

Growth does not come without a price. As discussed in part one of **When Success Puts You in the Spotlight**, a recent study of institutions with fast growth, especially merger or acquisition activity, shows a correlation between growth and enforcement actions/financial penalties.

Many institutions have found themselves in their regulators' spotlight once they communicate the intent to merge with or acquire another institution. Any institution considering a merger or acquisition needs to make sure that both parties are fully in compliance with regulations before announcing a deal. Regulators will be scrutinizing all parties involved, not just the acquiring institution. Therefore it is important to follow some proactive guidelines before, during and after the merger/acquisition.

The first step is to perform a thorough BSA compliance program analysis at your institution. Then you'll gather information about the institution with which you are merging. Throughout both of these processes, you'll start evaluating the risk of the "future" institution in preparation for the merger or acquisition. Here are some strategies for remaining compliant and avoiding penalties throughout such growth.

### Analyzing Your Current BSA Compliance Program

- **Make BSA a Priority.**

- ✓ Build a culture of compliance throughout the institution. Many recent enforcement actions were due to the lack of strong corporate governance principles that are necessary to do so. These cases demonstrated a disparity between the independence of compliance and company incentives that emphasized revenues and growth over risk management. Suitable incentives such as compensation structures, performance standards, promotions and a strong compliance culture could ensure that there is accountability throughout the organization and that employees are motivated to do the right thing.
- ✓ Create a clear and defined channel for informing the board of directors and senior management of compliance initiatives, compliance risks, new product development, identified compliance deficiencies and corrective actions undertaken.
- ✓ Ensure that BSA and compliance departments take an active role in all new product/service development. A BSA/AML/OFAC/Fraud risk assessment needs to be completed and presented to the board before being rolled out. It should cover all risks and detail possible mitigation, including costs to reduce risk. Consider using outside consultants if necessary to reduce the burden on the compliance department.
- ✓ Gather support from the entire institution. The BSA department cannot do this job alone. They need the input, support, knowledge and guidance of everyone in the institution in order to be successful.

- **Ensure Risk Profile is Up-to-Date.**

- ✓ A BSA/AML/OFAC risk assessment needs to be updated and approved by the board on a regular basis, reflecting higher risk banking operations and new products and services. If the assessment is handled in-house, consider having an independent third party conduct the assessment. They will be able to provide an unbiased decision about the quality and quantity of risk, along with an evaluation of the controls the institution is utilizing for mitigation.

- **Empower the BSA Officer.**

- ✓ Compliance staff should have appropriate level of authority and independence to make decisions, implement the BSA/AML compliance program, and question items such as account relationships and new products or services.
- ✓ Suspicious activity program parameters and alerts should be based on volume of risk, not number of staff. If staff is overburdened, consider outsourcing some of the responsibilities. This could be a cost-effective temporary or permanent solution to avoid penalties.

- **Evaluate your Suspicious Activity Monitoring Program Independently of the BSA Audit.**

- ✓ This evaluation should include the following components, which can be completed as separate tasks:
  - **Data integrity review** – This confirms that all applicable data transactions and elements are correctly mapped into the system.
  - **Program efficiency review** – This checks to see that the parameters, filters and rules are appropriate and that the system is being used correctly.
  - **Software evaluation** – This validates that the software works as designed.

- **Have a Succession Plan.**

- ✓ Create a well-defined succession plan to maintain the BSA program's continuity despite changes in management, staffing or structure.
- ✓ Implement 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.

- **Analyze the Other Institution.**

- ✓ As part of due diligence during a merger or acquisition, perform a BSA/AML/OFAC risk assessment of the other institution. If this is not possible, obtain and review a copy of the institution's previous risk assessment and independent audit. The goal is to understand all associated risks and to plan how you will address any new ones once the merger takes place.

# Analyzing the Combined Institution for Ongoing Success

- **Perform a Combined Risk Assessment.**

- ✓ Consider what the new institution will look like, including any risks or shortcomings that need to be addressed. Begin creating possible plans to manage them.

- **Conduct Ongoing Threat Assessments on New or Risky Products.**

- ✓ Outline risks on specific products and propose mitigation to reduce or eliminate them. Some banks have exited business lines such as third party payment processors because the risks or the costs to mitigate them are too great. If conflicted about the risk, get an independent consultant involved to assist with the threat assessment and propose cost-effective alternatives.

- **Perform Proactive Lookbacks.**

- ✓ Instead of waiting for an examiner to uncover past problems, have a three- to six-month lookback conducted to review for suspicious activity that might have been missed at the other institution. Proactively review a sample of the suspicious activity reports filed, alerts cleared and cases conducted. Any problems or issues discovered can be documented and quickly dealt with, as opposed to having them discovered by an examiner in your next audit.

- **Conduct a Data Integrity Review on the Combined Database.**

- ✓ After the conversion of the new institution, conduct another data integrity review on the new combined data. Ensure there was no corruption of data, validate that all new data sources and transactions were mapped, and determine if the old filters, parameters and rules are still appropriate for the risks of the new organization.

- **Assess Staffing.**

- ✓ Recent cases have identified a lack of sufficient staffing, high turnover rates and cutbacks as common factors that have impeded the effectiveness of banks' BSA/AML programs. In some cases, banks have inappropriately reduced staffing after a merger or acquisition, and their compliance department staff and expertise have failed to keep up with the institution's growth. The combined volumes after a merger or acquisition may place an institution into a higher risk level, which should be addressed with the appropriate number of staff.

As was illustrated in **part one** of this white paper, the price tag for complying with a BSA/AML enforcement action can be high. The most efficient and cost-effective way for an institution in growth mode to prepare for regulators and avoid personal liability is to proactively look for threats, taking action before a penalty is issued.

Growth can happen quickly or over time, but a financial institution must brace itself for increased scrutiny as the price to pay for success. If you take the initiative to take these extra precautions up front, your growth and your relationship with examiners can both remain positive. To learn more about the role that Banker's Toolbox can play in helping you prepare for regulatory scrutiny, contact [experts@bankerstoolbox.com](mailto:experts@bankerstoolbox.com).