Summaries Provided by:

Ernesto R. Larrea, AMLCA

Vice President & Senior Consultant, CSMB International, Inc.

- **Lessons learned from the U.S. Treasury Department's recent enforcement actions against financial institutions in the region**

*Moderator **Carl A. Fornaris**, Shareholder, Co-Chair, Financial Regulatory and Compliance Practice, Greenberg Traurig, P.A.*

The panel discussed the cases of Banco Continental (Honduras), Balboa Bank and Trust (Panama) and PacNet (Canada) as a shift by the U.S. Treasury in the use of enforcement tools moving away from Section 311 and towards the use of the Kingpin Act and even most recently the designation of a transnational criminal organization with respect to financial services firms. Also discussed was the impact on the designated financial institutions and their related parties, as well as the indirect impact on depositors, creditors, bondholders, shareholders, employees and others with financial ties in the region.

Stephanie Brooker, Partner with the law firm of Gibson Dunn and Crutcher LLP & Co-Chair of the Financial Institutions Practice Group said that FinCen has used Sec. 311 Special Measure 24 times over the past 12 years to issue a rule making action naming a "primary money laundering concern" a jurisdiction, a financial institution or a transaction to eliminate the concern from the U.S. Financial System. Sanction under OFAC can be used more precisely. Banco Continental has been a marked use of the Kingpin Act, as a designation which even included Banco Continental's Holding Company, as well as the Bank's subsidiaries and shareholders.

Gabriel Caballero, Partner, Holland & Knight - Financial Institutions Group, said that In 1999, Congress passed the Kingpin Act, following-up on an executive order approved in 1995, with the purpose of blocking property or interest in property related to narcotics trafficking activity focusing on individuals and organization that materially assist in this criminal activity. The act created a process to designate certain parties, but with delegated authority to the Secretary of the Treasury, assigned with the consultation of key members of the federal government, focusing on three criteria for their judgement, which are as follows: 1. Was the person(s) material assisting or providing financial or technological support for international narcotics trafficking; 2. Are they owned or controlled by a narcotics trafficker; 3. Do the person(s) play a significant role in the trafficking? When the determination is made any property directly or indirectly owned by the party or parties may be blocked. In Panama two individuals were targeted, but the impact extended to 60 individuals in Balboa Bank and Trust and Balboa Securities resulted in making all blocked persons (SDNs). Blocking has resulted in substantial divestments of investments in the region for many individuals (including U.S. citizens) and companies in the financial sector, real estate and distribution. The impact was felt by the bank's employees and depositors, not to mention the effect of OFAC sanction related to the many designated parties(SDNs).

Jose Luis Stein, Senior Advisor, The Financial Integrity Network (FIN) spoke on behalf of the non-U.S. jurisdiction perspective of these three case. He noted that the three common points on the designations of the Kingpin Act, were as follows:

1. No reference to collaboration with non-U.S. authorities,
2. There is a clear message that the actions are to safeguard the U.S. financial system from criminals, and
3. There is no clear information on the standard approved.

Frustrated and excluded non-U.S. authorities expressed a desire to:

1. Be included in the process, they would like to participate in coordinated action,
2. Join in a co-operative effort in fighting international criminals, as is in related cases,
3. Know which U.S. entity is implementing action.

The consequences and costs to the country implicated is huge since there is an implication that the country has no internal controls to limit narcotics crimes.
Will the financial Kingpin act be used again without these considerations?
It would be best to involve foreign authorities. There appears to be little clarity as to any appeal or alternativity including a foreign authority to process future cases. The question of lack of due process of law was also raised as particular concern and frustration to foreign entities.

John P. Cunningham Partner, Litigation & Government Enforcement Practice Group, Baker & McKenzie said that the PacNet case has had enormous consequences as an OFAC action in Canada, but shocking little press coverage. A paint processor based in Vancouver was processing fake sweepstakes proceeds as payments through PacNet. Twelve individuals were designated, along with 24 other entities caught under Executive Order No. 13581. This records the first time that a commercial entity is designated under this order. The 24 entities were unrelated and may have had little or no involvement with PacNet, yet they were also named. The takeaway is to practices stronger third party due diligence. PacNet had been warned in the past, but the individuals and companies working with them had no warning about PacNet's wrongdoings. There is no evidence that OFAC or FinCen had taken any steps to collaborate with Canadian authorities.

Closing thoughts:

Penalties and sanctions by the U.S. government on U.S. entities do not carry the severity of Section 311 (or OFAC) designations. *The implication to foreign owners and depositors of financial institutions is irreversible once an order is given*.

Noted at the end of this session is the fact that given the chief of staff rule, **Section 311 as a rule making tool has been frozen by the current administration.**

Summaries Provided by:

Jose David Rodriguez, AMLCA

Executive Manager & Senior Consultant, CSMB International, Inc.

➢ Beneficial Ownership, the Final Rule – *What does it mean for the Industry?*

Moderator ***Daniel Gutierrez**,* Vice President, Regulatory Risk Manager with Ocean Bank

This Session's speakers were: **Sarah Runge** is the Director of the Office of Strategic Policy for Terrorist Financing and Financial Crimes at the U.S. Department of the Treasury; **Craig Hirsch** is a Bank Examiner specializing in Anti-Money Laundering and Counter Terrorist Financing; **Susan Galli**, is a Managing Director in the Financial Services Advisory Risk and Regulatory practice at PwC.; **Scott Nathan** is the Bank Secrecy Act (BSA) Officer and Director of Financial Crimes Risk Management for BankUnited, N.A.; and **Nagib Touma**, Director, Global AML Compliance of Citi.

The purpose of this conference was to give to the audience a perspective about how the implementation of the CDD Final Rule in the private sector is going to be, and how the regulators are going face these new requirements when they are evaluating the financial institutions.

At the beginning of the panel, Mr. Gutierrez gave all of the panelist the opportunity to speak about this new rule and give their opinion. Firstly, the regulators commented about it and after, the private sector explained their points of view and general practices.

The first person that gave us a short introduction about the rule was Mrs. Runge. She was part of the team that developed the CDD Final rule and explained to the audience that this rule is an important step towards knowing who is the beneficial owner (BO) in the legal entities, but it is also very important to know the purpose of the business of the legal entities. Moreover, she spoke about the complexity of the preparation of this rule and said that it took almost 5 years to prepare it. Mrs. Runge also explained the two definitions that can be found in this rule of BO. Furthermore, Mrs. Runge spoke about the standard form that has been created to incorporate the information acquired for the clients. She said that this standard form is a guide for the financial institutions but they can use their own forms if they comply with all of the requirements

Mr. Hirsch´s presentation was mainly focused on giving the audience the perspective of what he looks for, as an examiner, when he visits a financial institution. Mr. Hirsch pointed out that he wants to know everything about the CDD procedure, from the beginning until the end. He also mentioned that the policies and procedures are an important aspect that he always evaluates in order to know if all of the aspects that are included in them are duly implemented in the process of the evaluation of a new customer. In addition, Mr. Hirsh also emphasized the importance of having a good system (software) to detect all the transactions and the suspicious activities. He also stressed the importance of having the risk assessment duly updated with the current clients and profiles of the bank which is reviewed in detail by the regulators as well.

Mrs. Galli spoke about the importance of making a first approach evaluation when a client arrives to a financial institution. She also addressed the importance of having very accurate and detailed risk assessment to understand the limits and the risks that the financial institutions are exposed to.

After listening to the regulators and Mrs. Galli, Mr. Gutierrez gave the word to the bank representatives to give their opinion about this new rule and its real implications. Mr. Gutierrez asked Mr. Nathan if his bank accepts and relies on a document signed by a third party which reveals information about the UBO of a legal entity. Mr. Nathan said that he accepts it, but they also verify this information with other resources that they have acquired from the client. He also pointed out that this new rule helps the financial institutions to understand what their clients do. In addition, Mr. Touma commented that this new rule is going to a be a challenge for his bank and he and Mr. Nathan agreed that the CDD Final Rule will require the financial institutions to adapt their internal policies and procedures.

Mr. Gutierrez asked the panelists how this new rule is going to impact in the corresponding banking. Regulators and private sector agree that those need to adapt their policies with the requirements of the new rule to fulfill it.

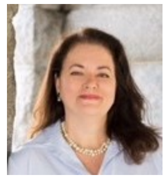
Mrs. Runge asked Mr. Nathan if his bank is using the certification form that was provided by FinCEN. He answered that they basically use it, but more information has been included on it to acquire more information about its clients.

In addition, Mr. Gutierrez showed a survey which reveals that the majority of the banks have already applied the limit of 10 % to identify the UBO of a legal entity, and they are not going to change that limit when this new rule is effective.

To conclude, Mr. Gutierrez showed a very complex legal structure of one entity to all of the panelists and the audience, and he asked Mrs. Runge how deep into the layers we must go to truly analyze and know the UBO. Mrs. Runge´s response was very clear: *you must identify each natural person that directly or indirectly owns 25% or more of the equity interests of ALL of the legal entities of the complex structure*.

Lastly, Mr. Hirsch said that he also evaluates the culture of compliance of the institution and the implication of the Board with the compliance requirements.

Summaries Provided by:
Pamela Wilkerson, CAMS
Senior Consultant, CSMB International, Inc.



➢ Ask the Examiners, Breakout Session 6A

Moderator Patricia Hernandez, Founding Partner, Avila Rodriguez Hernandez Mena & Ferri LLP, Corporate and Financial Services, noted that hot topics this year include de-risking, correspondent banking, and new CDD rules. There is frustration among non-US banks. She noted closed accounts could go into less transparent areas which is not the goal. She introduced the panelists and asks what their hot topics or trends in their examinations.

Blake Snyder, Director for FINRA's AML Investigative Unit, started the session on broker/dealer exam priorities. They are published in January including gaps in surveillance systems by securities systems where the systems are not being fed the appropriate inputs including micro-cap, penny stocks and currency conversion

Daniel Haggerty, AML Specialist with the Federal Reserve Bank, noted that risk assessments are not driving the programs as they should. Other issues are reporting to the Board, risk management, and monitoring systems. System validation is an issue to check that it continues to be used the way it is to be intended.

Craig Hirsch, a Bank Examiner specializing in AML and CTF with the OCC, added that wire data from a monitoring perspective, such as originating beneficiary and bene bank address, originator data and the countries' risk profile High Risk jurisdictions all play a part. Bank's analyses of this data has improved. Culture of compliance has seen a shift from BSA department only to support of the BSA officer.

Santiago Granja, Senior Examiner with the FDIC gave his highlights. Concerns are residential mortgage for foreign nationals and absence of their KYC including SOW/SOF. FIs and other parties are not digging enough to determine who the true borrower is as it could be a PEP or other High Risk customer especially in South Florida. Validation of the AML system, key has been reliant on the system but validation is required to make sure it interfaces with core system and wire system but it is a different thing to validate whether the system is generating relevant alerts.

Next topic - **System validation issues**. Ongoing validation is expected on what basis? Annually? A lot of the validation period has to do with the basic structure of the financial institution, any new product, service, or new market. Revalidation is expected upon credible changes. Risk ratings or monitoring threshold may not have been set appropriately. It is expected that at revalidation, there needs to be analysis to say that nothing has changed, or support why certain rules are needed to be revised. Full documentation is expected. No full scope review is required every year. A "no validation needed" decision also needs analysis. Additionally, policies and procedures should include a validation section and set a time period or set a trigger event to drive when changes should happen.

If core or wire platform or other feeds then the data integrity and system changes would also require validation. Testing should also be above and below the rules. Examiners are ooking for the thought process. While there is no prescriptive period to validate there should be governance around validation and testing especially at material changes. A regular review does not be required annually and does not always have to be a full review.

Who should conduct validation? AML function, internal audit or completely independent party? No common decision. There is model risk management guidance within banking regulations and there is a continuing obligation on FIs. The "owner" on the system within the organization should not validate their own work; it should be independent of the model owner. Document why a particular group is sufficiently independent. Who looks at audit's work? It is hard to know that audit has that skill set. Majority of firms are going to an outside party. Who has the technical expertise to conduct the review and the thresholds? The engagement letter is very important in setting the intention of the project. An example was given that an in-house expertise approach had an independent party rerun the tests to show that internal work plus some external. The approach was an exception to the usual examiner expectations

New CDD rule – Exam guidance is not set but FIs would like some input. In South Florida, many are looking at 10% beneficial ownership level which is more conservative than the 25% in compliance with the rules. A question was posed: If firms are at 10% would it be viewed as a weakening of the program if they move to 25%? FI might use a sliding scale, High Risk at 10% then low at 25%. It depends on the risk profile of the bank especially using the Risk Assessment of the bank. If a low risk profile with low complexity then transaction testing should show the complexity. Most are taking a risk based approach, as 62% of respondents in a recent survey will stay at 10%, then some are doing a risk tiered approach, few are moving from 10 to 25%. If a change is made why did the FI change the level, It should be documented and demonstrate senior management and even the board to accept this level of risk. Identify why it is appropriate for that entity and should be in board minutes.

Multiple layers of ownership on how to make the determination on complex structure with multiple layers. How to determine? You have to keep going through the layers until you get to that final party. If the beneficial owner cannot be determined then how is the FI actually comfortable with that risk? Knowing whether there are nominees owners is important

Monitoring of certain types of accounts such as Attorney trust accounts or client accounts, Correspondent accounts with confidentiality rules in the jurisdiction. If there is push back from attorney or other trustees, then public records could be consulted. Closing the account does not relive the FI of the obligation to investigate and file SARs. Omnibus accounts have different monitoring issues. Third parties require some pubic record searches. And based on expected activities for that lawyer's accounts. For correspondent banking, some level of "does it make sense" without providing any client details is needed from the respondent bank. Some approaches include looking at country risk, determining is this an anomaly or is it ongoing type transaction, are they round dollar transactions or looking at other documented factors which go into the file/no file decision. Know your customer and what type of customer base the bank or attorney take on. What is the due diligence on the customer?

Then that could give a level of comfort. Is your customer banking customers you, the FI, would not bank directly? Effective use of 314B for domestic banks is expected.

New CDD rule – Does OFAC need to be checked for beneficial owner? Answer from the panel was a resounding yes, UBOs should be registered in a system to be reviewed for sanctions. Who is the source of payments? Robust systems are needed to maintain that information.

Nominee directors – Who are they a nominee for? For whom is the director serving? This is part of KYC.

De-risking - There is a seeming disconnect between higher level regulators saying de-risking is not needed but then different view when the examiners arrive. The regulators are asking whether the bank can demonstrate that they can manage the risks correspondent accounts present. Many do a good job. The level of resources and technical expertise is significant. From the OCC side, the OCC never instructs an institution or bank to close specific accounts. Examiners are looking at whether the controls mitigate the risk. There will be a new division at OCC will be compliance and consumer affairs to avoid a fragmented approach. The FFIEC exam manual builds in consistency.

Financial Statements - For higher risk customers, there is a thought that it is expected that financial statements from customers are needed. Relationship Managers giving push back possibly from the customer feedback that other banks are not asking. There is a proportional aspects. If the customer is organized under a complex structure then questions are to be asked in order to understand how the movement of funds happens without audited or pro forma statements. The activity level should be consistent with full understanding of movement of funds. In the absence of good financial data, it is difficult to know what is really going on. Analysis of the statements or other supporting documents to support the level and types of activity.

Culture of compliance – How do examiners determine if there is an issue with the culture? It starts from the top. If the business is always able to get exceptions or business overrides compliance, then that is an issue. The compliance culture could be different depending on the level of the risk.

➢ Ask the U.S. Regulators and Policy Makers

Moderator Andres Fernandez, of Holland & Knight’s Financial Services group and on the Cuba Action Team noted that BSA and OFAC policy makers for compliance have been busy over the last year revising FAQs, dealing with Burma, Cuba, Iran and targeted designations, and with respect to the VP of Venezuela and more on the regulatory front. On the enforcement side, actions against banks, MSBs, and precious metals dealers, Geographic Targeting Orders (GTO) and renewed GTOs, proposed rules on registered investment advisors and multiple guidance on cybersecurity, Fin Tec and renewed focus on transparency, beneficial owners and the final CDD rule have also been a focus.

Mr. Fernandez started the session by introducing the panel and asking an open question to the panel so attendees can be ahead of the cure: **What are exam trends?**

Andrea Sharrin, Associate Director, Regulatory Policy and Programs Divisions, Financial Crimes Enforcement Network, started with a trend still seen based on enforcement actions is **culture of compliance**. If there is a strong culture then an enforcement action would not have come into being. For example in casinos, more SARs than ever before are being filed and it is a positive step.

Sarah Green, Senior Director, FINRA, noted that FINRA exam has these priorities:

1. Gaps in automated surveillance systems. Firms which have auto systems which may not be working as intended. Groups of customers or products are not getting into system. Parameters are not revisited as business and risks change. They need to evolve as well. Testing of the systems is not sufficient. Regulators test and firm is not current.
2. Delegation. Compliance cannot do it alone. Reliance best practice. Make sure everything is in writing (roles). What functions are you relying on other?
3. Nominee corporations. Broker Dealers need to question whether they have nominee corporations and what level of surveillance is needed.
4. Affiliates of foreign banks. The customer might know from a personal way but it is not written down. Know your customer must be in writing, documentation is necessary.

Spencer Doak, Director for BSA/AML Policy at the Office of the Controller of the Currency OCC, noted that BSA programs on 1400 institutions are satisfactory. What are the negatives? **Suspicious activity monitoring**. While there is a system place, the firm does not always ensure that it is keeping pace with changes in business, with M&A or changing risk profile. **Culture** is another thing. The BSA officer and staff need to have the proper stature and influence within the institution and must be at the table for strategic initiatives.

Koko Ives, Manager of the BSA.AML Section at the Board of Governors of the Federal Reserve System notes that enforcement actions are in place in only a small percent of institutions they supervise. Most actions arise as part of the supervisory process. Positive is that board of directors are better trained and more involved as they need to assess risk and approve policy. On the downside some challenges on **risk assessment on affiliates** within a group, including geographic risks and products are different by different affiliates.

Debra Novak, Chief, AML Section, FDIC noted they are responsible for 3700+ banks and less than 1% have enforcement actions. Civil money penalty is a major breakdown or repetitive issues and FDIC does not take it lightly. Every circumstance is unique to that institution. FDIC performs 2000 exams per year in BSA. BSA officer and staff whether they have resources to do their job continues to be a concern. Are the systems correct for the risks?

Rachel Dondarski, Chief of Regulated Industries Oversight and Evaluation at the Office of Foreign Assets Control (OFAC), noted they had a busy year on a variety of fronts, including targeting programs and financial sector enforcement. Closed more than 700 cases many of which were initiated by FIs. Non-public enforcement action for the most part. But there are some public enforcement actions. What are lessons learned? The enforcement actions highlight risks for peer institutions. Training issues; personnel complying with internal Policies and Procedures; technology must be calibrated to that institution; CDD and documentation needs to be full on products and services especially if they touch any country with sanctions.

Mr. Fernandez asked about the new US administration. A few takes on issues such as Dodd-Frank, consumer regulations, and BSA: *Is repeal of BSA coming?* According to Mr. Fernandez the answer is "**Unlikely**". He noted BSA is to protect US financial system. *Is it keeping pace with new technology, should regulations be streamlined?* Mr. Fernandez said BSA is always being considered.

- Ms. Ives noted that they are looking to be more effective to justify the compliance costs which are worthy of review.
- Mr. Doak – no decisions have been as of yet.
- Ms. Green – AML is not a political issue.

Mr. Fernandez pressed on– A moratorium on new regulations in play (investment advisors etc). Thoughts?

We are still working with OMB on clarifications. Final CDD rule is working its way through the process, does the moratorium affect it? The panel noted FinCEN believes it will not be affected and 2018 is still the implementation date. FIs be should be working toward it now. The rule is in effect FIs had two years.

Next topic – Recent Clearing House Association position paper on BSA/AML. Thoughts?

Mr. Doak commented more generally not on a specific paper. Is the BSA the right way? It has been in place since 1970. Any effort to review statues and guidance would be appropriate.

Ms. Ives – Interesting. Impacts prudential reviews. The administration of BSA is always under review and fit in within the current landscape. It is not in a silo in one area of the FI, it effects loans, Private banking, trusts, deposits customer. BSA impacts every aspect of FI.

Next topic – There has been an increase at OFAC in level of civil money penalties, more will be coming. Upping the numbers by a certain percentage so that enforcement actions remain effective to deter activity in the future. *Is there a limit on self-disclosed?* There is no limit to the number that FI can file on a self-disclosure basis. Certain enforcement information is shared with other agencies and regulators especially if there is a pattern of behaviour. Some feedback on disclosures: information should be clear and concise and how institution is evolving or improving so that the reason for disclosure is bridged. Facts, documents, and advocacy is what regulators are looking for.

FINRA – Trading and activity related red flags should be kept in mind. At onboarding and ongoing changes in strategy and volume of activity. Wash sales, sweeping, layering are to be reviewed

Geographic Target Order (GTO) – Wire transfers are excluded because statutes indicate to look at monetary instruments and it is unclear that wire transfers are included. Clarification is being sought. A significant number of Subjects under GTO also have other SARs which is no coincidence. Corporate entities could be tied to high end real estate sales to disguise beneficial ownership.

De-Risking and Correspondent Banking - Know Your Customer's Customer (KYCC), there is no general requirement to KYCC but information is to be gathered through Requests for Information (RFIs) between US and foreign FIs are required in order to file SAR. Basel group and other groups also discuss KYCC. US FIs need to understand the risk profile of their clients and should have a clear idea of the customer base of their FI customers as well as the business model and target customer for the foreign FI. Responses should arrive in a timely and transparent way. In the absence of additional information from the foreign correspondent, US FI will file a SAR. Then after a number of SARs the foreign FI could be exited.

Conclusion

- Keep doing what you are doing and regulators will be looking for more public/private engagement. Regulators cannot do it without you, Compliance.
- To Foreign FI in the room, TRANSPARENCY and TIMELINESS will make a big difference in relationships with your correspondent banks.
- Info sharing within internationally active banks and a clear assessment of risk is important.
- BSA is not to be in a silo within an institution; it is holistic within any organization. Listen to BSA and take them seriously.
- Make a good faith effort and document, document, document.

Summaries Provided by:

Cody Smith, CPAML

Vice President, CSMB International, Inc.

➢ FinTech Trends and RegTech – How to use technology to improve the efficiency and effectiveness of your BSA/AML program.

FinTech, or Financial Technology, and RegTech, or Regulatory Technology have certainly become important buzzwords in the banking industry over the past several years. But, just how much do these monikers encapsulate? And, how can these new technologies improve a financial institution's efforts in the fight against money laundering and terror financing? These were the topics of discussion in the Breakout Session 4A "FinTech Trends and RegTech – How to use technology to improve the efficiency and effectiveness of your BSA/AML program."

The panel, moderated by **Walter J. Mix III**, Managing Director and Financial Services Practice Group Leader at Berkeley Research Group LLC and Chairman of the International Bankers Association, included **Shirish Netke**, President and CEO of Amberoon Inc, **Noor Menai**, President and CEO of CTBC Bank, **Bimal Patel**, Partner and Head of the Financial Advisory and Regulation Practice at O'Melveny and **Bob Tull**, Senior Managing Director and Global Head of Financial Risk Management at 5/3 Bank Capital Markets.

Walter began by siting a Reuters report that $321 Billion in fines against banks and the financial services industry has been assessed by U.S. regulators since the end of the 2008 financial crisis and questioned whether or not these fines have led to an improvement in bank supervision or the quality of BSA/AML programs. This said, he does believe that Regtech is a big step forward when utilized in coordination with all of the other pillars when properly presented and implemented.

With regards to current issues in Fintech and Regtech Bimal explained that, for him, the easiest way to understand the current state of Fintech and Regtech is to disaggregate the issue into discrete subject matters. It then becomes easier to tie those concepts to existing business such as alternative credit and marketplace lending, payment systems, wealth management and investment advisory services, blockchain and distributive ledger technologies and insurance technology. And, while the technology in some areas are is more mature than other areas, it can be used to fill the gaps that currently exist in these market.

One example provided in the case of wealth management, is a so called “robo-advisor” that is able to balance a portfolio applying all of the same logic and theory as a person. However, rather than doing this once per quarter, the same can be done as many times as a customer can press the button on their iPhone in a given day. Plus, once paid for, the system does not require an ongoing salary.

Another example of Fintech used by insurance companies is geo-location to determine whether in fact a vehicle is only used to go back and forth to work, or the overall nature of vehicle use.

The once evident divide between technology and financial services seems to have closed over the past few years. Today, these two industries are much more closely aligned. A new Fintech charter is being offered by the OCC and some states to allow Fintech companies to become financial institutions.

Concerning the outlook for Action in Washington DC, traditional cabinet positions serve at the will and pleasure of the President. However, for the most part, the financial agencies are independent and serve defined terms. Therefore, change that may occur immediately in some departments of the government will often happen more slowly in the agencies that we deal with as financial institutions. New appointments to pertinent positions will take place as soon as next month and as distant as the middle of next year.

It is believed that the new administration will be supportive of technology. Furthermore, one of the key topics in the Washington circle is how to ramp up lending. This will be done through a more efficient use of technology. An example of this are the channel conflicts between marketplace lending and alternative credit. Banks are at times unable to serve certain markets within the confines of the safety and soundness, capital liquidity, or other requirements.

Over the next years the banks and technology companies are expected to partner where each can build upon the competitive advantage of the other. Washington will most likely enable this behavior to take place. In part because regulators will allow it, but in part because regulators tend to move more slowly than both the Fintech companies and the banks.

There is cautious optimism among the panel regarding coming action at the federal level based on the simple law of economics that there are diminishing returns to every activity as this should apply to new regulations as well. We past the point of “just enough regulation” a while ago and the new regulation, no matter how well intentioned and well thought out, will produce diminishing returns. This may just be the result of new requirements already being addressed by existing regulations.

The “happy outcome” of the right amount of regulation is that the U.S. banking system is the safest and the soundest banking system on the planet. Thus, the benefits we were meant to harvest have already been gotten.

Bankers Point of View - Noor proclaimed that while innovation is “front and center” at larger banks, survival is the greatest focus for smaller banks. However, the risk of not having adequate capabilities presents a real threat to both large and small banks alike. That said, the challenge bankers face is the hundreds of millions of dollars that an institution may invest into its Fintech and the next generation of technology comes along before the expense of the last implementation is ever written off. This is known as the “incumbency dilemma.”

Bob added the ability to be efficient, nimble and configurable in a very short period of time as necessary attributes to today’s banks. The question is how quickly can we make decisions to continually keep up to date and provide new alternative services to the customer. Thus, Fintech is a quantitative box into which data is thrown and from which both the sales and compliance sides can pull from quickly to make quality judgements.

The value in Fintech and Regtech is found in the efficiencies created. For example, each head employed at a financial institution directly affects the bottom line. And, a new system that reduces false positives by a large percentage allows a complete reassessment of resources.

Technology is a great tool; however, it should not replace human judgement. That said, a greater level of data capture and analysis can be used to create different types of efficiencies. For example, rather than dividing 1000 alerts between 10 people by giving each of them a random or structure 100 each; it may be much more efficient to give 800 alerts of less concern to 2 staff and 200 alerts of greater concern to 8 staff.

About De-risking -the question posed regarding hot topic was, *what’s my return on bother?* This is clearly the result of regulatory scrutiny. The standard approach for reviewing the risk of a foreign financial institution (FFI) is first, what is the regulatory regime of the country; second, how fit is the particular FFI and what is the quality of their AML program; and third, what issues have been identified in their most recent independent review or audit.

Machine learning is reaching levels to where the FFIEC manual, FATF recommendations and a countries regulatory framework can be fed into system followed by a bank’s policy and procedures manual. The system will immediately be able to identify gaps in the bank’s manuals. Shirish insists that such technology provides additional factors to make better decisions using thousands of dimensions of data. Such technology will help prevent the large banks from throwing the baby out with the bath water as has often been done in the de-risking process to date.

Conclusion

As Fintech and Regtech continue to develop and we are able to capture thousands of dimensions of information, more will be expected of banks regarding the quality of their decision making ability. Therefore, while much can be given over to the machine, the human factor is still an absolutely necessary component to make good judgement.

- ## Sanctions Update – The Compliance and Ethical Issues of Doing Business in Cuba, Russia and Iran

Following Russia's occupation of Crimea in April 2014, very specific sanctions were placed on Russia. On December 17, 2014 U.S. President Barack Obama announced significant changes to Cuban sanctions. And, on July 14, 2015 the Joint Comprehensive Plan of Action (JCPOA), better known as the Iran nuclear deal, was reached between Iran, the 5 permanent members of the UN Security Council and the European Union. In this agreement, the U.S., U.N. and E.U. provides sanctions relief in exchange for Iran's minimization of nuclear development. This panel discusses the compliance and ethical issues of doing business in these countries at this point in time.

The panel, moderated by **Andres Fernandez**, Partner at Holland & Knight; the speakers were **Lorraine Lawlor**, Vice President and Global Sanctions Governance Director at Wells Fargo Bank; **Rachel Dondarski**, Senior Advisor of Compliance Programs at Office of Foreign Assets Control (OFAC); **Ryan Fayhee,** Partner, Litigation & Government Enforcement at Baker & McKenzie; and **Allie Cheatham**, Director, Sanctions Advisory & Investigations Group at JPMorgan Chase.

About JCPOA, Secondary Sanctions and Snapback - On January 16, 2016, otherwise known as Implementation Day, OFAC lifted the nuclear-related secondary sanctions and more than 400 individuals and entities from the SDN list. Furthermore, certain imports and activities have been authorized that were previously restricted or prohibited under CISADA and other Iran sanctions. However, most of the sanctions that apply to U.S. entities and transactions remain unchanged.

It has become more difficult to determine what customers can and cannot do through U.S. banks. Ryan stated that Iran and Cuba were once like "kryptonite, absolutely deadly." Everybody just knew to stay away. However, regarding these two countries today, what was easy is now complicated.

Regarding the 400 names removed from the SDN list; Lorraine explained that these names were removed from their filtering lists on Implementation Day, but then added right back on one by one based on the individuals' affiliations and associations identified through a review of press releases. All banks should ensure that those 400+ names continue to be scrubbed, even if your third party vendor has removed them from their distribution lists.

A key issue to be aware of is the possible snap back of sanctions in the event the U.S. government has concerns of non-compliance. In terms of possible changes to the JCPOA, Rachel stated that OFAC is "on a holding pattern." That said, OFAC has an active team still identifying additional Iranian targets.

With regards to Russia and Sectorial Sanctions, the past several months have seen quite a bit of activity regarding Russian sanctions including the June 16, 2016 publication of the Ukraine/Russia-Related Sanctions Program released to explain blocking sanctions vs. sectorial sanctions, prohibited transactions and the existing licenses for authorized transactions.

The idea of sectorial sanctions presents multiple challenges as this only applies to portions of a country and not the country as a whole. The traditional understanding of sanctions is to either block or reject based on the individual, entity or country involved; however, sectorial sanctions has required OFAC to dedicate a lot of time and effort in training personnel to provide awareness and understanding of very complex financial instruments that are difficult and that are not obvious in terms of, for example, what may trigger a 30 or 90-day maturity period.

Banks need to ensure a similar level of understanding. However, it is also important for Bank personnel to pick up the phone and consult with OFAC when presented with difficult or questionable situations. These may be sanctions on payment types with whom your customers are legitimately conducting business. Rather than a hit signifying an immediate block, new processes to take transaction off line for investigation need to exist. Therefore, where other sanctions are a case of each hit is a block, sectorial sanctions hits will mostly be approved to process.

One challenge that banks are facing with this new paradigm of sanctions process is a rule built into filtering software that prohibits the bypass of a 100% match. Thus, a function that was developed as a safeguard has come back to hurt the financial institution.

Another identified challenge has been the use of credit cards in Crimea. They can be used in the country, but not in certain areas. But how are these areas identified? OFAC has not put out a specific map because there was no consensus on what map to use and whether it would contain names in English, Ukrainian or Russian. Furthermore, Russians are changing the names of towns in Crimea which makes it even more difficult to know what transactions can be accepted and what transactions should be blocked.

With regards to Cuba, there seems to be a lot of **misinformation** on the street regarding Cuba. Some people say nothing has changed while others say the embargo is gone and Cuba is open for business. Yet, the truth actually lies somewhere in the middle. There have been 5 sets of regulations promulgated over the last couple of years addressing these changes. And, the FAQ has been updated nearly a dozen times. However, while we have seen an easing of transactions we are still seeing a lot of USFIs that are hesitant on processing this activity.

The banks feel the biggest challenge they face with Cuba is not knowing what is to come. Very little has come out of the new administration regarding a position on Cuban sanctions and banks feel they are in a holding pattern waiting to see what their policies will be. Furthermore, from a risk standpoint, no due diligence has been done in country by any USFI for over 50 years. There is a great deal of preparation that will need to be done prior to banks just walking into the country or transacting with confidence. As for reputational risk, any bank that gets too close too fast should just assume that they will at some point wind up on the front page of the New York Times.

One of the key topics is at the conference has be de-risking. And, Cuba has essentially been de-risk for multiple decades. When looked at through the lens of risk vs. benefit, is Cuba a sensible move at this time or would it just be too expensive to do what has to be done? It will be up to each bank to make that decision.

Conclusion

Whether it’s the newly concocted sectorial sanctions, sanctions on towns with evolving names, the increase of what transactions can occur while maintaining strict rules on what can’t occur, or re-entering a market lost in time; the one thing that is certain regarding OFAC sanctions is that they are more complicated to navigate than ever.