

# **ALIXPARTNERS 2020 AML & OFAC/SANCTIONS COMPLIANCE SURVEY**

Innovative approaches to drive compliance effectiveness and return on investment, with responses from financial institutions, investors and legal counsel

In the first half of 2020, AlixPartners invited responses to its anti-money laundering (AML) and Office of Foreign Assets Control Sanctions survey. What is clear from the results is that financial institutions (FIs) aim to take innovative steps to enhance the effectiveness and efficiency of AML and Sanctions compliance programs, in order to deal with long-term concerns.

Many challenges currently faced by FIs have existed for the past decade or more. Consent orders and written agreements continue to reference that FIs face challenges relating to insufficient transaction monitoring and filtering capabilities, unsatisfactory customer due diligence processes, and an apparently inadequate culture to deal with compliance challenges, among other topics.

Our survey results, consulting experience and research all indicate that broad new steps are being developed to deal with these continuing problems. Specifically, the use of advanced technologies and greater information sharing is

being evaluated by many FIs to deal with challenges more holistically and enhance efficiency.

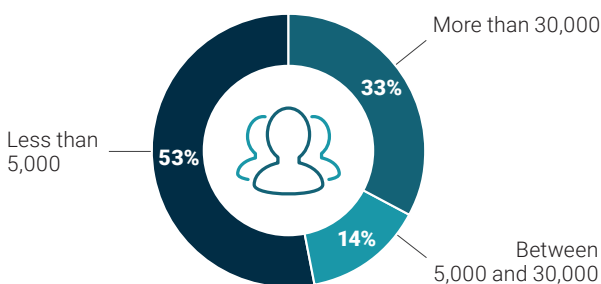
We believe that investors in FIs, through both public actions and responses to our survey, may be helping drive significant changes in approach. While discussions between compliance personnel and senior management may begin with the requirements of the law, minimizing reputational risk and avoiding regulatory fines, and the importance of combatting financial crime in general, new discussion points may be added relating to investor expectations of AML and Sanctions compliance programs.

### MAKE-UP OF FINANCIAL INSTITUTION RESPONDENTS

AlixPartners conducted its AML and Sanctions survey in spring 2020. We sent invitations to employees of FIs, external legal counsel, investors and investment advisors.

We did not post our survey on AlixPartners' website or social media, which allowed us to focus on receiving responses from senior executives and decision makers. We received more than 100 responses to our invite-only survey.

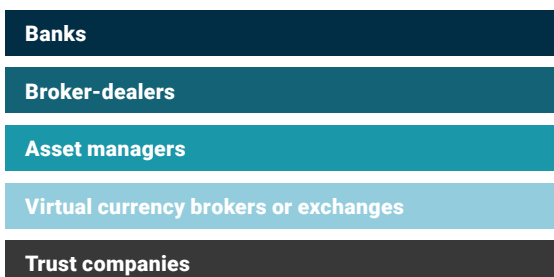
#### Number of FI employees



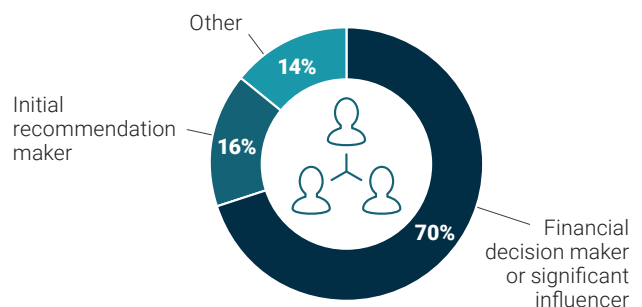
#### Location



#### Types of FIs



#### Seniority



## THE RISE OF THE INVESTOR'S VOICE

To investors, the importance of strong AML and Sanctions compliance is clear. When large fines are levied, there is financial loss to FIs and, in turn, investors, and there is substantial reputational risk associated with compliance lapses that enable financial crime.

One free-text response from an investor respondent summarized the view well: "Failure to maintain adequate controls results in regulatory fines, which undermine shareholder value."

Investors currently seem to be taking a stronger view of the importance of AML and Sanctions compliance. In our survey, when asked, "[do] you believe that a robust AML and Sanctions compliance program would be appealing to investors focused on [Environmental, Social and Governance] factors?", 84% of FI employees, 71% of investors and 56% of external legal counsel said yes.

When given the chance to explain why, one respondent said: "I would like to feel that my investments are safe without the risk of regulatory intervention as a result of non-compliance by the financial institution," while another said, simply: "Because ultimately it reflects on the overall governance structure of the financial institution."

In addition to the survey results, we also see evidence of investors' focus on AML and Sanctions compliance through investor lawsuits brought against banks regarding inadequate compliance programs. We also see that there are greater expectations and accountability of senior executives when there are compliance lapses. We provide below instances where lapses in AML compliance may have led, in part, to turnover at the top of the financial institution.

A strong AML and Sanctions compliance program may be seen not only as protecting, but also enhancing shareholder value. Higher investor expectations may allow for more in-depth discussions between compliance teams and senior management, as it relates to the bold steps that may be necessary to meet investors' and other stakeholders' compliance expectations.

## AGE-OLD PROBLEMS WITH POTENTIAL NEW SOLUTIONS

The current AML and Sanctions compliance landscape at many FIs is patchwork. There are many examples where new technologies and capabilities were layered on top of existing systems, without addressing the performance as a whole. The usual result is an AML and Sanctions

**DO YOU BELIEVE THAT A ROBUST AML AND SANCTIONS COMPLIANCE PROGRAM WOULD BE APPEALING TO INVESTORS FOCUSED ON ESG FACTORS?**

**84%**

FI employees

**71%**

Investors

**56%**

External legal counsel

compliance program and governance structure that no FI would design from scratch, and one that is difficult to adjust to address new financial crime schemes and risks.

Even with new systems and processes, the types of AML lapses cited by regulators when issuing fines in the millions or billions of US dollars have not changed much over time. In regulatory orders, we continue to read about insufficient transaction monitoring and filtering capabilities, unsatisfactory customer due diligence processes and inadequate cultures to deal with compliance challenges, among other topics.

### (a) Selected recent enforcement events

The regulators issuing large public fines have changed in the past few years. While US regulators and law enforcement entities continue to be active, there has been an uptick in enforcement actions brought by European regulators. Recently reported enforcement and investigative matters include:

- In late 2018, the Dutch Public Prosecution Service settled with ING for a fine of €675m and disgorgement of €100m (for a total of €775m or approximately US\$900m) for inadequate customer due diligence processes.<sup>1</sup>
- In late 2018, Danske Bank released an investigative report titled, 'Report on the Non-Resident Portfolio at Danske Bank's Estonian Branch.'<sup>2</sup> It outlined various AML-related compliance failures, including how they relate to customer due diligence and transaction monitoring and screening. On the same day the report was issued, the CEO of Danske Bank informed the board of directors that he wished to resign.<sup>3</sup>
- In February 2019 a Swedish public TV network launched a series alleging that customers of Swedbank's Baltic operations carried out suspicious transactions.<sup>4</sup> One month later, it was reported that Swedbank fired its CEO because of the money laundering allegations and Swedbank's response to those allegations.<sup>5</sup> By April 2019,

1. <https://www.ing.com/Newsroom/News/Press-releases/ING-reaches-settlement-agreement-with-Dutch-authorities-on-regulatory-issues-in-the-ING-Netherlands-business.htm> 2. <https://danskebank.com/-/media/danske-bank-com/file-cloud/2018/9/report-on-the-non-resident-portfolio-at-danske-banks-estonian-branch.pdf?rev=56b16dfddae94480bb8cdcaebc9b&hash=B7D825F2639326A3BBBC7D524C5E341E> 3. <https://danskebank.com/news-and-insights/news-archive/company-announcements/2018/ca19092018a#:~:text=Thomas%20F,into%20the%20matters%20in%20Estonia> 4. <https://internetbank.swedbank.se/ConditionsEarchive/download?bankid=1111&id=WEBDOC-PRODE57526786>, p. 4. 5. <https://www.bloomberg.com/news/articles/2019-03-28/swedbank-ceo-has-been-fired-amid-mounting-laundering-allegations>

## CRYPTOCURRENCIES

On July 22, 2020, the Office of the Comptroller of the Currency – a US banking regulator – issued an interpretive opinion relating to the provision of custody services for crypto assets.

In the press release announcing the issuance of the opinion, Acting Comptroller of the Currency, Brian P. Brooks stated: “This opinion clarifies that banks can continue satisfying their customers’ needs for safeguarding their most valuable assets, which today, for tens of millions of Americans, includes cryptocurrency.”<sup>6</sup> Additionally, the European Commission’s 5th Anti-Money Laundering Directive, which came into force in January 2020, specifically references virtual currencies and wallet providers.<sup>7</sup> It is clear that cryptocurrencies have organically become an important part of the financial ecosystem.<sup>8</sup>

Greater assurance from banking regulators may be what financial institutions are waiting for. 74% of respondents stated their institutions are not considering involvement with cryptocurrencies or any other digital assets and 44% of FI respondents replied that their FIs expressly prohibit the provision of financial services relating to cryptocurrencies and other digital assets.

If banks are taking on cryptocurrency customers it is important their compliance programs are evaluated and adjusted, if needed, to address the inherent risks that come with a new product or service offering. Additionally,



# 44%

of FIs expressly prohibit financial services relating to cryptocurrencies and other digital assets

# 74%

of institutions are **not** considering involvement with cryptocurrencies or other digital assets

adding crypto-related expertise, through hiring from cryptocurrency exchanges, may be helpful to traditional FIs to assess relevant risk.

the Chairman of Swedbank also resigned.<sup>9</sup> Ultimately, in March 2020, Swedbank was fined SEK 4bn (approximately US\$440m) by the Swedish regulator for inadequate AML controls.

- In April 2020, Industrial Bank of Korea was fined US\$35m by the New York State Department of Financial Services for failing to maintain an adequate AML program. The Consent Order raised a number of concerns including those related to the effectiveness of Industrial Bank of Korea’s transaction monitoring system.<sup>10</sup>
- In June 2020, SEB, a Nordic financial services group, was fined SEK 1bn (approximately US\$110m) for inadequate AML and Sanctions compliance controls covering the

Baltic region. The press release stated that the regulator, among other things, “ordered the bank to take certain actions to improve the monitoring of transactions”.<sup>11</sup>

These examples outline two important points. Firstly, that significant fines are coming from multiple global regulators. Secondly, that the expectation of C-suites and boards of directors to ensure adequate AML and Sanctions compliance programs is now higher than ever, and investors are demanding more accountability from senior executives. According to our survey, this picture is also generally consistent with how FI employees and their legal counsel view current risks. When asked what is most challenging to AML/sanctions compliance, FI employees said ‘maintaining adequate transaction monitoring systems’ was one of

6. <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-98.html> 7. [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en) and <https://eur-lex.europa.eu/eli/dir/2018/843/oj> 8. It was reported in May 2020 that JPMorgan Chase added Coinbase and Gemini as banking customers. See <https://www.bloomberg.com/news/articles/2020-05-12/jpmorgan-is-now-banking-for-bitcoin-exchanges-coinbase-gemini> 9. [https://www.reuters.com/article/us-europe-moneylaundering-swedbank/swedbank-chairman-quits-over-money-laundering-scandal-idUSKCN1RH0P9#:~:text=STOCKHOLM%20\(Reuters\)%20%2D%20Swedbank%20Chairman,head%20of%20forestry%20group%20Sodra.](https://www.reuters.com/article/us-europe-moneylaundering-swedbank/swedbank-chairman-quits-over-money-laundering-scandal-idUSKCN1RH0P9#:~:text=STOCKHOLM%20(Reuters)%20%2D%20Swedbank%20Chairman,head%20of%20forestry%20group%20Sodra.) 10. [https://www.dfs.ny.gov/system/files/documents/2020/04/ea20200419\\_co\\_ibk\\_ibk\\_ny.pdf](https://www.dfs.ny.gov/system/files/documents/2020/04/ea20200419_co_ibk_ibk_ny.pdf) 11. <https://www.fi.se/en/published/press-releases/2020/seb-receives-an-administrative-fine-for-deficiencies-in-its-work-to-combat-anti-money-laundering-in-the-baltics/>

## PERSPECTIVES ON CHALLENGES FROM FIS AND THEIR EXTERNAL LEGAL COUNSEL



their top concerns, while external legal counsel concurred that inadequate transaction monitoring programs were one of the top target areas for future enforcement actions. The recently released FinCEN Files may bring additional attention to transaction monitoring programs.

### (b) A new approach to reach a different outcome

The Financial Action Task Force (FATF) identified that studying the opportunities AML technology and digital transformation could offer to both the private and public sectors is a priority between 2020 and 2022.<sup>12</sup>

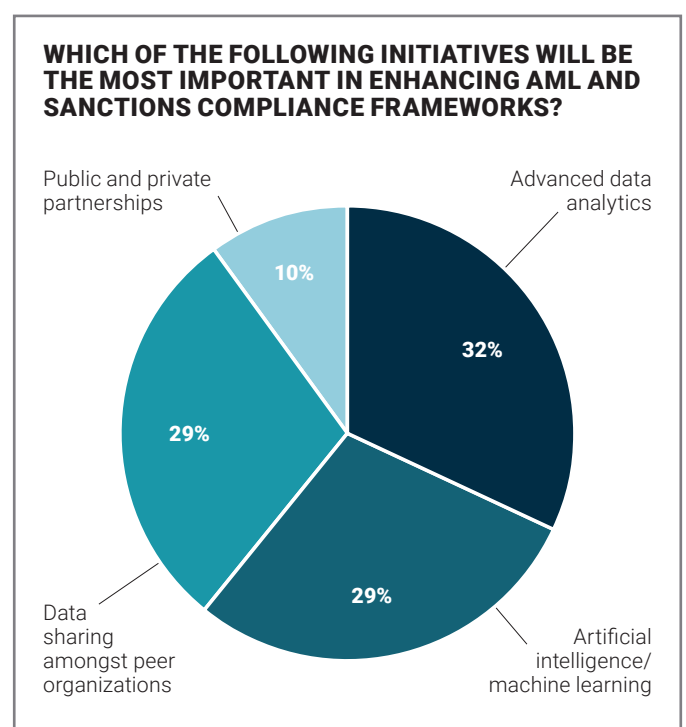
Our respondents indicated a similar thought process. Instead of continuing to address challenges through more layered, fragmented and siloed review teams, the survey results suggest FI employees and their advisors are challenging themselves to think more holistically and creatively about solutions to the problems.

Respondents to the survey clearly view advanced technology and information sharing as important, and, if implemented correctly, these advancements could result in a dramatic change to AML and Sanctions compliance overall.

Consistent with our survey results, on July 8, 2020 it was announced that five Dutch banks would work to establish Transaction Monitoring Netherlands (TMNL) in the collective fight against money laundering and the financing of terrorism, an industry first.

The press release states: “The TMNL initiative will be an addition to the banks’ individual transaction monitoring activities. TMNL will focus on identifying unusual patterns in payments traffic that individual banks cannot identify.”<sup>13</sup> If successful, this initiative could be the blueprint for a step-change in collaboration to combat financial crime.

Data sharing is also being seen as an opportunity to enhance the KYC (Know Your Customer) process. 37% of FI survey respondents said that they are considering participation in a KYC registry – a higher-than-expected rate



12. <https://www.fatf-gafi.org/publications/fatfgeneral/documents/objectives-2020-2022.html#:~:text=During%20the%20German%20Plenary%20years,Money%20laundering%20and%20migrant%20smuggling> 13. [https://www.nvb.nl/english/transaction-monitoring-netherlands-a-unique-step-in-the-fight-against-money-laundering-and-the-financing-of-terrorism/#:~:text=Five%20Dutch%20banks%20\(ABN%20AMRO,and%20the%20financing%20of%20terrorism](https://www.nvb.nl/english/transaction-monitoring-netherlands-a-unique-step-in-the-fight-against-money-laundering-and-the-financing-of-terrorism/#:~:text=Five%20Dutch%20banks%20(ABN%20AMRO,and%20the%20financing%20of%20terrorism)

that could have a significant impact on an FI's operations. The most likely solution is a self-sovereign virtual repository where participants share and validate their own identity information.

These responses align with expected future investment by FIs, with the three largest areas of investment relating to transaction monitoring systems, sanctions filtering systems and reviewing/updating customer/KYC files. This suggests opportunities to enhance AML and Sanctions compliance through coordination across FIs.

Respondents also believe that there are opportunities for greater efficiency and effectiveness through reorganization within the FI. For example, our survey revealed that there is a high likelihood that AML and Sanctions initiatives can be converged with fraud and cyber initiatives to combat financial crimes, with 73% of FI employees and 67% of external legal counsels believing it 'likely', or 'very likely'.

### (c) Investigative and risk mitigation assignments

It is often difficult to determine the full picture when initially evaluating red flags for potential fraud or money laundering, which makes investigative and risk mitigation assignments within a siloed FI difficult.

Take, for example, a local business bank account that is accessed from multiple online devices located in different countries across the world. The investigative assignment could go initially to the FI's cyber team, as they may have access to the fraud surveillance tool that collected the IP addresses and devices used by customers who log into the internet banking platform. The investigation could also be assigned to the AML team, given that the login activity may be inconsistent with the customer's KYC profile.

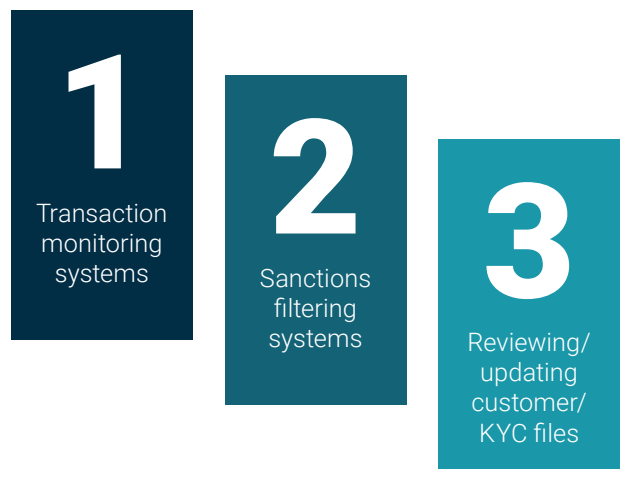
Much of the work required for the investigation, such as analyzing login activity and transactional activity, reviewing KYC information and conducting other due diligence, will need to be performed regardless of the assigned team.

Combining resources to think through the 'Level 1' review of red flags and potential risks, after adequate cross-training, makes good sense, but deep subject matter expertise is still necessary at more senior levels of the compliance department to determine whether a Suspicious Activity Report should be filed, or if other risk mitigation measures need to be put in place. If the view is expanded to cover market abuse, there may be additional convergence opportunities to allow for greater effectiveness and efficiency to combat financial crime.

### (d) The importance of compliance culture

Implementation of greater technical controls, such as better transaction monitoring and KYC capabilities, and greater cross-training and convergence of resources, are steps in the right direction, but may not provide a complete solution to the AML and Sanctions compliance challenges.

### WHAT ARE THE THREE LARGEST INVESTMENT AREAS (BY MONEY SPENT) THAT YOU ANTICIPATE IN THE NEXT 1 TO 2 YEARS?



An appropriate culture of compliance is also important. Indeed, 80% of FI employee respondents believe that a culture of compliance is high on their senior management's agenda, but only 65% of respondents believe their institution's culture of compliance is adequate.

A key component of an effective AML and Sanctions compliance program is a strong and well-defined culture of compliance, driven primarily by the board of directors and senior management. They must set adequate tone from the top, ensure proper tone from middle management, and must also lead by example.

The Department of Justice of the United States, in its 'Evaluation of Corporate Compliance Programs' released in June 2020, sums up the interaction between tangible controls and culture well: "Beyond compliance structures, policies, and procedures, it is important for a company to create and foster a culture of ethics and compliance with the law at all levels of the company. The effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the middle and the top."<sup>14</sup>



14. <https://www.justice.gov/criminal-fraud/page/file/937501/download>



“...any culture analysis begins with an assessment of senior leadership, their alignment to the current and future cultures, and their capabilities to drive the changes necessary for transformation.”

In other words, an adequate culture serves as the backbone of a strong compliance program.

Assessing culture and understanding how to move it in the right direction is a deliberate and complex exercise. Culture is powerfully influenced by culture carriers – people in authority who set the tone of a company through their behaviors, beliefs, and values. As such, any culture analysis begins with an assessment of senior leadership, their alignment to the current and future cultures, and their capabilities to drive the changes necessary for transformation.

The views of employees across the organization must be evaluated to determine the parts of the current culture that are working productively and should be preserved, and those that hinder productivity and engagement, with the aim of clarifying the gap between the current and desired state.

## REMOTE WORKING

The survey was conducted in spring 2020 while many professionals were working remotely due to the challenges of COVID-19.

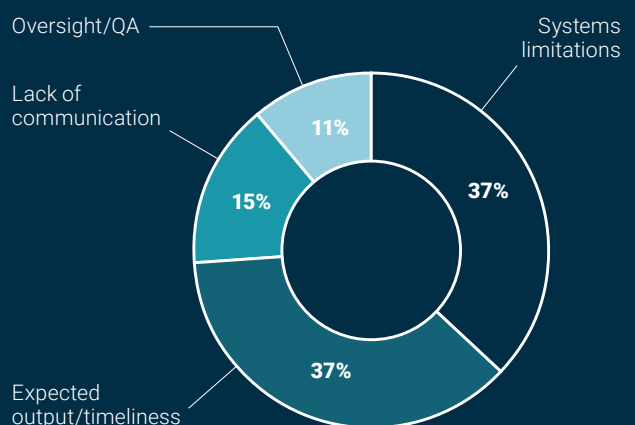
In general, compliance professionals felt well prepared for remote working, with 87% responding positively. This is good news, as some professionals may continue to work remotely in at least the short and medium term (and possibly longer).

Respondents, however, did express that there were challenges to remote working, with systems limitations and expected output/timeliness topping the list.

The challenges relating specifically to system limitations and expected output/timeliness may be linked. If IT systems are not running efficiently this could lead to a decrease in output.

This is a particular challenge where fast home internet access, which in some parts of the world is taken for granted, is not available. The majority of compliance professionals may feel adequately prepared to work remotely, but technology and other factors may be inhibiting productivity.

## TOP CHALLENGES TO FINANCIAL CRIME COMPLIANCE WHEN WORKING REMOTELY



Once this is determined, the focus should be on alignment. It is critical that senior leaders are cohesive in their individual and collective accountabilities for driving culture transformation, that they desire it, and that they are confident that it can be executed.

## Conclusion: Next steps

AML and Sanctions compliance at financial institutions is evolving at a rapid pace. Broad new steps, including the use of advanced technologies, greater sharing of information across institutions, and bringing internal teams together, are being evaluated to deal with recurring AML and Sanctions compliance challenges.

Financial institutions should be evaluating the transformative impact these steps and others could have on the effectiveness and efficiency of AML and Sanctions compliance and also the organization as a whole.

Implementation will be complex, but will likely be necessary in the

near future to keep up with peer organizations, deal with evolving financial crime risk, and meet the expectations of internal and external stakeholders, including the evolving views of compliance by investors.



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Tackling situations when time is of the essence is part of our DNA – so we adopt an action-oriented approach at all times. We work in small, highly qualified teams with specific industry and functional expertise, and we operate at pace, moving quickly from analysis to implementation. We stand shoulder to shoulder with our clients until the job is done, and only measure our success in terms of the results we deliver.

Our approach enables us to help our clients confront and overcome truly future-defining challenges.

We partner with you to make the right decisions and take the right actions. And we are right by your side. When it really matters.

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