



TEXAS DEPARTMENT OF BANKING

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SUPERVISORY MEMORANDUM – 1040

October 29, 2015

TO: Money Services Business License Holders

FROM: Charles G. Cooper, Banking Commissioner

SUBJECT: Recommended File Documentation for Money Services Business License Holders that Conduct Business through Authorized Delegates, Foreign Agents and Counterparties, and Gateway Agents

DEFINITIONS

For purposes of this guidance, the following definitions apply:

- Authorized Delegate (AD) has the same meaning as found in Section 151.002(b)(2) of the Texas Finance Code.
- Foreign agents or counterparties – include foreign-based entities used by a money services business (MSB) to pay out beneficiary funds.
- Gateway agents are domestically located or domiciled MSBs or processors that are used by a MSB to gain access to foreign paying agents and payout locations.

Hereinafter, the terms foreign agents, counterparties, and gateway agents will be referred to simply as agents.

BACKGROUND

Texas Department of Banking (Department) examinations routinely include a detailed review of money services business AD and agent files. Files are reviewed primarily to assess compliance with the requirements of Section 151.402 of the Texas Finance Code (Conduct of Business through Authorized Delegates); and, Title 31 Code of Federal Regulations (CFR) 1022.210 (Anti-Money Laundering (AML) Program). Foreign agent files are also reviewed to assess adherence to the anti-money laundering guidelines set forth in Financial Crimes Enforcement Network (FinCEN) Interpretive Release 2004-1 for foreign agents and counterparties.

Agent and AD relationships have long been known by regulators and industry to pose substantial compliance risks for MSBs. Consequently, agent and AD file review comprises a significant component of the examination process for assessing compliance with AML Program requirements and Texas law. To date there has been limited guidance available to MSBs with respect to regulators' expectations for the content and organization of files selected for review. Neither Chapter 151 of the Texas Finance Code, nor Title 31 CFR Chapter X specifically addresses these expectations; however, Texas law requires license holders to establish policies,

procedures, and controls requiring reasonable risk-based background investigations to ensure that ADs are complying with: (1) all applicable federal and state laws; (2) AD agreement requirements, including terms and conditions; and, (3) consumer disclosure notice requirements.

In addition, federal law requires MSBs to establish effective AML procedures and controls, which includes agent and AD monitoring policies and procedures. At a minimum, these procedures should cover contracts; consumer disclosures; on and off-site reviews; risk assessment; credit reviews; background investigations; escalation and termination policies for ADs and agents; transaction monitoring; and, BSA training. As such, file documentation presented for review should support the license holder's adherence to its agent and AD policies and procedures regarding conducting initial (on-boarding) due diligence and periodic (on-going) monitoring.

PURPOSE

The purpose of this memorandum is to provide license holders with industry best practices regarding the documentation of AD and agent compliance monitoring efforts. In addition, it is the intent of this memorandum to offer general guidance for AD and agent file content and structure in order to facilitate more efficient and effective regulatory review, to improve MSB compliance, and to reduce the demands on limited license holder resources.

DOCUMENTING COMPLIANCE

The most frequently noted examination issues observed by Texas examiners include the untimely delivery of AD and agent files for review, deficiencies in the documentation provided to support compliance with agent and AD oversight (due diligence), and difficulty locating specific documents within the files. More often than not, these deficiencies are the result of the absence of established file documentation procedures or protocols, and are further augmented when the files are not centrally managed. Texas examiners have noted that MSBs face difficulties in demonstrating compliance when relevant file documents are maintained in different departments or in locations different from where the examination is conducted. Examples of de-centralized file management include credit review documents that are maintained within the credit department; AD and agent applications that are maintained within regional offices; and, contracts that are maintained within the general counsel's office. In order for a MSB to adequately demonstrate compliance, it is recommended that all corresponding documentation be centrally maintained.

Agent and AD File Content

The Department understands that the documentation of on-boarding and on-going due diligence will vary among license holders. Nevertheless, the Department has identified the following types of document content that tends to support effective agent and AD due diligence:

On-boarding due diligence documents

- On-boarding approval checklist, if applicable
- Agent and AD BSA policies and procedures
- Evidence of agent due diligence over subagents (e.g. subagent lists, reviews conducted by

the agent, etc.)¹

- Approval by foreign regulators to conduct money transmission, including documentation demonstrating compliance with applicable foreign country regulations
- Application for Agency Appointment
- Signed Agency/AD Contract (Trust Agreement) and addendums
- Background on owners and principals (e.g. OFAC/WorldCheck/LexusNexus), including verification of identity (e.g. photo IDs, social security numbers, etc.)
- Credit review and approval documents (e.g. financials, credit reports, Dun & Bradstreet, income tax returns, etc.)
- Funds settlement documents (ACH and Pre-Authorized Draft Authorization Agreement)
- Secretary of State/local legal filings and corporate ownership information legal filings
- Initial BSA review and risk rating
- Evidence of initial AML/BSA training
- Evidence of receipt of AML/BSA policies and procedures and other information required to be provided to ADs by license holder, see Sections 151.402(b)(1);151.402(c)(9); and 151.402(c)(10) of the Texas Finance Code

On-going due diligence documents

- Copies of periodic on-site and off-site program reviews, including findings and license holder follow-up actions (remediation, escalation, termination), updated risk assessments and supporting documents
- Confirmation procedures for payouts by foreign agents and counterparties
- Current lists of foreign agents' subagents
- Documentation to support on-going foreign agent monitoring and due diligence over its subagents
- Evidence to support periodic (on-going) BSA training
- Evidence to support the license holder's review of updated BSA/AML Program policies and procedures
- Evidence to support agent compliance with independent AML review requirements
- Updated credit review
- If applicable, reports of foreign regulators for agents (violations, fines, penalties)
- Updated owner/principal due diligence (including change of ownership and other structural changes, OFAC). License holders subscribing to negative news services should include or reference negative items detected by the service and management actions taken.

File Organization

As with file content, the organization of agent and AD files will vary among MSBs depending on internal file and document maintenance policies. Similar to file content, the Department has identified the following aspects of file organization and delivery that tend to result in efficient examiner review and reduced demands on license holder staff and management resources:

- Whether the files are provided electronically (preferred format) or in paper form, the

¹ Texas authorized delegates are prohibited from appointing subagents [Section 151.402(a), Texas Finance Code]. Therefore, subagent due diligence applies only to foreign and gateway agents.

documents contained within the files must distinguish between those related to on-boarding due diligence and on-going supervision. That is, on-boarding documents should be clearly identifiable and separate from file documents related to on-going supervision.

- Within the on-boarding and on-going classifications, related documents should be filed together and clearly labeled. For example, the on-boarding folder would have a subfolder labeled *Contracts* containing all contract related documents. Similarly, the on-going supervision folder may have a subfolder labeled *Program Reviews* that contains documents related to periodic AD monitoring.
- File documents should be arranged in chronological order.

It is ultimately incumbent upon management to ensure that the documents contained in files presented for review provide sufficient evidence that the compliance risks identified in the risk assessment have been satisfactorily mitigated. Further, management should follow its own company's record retention policy when determining how long to maintain a specific AD or agent document record.