

## CONSULTATION RESPONSE

### Submission to the Board of Governors of the Federal Reserve System on Notice of Proposed Rulemaking Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements (R-1835 RIN No. 7100-AG78)

The concept of effectiveness has become a key theme in global Anti-Financial Crime (AFC) discussions. Yet, despite the time, effort and resources devoted to enhancing AFC regimes, most observers, including the Financial Action Task Force (FATF), believe we are not achieving the desired impact on fighting financial crime.

In the United States, the Anti-Money Laundering (AML) Act was passed to “strengthen, modernize, and improve” the U.S. AML/countering the financing of terrorism (CFT) regime.<sup>1</sup> As part of the implementation of the AML Act, FinCEN and the Federal Regulatory Agencies (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the National Credit Union Administration) have proposed rules that “seek[] to promote effectiveness, efficiency, innovation and flexibility with respect to AML/CFT programs.”<sup>2</sup>

In 2024, ACAMS collaborated with our global members across the public and private sectors to share ideas about why the system is not as effective as it could be and how to improve it. Through numerous roundtable discussions, individual meetings, and independent research, we identified several strategies that could incentivize AML/CFT program effectiveness. Our findings are described in a recent paper titled, “Incentivizing Effectiveness: Strategies to Achieve Better Anti-Financial Crime Results” (the Paper).<sup>3</sup> As describe below, several of these strategies may be relevant to the request for comment on the proposed rules.

## About ACAMS

---

ACAMS is a leading international membership organization dedicated to providing opportunities for AFC education, best practices, and peer-to-peer networking to AFC professionals globally. With over 100,000 members across 180 jurisdictions, ACAMS is committed to the mission of ending financial crime through the provision of anti-money laundering/counterterrorism-financing and sanctions knowledge-sharing, thought leadership, risk mitigation services, ESG initiatives, and platforms for public-private dialogue. The association’s CAMS certification is the gold-standard qualification for AFC professionals, while the CGSS certification is its premier specialist qualification for sanctions professionals. ACAMS’ 60+ Chapters globally further amplify the association’s mission through training and networking initiatives.

1. H.R. Rep. No. 6395 (2020) at pp. 731-732 (Joint Explanatory Statement of the Committee of Conference), available at <https://docs.house.gov/billshtisweek/20201207/116hrpl617-JointExplanatoryStatement.pdf>.

2. See Financial Crimes Enforcement Network, Anti-Money Laundering and Countering the Financing of Terrorism Programs, Notice of Proposed Rulemaking, 88 FR 55428 at 55430 (July 3, 2024) [the NPRM]. The Federal Regulator Agencies published similar proposed rules with similar objectives.

3. See attached.

## Key Observations from our Global Convening

---

We recognize that there is no one universally accepted “right” approach to better fighting financial crime. Therefore, the purpose of the Paper and our observations is not to recommend any specific action. Rather, our goal is to present FinCEN and the Federal Regulatory Agencies with a range of potential strategies to consider as they move forward with the rulemaking process.

### Purpose Statement

The proposed rules would establish a new purpose statement that defines the purpose of the AML/CFT program requirement.<sup>4</sup> Throughout our discussions, the lack of a defined purpose was consistently raised as a key factor negatively impacting AML/CFT program effectiveness. Most jurisdictions have not defined the desired outcomes for AML/CFT programs. While some have, they are often high-level in nature and lack the substance to measure and operationalize them. They also typically lack a focus on results, such as producing highly useful information for government authorities.

The proposed purpose statement addresses many of these concerns. It clearly defines the objectives of an AML/CFT program and has a significant focus on results (e.g., providing highly useful reports or records, protecting the financial system, and safeguarding national security). However, what’s not clear from the proposed rule is how the purpose statement will be used and whether it will be the basis upon which financial institution AML/CFT programs are assessed.

When the FATF began focusing on effectiveness, it defined its desired outcomes, provided detailed guidance on how jurisdictions could achieve these outcomes and assessed their progress during mutual evaluations. There was broad consensus across our discussions that jurisdictions should do the same:

- Define the desired outcomes for its AFC regime.
- Provide detailed guidance on how various stakeholders can achieve these outcomes, including potential metrics and other ways to demonstrate effectiveness.
- Evaluate stakeholders against these criteria. For financial institutions, this would be the basis upon which their AML/CFT programs are examined and evaluated.

### Effective, Risk-Based and Reasonably Designed (Questions 12 – 14)

In the proposed rules, FinCEN and the Federal Regulatory Agencies would explicitly require financial institutions “to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs.”<sup>5</sup> This new requirement is intended to help financial institutions “better focus attention and resources, assess customer risks in a more sophisticated and refined manner, and provide more targeted, highly useful [Bank Secrecy Act] reports to law enforcement and national security agencies.”<sup>6</sup>

To help achieve these goals, FinCEN and the Federal Regulatory Agencies may want to consider two other strategies from the Paper to better incentivize more effective financial institution behavior: (1) evolve AML/ CFT programs from a coverage approach to an intelligence-led approach; and (2) create supervisory incentives to drive a risk-based approach that leads to more effective outcomes.

4. NPRM at 55430-31.

5. *Id.* at 55436.

6. *Id.*

## 1. Evolve AML/CFT programs from a coverage approach to an intelligence-led approach

In our discussions, AFC professionals consistently identified information sharing initiatives and public-private partnerships (PPPs) as the most effective part of their AFC regime. However, most institutions allocate only a small fraction of their overall AML/CFT budgets to these initiatives. Part of this is likely due to the lack of defined outcomes discussed above, as well as supervisory incentives discussed below, but we also heard a strong desire to see AML/CFT programs shift from a coverage approach to an intelligence-led approach.

The coverage approach typically stems from a jurisdiction's reporting requirements. The definition of suspicious activity that financial institutions need to report is usually broad and often does not prioritize any particular type of suspicious activity. To comply with this requirement, financial institutions tend to allocate their resources across a wide range of potentially suspicious activities to ensure they have everything "covered." As a result, they often spend most of their resources investigating and reporting on relatively non-complex and low monetary value activities that form the largest quantity of suspicious activity. This can leave them with fewer resources to handle more complicated cases or to participate in information sharing initiatives and PPPs.

An intelligence-led approach, however, could do the opposite. It could focus the private sector's resources on the highest-risk, most significant suspicious activity and potentially help the government identify bad actors they don't know about. As one former law enforcement officer said, we can either have financial institutions spend all their time trying to find the needle in the haystack, or we can give them the needles and have them help us identify the broader criminal networks.

Several jurisdictions have successful intelligence-led initiatives in place. In the United States, financial institutions operating as a formal association under the USA PATRIOT Act Section 314(b) information-sharing provision receive intelligence from law enforcement and pool their investigative resources to "supercharge" investigations and build a greater understanding of criminal networks.<sup>7</sup> On average, for every subject shared by law enforcement, the association identifies five additional subjects previously unknown to law enforcement.<sup>8</sup>

There was near universal agreement amongst AFC professionals we spoke with that if financial institutions were able to move from spending less than 1% of their resources on intelligence-led initiatives to 10%, 20%, 50% or more, it could dramatically improve AML/CFT program effectiveness.

## 2. Create supervisory incentives to drive a risk-based approach that leads to more effective outcomes

Among the AFC professionals we spoke with, there was broad consensus that supervisors play a critical role in driving effective financial institution behavior, with many considering them the most important factor. While the idea that jurisdictions should clearly define outcomes and examine financial institutions based on these outcomes was widely supported, some expressed concerns about the practical implementation of this approach.

### a. An abuse of discretion standard for more subjective outcomes

Concerns were raised about how supervisors would assess the more subjective outcomes. For instance, how supervisors would examine for something like providing highly useful reports or information to government authorities.

7. Maxwell, N (2022). A Survey and Policy Discussion Paper: 'Lessons in private-private financial information sharing to detect and disrupt crime' at p.

38. Future of Financial Intelligence Sharing (FFIS) research programme.

8. Id. at 40.

One way to allow supervisors to fulfill their essential oversight function while giving financial institutions the flexibility to implement a risk-based approach is to adopt an abuse of discretion standard of review for more subjective outcomes. Under this standard, when supervisors have determined that the AML/CFT program head is qualified and has adequate resources, supervisors would defer to the AML/CFT program head on subjective judgment calls absent an abuse of discretion.<sup>9</sup> An abuse of discretion, for example, would be a clear error in judgment that cannot be justified under any reasonable interpretation of the facts.

An abuse of discretion standard could have several benefits. It would give the person best positioned to make the decision the decision-making authority for subjective questions. This aligns with the FATF's Guidance on Risk-Based Supervision: "[i]mplemented properly, a risk-based approach is more responsive, less burdensome, and delegates more decisions to the people best placed to make them."<sup>10</sup> It could empower AML/CFT program heads to make tough decisions without fear of being second-guessed on the basis of a different opinion. For supervisors, it may allow them to concentrate the examination on significant issues (e.g., clear errors) and sidestep the need to re-evaluate every subjective decision in detail.

b. Use questions during examinations to drive effective behavior

A short-term way for supervisors to foster effectiveness could be to evaluate how the questions they ask impact financial institution behavior. Specifically, asking more questions about opportunity cost.

Opportunity cost is a term from economics, but it simply means what else could you have done if you didn't do what you did. In the context of an AML/CFT program, it's looking at how resources are allocated across the program and asking whether there are places where you could stop or change what you are doing to put existing resources to more effective use.

AFC professionals we spoke with indicated that changing the questions that supervisor ask during the examination process could significantly improve effectiveness. The following are some examples:

- Which controls have you determined to be ineffective and/or inefficient, and how have you stopped or changed them?
- Which areas of your program consume the most resources for the least results?
- What are the most effective areas of your AFC program? Would allocating more resources to these areas enhance overall effectiveness? If so, what do you plan to stop or change to reallocate resources?
- Are you involved in intelligence-sharing initiatives and PPPs? What are the results? Would your program be more effective with additional resources in these areas? If so, how do you plan to reallocate resources?
- How have you used technology to enhance your program's efficiency and effectiveness?
- How have you been able to manage risk to prevent de-risking and enable more financial inclusion and humanitarian assistance?

Nearly every AFC professional we spoke with said they rarely get these questions from their supervisors. There was near unanimous agreement that if supervisors asked these questions and focused on these things during examinations, it could immediately improve financial institution behavior.

9. Without a qualified AFC program head and adequate resources, supervisors would not have an adequate basis to rely on the AFC program head's judgement and resource allocations.

10. FATF (2021), Guidance on Risk-Based Supervision, FATF, Paris, [www.fatf-gafi.org/publications/documents/Guidance-RBA-Supervision.html](https://www.fatf-gafi.org/publications/documents/Guidance-RBA-Supervision.html) at ¶2.

## Conclusion

---

To many AFC professionals, effectiveness is not about compliance. It's about making our communities safer, protecting victims and saving lives. At ACAMS, we are grateful for the opportunity to share our observations as part of the rulemaking process and stand prepared to collaborate with various stakeholders – governments, policymakers, supervisors, financial intelligence units, law enforcement, financial institutions, and others – to work together to improve AML/CFT program effectiveness and achieve better outcomes.

# Attachment



**Incentivizing Effectiveness:**  
Strategies to Achieve Better Anti-Financial Crime Results

# Contents

<b>1. Introduction</b>	<b>3</b>
<hr/>	
<b>2. Five Strategies to Achieve Better AFC Results</b>	<b>4</b>
1. Define the desired outcomes of the AFC regime and use them to evaluate stakeholders	4
2. Ensure the defined outcomes include results, not just technical compliance	4
3. Establish a strategic PPP focused on effectiveness	6
4. Evolve AFC programs from a coverage approach to an intelligence-led approach	6
5. Create supervisory incentives to drive a risk-based approach that leads to more effective outcomes	8
<hr/>	
<b>3. Conclusion</b>	<b>10</b>
<hr/>	
<b>4. About ACAMS</b>	<b>10</b>
<hr/>	





# 1. Introduction

---

The concept of effectiveness has become a dominant theme in global Anti-Financial Crime (AFC) discussions. Yet, despite the time, effort and resources devoted to enhancing AFC regimes, most observers, including the Financial Action Task Force (FATF), believe we are not achieving the desired impact on fighting financial crime.

To contribute to this global dialogue, in 2024, ACAMS collaborated with our global members across the public and private sectors and chapters to share ideas about why the system is not as effective as it could be and how to improve it. Through numerous roundtable discussions, individual meetings, and independent research, we identified five strategies that jurisdictions may wish to consider to better incentivize effectiveness:

1. Define the desired outcomes of the AFC regime and use them to evaluate stakeholders.
2. Ensure the defined outcomes include results, not just technical compliance.
3. Establish a strategic public-private partnership (PPP) focused on effectiveness.
4. Evolve AFC programs from a coverage approach to an intelligence-led approach.
5. Create supervisory incentives to drive a risk-based approach that leads to more effective outcomes.

In sharing the results of our work, we recognize that there is no universally accepted “right” approach to better fighting financial crime. Therefore, the purpose of this paper is not to recommend specific actions for jurisdictions. Rather, our goal is for this paper to serve as a useful resource for the global AFC community and a catalyst for further discussion, including considerations for how to improve the effectiveness of AFC regimes and achieve better outcomes.

---

## 2. Five Strategies to Achieve Better AFC Results

---

### 1 Define the desired outcomes of the AFC regime and use them to evaluate stakeholders

Most jurisdictions have not defined the desired outcomes for their AFC regime. While some have, they are often high-level in nature and lack the substance to measure and operationalize them. As a result, different stakeholders (i.e., supervisors, Financial Intelligence Units (FIUs), law enforcement, the private sector and others) are left to make their own interpretations about what the regime is trying to achieve. These interpretations are often not aligned (even within the same agency or institution) and, in some cases, directly conflict. This lack of common purpose was consistently raised as a key reason why AFC regimes are inefficient and less effective.

When the FATF began focusing on effectiveness, it defined its desired outcomes, provided detailed guidance on how jurisdictions could achieve these outcomes and assessed their progress during mutual evaluations. There was broad consensus across our discussions that jurisdictions should do the same:

- Define the desired outcomes for its AFC regime.
- Provide detailed guidance on how various stakeholders can achieve these outcomes, including potential metrics and other ways to demonstrate effectiveness.
- Evaluate stakeholders against these criteria. For financial institutions, this would be the basis upon which their AFC programs are examined and evaluated.

### 2 Ensure the defined outcomes include results, not just technical compliance

We asked AFC professionals how they would define effectiveness in the context of a financial institution's AFC program and whether there were any good existing definitions. The one referenced most frequently was from the Wolfsberg Group.<sup>1</sup> The Wolfsberg Group defines an effective AFC program as one that:<sup>2</sup>

1. Complies with anti-money laundering/combating terrorist financing (AML/CTF) laws and regulations.
2. Provides highly useful information to relevant government agencies in defined priority areas.
3. Establishes a reasonable and risk-based set of controls to mitigate the risks of a financial institution being used to facilitate illicit activity.

---

1. The Wolfsberg Group is an association of 12 global banks which aims to develop frameworks and guidance for the management of financial crime risks. Its members are Bank of America, Barclays, Citi, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, MUFG, Santander, Société Générale, Standard Chartered and UBS.

2. The Wolfsberg Group – [Statement on Effectiveness](#) (2019).

In particular, AFC professionals highlighted the importance of the second element. While many believe that the primary focus of a financial institution's AFC program should be to provide highly useful information to the government, most say it is rarely part of the evaluation of their programs. Instead, supervisors typically focus on technical requirements and compliance processes without considering the results for governments.

## Why AFC Regimes are Focused on Technical Compliance

There are several potential explanations for why AFC regimes focus on technical compliance. First, assessing whether something is “highly useful” is subjective and difficult. The best way to evaluate this would be through direct feedback from law enforcement and FIUs, but both financial institutions and supervisors rarely receive this feedback. When feedback does occur, it's inherently subjective. What one agent or agency finds highly useful, another might not. While there are ways to assess the usefulness or potential usefulness of information without direct feedback, these metrics are also imperfect.

Assessing technical compliance is easier. It's black and white. You either did it or you didn't. It also fits the skill set of most supervisors and auditors who are used to assessing compliance but may not have a background in fighting financial crime.

For these reasons, and without clearly defined AFC regime objectives, supervisors and auditors have traditionally focused on things that would fall under the first and third elements of the Wolfsberg Group definition. As a result, financial institutions have focused their resources on optimizing for these things. This is why AFC regimes and programs prioritize technical compliance.

To change this, most people thought it was essential to include results – providing highly useful information to the government, protecting the financial system, safeguarding national security, etc. – as key measures of an AFC program's effectiveness and a basis upon which financial institutions are assessed.

Additionally, the concept of what institutions should prioritize is a separate challenge. Very few jurisdictions have clearly defined priorities. While some told us that a country's national risk assessment could serve as a proxy for its priorities, how to incorporate those priorities into an AFC program is often unclear.

What is clear is that most financial institutions we have spoken with are feeling pulled in more directions than ever before. They feel that “everything is a priority, so nothing is a priority.” Some strongly believe that the government should establish clear priorities, while others think that institutions should set their own priorities and allocate resources accordingly. However, each approach presents its own challenges. Regardless of the approach, nearly everyone we spoke with expressed concerns about not being allowed to de-prioritize certain areas to focus on priorities.

### 3 Establish a strategic PPP focused on effectiveness

To help establish outcomes and priorities, jurisdictions could develop a strategic PPP focused on effectiveness (an Effectiveness PPP). Unlike many PPPs today that focus on sharing information and intelligence, an Effectiveness PPP would focus on the strategic direction of the AFC regime. Ideally, the Effectiveness PPP would include relevant stakeholders from across the public and private sectors. We have received feedback from various individuals stating that supervisors, FIUs, law enforcement and the private sector seldom come together, much less for these types of strategic discussions. Most of the AFC professionals we spoke to strongly believe that an Effectiveness PPP would significantly enhance communication among stakeholders and contribute to a more effective AFC regime.

One potential model is the Bank Secrecy Act Advisory Group (BSAAG) AML Effectiveness Working Group in the United States.<sup>3</sup> The AML Effectiveness Working Group was created in June 2019 to develop recommendations for strengthening the national AML regime and increasing its effectiveness and efficiency.<sup>4</sup> It included representatives from supervisory agencies, law enforcement, the U.S. FIU, and a cross-section of private sector financial institutions.<sup>5</sup> The stakeholders worked collaboratively throughout 2019 and 2020 to identify regulatory initiatives that would allow financial institutions to reallocate resources to better focus on national AML priorities, increase information sharing and PPP, and leverage new technologies and risk management techniques.<sup>6</sup> Many of their recommendations resulted in changes to U.S. law and regulations as part of the AML Act of 2020. Implementation of these changes is currently underway.

Over time, the Effectiveness PPP could evolve from developing the overall framework to a group that monitors the ongoing effectiveness of the AFC regime and adapts to changes. The Effectiveness PPP could also be used as a forum to address other long-standing challenges like de-risking and financial inclusion, which require stakeholders from across the AFC regime to come together to find a potential solution.

### 4 Evolve AFC programs from a coverage approach to an intelligence-led approach

AFC professionals consistently identified information sharing initiatives and PPPs as the most effective part of their AFC regime. However, most institutions allocate only a small fraction of their overall AFC budgets to these initiatives. This goes against what one would expect under a truly risk-based approach. Part of this is likely due to the lack of defined outcomes and priorities discussed above, as well as supervisory incentives discussed below, but we also heard a strong desire to see AFC programs shift from a coverage approach to an intelligence-led approach.

#### The Coverage Approach

The coverage approach typically stems from a jurisdiction's reporting requirements. The definition of suspicious activity that financial institutions need to report is usually broad and does not prioritize any particular type of suspicious activity. To comply with this requirement, financial institutions allocate their resources across a wide range of potentially suspicious activities to ensure they have everything "covered." As a result, they spend most of their resources investigating and reporting on relatively non-complex and low monetary value activities that form the largest quantity of suspicious activity.

3. FinCEN Advanced Notice of Proposed Rulemaking on [AML Program Effectiveness](#) (2020).

4. *Id.*

5. *Id.*

6. *Id.*

This leaves them with fewer resources to handle more complicated cases or to participate in information sharing initiatives and PPPs.

The coverage approach has potentially negative consequences for governments as well. In some jurisdictions, the reporting volume can overwhelm FIUs and law enforcement, causing delays in opening investigations or significant reports to get buried amongst the masses.

## The Intelligence-Led Approach

An intelligence-led approach would do the opposite. It would focus the private sector's resources on the highest-risk, most significant activity and help the government identify bad actors they don't know about. As one former law enforcement officer said, we can either have financial institutions spend all their time trying to find the needle in the haystack or we can give them the needles and have them help us identify the broader criminal networks.

Several jurisdictions have successful intelligence-led initiatives in place. The United Kingdom's Joint Money Laundering Intelligence Taskforce (JMLIT) is a partnership to exchange and analyze information on money laundering and wider economic threats. It includes over 40 financial institutions, the U.K.'s conduct regulator and five law enforcement agencies.<sup>7</sup> Since its inception in 2015, the JMLIT has supported over 950 law enforcement investigations, with private sector members identifying over 7,400 accounts linked to money laundering.<sup>8</sup> In the United States, financial institutions operating as a formal association under the USA PATRIOT Act Section 314(b) information-sharing provision receive intelligence from law enforcement and pool their investigative resources to "supercharge" investigations and build a greater understanding of criminal networks.<sup>9</sup> On average, for every subject shared by law enforcement, the association identifies five additional subjects that law enforcement had not known about.<sup>10</sup> On April 1, 2024, the Monetary Authority of Singapore (MAS) launched the Collaborative Sharing of Money Laundering/Terrorism Financing Information & Cases (COSMIC), the first centralized digital platform to facilitate the sharing of customer information among financial institutions to combat money laundering, terrorist financing and proliferation financing.<sup>11</sup> COSMIC allows financial institutions to securely share information on customers who exhibit multiple "red flags" that may indicate potential financial crime concerns, making it easier to detect and deter criminal activity.<sup>12</sup>

There was near universal agreement amongst AFC professionals we spoke with that if financial institutions were able to move from spending less than 1% of their resources on initiatives like these to 10%, 20%, 50% or more, it would dramatically improve the effectiveness of AFC programs and regimes.

However, making the shift from a coverage approach to an intelligence-led approach is not easily done. It might require changes to laws and regulations, as well as time to develop trust between the public and private sectors to enable information sharing at this scale. An Effectiveness PPP would be a useful forum to work through these challenges and develop solutions.

---

7. [National Economic Crime Centre - National Crime Agency](#)

8. *Id.*

9. Maxwell, N (2022). A Survey and Policy Discussion Paper: '[Lessons in private-private financial information sharing to detect and disrupt crime](#)' at p. 38. Future of Financial Intelligence Sharing (FFIS) research programme.

10. *Id.* at 40.

11. [COSMIC \(mas.gov.sg\)](#)

12. *Id.*

## 5 Create supervisory incentives to drive a risk-based approach that leads to more effective outcomes

Among the AFC professionals we spoke with, there was broad consensus that supervisors play a critical role in driving effective financial institution behavior, with many considering them the most important factor. While the idea that jurisdictions should clearly define outcomes and examine financial institutions based on these outcomes was widely supported, some expressed concerns about the practical implementation of this approach.

### An Abuse of Discretion Standard for More Subjective Outcomes

Concerns were raised about how supervisors would assess the more subjective outcomes. For instance, consider the second element of the Wolfsberg Group definition – providing highly useful information to government authorities in defined priority areas. Given the realities and challenges discussed above, financial institutions would have to make several subjective judgment calls to implement this objective. These include:

- Determining the metrics to assess the usefulness of the information provided.
- Weighing the different metrics to form an overall assessment.
- Identifying the priority areas for the relevant jurisdiction.
- Determining which priority areas are most relevant for their institution.
- Allocating resources among priorities and other risks.
- De-prioritizing lower-risk areas to allocate more resources to higher-risk, higher-priority areas.

There are no “right” answers to these questions. In fact, there are likely several reasonable approaches to each one.

One way to allow supervisors to fulfill their essential oversight function while giving financial institutions the flexibility to implement a risk-based approach is to adopt an abuse of discretion standard of review for more subjective outcomes. Under this standard, when supervisors have determined that the AFC program head is qualified and has adequate resources, supervisors would defer to the AFC program head on subjective judgment calls absent an abuse of discretion.<sup>13</sup> An abuse of discretion, for example, would be a clear error in judgment that cannot be justified under any reasonable interpretation of the facts.

An abuse of discretion standard could have several benefits. It would give the person best positioned to make the decision the decision-making authority for subjective questions. This aligns with the FATF's Guidance on Risk-Based Supervision: “[i]mplemented properly, a risk-based approach is more responsive, less burdensome, and delegates more decisions to the people best placed to make them.”<sup>14</sup> It empowers AFC program heads to make tough decisions without fear of being second-guessed on the basis of a different opinion. For supervisors, it allows them to concentrate on the examination of significant issues (e.g., clear errors) and sidestep the need to re-evaluate every subjective decision in detail.

An abuse of discretion standard could also help address long-standing AFC challenges, such as defensive suspicious activity report/suspicious transaction report (SAR/STR) filings. Defensive SAR/STR filings refers to financial institutions filing SARs/STRs not because they genuinely suspect illicit activity but to avoid potential regulatory criticism or penalties for failing to file.

13. Without a qualified AFC program head and adequate resources, supervisors would not have a sufficient basis to rely on the AFC program head's judgement and resource allocations.

14. FATF (2021), Guidance on Risk-Based Supervision, FATF, Paris, [www.fatf-gafi.org/publications/documents/Guidance-RBA-Supervision.html](https://www.fatf-gafi.org/publications/documents/Guidance-RBA-Supervision.html) at ¶12.

This practice often occurs when institutions are uncertain about the suspicious nature of a transaction but choose to file as a precaution.

Defensive SAR/STR filings can lead to an overload of reports, making it challenging to identify the truly suspicious activity and diminishing their value to FIUs and law enforcement. An abuse of discretion standard could facilitate better decisions and minimize defensive filings.

## Use Questions During Examinations to Drive Effective Behavior

Defining common outcomes, establishing priorities and revamping the examination process, such as with a new standard of review, requires significant time to implement. However, a short-term way for supervisors to foster effectiveness is to evaluate how the questions they ask impact financial institution behavior.

Financial institutions take the questions supervisors ask very seriously. They see these questions as indicating what is most important to their supervisors. For every question, behind the scenes, significant resources are often devoted to analyzing the question and determining the adequacy of the institution's response. These questions can have an impact long after an examination as institutions will often align resources based on the areas of inquiry from their supervisors.

However, many AFC professionals said that supervisors almost never ask about opportunity cost. Opportunity cost is a term from economics, but it simply means what else could you have done if you didn't do what you did. In the context of a financial crime program, it's looking at how resources are allocated across the program and asking whether there are places where you could stop or change what you are doing to put existing resources to more effective use.

Financial institutions agree that changing the questions that supervisor ask during the examination process could significantly improve effectiveness. The following are some examples:

- Which controls have you determined to be ineffective and/or inefficient, and how have you stopped or changed them?
- Which areas of your program consume the most resources for the least results?
- What are the most effective areas of your AFC program? Would allocating more resources to these areas enhance overall effectiveness? If so, what do you plan to stop or change to reallocate resources?
- Are you involved in intelligence-sharing initiatives and PPPs? What are the results? Would your program be more effective with additional resources in these areas? If so, how do you plan to reallocate resources?
- How have you used technology to enhance your program's efficiency and effectiveness?
- How have you managed risk to prevent de-risking and enable more financial inclusion and humanitarian assistance?

Nearly every financial institution we spoke with said they rarely get these questions from their supervisors. There was near universal agreement that if supervisors asked these questions and focused on these things during examinations, it would immediately improve financial institution behavior.

---

## 3. Conclusion

---

Effectiveness is not about compliance. It's about making our communities safer, protecting victims and saving lives. We hope this paper is helpful for the global AFC community and serves as a catalyst for further discussion and action to improve the effectiveness of AFC regimes and achieve better outcomes. At ACAMS, we stand ready to share what we have learned and work with governments, policymakers, supervisors, FIUs, law enforcement, financial institutions, and anyone who wants to help achieve this goal.

### Author

Craig Timm, ACAMS,  
Senior Director of Anti-Money Laundering

## 4. About ACAMS

---

ACAMS is a leading international membership organization dedicated to providing opportunities for anti-financial crime (AFC) education, best practices, and peer-to-peer networking to AFC professionals globally. With over 100,000 members across 180 jurisdictions, ACAMS is committed to the mission of ending financial crime through the provision of anti-money laundering/ counterterrorism-financing and sanctions knowledge-sharing, thought leadership, risk mitigation services, ESG initiatives, and platforms for public-private dialogue. The association's CAMS certification is the gold-standard qualification for AFC professionals, while the CGSS certification is its premier specialist qualification for sanctions professionals. ACAMS' 60+ Chapters globally further amplify the association's mission through training and networking initiatives.

Legal Disclaimer: This publication has been prepared using information believed to be reliable and accurate. The content contained herein is for general information purposes only. This information is not legal, tax, or business advice nor should it be relied upon as such. ACAMS is under no obligation to update the information included herein. Please consult your legal, tax, and business advisors with any questions regarding the application of this information to your individual circumstances.