*

Banks That Paid the Price

Even if a bank’s previous exams have gone well, it is not necessarily immune to regulatory penalties. The BSA team at M&T Bank Corp. (an $88 billion Buffalo, New York-based bank) felt they had a good BSA compliance program. However, following the notification of a proposed merger, examiners found problems with M&T's BSA program. As a result of the findings, M&T had to delay the merger.[4]

Old National Bancorp (a $9.7 billion Evansville, Indiana institution) also learned a hard lesson. Their BSA department received positive reviews from examiners for five years in a row before they were suddenly faced with a consent order. The price tag to address the requested changes was estimated at roughly $4 million in upfront expenditures, approximately $5 million in ongoing annual expenses and a $500,000 civil money penalty.

Additionally, The Bancorp Inc. (a $4.7 billion-asset lender in Wilmington, Delaware) suffered a 30% plummet in share price in a single day after the disclosure of a consent order. Furthermore, the consent order also required them to slow the growth of a profitable prepaid card business.

> “It was a shock for us. The message was, ‘You were fine before, but now you’re all broken.’ Nothing had really changed except (regulators) were raising the bar. Expectations were higher."[4]
>
> *- Candice Rickard, Old National Bancorp*

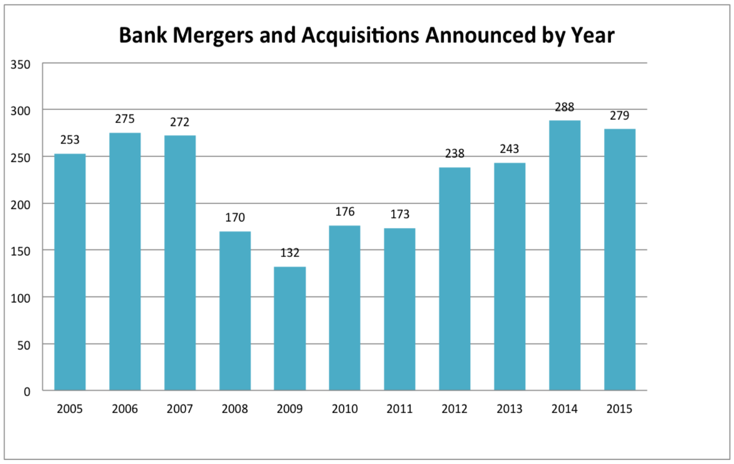
Trends in Merger/Acquisition Activity

Growth, either organic or inorganic, is a critical step for financial institutions on their path to success. While organic growth (through a natural increase in accounts) is the most traditional, inorganic growth (through a merger or acquisiton), may be more beneficial. Richard Hunt, President and Chief Executive of the Consumer Bankers Association, said that industry consolidation is what will keep community banking alive in the face of economic, technological and regulatory threats.

Hunt also said that “small banks have been suffocated with regulation,"[5] and consolidation may be a necessary evil even as community banks get healthier.

However, growth does not come without a price. A recent study conducted by Banker's Toolbox determined that approximately 25% of recent public BSA/AML-related enforcement actions were given to institutions that had also recently experienced a merger or acquisition. Beyond that percentage, many enforcement actions are not even publicly available. However, they are still considered serious and must be addressed in a timely fashion.

It is not just large instutitions that are being scrutinized. Examiners, regulators and law enforcement point to criminals who know that larger institutions have enhanced their monitoring programs. They are now moving their illicit operations to smaller and more rural community institutions.



As the financial crisis is winding down, banks are recovering and mergers and acquisitions are once again on the rise. (6)

Approximately 25% of recent BSA/AML-related enforcement actions were given to institutions that had also recently experienced a merger or acquisition.

How Can Financial Institutions Avoid Penalties During a Period of Growth?

Regulators will be taking a hard look at all parties involved in a merger or acquisition, not just the acquiring institution. Compliance issues or shortcomings that had been previously unaddressed or overlooked will be put under a magnifying glass to ensure all areas are compliant with past and current increased expectations.

When faced with a merger or acquisition, the key is to be proactive rather than reactive. By taking initiative and taking extra precautions up front, the growth and the relationship with examiners can be a positive experience. In **part two** of this white paper, we will discuss strategies for avoiding costly enforcement actions related to BSA. We will outline specific steps on how to "clean house" and create a vision plan for the new institution's long-term success.

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