



# ACFE and ACAMS South Florida Chapter 2015 AML/Fraud Conference

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# I. Introduction

## A. Goals for the Session

1. Discuss the Regulatory Landscape
2. What Our Clients Are Concerned About
3. Trends in the Marketplace
4. Regulatory Update
5. Issues facing South Florida Banks
6. Community Banks

# II. Regulatory Landscape

## A. Operating Environment

1. Record setting fines, increased criminal prosecutions and enforcement actions.
2. Heightened expectations with regard to compliance risk management
3. A focus on personal accountability. “Someone”, not just the “corporation” must be held accountable.

*There are no signs of this environment changing.*

## B. New and Old Challenges

1. CDD – Beneficial Owners
2. Proposal to have Investment Advisors Establish AML Programs
3. Heightened SAR Expectations
4. Focus on non-bank financial institutions

# III. Regulatory Update

## A. The 5th Pillar – the “CDD” Rule

1. FinCEN issued a Notice of Proposed Rule Making regarding Customer Due Diligence (“CDD”)/the “Fifth Pillar of BSA.”
2. Under the proposed rule, covered FIs for the first time would be required to identify and collect information on the **beneficial owners of their legal entity customers.**
3. FinCEN’s Proposed Rule comprises four individual regulatory requirements that act as minimum standards and collectively constitute the CDD rule.

# III. Regulatory Update *(cont'd)*

## A. The 5th Pillar – the “CDD” Rule *(cont'd)*

4. The core elements of the rule are:
  - a. Identifying and verifying the identity of customers
  - b. Identifying and verifying the **beneficial owners** of legal entity customers
  - c. Understanding the nature and purpose of the customer relationships
  - d. Conducting on-going monitoring to maintain and update customer information and to identify and report suspicious transactions

# III. Regulatory Update *(cont'd)*

## A. The 5th Pillar – the “CDD” Rule *(cont'd)*

### 5. Beneficial Ownership

a. This is the “new” section of the proposal

i. The proposed rule provides explicit beneficial ownership requirements

ii. The requirement focuses on a concept of 2 elements: “Ownership” & “Control”

b. What Constitutes Ownership?

Each individual, up to 4, who owns directly or indirectly, 25% or more of the equity interest in a legal entity customer.

# III. Regulatory Update *(cont'd)*

## A. The 5th Pillar – the “CDD” Rule *(cont'd)*

### 6. What Constitutes Control?

- a. An individual with significant responsibility to control, manage or direct a legal entity customer. This includes:
  - i. An executive officer or senior manager; or
  - ii. Any other individual who regularly performs similar functions



# III. Regulatory Update *(cont'd)*

## B. Investment Advisors

1. FinCEN has proposed that Investment Advisors be required to establish AML programs and report suspicious activity to FinCEN under the BSA.
2. They would have to comply with the general BSA reporting and recordkeeping requirements for FIs.
3. The authority to examine Investment Advisors for compliance with the Proposed Rule would be delegated to the SEC.

# III. Regulatory Update *(cont'd)*

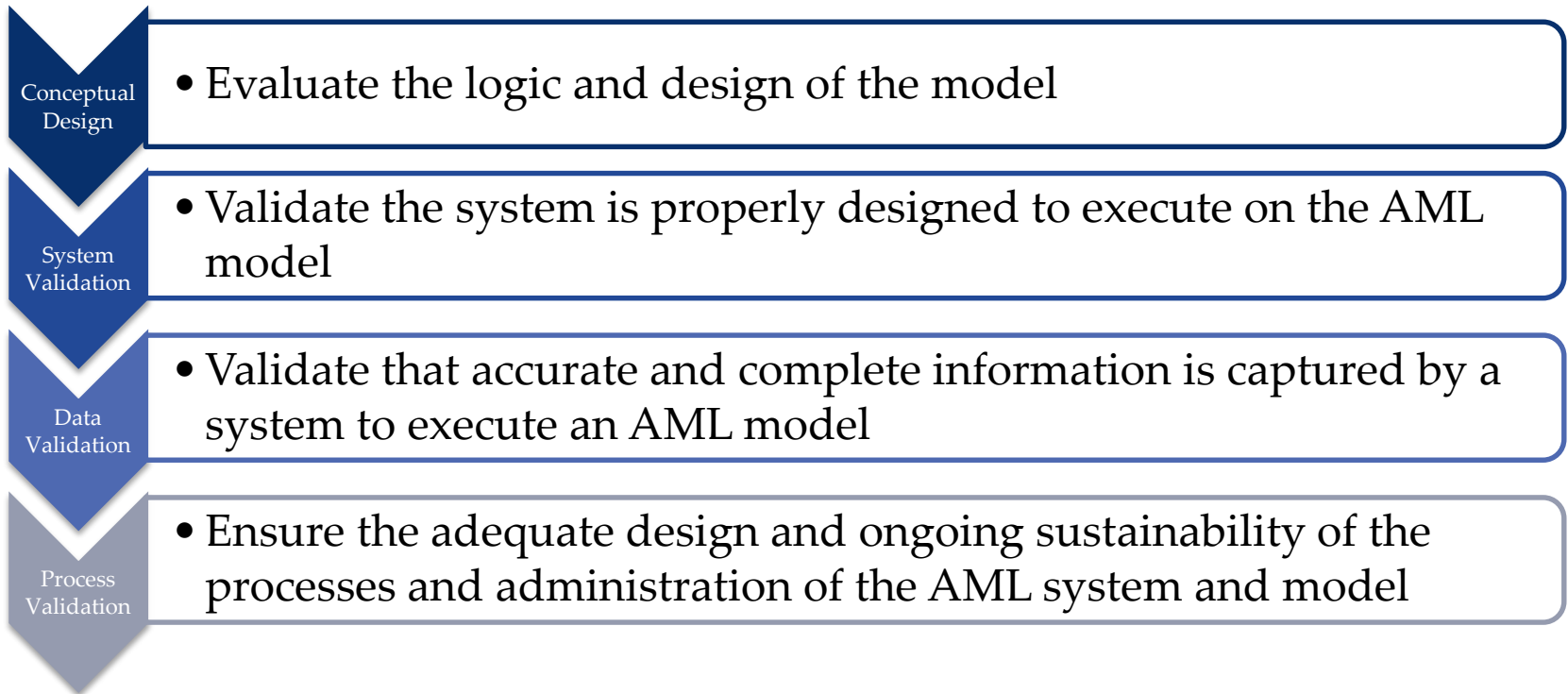
## C. Model Validation

### 1. BSA/AML Regulatory Landscape

- a. The increase in variety and functionality of AML systems and models, as well as the increasing number of institutions using these systems, has heightened regulatory awareness of model risk management
- b. Regulatory agencies have shifted resources and attention to assessing how institutions model their transaction monitoring and high-risk-customer management programs.
- c. Increasingly focused model examination teams (such as the OCC Compliance Risk Analysis Division team)
- d. Failure to appropriately manage AML model risks has proven to be a leading attribute of recent fines, penalties, enforcement actions, and mandated look-backs

# III. Regulatory Update *(cont'd)*

## C. Model Validation *(cont'd)*

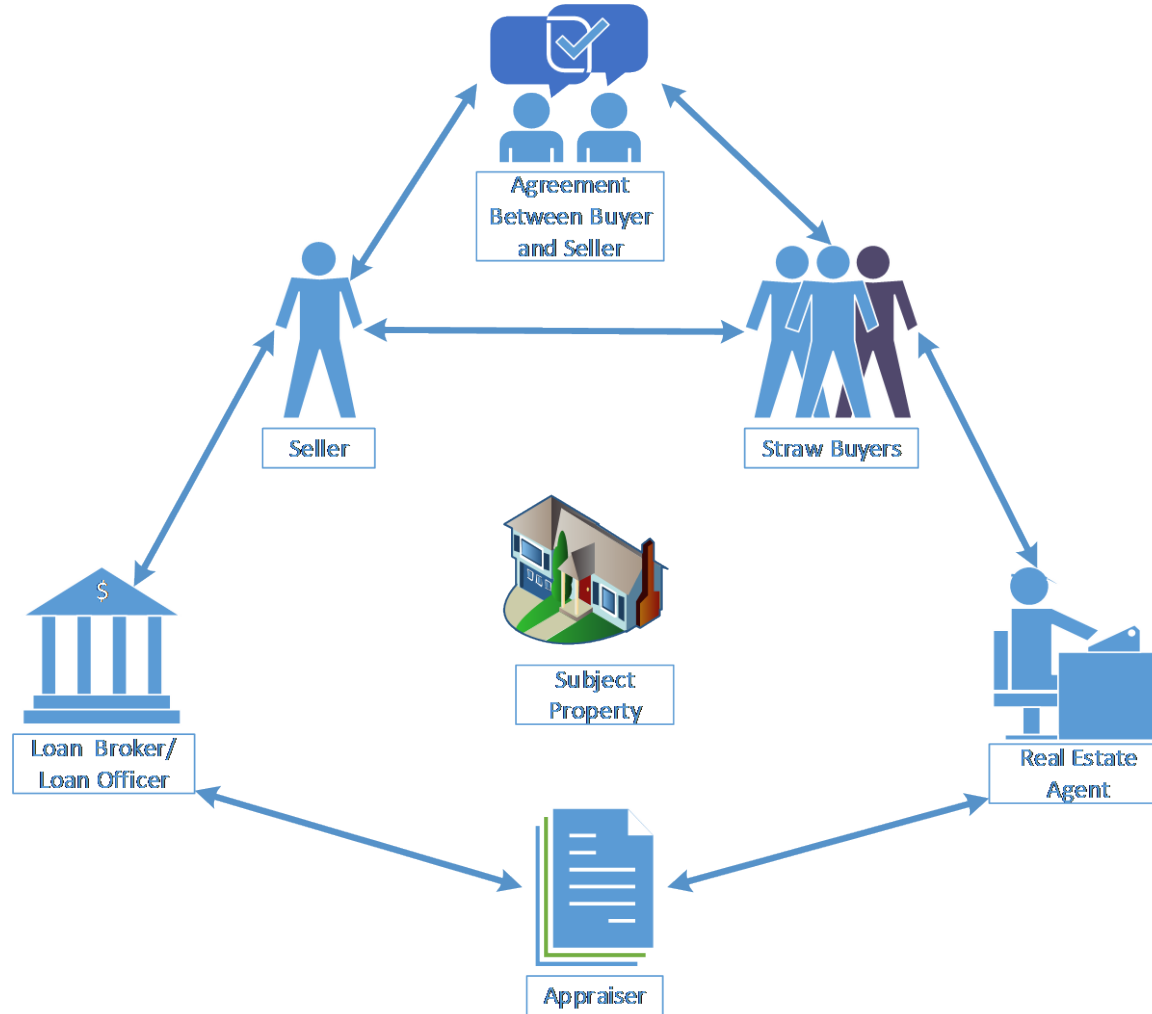


# III. Regulatory Update *(cont'd)*

## D. The Use of Real Estate to Commit Money Laundering

1. Real estate industry can be used to launder money, commit fraud, and to evade taxes.
2. Currently, the Patriot Act provides an exemption for the real estate industry (e.g. real estate agents, title companies), from having to conduct due diligence on its customers/clients.
3. The exception allows for the multimillion dollar purchases of real estate with few questions.
4. The developers, real estate agents and building managers don't know where all the money is coming from and they don't necessarily want to know.

# III. Regulatory Update *(cont'd)*



# III. Regulatory Update *(cont'd)*

5. Red flags: Customer Risk & Transaction Risk  
Customer Risk
  - a. Large unexplained geographic distance between the buyer & the property
  - b. Unusual involvement in third parties
  - c. Titling a residential property in the name of a third party
  - d. Use of legal entities that obscure identity
  - e. PEPs
  
6. Transaction Risk
  - a. Use of large amount of cash; Purchase without a mortgage
  - b. Purchase inconsistent with the individual's occupation / income
  - c. Numerous LLCs owned by parties
  - d. Rapid repayment of loans
  - e. Parties who are non-resident aliens who have no clear purpose or means for acquiring a property in the US

# III. Regulatory Update *(cont'd)*

## E. Increased Individual Accountability

1. Throughout 2015, regulators have been stressing individual accountability both in their public comments and enforcement actions.
2. Initial historical target of enforcement actions focused on corporate responsibility, the growing trend is to also focus on individual employees.
3. Compliance Professionals, Senior Management and Boards of Directors are all at risk and must do their part.
4. Institutions appear to be reacting the message. As recent surveys show that AML issues are more frequently discussed at the Board level and AML training is on the rise.

# IV. South FL Bank Issues and Enforcement Actions

- A. Non-Resident Aliens (“NRAs”)
  - 1. The following are risks associated with NRA accounts:
    - a. Increased difficulty in verifying and authenticating the identity, source of funds, and source of wealth
    - b. Account holders may be residents of high-risk jurisdictions
    - c. Accounts will likely have frequent international activity
    - d. Account holders may be Politically Exposed Persons (“PEPs”)



# IV. South FL Bank Issues and Enforcement Actions

*(cont'd)*

- A. Non-Resident Aliens (“NRAs”) (cont'd)
  - 2. Banks should have policies, procedures, and processes that provide sound due diligence and verification practices, adequate risk assessment of NRA accounts and allow for ongoing monitoring and reporting of unusual or suspicious activities.
  - 3. Factors banks should consider when determining the risk associated with NRA accounts include:
    - a. The NRA’s home country
    - b. The type of products and services being used
    - c. Forms of identification
    - d. Source of wealth and funds
    - e. Unusual account activity

# IV. South FL Bank Issues and Enforcement Actions

*(cont'd)*

## B. High SAR Filing

1. Upwards of 10% of South Florida banks file more than 50 SARs monthly while banks in Central and Northern Florida file less than 50 per month.
2. Reasons for this pattern:
  - a. Customers in South Florida tend to be involved with international businesses
  - b. Difficulty in verifying international transactions due to lack of public information

# IV. South FL Bank Issues and Enforcement Actions

*(cont'd)*

## C. Recent Enforcement Actions

Year	Penalty	Regulator	Regulator Findings
2014	\$300,000	FinCEN	Failure to comply with §314(a) of the USA Patriot Act, establishing an AML program and system for monitoring unusual transactions
2014	Consent Order	OCC	There are still deficiencies in the Bank's efforts to meet the requirements of the BSA
2015	Consent Order	<ul style="list-style-type: none"><li>• FDIC</li><li>• FL Office of Financial Regulation</li></ul>	Weaknesses in the Bank's compliance with the BSA

# V. Community Banks

## A. Community Banks

1. Enforcement actions against community banks are on the rise.
2. Smaller financial institutions have to walk that fine line between heightened regulatory expectations requiring robust compliance programs and managing typically the higher cost of such programs.
3. As larger banks de-bank entire customer bases, such as MSB's, these businesses flock to smaller institutions for services
  - a. These smaller institutions may not have the appropriate systems or prepared to handle the added risk
  - b. A recipe for suspicious activity to go undetected.

# V. Community Banks *(cont'd)*

## A. Community Banks

Year	Penalty	Regulator	Regulator Findings
2015	\$4,500,000	FinCEN	Severe and systemic failures in many aspects of its anti-money laundering program
2015	\$1,500,000	FinCEN	Willful violation of the BSA by failing to detect or adequately report suspicious transactions involving millions of dollars in illicit proceeds from a judicial corruption scheme
2015	\$1,000,000	OCC	Failure to achieve full compliance with a Consent Order it entered into in 2012