

## DUE DILIGENCE PROGRAMS FOR PRIVATE BANKING ACCOUNTS

**Objective:** *Assess the bank's compliance with the Bank Secrecy Act (BSA) regulatory requirements for due diligence programs for private banking accounts established, maintained, administered, or managed in the United States for non-U.S. persons.*

### Regulatory Requirements for Due Diligence Programs for Private Banking Accounts

This section outlines the regulatory requirements for banks in 31 CFR Chapter X regarding due diligence programs for private banking accounts. Specifically, it covers:

- [31 CFR 1010.605](#) (Definitions)
- [31 CFR 1010.620](#)

Generally, private banking services (sometimes referred to as wealth management services) consist of personalized services to higher net worth clients.<sup>1</sup> A central point of contact, such as a relationship manager, usually acts as a liaison between the customer and the bank and facilitates the customer's use of the bank's financial services and products. Refer to [Appendix N](#) of this Manual for an example of a typical private banking structure and an illustration of the central role of the relationship manager. Banks typically base private banking thresholds and associated fees on the amount of assets under management and on the use of specific products or services. Products and services offered in a private banking relationship may include, but are not limited to:

- Cash management, such as checking accounts, overdraft privileges, cash sweeps, and bill-paying services.
- Funds transfers.
- Asset management, such as trust, investment advisory, investment management, custodial, and brokerage services.<sup>2</sup>
- Facilitation of the establishment of shell companies and offshore entities, such as private investment companies, international business corporations, and trusts.<sup>3</sup>
- Lending services, such as mortgage loans, credit cards, personal loans, and letters of credit.
- Financial planning services, including tax and estate planning.
- Other services as requested, such as mail services.

Private banking relationships present varying levels of money laundering (ML), terrorist financing (TF), and other illicit financial activity risks, depending upon the facts and circumstances specific to individual client relationships. Banks may establish, maintain, administer, or manage private banking relationships for both domestic and international

<sup>1</sup> The regulation refers to "client(s);" however, this section will use "client" and "customer" interchangeably.

<sup>2</sup> For more information, refer to the [Trust and Asset Management Services](#) section of this Manual.

<sup>3</sup> For more information, refer to the [Business Entities \(Domestic and Foreign\)](#) section of this Manual.

customers. However, banks are required to take specific anti-money laundering (AML) measures with respect to private banking accounts established, maintained, administered, or managed in the United States for non-U.S. persons. These measures involve establishing a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected ML or suspicious activity conducted through or involving such accounts. Additionally, for private banking accounts in which a senior foreign political figure (SFPPF) is a nominal or beneficial owner, the bank's due diligence program must include enhanced scrutiny of the accounts that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.<sup>4</sup>

Some banks may have wealth management and/or private banking accounts that do not meet the definition of "private banking accounts" for purposes of 31 CFR 1010.620. These accounts are often held by individuals with a high net worth and may also include high-dollar accounts or large transactions. Although these accounts are not covered by 31 CFR 1010.620, they are subject to other applicable Bank Secrecy Act (BSA)/AML regulatory requirements, such as customer due diligence and suspicious activity reporting.<sup>5</sup>

## Definitions

For purposes of these requirements, certain terms are defined as follows:

A "private banking account"<sup>6</sup> means an account (or any combination of accounts) maintained at a bank that:<sup>7</sup>

- Requires a minimum aggregate deposit of funds or other assets of not less than \$1 million;
- Is established on behalf of, or for the benefit of, one or more non-U.S. persons who are direct or beneficial owners of the account; and
- Is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a bank acting as a liaison between the bank and the direct or beneficial owner of the account.

A "beneficial owner"<sup>8</sup> means an individual who has a level of control over, or entitlement to, the funds or assets in an account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account. The ability to fund an account or the entitlement to the funds of an account alone, however, without any corresponding authority to control, manage, or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner.

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<sup>4</sup> [31 CFR 1010.620\(c\)](#).

<sup>5</sup> See also [Joint Statement on Bank Secrecy Act Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons](#) (August 21, 2020).

<sup>6</sup> [31 CFR 1010.605\(m\)](#).

<sup>7</sup> A bank may offer a wide range of services that are generically termed private banking; however, if a private banking account does not meet the three criteria in the definition, these requirements do not apply.

<sup>8</sup> [31 CFR 1010.605\(a\)](#).

A “non-U.S. person”<sup>9</sup> means a natural person who is neither a U.S. citizen nor is accorded the privilege of residing permanently in the United States pursuant to Title 8 of the United States Code.

A “senior foreign political figure”<sup>10</sup> means:

- A current or former:
  - Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);
  - Senior official of a major foreign political party; or
  - Senior executive of a foreign government-owned commercial enterprise.
- A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual.
- An immediate family member of any such individual.
- A person who is widely and publicly known (or is actually known by the relevant bank) to be a close associate of such individual.

A “senior official or executive” means an individual with substantial authority over policy, operations, or the use of government-owned resources.<sup>11</sup>

An “immediate family member” means spouses, parents, siblings, children, and a spouse’s parents and siblings.<sup>12</sup>

## Due Diligence Programs for Private Banking Accounts

Banks must maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected ML or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States on behalf of or for the benefit of a non-U.S. person. The due diligence program must be designed to ensure that, at a minimum, the bank takes reasonable steps to:

- Ascertain the identity of all nominal and beneficial owners of a private banking account;
- Ascertain whether any nominal or beneficial owner of a private banking account is an SFPF;
- Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and
- Review the activity of the account to ensure that it is consistent with the information obtained about the client’s source of funds, and with the stated purpose and expected use of the account, as needed to guard against ML, and to report, in accordance with applicable laws

<sup>9</sup> [31 CFR 1010.605\(h\).](#)

<sup>10</sup> [31 CFR 1010.605\(p\)\(1\).](#)

<sup>11</sup> [31 CFR 1010.605\(p\)\(2\)\(i\).](#)

<sup>12</sup> [31 CFR 1010.605\(p\)\(2\)\(ii\).](#)

and regulations, any known or suspected ML or suspicious activity conducted to, from, or through a private banking account.

The purpose and expected account activity can establish a baseline for account activity that enables a bank to better detect potentially suspicious activity and to assess situations where additional verification of information may be necessary. Banks should monitor deposits and transactions as necessary to ensure that activity is consistent with information the bank has received about the client's source of funds and with the stated purpose and expected use of the account. Such monitoring facilitates the identification of accounts that warrant additional scrutiny.<sup>13</sup>

### **Identifying Senior Foreign Political Figures**

As noted above, a bank's due diligence program for private banking accounts must be designed to ensure that the bank takes reasonable steps to ascertain whether any nominal or beneficial owner of a private banking account is an SFPF as defined in the regulation. Procedures for meeting this requirement may include seeking information directly from the customer, obtaining information regarding employment and other sources of income of the customer, or reviewing public sources of information regarding the customer.<sup>14</sup>

### **Special Requirements for Senior Foreign Political Figures**

For private banking accounts in which an SFPF is a nominal or beneficial owner, the bank's due diligence program must include enhanced scrutiny of the account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption. Enhanced scrutiny may include consulting publicly available information regarding the home country of the customer, contacting branches of the U.S. bank operating in the home country of the customer to obtain additional information about the customer and the political environment, and reviewing with greater scrutiny the customer's employment history and sources of income.<sup>15</sup>

For the purposes of this requirement, the term "proceeds of foreign corruption" means any asset or property that is acquired by, through, or on behalf of an SFPF through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and includes any other property into which any such assets have been transformed or converted. In cases where a bank files a suspicious activity report (SAR) concerning a transaction that may involve the proceeds of foreign corruption, FinCEN has requested that the term "foreign corruption" be included in the narrative portion of the SAR.<sup>16</sup>

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<sup>13</sup> FinCEN, Final rule "[Special Due Diligence Programs for Certain Foreign Accounts](#)," 71 Fed. Reg. 496, 509 (Jan. 4, 2006).

<sup>14</sup> FinCEN, Final rule "[Special Due Diligence Programs for Certain Foreign Accounts](#)," 71 Fed. Reg. 496, 509-511 (Jan. 4, 2006).

<sup>15</sup> FinCEN, Final rule "[Special Due Diligence Programs for Certain Foreign Accounts](#)," 71 Fed. Reg. 496, 510-511 (Jan. 4, 2006).

<sup>16</sup> FinCEN (April 17, 2008), FIN-2008-G005 "[Guidance to Financial institutions on Filing Suspicious Activity Reports regarding the Proceeds of Foreign Corruption](#)."

## Special Procedures When Due Diligence Cannot Be Performed

A bank's due diligence program for private banking accounts must include procedures to be followed in circumstances where appropriate due diligence cannot be performed, including when the bank should:

- Refuse to open the account.
- Suspend transaction activity.
- File a SAR.
- Close the account.

## Examiner Assessment of Compliance with Due Diligence Program Requirements for Private Banking Accounts<sup>17</sup>

Examiners should assess the adequacy of the bank's policies, procedures, and controls related to the bank's compliance with the BSA regulatory requirements for due diligence programs for private banking accounts. Specifically, examiners should determine whether these controls are designed to detect and report any known or suspected ML or suspicious activity conducted through or involving such accounts, as well as comply with due diligence requirements. Examiners may review information, such as independent testing or audit reports, to aid in their assessment of the bank's compliance with due diligence requirements for private banking accounts.

Examiners should determine whether the bank's internal controls for private banking accounts are designed to ensure ongoing compliance with the requirements and are commensurate with the bank's size or complexity and organizational structure. Refer to the [Assessing the BSA/AML Compliance Program - BSA/AML Internal Controls](#) section in this Manual for more information. Refer to the [Risks Associated with Money Laundering and Terrorist Financing](#) section in this Manual for additional information and procedures regarding ML/TF and other illicit financial activity risks for certain types of private banking activities.

## Risk-Based Due Diligence Policies, Procedures, and Controls

A bank's due diligence program must incorporate the minimum requirements noted above and should also be risk-based.<sup>18</sup> Not all private banking clients automatically represent a uniformly higher risk of ML/TF and other illicit financial activities. The potential risk to a bank depends on the facts and circumstances specific to each private banking relationship. The nature and extent of due diligence should be commensurate with the risks presented by the private banking relationship. For example, more due diligence may be appropriate for new clients and clients who operate in, or whose funds are transmitted from or through, jurisdictions with weak AML

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<sup>17</sup> The subsections under the Examiner Assessment of Compliance with Due Diligence Program Requirements for Private Banking Accounts heading provide additional information that may be useful to examiners when assessing the due diligence programs for private banking accounts.

<sup>18</sup> FinCEN, Final rule "[Special Due Diligence Programs for Certain Foreign Accounts](#)," 71 Fed. Reg. 496, 508 (Jan. 4, 2006).

controls.<sup>19</sup> Due diligence should also be commensurate with the size of an account and the complexity of the private banking relationship. For example, more due diligence may be appropriate for accounts with relatively more deposits and assets.<sup>20</sup>

Risk-based due diligence policies, procedures, and controls for private banking accounts will vary by bank depending upon a bank's risk profile and may include consideration of the following information about the private banking customer:

- The source of the client's wealth and estimated net worth.
- The nature of the client's profession or business.
- The products and services involved in the relationship.
- The nature and duration of the client's relationship with the bank (including the bank's affiliates).
- The type of client, such as individual, trust, international business corporation, shell company, or private investment company, and, if applicable, the entity's structure, such as privately held or publicly traded stock ownership.
- The geographic locations and AML controls where the private banking customer resides and conducts business.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## **DUE DILIGENCE PROGRAMS FOR PRIVATE BANKING ACCOUNTS EXAMINATION AND TESTING PROCEDURES**

**Objective:** *Assess the bank's compliance with the Bank Secrecy Act (BSA) regulatory requirements for due diligence programs for private banking accounts established, maintained, administered, or managed in the United States for non-U.S. persons.*

1. Determine whether the bank offers accounts that meet the regulatory definition of a private banking account:<sup>21</sup>
  - Requires a minimum aggregate deposit of funds or other assets of not less than \$1 million;
  - Is established on behalf of, or for the benefit of, one or more non-U.S. persons who are direct or beneficial owners of the account; and
  - Is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a bank acting as a liaison between the bank and the direct or beneficial owner of the account.
2. Review the bank's due diligence policies, procedures, and controls related to private banking accounts. Determine whether the bank's policies, procedures, and controls:
  - Are reasonably designed to detect and report any known or suspected money laundering (ML) or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States.
  - Require the bank to take reasonable steps to:
    - Ascertain the identity of all nominal and beneficial owners of a private banking account.
    - Ascertain whether the nominal or beneficial owner of any private banking account is a senior foreign political figure (SFPF).
    - Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account.
    - Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against ML, and to report, in accordance with applicable laws and regulations, any known or suspected ML or suspicious activity conducted to, from, or through a private banking account.
  - Require the bank to perform enhanced scrutiny for private banking accounts in which an SFPF is a nominal or beneficial owner. Enhanced scrutiny of the account must be reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.
  - Include special procedures to be followed when appropriate due diligence cannot be performed, including when the bank should:

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<sup>21</sup> [31 CFR 1010.605\(m\)](#).

- Refuse to open the account.
  - Suspend transaction activity.
  - File a suspicious activity report.
  - Close the account.
3. On the basis of a risk assessment, prior examination reports, and a review of the bank's audit findings, select a sample of private banking accounts. The sample should include, if applicable, private banking accounts with nominal or beneficial owners that are SFPFs and/or any private banking accounts that were closed. From the sample selected, determine whether the bank:
- Ascertained the identity of all nominal and beneficial owners of a private banking account.
  - Ascertained whether the nominal or beneficial owner of any private banking account is an SFPF.
  - Ascertained the source(s) of funds deposited into a private banking account and the purpose and expected use of the account.
  - Completed reviews of activity to ensure it is consistent with the information obtained about the client's source of funds, with the stated purpose and expected use of the account, and with any other information obtained in accordance with the bank's policy.
  - Performed enhanced scrutiny of private banking accounts in which SFPFs are nominal or beneficial owners.
  - Followed special procedures for any private banking accounts where appropriate due diligence was not able to be performed.
4. On the basis of examination and testing procedures completed, form a conclusion about the adequacy of policies, procedures, and controls the bank has developed to meet Bank Secrecy Act (BSA) regulatory requirements for due diligence programs for private banking accounts.