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**AML RISKS  
VENDOR MANAGEMENT  
&  
INDIVIDUAL LIABILITY  
December 29, 2015**

# Agenda

- Opening Remarks / Introduction
- High Risk BSA/AML Vendor Activities
  - Types of Risks
  - Mitigating Factors
  - Additional ways to Manage the Risk
- Individual Liability
  - Yates Memo
  - New York State Proposal
- Q&A

# High Risk BSA/AML Vendor Activities

- High Risk BSA/AML Vendor Activities
  - Customer Acquisition and Recordkeeping
  - Ongoing Customer Due Diligence
  - Suspicious Activity Monitoring
  - SAR Investigation
  - SAR and Non-SAR Documentation
  - OFAC and other Screening Lists

# Risk Factors

## Mitigating or Exacerbating Factors

- Source of Customers
- Product Offerings
- Geo-Location of Customers and Transactions
- Type of Customers

# How to Manage the Risk

1. Vendor Contract must Include Audit Rights
2. Get out Your Auditors Hats
3. Set out a “Monitoring Plan”
4. Test, Test and Test
5. Reporting of Testing Results to an Executive Management Committee
6. A Dashboard Format works well for Reporting
7. Annual Independent Audit

# Individual Liability (Pt. 1)

The concept of individual liability is not a new one. This concept has been applied to wrongdoing within various industries and enforced through other regulations.

Individual liability has been a top-of-mind subject of regulators and practitioners for ~ 2 years. So, what is it?

- The notion whereby certain individuals are held accountable for the shortcomings of an organization's compliance program and any corporate wrongdoings as a direct result of those shortcomings.



# Individual Liability (Pt. 2)

## Deputy Attorney General Sally Quillian Yates and the “Yates Memo”

A September 9, 2015 directive given to all DOJ attorneys on the measures being taken to strengthen the government’s pursuit of individual corporate wrongdoers.

***<http://www.justice.gov/dag/file/769036/download>***

***<http://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-american-banking-0>***

# Individual Liability (Pt. 3)

## 6 Tenets of the Yates Memo

1. No cooperation credit given until corporations provide all facts relating to individuals responsible for the misdeeds.
2. Corporate investigations (civil and criminal) should focus on individuals from the onset.
3. Collaboration / partnership between civil and criminal DOJ attorneys.
4. Matters with corporations should not be resolved without a plan to resolve related individual matters.
5. Civil DOJ attorneys should focus on individuals, without consideration of the individual's ability to pay a substantial judgment.
6. Individuals will not be released from civil or criminal liability unless there is "extraordinary circumstances".



# Individual Liability-New York Style

## New York Proposal to SOXify AML Compliance

1. *New York Gov. Andrew M. Cuomo proposed stringent new anti-money-laundering regulations*
  1. *Chief Compliance Officer personally certify that an institution maintains a robust anti-money-laundering program, potentially opening executives to criminal charges if they give incorrect or false certifications.*
  2. *Would Apply to All*
    1. *Banks Charter in New York or under authority of New York Dept. Financial Services (includes State Chartered Banks with Branches and Rep Offices in New York)*
    2. *Foreign Banks operating Branches under NYDFS Regulatory Authority.*

# Individual Liability-New York Style

## New York Proposal to SOXify AML Compliance

1. Modeled upon Sarbanes-Oxley that Senior Financial Executive certify that their institutions has sufficient systems in place to detect, weed out, and prevent illicit transactions.
2. Give NYDFS greater leeway to pursue money-laundering cases than Federal banking regulators, i.e. OCC , NY FRB, FinCEN

# Individual Liability-New York Style

## New York Proposal to SOXify AML Compliance

1. Annual Certification, to ensure compliance with the requirements, each institution shall submit to the Department by April 15 of each year certifications duly executed by its chief compliance officer or functional equivalent.

### § 504.5 Penalties/Enforcement Actions.

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

# Resources

- WSJ – The Morning Risk Report: NY Law to Put Compliance Officers in AML Crosshairs *By Ben DiPietro*
- *New York Dept. Financial Services - <http://www.dfs.ny.gov/legal/regulations/proposed/rp504t.pdf>*

# Thank You

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## Q & A