

FinTech Webinar Series: Financial Crimes—What to Watch Out For

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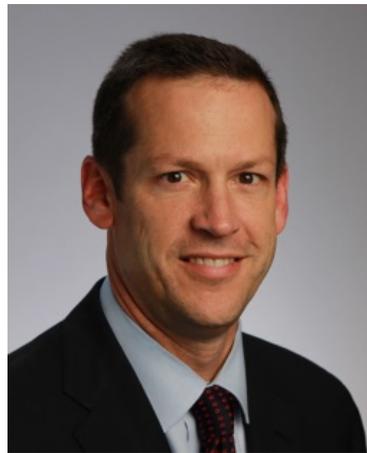
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Roadmap

- I. Recap of Developments in Financial Crimes
- II. What's On the Horizon
- III. The Value in Being Proactive: Strategies for Compliance
- IV. Anti-Money Laundering/Financial Crimes Internal Investigations
- V. Four Key Areas of Focus



I. Recap of Developments in Financial Crimes

- Big bank cases
- Escalating penalties
 - Don't just focus on the dollar amounts
- “Alphabet soup” of regulators/law enforcement
 - Sometimes coordinated on actions regarding the same/similar conduct
 - Sometimes disjointed
- Deferred Prosecution Agreements



I. Recap of Developments in Financial Crimes

Trends in Recent Enforcement Actions

- Compensation clawbacks/tying to compliance
- Geographic risk
- Governance over new or risky products/services
- Treatment of/interaction with foreign affiliates



II. What's On the Horizon

- Continuing Congressional interest will drive regulators to keep the pressure on institutions
- “Waterfall effect:” financial institutions requiring certifications and other compliance measures from their customers, counterparties and vendors
- Government making use of all its tools in new and creative ways
 - Civil Asset Forfeiture
 - PATRIOT Act Section 311



II. What's On the Horizon

- New York Department of Financial Services
- Foreign Authorities
- Effects of “de-risking”
 - Customers and counterparties will be looking to take their business elsewhere
- Shareholder actions for failures
 - De facto private right of action?
- Iran sanctions: new challenges



III. The Value in Being Proactive: Strategies for Compliance

- Tone at the top
- Risk assessments
 - Update after changes to business, M&A
- Independent test/internal audit
 - Findings can provide an opportunity to identify and address problems before the government does
- The government provides strong incentives:
 - Credit for solid compliance controls (e.g., USSG, OFAC Enforcement Guidelines)
 - Policies and procedures on the shelf are not sufficient



III. The Value in Being Proactive: Strategies for Compliance

- Financial crime investigations can morph quickly, and there is risk in how you handle this
 - Do you have the internal and external resources and expertise needed to address?
 - Do you have controls in place to maintain sensitivity of investigation/information?
- Approach compliance with the goal of identifying what went wrong
 - Transparency and credibility with the government
 - Commitment to fix what went wrong
- Equal opportunity bad guys



IV. AML/Financial Crimes Internal Investigations

Practical Tips

- Initial response is often very important in the long term
- Halting potentially bad conduct - global “scrub”
- Preserving documents - paying attention to foreign data protection rules
- Reporting obligations



IV. AML/Financial Crimes Internal Investigations

Practical Tips (cont'd)

- What did we miss?
- Information sharing - LOBs and enterprise wide
- Document, document, document!
- Remediation must be global



IV. AML/Financial Crimes Internal Investigations

Hot Topics:

- Self-reporting
- Dealing with business units vs Legal
- Particular challenges of employees under investigation
- Navigating parallel criminal and civil matters re: same/similar conduct
- Corporate criminal liability



V. Four Key Areas of Focus

1. Roles and Potential Exposure for Officers/Directors

- Recent Federal Reserve consent orders have focused on the role of the board and senior management
 - Expecting more involvement and familiarity with AML/OFAC issues
- Traditional Business Judgment Rule may not suffice
 - Won't protect against regulators, law enforcement
- The Board and management need to be trained in financial crimes issues
- Compliance needs to have an open pipeline to officers/directors



V. Four Key Areas of Focus

2. Information Flow

- Across business lines and up the chain
- Incoming subpoenas
- Leveraging compliance efforts in one area of financial crime to monitor for another
 - e.g., customer/counterparty/vendor due diligence



V. Four Key Areas of Focus

3. Resources and Training

- Low-hanging fruit for the regulators
 - If you don't show meaningful consideration of these issues, they will substitute their judgment
 - Comprehensive policies and procedures on paper vs. a skeleton crew implementing them
- Training should be meaningful and ongoing
 - Customized to job functions
 - Not just in-person or web; circulate updates on hot topics
 - Catalogue what you are doing and who attended



V. Four Key Areas of Focus

4. Outsourcing/Third Party Relationships/Vendor Management

- Recent OCC Guidance
- Risk Assessment
 - Special concerns for offshore service providers
- OFAC Screening
- Negotiating the Contract
 - Does the service provider have a program? Get copies
 - Certifications?
- Ongoing Monitoring



Questions?

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