

## CLIENT ALERT

### Agencies Issue Joint Statement on Banks' Resource Sharing and Collaborative Arrangements

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On October 3, 2018, the Financial Crimes Enforcement Network (FinCEN), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (collectively, "the Agencies") issued a statement addressing instances in which banks can collaborate with each other and share resources to manage their Bank Secrecy Act (BSA) and anti-money laundering (AML) obligations more efficiently and effectively. This may involve pooling human, technology, or other resources to reduce costs, increase efficiency, and leverage specialized expertise. The statement indicates that such collaborative arrangements are generally are most suitable for community banks with simple operations and lower risk for money laundering and terrorist financing. The statement does not apply to collaborative arrangements for the purpose of sharing information under Section 314(b) of the USA PATRIOT Act.

The statement provides several non-exhaustive examples of how banks may collaborate:

#### *Internal Controls*

Two or more banks may share resources to conduct internal control functions such as: (1) reviewing, updating, and drafting BSA/AML policies and procedures; (2) reviewing and developing risk-based customer identification and account monitoring processes; and (3) tailoring monitoring systems and reports for the risks posed.

#### *Independent Testing*

Personnel at one bank may be used to conduct the BSA/AML independent test at another bank within a collaborative arrangement.

#### *BSA/AML Training*

A collaborative arrangement may allow for the hiring of a qualified instructor to conduct the BSA/AML training across multiple banks.

In certain instances it may not be appropriate to share resources under a collaborative arrangement. For instance, it may not be appropriate for banks to share a BSA officer due to the confidential nature of SARs filed and the potential impact on the ability of the BSA officer to effectively manage each bank's daily BSA/AML compliance. Further, banks should be careful when considering entering into arrangements due to potential privacy concerns, regulatory requirements specific to third parties, oversight issues, and more. Any arrangement should be documented with a contract and evaluated on a periodic basis. It is also important that banks tailor any agreements to meet their specific risk profile for money laundering and terrorist financing. Finally, each bank remains individually responsible for ensuring compliance with BSA requirements.

The statement appears to reflect an acknowledgement by regulators of the increasing amount of financial and human resources that banks are obligated to invest in AML compliance and the growing dichotomy in the ability of large versus smaller banks to maintain complex AML programs.

### **Practical Considerations**

Banks considering such arrangements may wish to consider incorporating into these agreements other types of collaboration allowed by BSA rules. For example, although the statement does not govern sharing under Section 314(b) of the USA PATRIOT Act, such arrangements could be combined with section 314(b) relationships where appropriate to help banks improve the quality of their SAR reporting. Likewise, banks have the option under BSA rules to enter into agreements to rely on other banks to perform customer identification and collect beneficial ownership information on shared customers, which could be combined with the new collaborative arrangements.

Of course, banks should be careful when entering into such arrangements to ensure regulatory and other concerns are met. Any collaborative arrangement should be fully documented, reviewed periodically, and commensurate with the banks' risk profiles.

Finally, the statement encourages banks to engage with their primary federal regulators when first considering collaborative arrangements to ensure that regulators understand the nature and extent of the proposed collaboration and have an opportunity to provide feedback.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

#### **Carlton Greene**

Partner – Washington, D.C.  
Phone: +1 202.624.2818  
Email: [cgreene@crowell.com](mailto:cgreene@crowell.com)

#### **Scott Lessne**

Senior Counsel – Washington, D.C.  
Phone: +1 202.624.2597  
Email: [slessne@crowell.com](mailto:slessne@crowell.com)

#### **Erik Woodhouse**

Counsel – Washington, D.C.  
Phone: +1 202.624.2554  
Email: [ewoodhouse@crowell.com](mailto:ewoodhouse@crowell.com)