

MAYER | BROWN

SECURITIES ENFORCEMENT TRENDS

BSA/AML RISKS FOR FINANCIAL INSTITUTIONS AND BROKER-DEALERS



AGENDA

1. The Legal Framework
2. Key Federal Enforcers
3. AML Rules & Regulatory Expectations
4. Historical Context & Policy Shifts
5. Key Cases & Developments
6. Compliance & Defense



01

THE LEGAL FRAMEWORK

INSTITUTIONAL ENFORCEMENT LANDSCAPE

SEC

Enforces federal securities laws; pursues civil cases (fraud, misstatements, AML failures under Rule 17a-8).

FINRA

Self-regulatory organization for broker-dealers; focuses on supervision, AML, fraud prevention.

FinCEN

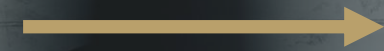
Treasury bureau enforcing BSA; sets AML/CFT priorities, issues rules, imposes civil penalties.

DOJ

Criminal enforcement agency; prosecutes egregious AML failures and frauds; works in parallel with SEC

Key Concept

Overlapping
jurisdiction



risk of multiple
investigations for
same conduct.



THE LEGAL ARCHITECTURE

FOUNDATIONAL STATUTES

- **Securities Exchange Act of 1934:** Framework for broker-dealer regulation (e.g., recordkeeping, supervision).
- **Bank Secrecy Act (BSA):** Cornerstone of AML regime. Requires institutions to:
 - Maintain risk-based AML programs
 - File Suspicious Activity Reports (SARs)
 - Keep adequate records
- **USA PATRIOT Act:** Expanded AML obligations post-9/11. Enhanced CDD, information sharing, international cooperation.¹
- **18 U.S.C. §§ 1956/1957:** Criminal statutes for money laundering.
- **Importance:** Institutions must track both regulatory (civil) and criminal exposure.



02

KEY FEDERAL ENFORCERS

SEC'S AML AND FRAUD ENFORCEMENT

- SEC can bring enforcement under:
 - Rule 17a-8 (AML records)
 - Anti-fraud rules (10b-5, etc.)
- Recent trends:
 - Focus on unregistered platforms (crypto, foreign brokers)
 - Misuse or failure to file SARs
 - AML failures tied to market manipulation
- Example: SEC enforcement against broker-dealers routing suspicious microcap trades without AML reviews.

DOJ'S ROLE IN FINANCIAL INSTITUTION OVERSIGHT

- DOJ prosecutes criminal violations: money laundering, wire fraud, securities fraud.
- Can act independently or in parallel with SEC, FinCEN.

USES

- + Grand juries
- + Whistleblowers (under SEC and AMLA)
- + Deferred prosecution agreements (DPAs)

RED FLAGS

TRIGGERING DOJ INVOLVEMENT

- + Ignored red flags
- + High-dollar suspicious transactions
- + Complicity or knowledge by senior management

FINCEN'S EXPANDING ENFORCEMENT PROFILE

- Once limited to information collection, FinCEN now:
 - Imposes civil penalties (e.g., Ripple, Binance cases)
 - Files GTOs (Geographic Targeting Orders)
 - Publishes advisories and alerts
- Key update: Corporate Transparency Act → Beneficial Ownership Registry:
 - BD compliance teams must update CDD procedures
 - Potential conflict with state privacy laws and global transparency efforts





03

AML RULES & REGULATORY EXPECTATIONS

EXCHANGE ACT RULE 17A-8

- Requirement: Broker-dealers must comply with the BSA.
- Enforced by SEC → failure = securities law violation.
- Key obligations:
 - Maintain AML program
 - File SARs and CTRs
 - Implement policies to detect/report suspicious activity
- Practical tip: 17a-8 allows SEC to reach AML deficiencies without proving criminal intent or money laundering.

FINRA RULE 3310

- Requires each member firm to develop and implement a written AML program:
 - Tailored to its business, size, and risk profile
 - Must include:
 - Written policies and procedures
 - Independent testing (at least annually)
 - Designation of AML Compliance Officer
 - Ongoing employee training
- FINRA regularly cites firms for:
 - Boilerplate programs
 - Failure to update programs in response to evolving threats
- Practical concern: Small or under-resourced BDs often fail Rule 3310 tests.

FINCEN AML/CFT PRIORITIES (CURRENT + OUTLOOK)

- Issued in 2021 pursuant to the Anti-Money Laundering Act of 2020.
- Institutions must integrate these into their risk assessments and programs.
- FinCEN will soon update priorities; expected to include:
 - Use of AI in financial crime
 - Geopolitical risks (Russia, China, crypto misuse)
 - Environmental crime (ESG-related fraud)

8 PRIORITIES (AS OF CURRENT GUIDANCE)

- (1) *Corruption*
- (2) *Cybercrime*
- (3) *Terrorist Financing*
- (4) *Fraud*
- (5) *Transnational Crime*
- (6) *Drug Trafficking*
- (7) *Human Trafficking/Smuggling*
- (8) *Proliferation Finance*

OTHER KEY FINRA AML & FRAUD RULES

- **FINRA Rule 2010:** Catch-all for unethical or dishonest conduct. Often used for fraud or AML violations.
- **Rule 3110: Supervision.** Firms must design, implement, and maintain supervision systems.
- **Rule 4511:** Books and records. Firms must maintain accurate records.
- **Practical note:** AML deficiencies often involve combinations of these—e.g., poor supervision + failure to report = multiple violations.



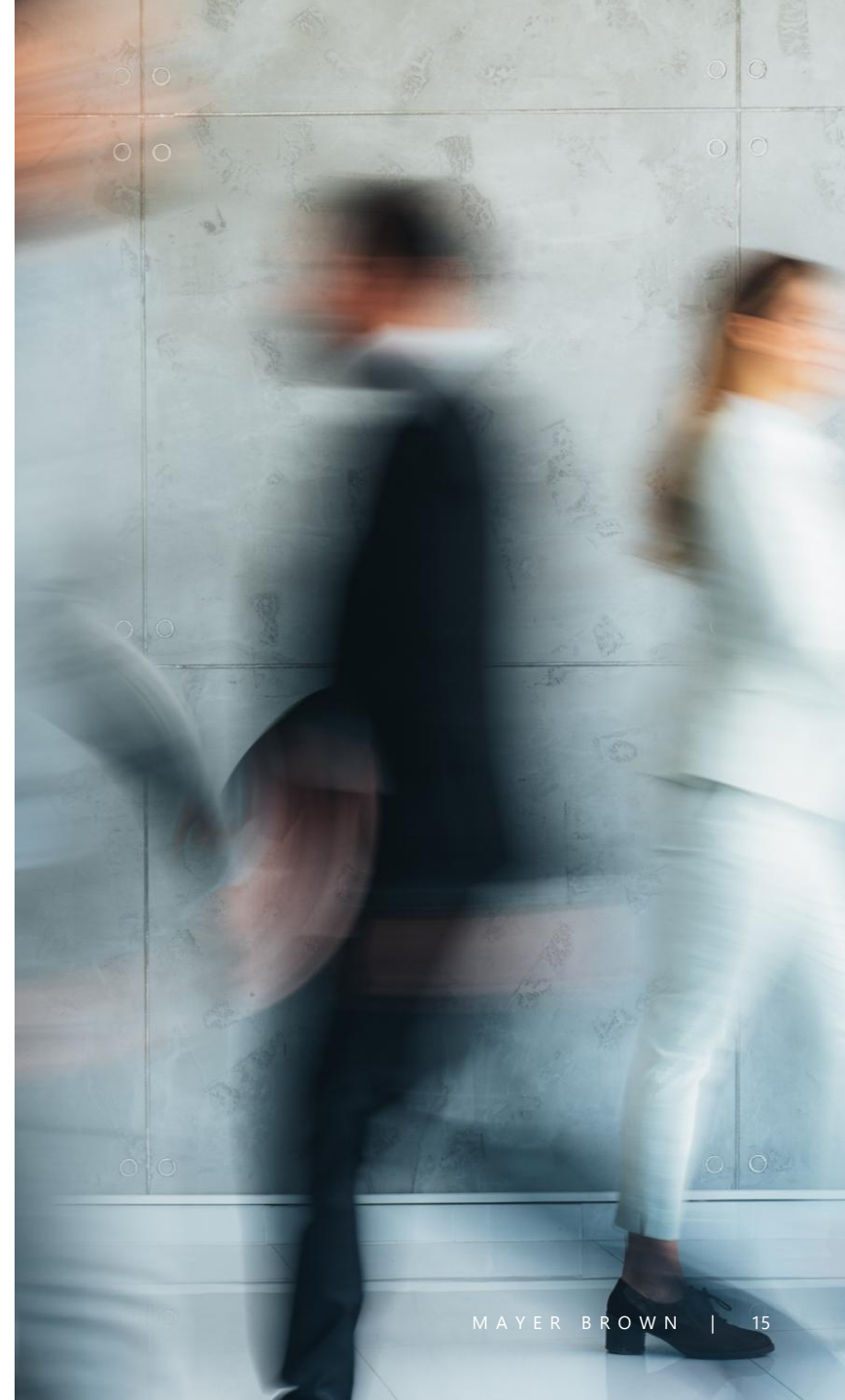
The image is a vertical composition. The left half features a light blue-grey background with a dark grey grid. A diagonal line runs from the top-left towards the bottom-right, intersecting the grid. The right half shows a blurred office scene with people in business attire walking past a large window. The overall aesthetic is modern and professional.

04

POLICY SHIFTS

SEC'S RENEWED FOCUS ON INTERNATIONAL FRAUD ENFORCEMENT

- The SEC just launched a **Cross-Border Task Force** to tackle fraud involving foreign-based companies accessing U.S. markets.
- This marks a major shift under new Enforcement Director Margaret Ryan — expect deeper scrutiny of foreign issuers, especially those from high-risk jurisdictions like China.
- The Task Force isn't just looking at bad actors — it's also focused on gatekeepers like auditors, underwriters, and financial institutions that help these companies enter U.S. markets.
- If your institution works with foreign clients or trades low-priced securities, you're likely to face more questions, more oversight, and possibly more enforcement.



FINCEN'S FINAL AML RULE

WHAT'S CHANGING FOR INVESTMENT ADVISERS?

- On August 28, 2024, FinCEN finalized a long-awaited rule imposing AML obligations on certain SEC-registered investment advisers.
- This brings the U.S. closer to full compliance with international AML standards set by the Financial Action Task Force (FATF).
- Who's Covered?
 - Applies to SEC-registered investment advisers (RIAs) and exempt reporting advisers (ERAs) — but with key carve-outs:
 - Excludes mid-sized RIAs (\$25M–\$100M AUM), multi-state advisers, and pension consultants.
 - Also excludes RIAs with no reported regulatory AUM and state-registered advisers.
- Foreign-Located Advisers are covered if they:
 - Conduct advisory activities in the U.S. (including via U.S. personnel), or
 - Serve U.S. persons or foreign funds with U.S. investors.

IMPLEMENTATION DELAY

FinCEN is proposing to push the AML rule's effective date to January 1, 2028, giving firms two extra years to prepare.

FinCEN wants time to ensure the rule fits the diverse business models across the investment adviser space — and avoids unnecessary burden.



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KEY CASES & DEVELOPMENTS

TD BANK ANTI-MONEY LAUNDERING SETTLEMENT

HISTORIC ENFORCEMENT ACTION

- TD Bank pled guilty to conspiracy to commit money laundering—first-ever guilty plea of its kind by a U.S. bank.
- Total penalties exceed \$3.09 billion, involving DOJ, OCC, Fed, and FinCEN.

ASSET CAP AS A COMPLIANCE LEVER

- OCC imposed an unprecedented asset cap, restricting growth until compliance obligations are met.
- Asset reduction of up to 7% annually possible if remediation fails—introducing a new enforcement tool with long-term financial impact.

SHAREHOLDER FALLOUT

- Stock dropped over 10%; class action filed in SDNY.
- Future litigation may hinge not just on fines, but on growth limitations and reputational damage.

TD BANK ANTI-MONEY LAUNDERING SETTLEMENT

INSIDER THREATS ARE REAL

- Employees accepted bribes, opened accounts, and facilitated laundering schemes.
- DOJ has already indicted branch-level staff; executive-level investigations are ongoing.

TRANSACTION MONITORING MUST EVOLVE

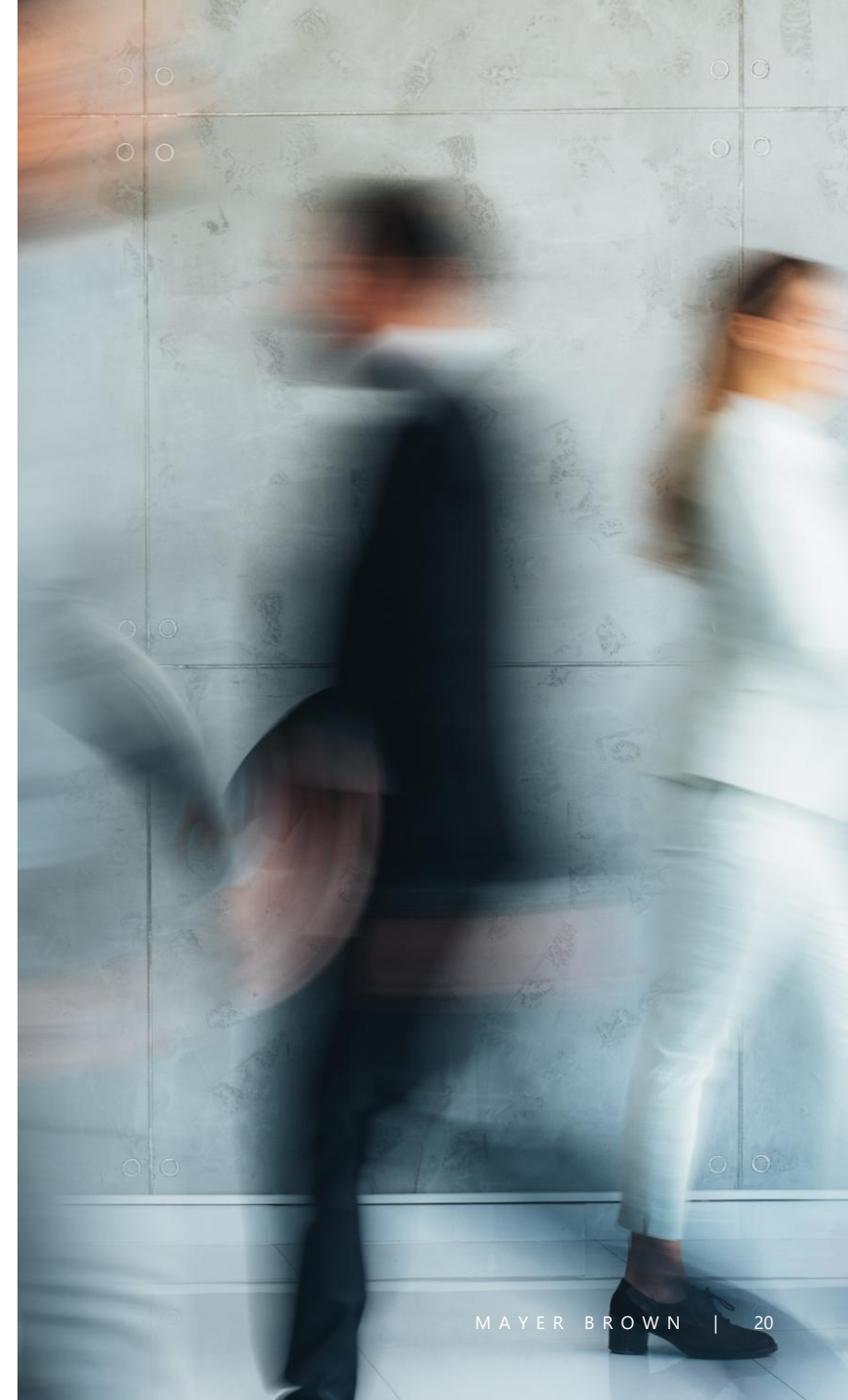
- TD Bank failed to update its monitoring systems for nearly a decade.
- Domestic ACH transactions went unmonitored, despite evolving risks from P2P platforms like Zelle and Venmo.

TONE AT THE TOP = BUDGET PRIORITIES

- Executives maintained a “flat cost paradigm” despite revenue growth.
- Underspending on compliance led to systemic failures—a costly mistake both financially and reputationally.

BTG PACTUAL FACES FINRA SANCTIONS

- FINRA fined a unit of BTG Pactual for deficiencies in anti-money laundering (AML) compliance.
- The case underscores FINRA's continued focus on AML enforcement across international financial institutions.
- Key Issues Likely Involved:
 - Inadequate transaction monitoring and failure to detect suspicious activity.
 - Weak internal controls and insufficient staff training on AML protocols.
 - Potential lapses in filing timely Suspicious Activity Reports (SARs).
- Takeaway for In-House Counsel:
 - AML compliance is not just a regulatory checkbox—it's a frontline defense.
 - Firms must ensure robust monitoring systems, clear escalation protocols, and ongoing staff education.
 - FINRA's action signals that global firms are not immune from U.S. regulatory scrutiny.





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COMPLIANCE & DEFENSE



DESIGNING A RISK-BASED AML PROGRAM

- Broker-dealer arm of Brazil's BTG Pactual.
- FINRA fined for AML program violations:
 - Lack of independent testing
 - Failure to monitor suspicious penny stock trading
- Risk exacerbated by foreign affiliate operations.
- Challenges for global firms:
 - Cross-border compliance integration
 - Language and cultural barriers
 - Need for centralized control over U.S.-regulated entities
- Common Pitfalls include:
 - Compliance silos (AML not integrated with fraud or trading surveillance)
 - Failure to escalate or remediate audit findings
 - Neglecting to train at all levels



RESPONDING TO INVESTIGATIONS & EXAMS

- Tips:
 - Treat routine exams as pre-litigation events
 - Preserve attorney-client privilege
 - Consider using external counsel when responding to complex subpoenas
- Early cooperation can mitigate penalties

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