

The Anti-Money Laundering Act of 2020 and the Shifting AML Framework

A Conversation with Edward Longridge,
Managing Director and Practice Leader,
Bates AML & Financial Crimes

Bates Research

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5005 Meadows Road, Suite 300 Lake Oswego, OR 97035

503-670-7772 contact@batesgroup.com

Introduction

As compliance professionals continue to operate from remote locations under pandemic conditions, firms must plan to navigate the new requirements contained in a broad new Anti-Money Laundering (“AML”) law passed by Congress in December 2020, and they must prepare to adapt to anticipated regulatory changes under a new administration.

Bates Research spoke with Edward Longridge, Managing Director of Bates Group’s AML & Financial Crimes Practice, for an extended virtual conversation about the latest AML challenges facing financial firms.

As practice leader, Mr. Longridge supports financial firms confronting AML challenges. Before joining Bates two years ago, he served as Chief Anti-Money Laundering Officer for Oppenheimer & Co. Inc., where he oversaw the firm’s global AML and Sanctions program. Over a twenty-year span, he worked at Citigroup, Deutsche Bank in New York, and Morgan Stanley and Salomon Smith Barney in London.

Here are some excerpts from our discussion.

COVID and Compliance

EL: COVID is not going away any time soon. Right now, many states and jurisdictions are in lockdown. As we speak, the whole of the UK is in lockdown, and vaccinations are only beginning here in the US. So realistically, we will be operating remotely for quite a while.

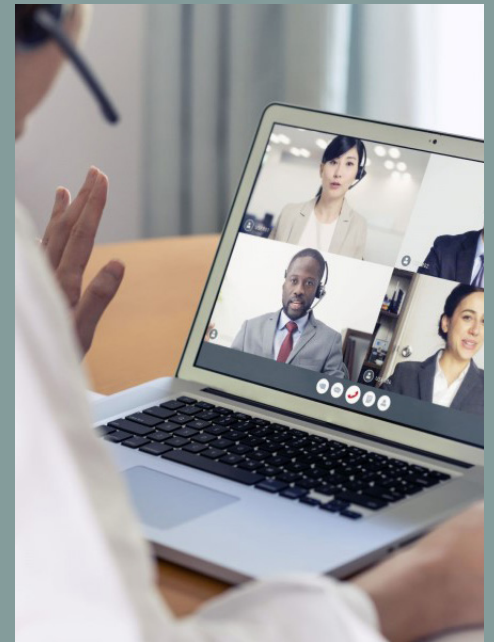
That said, it’s important to take a moment to consider how far financial firms have come in adjusting their work practices over a relatively short time. It has been under a year since we started grappling with the impact of COVID on Compliance and Operations. Initially, Bates helped clients to transition to a fully remote environment. That was a seismic change for many firms. Some of them, for example, had written policies against granting remote access except in very limited circumstances. We then began assisting clients under a host of engagements, including doing so directly by providing senior Bates’ executives to help manage client programs, and to cover other staffing needs.

Starting in the third and fourth quarter last year, we saw a significant pick-up of more traditional AML consulting activity. As firms were becoming more adept at operating under COVID, they realized that the work could no longer be deferred. It had to get done. Firms still have to fulfill their obligations under the rules and requirements.

In addition, regulators were very active during 2020. In particular, red flag guidance around fraud during COVID was abundant. When a regulator issues such guidance, firms must incorporate it. AML officers know that firms will be examined on it. Against the backdrop of COVID, these alerts put increasing pressure on AML departments to keep up. Beyond the operational challenges of remote compliance, we are helping AML teams to keep pace with the expanding number of risks highlighted by the regulators.

With the passage of the new Ant-Money Laundering Act of 2020 (“AMLA”) this trend will only grow. Despite the COVID limitations, the focus of atten-

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tion for firms in time will be to push their programs towards the AMLA and when issued adopt the requirements of the rules and regulations. We will continue to maintain and disseminate the large flow of information coming from regulators in the coming months related to the AMLA and other proposed rules – through webinars, communications, and industry dialogue – on the impact of COVID on financial crimes, on temporary regulatory responses and on market conditions. That said, it is clear, firms must remain flexible and stay vigilant. While there is potentially light at the end of the tunnel, COVID is not going anywhere soon.

Anti-Money Laundering Act of 2020

EL: The AMLA is the largest new AML law in the United States since the USA PATRIOT Act. It is broad. It covers many areas. Though it is a fundamental change, much of it has been advocated by industry groups. Significantly, the act goes a long way in aligning the United States with other countries under an international AML framework. I am very positive on the new rules and the increased transparency in many areas. There are a whole number of key initiatives to make AML programs more effective. This is a big positive step forward for the industry.

There are many important changes in the AMLA. The law requires smaller shell companies to disclose beneficial ownership and mandates that the information be held in a federal registry. The law covers virtual currencies (through a revised definition of financial institution), as well as the antiques world (which has been rife with money laundering for decades.) Further, the law establishes and embeds a new role for innovation officers, supports technology innovation to drive the widespread use of technology to improve efficiencies and to simplify paperwork-heavy processes.

If you look at the AMLA, particularly around the pressures of working in or running an AML program, there are two things that stand out: increased penalties (fines and jail terms) and enhancement in the whistleblower programs. Both will likely increase the indirect pressure on programs and financial institutions.

I would argue that one of the most important changes for AML officers is the requirement that Treasury create and share national AML strategic priorities. By establishing and releasing these priorities, the government is communicating a clear direction for financial institutions to follow. We will now be able to adjust programs and better prepare for compliance examinations. If you are performing your BSA AML risk assessments, these priorities should be included in those assessments.

Virtual Currency

EL: Cryptocurrency has been a challenge under U.S. AML law. The AMLA changes the definition of virtual currencies so that now all those firms will be required to conduct and achieve full AML compliance. That is a fundamental change. Here too, the concept is not original. The intergovernmental Financial Action Task Force (“FATF”) recommended required transparency through virtual transactions. The FATF has had a pivotal role in advancing

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the global AML industry and legislative process. The result is that the AMLA now aligns the United States with the international guidelines on virtual currencies. This is a good thing.

The challenge and nature of AML programs is that we are always trying to keep up with the latest money laundering typologies. Money launderers will always come up with new methods. Money launderers that use virtual currencies will probably find a new way to launder money. The next challenge will be how to identify that because the cloak has been lifted off the virtual currency world with this new legislation.

Beneficial Ownership and the Registry

EL: Financial institutions through the Customer Due Diligence Rule (“CDD Rule”) have been required to obtain 25% beneficial ownership information and controlling person information on their customers. The AMLA targets the smaller companies, (there are exemptions for larger companies) particularly around shell companies and those companies under 20 full time employees – as well as those that have income tax returns of less than 5 million in sales in gross receipts. The AMLA requires them to disclose their beneficial ownership to the government. The rationale is that this disclosure will reduce the number of legal entities that have been set up for potentially nefarious reasons.

This will have a broad impact. Any company within the right threshold will have to disclose beneficial ownership. There are, of course, a number of exemptions involving larger institutions and listed or publicly traded companies. The exemptions are:

- Publicly-traded entities
- Certain Financial Institutions
- Some government entities
- Some non-profits
- Entities that meet the following requirements:
 - More than \$5 million in sales
 - Have more that 20 full-time employees
 - Have an operating office in the US

The AMLA targets smaller entities to get to shell companies and the like. The information on these companies will be held in a federal registry. The public will not have access to the information, but financial institutions will have access, which will enable them to obtain beneficial ownership information about their customers. That’s a big benefit to financial institutions. This is another example of how the international system, particularly the US and European regulation, is becoming more aligned on AML legislation. In Europe, similar types of registries of beneficial ownership information will have an important impact.

From a financial institution program standpoint, there will probably be groups that sit within the AML functions that will have access to the registry and for limited purposes. I welcome the development of the registry. It will

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increase the level of transparency across all the industries in the U.S.

Data Security

EL: There is always risk around data security. Databases can always get hacked. Could the registry be vulnerable? Yes. But FinCEN and the government will have focused and targeted cybersecurity requirements for it and have limited access to it. Cybersecurity will be a fundamental challenge during AMLA implementation. But that is also true about vast areas of data within financial institutions.

Importantly, the world of cybersecurity has become much more aligned with the world of AML and fraud. There is a trend in the industry that they are all being brought closer together. They may not be under the same program directly, but they are increasingly interrelated. If you have a data breach within a financial institution you need to file Suspicious Activity Reports. Thus, activities of your AML program are covering the world of cybersecurity.

Innovation Officers and Reporting Efficiency

EL: With respect to the AMLA, it requires making the suspicious activity reports (“SARs”) and currency transaction reports (“CTRs”) process more efficient, including potentially automating lower-risk SARs so the SAR review teams and the transaction monitoring investigation teams are focusing on the really critical SARs and having very good, detailed and useful information reported to FinCEN. AMLA also requires that by January 2022, and every five years thereafter, Treasury review the requirements for SAR and CTR processes. This will allow dollar thresholds for CTRs to be adjusted to determine relevance. The law also proposes to identify ways that certain SAR information may be shared internationally within an organization. These are big changes.

Essentially, the hiring of the new innovation officers at FinCEN, as well as at the federal functional regulators, is intended to enhance efficiencies throughout AML programs. These innovation officers will work with firms and vendors to promote innovation to support new technologies. The AML industry has moved toward the use of AI and the trend is picking up pace. Most firms are now implementing or considering an approach to AI. Technology vendors and consulting firms, such as Bates, that have AI solutions are going to be a focus in the next 12–18 months. All of these efforts are going to make programs more effective and less resource heavy.

The New Administration

EL: It is generally accepted that Democratic administrations tend to increase the number of regulatory rules and guidance on the financial industry. Indicators so far suggest that this will likely happen under the Biden administration, as well. The question is in what areas are they going to focus? We expect FinCEN and the federal functional regulators to be working hard on implementing regulations under the AMLA since the new law represents such a fundamental change. But we are also monitoring to see whether Congress will pass federal legislation approving marijuana and cannabis (which

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would impact AML) and whether there might be additional focus on non-AML compliance rules, such as with respect to Regulation Best Interest. Time will tell.

Concluding Thoughts:

EL: At the end of the day, the new legislation significantly advances the world of AML. There will be challenges to financial institutions to incorporate many elements within the implementation period. No doubt costs are associated with that. Will there be headaches in implementation as we go through the rulemakings? Absolutely.

Ultimately, however, the goal of AML Officers is to prevent money laundering and terrorist financing. The legislation significantly evolves the existing framework of AML laws and rules in this country and improves them. In doing so, the AMLA aligns the US with the international AML framework. Those are significant positive points for US and global companies

About Bates AML & Financial Crimes:

[Bates AML & Financial Crimes](#) has been working in 2020 to prepare for the AMLA requirements. We have grown our expertise, added to our bench in subject matter, policy and procedures, governance framework. We have built up the areas where we are seeing demand, particularly in the technical areas of AML such as tuning and optimization, implementation of new systems and trade finance. Our partnership with Complidata, an AI-driven Process Automation Solutions company, is an example of our efforts to add to our depth in leveraging AI to help satisfy the AMLA and other regulatory requirements and expectations. Bates Group's many years of experience advising financial institutions – from compliance to retail litigation and enforcement – underscores the breadth of our perspective and infuses our advice and counsel going forward.

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Contact:



Edward Longridge

Managing Director,
Practice Leader

Bates AML & Financial Crimes

917-455-7765

elongridge@batesgroup.com



Dennis Greenberg

Managing Director

Bates AML & Financial Crimes

914-588-3965

dgreenberg@batesgroup.com