

Department of Financial Services
Superintendent's Regulations

Part 504

**BANKING DIVISION TRANSACTION MONITORING AND FILTERING PROGRAM REQUIREMENTS
AND CERTIFICATIONS**

(Statutory authority: Banking Law §§37(3)(4) ~~& 672~~; Financial Services Law §302)

Sec.

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§ 504.1 Background.

The Department of Financial Services (the "Department") has ~~recently~~ been involved in ~~a number of~~ investigations into compliance by Regulated Institutions, as defined below, with applicable Bank Secrecy Act/Anti-Money Laundering laws and regulations¹ ("BSA/AML") and Office of Foreign Assets Control of the Treasury Department ("OFAC")² requirements implementing federal economic and trade sanctions.³

As a result of these investigations, the Department ~~has become aware of the~~identified shortcomings in the transaction monitoring and filtering programs of these institutions ~~and that~~attributable to a lack of robust governance, oversight, and accountability at senior levels ~~of these institutions has contributed to these shortcomings. The~~. Based on not only this experience, but also its regular examinations for safety and soundness, along with other factors, the Department ~~believes~~has reason to believe that ~~other~~ financial institutions ~~may also~~ have shortcomings in their transaction monitoring ~~programs for monitoring transactions for suspicious activities, and watch list~~and filtering programs, ~~for "real time" interdiction or stopping of transactions on the basis of watch lists, including OFAC or other sanctions lists, politically exposed persons lists, and internal watch lists.~~

As a result, the Department has determined to clarify the required attributes of a Transaction Monitoring and Filtering Program and to require that the Board of Directors or Senior Officer(s), as applicable, of each Regulated Institution submit to the Superintendent annually a Board

¹ With respect to federal laws and regulations, see 31 U.S.C. § 5311, et seq., and 31 CFR Chapter X. For New York

State regulations, see Part 115 (3 NYCRR 115), Part 116 (3 NYCRR 116), Part 416 (3 NYCRR 416) and Part 417 (3 NYCRR 417).

² 31 CFR part 501 et seq.

³ For information regarding the United States Code, the Code of Federal Regulations and the Federal Register, see Supervisory Policy G-1.

~~To address these deficiencies, the Department has determined to clarify the required attributes of a Transaction Monitoring and Filtering Program and to require a Certifying Senior Officer, as defined below, of Regulated Institutions, to file Annual Certifications, in the form set forth herein, regarding compliance by their institutions with the standards described in this Part.~~

Resolution or Compliance Finding, as defined in this Part, confirming the steps taken to ascertain compliance by the Regulated Institution with this Part.

This regulation implements these requirements.

§ 504.2 Definitions.

The following definitions apply in this Part:

- (a) ~~“Annual Certification” means a certification~~Board Resolution or Senior Officer Compliance Finding” means a board resolution or senior officer(s) finding in the form set forth in Attachment A.
- (b) “Bank Regulated Institutions” means all banks, trust companies, private bankers, savings banks, and savings and loan associations chartered pursuant to the New York Banking Law (the “Banking Law”) and all branches and agencies of foreign banking corporations licensed pursuant to the Banking Law to conduct banking operations in New York.
- (c) ~~“Certifying Senior Officer” means the institution’s chief compliance officer or their~~Board of Directors” means the governing board of every Regulated Institution or the functional equivalent if the Regulated Institution does not have a Board of Directors.
- (d) “Nonbank Regulated Institutions” shall mean all check cashers and money transmitters licensed pursuant to the Banking Law.
- (e) “Regulated Institutions” means all Bank Regulated Institutions and all Nonbank Regulated Institutions.
- (f) “Risk Assessment” means an ~~on-going~~on-going comprehensive risk assessment, including an enterprise wide BSA/AML risk assessment, that takes into account the institution’s size, staffing, governance, businesses, services, products, operations, customers_f, counterparties_f, other relations and their locations, as well as the geographies and locations of its operations and business relations;
- (g) “Senior Officer(s)” shall mean the senior individual or individuals responsible for the management, operations, compliance and/or risk of a Regulated Institution including a branch or agency of a foreign banking organization subject to this Part.
- (gh) “Suspicious Activity Reporting” means a report required pursuant to 31 U.S.C. §

5311 et seq. that identifies suspicious or potentially suspicious or illegal activities.

(h) “Transaction Monitoring Program” means a program that includes the attributes specified in Subdivisions (a), (c) and (d) of Section 504.3.

(i) “~~Watch List~~ Filtering Program” means a program that includes the attributes specified in Subdivisions (b), (c) and (d) of Section 504.3.

(k) "Transaction Monitoring and Filtering Program" means a Transaction Monitoring Program, and a ~~Watch List~~ Filtering Program, collectively.

§ 504.3 Transaction Monitoring and Filtering Program Requirements.

(a) Each Regulated Institution shall maintain a Transaction Monitoring Program reasonably designed for the purpose of monitoring transactions after their execution for potential BSA/AML violations and Suspicious Activity Reporting, which system may be manual or automated, and which shall, ~~at a minimum~~ include the following attributes, to the extent they are applicable:

1. be based on the Risk Assessment of the institution;
2. be reviewed and periodically updated at risk-based intervals to take into account and reflect ~~all current~~ changes to applicable BSA/AML laws, regulations and ~~alerts~~ regulatory warnings, as well as any ~~relevant~~ other information ~~available~~ determined by the institution to be relevant from the institution's related programs and initiatives, ~~such as "know your customer due diligence", "enhanced customer due diligence" or other relevant areas, such as security, investigations and fraud prevention;~~
3. ~~map~~ appropriately match BSA/AML risks to the institution's businesses, products, services, and customers/counterparties;
4. ~~utilize~~ BSA/AML detection scenarios ~~that are based on the institution's Risk Assessment~~ with threshold values and amounts ~~set~~ designed to detect potential money laundering or other suspicious or illegal activities;
5. ~~include an~~ end-to-end, pre-and post-implementation testing of the Transaction Monitoring Program, including, as relevant, a review of governance, data mapping, transaction coding, detection scenario logic, model validation, data input and Program output, ~~as well as periodic testing;~~
6. ~~include easily understandable~~ documentation that articulates the institution's current detection scenarios and the underlying assumptions, parameters, and thresholds;
7. ~~include investigative~~ protocols ~~detailing~~ setting forth how alerts generated by the Transaction Monitoring Program will be investigated, the process for deciding which alerts will result in a filing or other action, ~~who is~~ the operating areas and individuals responsible for making such a decision, and how the investigative and decision-making process will be documented; and

8. be subject to an on-going analysis to assess the continued relevancy of the detection scenarios, the underlying rules, threshold values, parameters, and assumptions.

(b) Each Regulated Institution shall maintain a ~~Watch List~~-Filtering Program, which may be manual or automated, reasonably designed for the purpose of interdicting transactions, ~~before their execution,~~ that are prohibited by ~~applicable sanctions, including OFAC and other sanctions lists, politically exposed persons lists, and internal watch lists, which system may be manual or automated~~OFAC, and which shall, ~~at a minimum,~~ include the following attributes, to the extent applicable:

1. be based on the Risk Assessment of the institution;

- ~~1. be based on the Risk Assessment of the institution;~~
 2. be based on technology, processes or tools for matching names and accounts⁴, in each case based on the institution's particular risks, transaction and product profiles;
 3. ~~include an~~ end-to-end, pre- and post-implementation testing of the ~~Watch List~~ Filtering Program, including, as relevant, a review of data ~~mapping~~matching, an evaluation of whether the ~~watch lists~~OFAC sanctions list and threshold settings map to the risks of the institution, the logic of matching technology or tools, model validation, and data input and ~~Watch List Filtering~~ Program output;
 - ~~4. utilizes watch lists that reflect current legal or regulatory requirements;~~
 - 5.4. be subject to on-going analysis to assess the logic and performance of the technology or tools for matching names and accounts, as well as the ~~watch lists~~OFAC sanctions list and the threshold settings to see if they continue to map to the risks of the institution; and
 - ~~6.5. include easily understandable~~ documentation that articulates the intent and ~~the~~ design of the Filtering Program tools, processes or technology.
- (c) Each Transaction Monitoring and Filtering Program shall, ~~at a minimum,~~ require the following, to the extent applicable:

1. identification of all data sources that contain relevant data;
2. validation of the integrity, accuracy and quality of data to ensure that accurate and complete data flows through the Transaction Monitoring and Filtering Program;
3. data extraction and loading processes to ensure a complete and accurate transfer of data from its source to automated monitoring and filtering systems, if automated systems are used;
4. governance and management oversight, including policies and procedures governing changes to the Transaction Monitoring and Filtering Program to ensure that changes are defined, managed, controlled, reported, and audited;
5. vendor selection process if a third party vendor is used to acquire, install, implement, or test the Transaction Monitoring and Filtering Program or any aspect of it;
6. funding to design, implement and maintain a Transaction Monitoring and Filtering Program that complies with the requirements of this Part;
7. qualified personnel or outside consultant(s) responsible for the design, planning, implementation, operation, testing, validation, and on-going analysis of the Transaction Monitoring and Filtering Program, including automated systems if applicable, as well as case management, review and decision making with respect to generated alerts and potential filings; and

⁴ The technology used in this area ~~by some firms is~~ may be based on automated tools that develop matching algorithms, such as those that use various forms of so-called "fuzzy logic" and culture-based name conventions

to match names. This regulation does not mandate the use of any particular technology, only that the system or technology used must be ~~adequate to capture~~ reasonably designed to identify prohibited transactions.

- ~~7. qualified personnel or outside consultant responsible for the design, planning, implementation, operation, testing, validation, and on-going analysis, of the Transaction Monitoring and Filtering Program, including automated systems if applicable, as well as case management, review and decision making with respect to generated alerts and potential filings; and~~
8. periodic training of all stakeholders with respect to the Transaction Monitoring and Filtering Program.

(d) ~~No~~ To the extent a Regulated Institution ~~may make changes or alterations to the Transaction Monitoring and Filtering Program to avoid or minimize filing suspicious activity reports, or because the institution does not have the resources to review the number of alerts generated by a Program established pursuant to the requirements of this Part, or to otherwise avoid complying with regulatory requirements.~~ has identified areas, systems, or processes that require material improvement, updating or redesign, the Regulated Institution shall document the identification and the remedial efforts planned and underway to address such areas, systems or processes. Such documentation must be available for inspection by the Superintendent.

§ 504.4 Annual ~~Certification~~ Board Resolution or Senior Officer(s) Compliance Finding.

To ensure compliance with the requirements of this Part, each Regulated Institution shall adopt and submit to the ~~Department by April 15th of each year~~ Superintendent a Board Resolution or Senior Officer(s) Compliance Finding in the form set forth in Attachment A- by April 15th of each year. Each Regulated Institution shall maintain for examination by the Department all records, schedules and data supporting adoption of the Board Resolution or Senior Officer(s) Compliance Finding for a period of five years.

§ 504.5 Penalties/Enforcement Actions.

~~All Regulated Institutions shall be subject to all applicable penalties provided for by the Banking Law and the Financial Services Law for failure to maintain a Transaction Monitoring Program, or a Watch List Filtering Program complying with the requirements of this Part and for failure to file the Certifications required under Section 504.4 hereof. A Certifying Senior Officer who files an incorrect or false Annual Certification also may be subject to criminal penalties for such filing.~~

This regulation will be enforced pursuant to, and is not intended to limit, the Superintendent's authority under any applicable laws.

§ 504.6 Effective Date.

This Part shall be effective ~~immediately. It shall apply to all State fiscal years beginning with the Fiscal Year starting on April 1, 2017.~~ January 1, 2017. Regulated Institutions will be

required to prepare and submit to the Superintendent Annual Board Resolutions or Senior Officer(s) Compliance Findings under § 504.4 commencing April 15, 2018.

(Regulated Institution Name)

APRIL 15, 20____

Annual ~~Certification~~ Board Resolution or Senior Officer(s) Compliance Finding For Bank Secrecy
Act/~~Anti-Money~~Anti-
Money Laundering and Office of Foreign Asset Control Transaction Monitoring and Filtering-
~~Programs~~
~~to~~ Program

~~New York State Department of Financial Services~~

~~In~~Whereas, in compliance with the requirements of the New York State Department of Financial Services (the "Department") that each Regulated Institution maintain ~~a~~ Transaction Monitoring and Filtering Program ~~satisfying all the requirements of~~ in compliance with Section 504.3; and

~~that a Certifying Senior Officer of a~~ Whereas, Section 504.4 requires that the Board of Directors or a Senior Officer(s), as appropriate, adopt and submit to the Superintendent a Board Resolution or Senior Officer Compliance Finding confirming its or such individual's findings that the Regulated Institution ~~sign an annual certification attesting to the~~ is in compliance ~~by such institution with the requirements of~~ Section 504.3, ~~each of the undersigned hereby certifies that they have reviewed, or caused to be reviewed, the Transaction Monitoring Program and the Watch List Filtering Program (the "Programs") of (name of~~ this Part 504;

NOW, THEREFORE, the Board of Directors or Senior Officer certifies:

- (1) The Board of Directors (or name of Senior Officer(s)) has reviewed documents, reports, certifications and opinions of such officers, employees, representatives, outside vendors and other individuals or entities as necessary to adopt this Board Resolution or Senior Officer Compliance Finding;
- (2) The Board of Directors or Senior Officer(s) has taken all steps necessary to confirm that (name of Regulated Institution) has a Transaction Monitoring and Filtering Program that complies with the provisions of Section 504.3; and
- (3) To the best of the (Board of Directors) or (name of Senior Officer(s))

knowledge, the Transaction Monitoring and the Filtering Program of (name of

Regulated Institution) as of (date of the ~~Certification~~) ~~for the year~~ Board Resolution
or

Senior Officer(s) Compliance Finding) for the year ended (year for ~~which certification~~
~~is provided~~) and hereby certifies
~~that the Transaction Monitoring and Filtering Program~~ which Board
Resolution or Compliance Finding is provided complies with ~~all the~~
~~requirements of~~ Section 504.3.

~~By signing below, the undersigned hereby certifies that, to the best of their~~
~~knowledge, the above statements are accurate and complete.~~

Signed:

Signed by each member of the Board of Directors or Senior Officer(s)

(Name:) _____ Date:

~~Chief Compliance Officer or equivalent~~

Summary report:	
Litéra® Change-Pro 7.5.0.145 Document comparison done on 6/30/2016 2:59:20 PM	
Style name: PW Basic	
Intelligent Table Comparison: Active	
Original filename: proposed rule DFS.pdf	
Modified filename: final rule DFS.pdf	
Changes:	
<u>Add</u>	103
Delete	98
Move From	16
<u>Move To</u>	16
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	233