



# IFSA EDUCATIONAL SERIES

## TODAY'S TOPIC

### The Foreign Corrupt Practices Act (FCPA) and Corruption Risk for Banks

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## Corruption Risks for Banks

1. The bank, through an authorized employee or agent, engages directly in bribery to gain business advantage

- For example, an employee, an investment banker, provides a “bribe” to a government official to obtain an underwriting mandate, or a loan syndicate member provides a favor to facilitate the financing of a deal
- Potential liability under the FCPA or its foreign counterparts

FCPA /  
Anti-  
Corruption  
Violation

If the bank knowingly enables corrupt activity of its clients, it and its employees may face prosecutorial scrutiny related to FCPA and money laundering violations

AML  
Compliance  
Obligations

2. The bank’s customers are engaged in corruption, enabled by the bank

- The bank’s client is engaged in corruption that touches the bank through payment or use of bank’s products/services, creating reputational risk
- Potential AML reporting obligations

Enforcement in both areas is rising significantly, framing the task of integrating of anti-corruption monitoring and compliance controls with anti-money laundering programs.



## Corruption Risks for Banks

### What are 'Bribes?'

- “Bribery” is defined broadly under FCPA as: paying or offering to provide ‘anything of value’ for a corrupt purpose
- Bribery goes beyond discrete payments to government officials. For example, a company provides:
  - Donations or corporate sponsorships to influence decisions of a government official
  - Preferential non commercial arrangements to employees of a State Owned Enterprise (SOE)
  - Provision of valuable insider information
  - International travel, internships or training programs provided to employees of SOE’s or their relatives
  - Hiring of a government officials relatives and associates for a corrupt purpose
  - Favorable loan terms and healthcare for employees or relatives
  - Other things of value such as: gifts, entertainment, office renovations



## Corruption Risks for Banks

- Who might do the bribing? A: Anyone acting on your behalf
  - Employees or Agents
  - M&A “finders,” Marketing Consultants, Legal Advisors
  - Relative or other agent or intermediary of agent or employee
- Who is a Government Official? Some Examples:
  - Government Officeholder
  - Customs Officials
  - Employees of a Regulatory Body
  - Safety Inspector
  - Tax Officials or Assessors
  - Employees of State-Owned Utilities or Financial Institutions
  - Pension Fund Examiner
  - State Owned Enterprise (SOE) Employees
  - Healthcare Workers (e.g., Doctors and Administrators of Nationalized Healthcare)



# The Foreign Corrupt Practices Act (FCPA)



## The Foreign Corrupt Practices Act (FCPA)

### What is the FCPA?

- The Foreign Corrupt Practices Act passed into law in 1977
  - “Anti-Bribery Provisions – Prohibits the promise, authorization, payment, or offer of money or anything of value, “corruptly,” directly or indirectly, to any foreign official for the purpose of influencing an official or securing any improper advantage, in order to obtain or retain business. 15 U.S.C. § 78dd-1(a), 78dd-2(a).
  - Accounting Provisions – Issuers (companies whose securities are traded on a U.S. exchange) are required to make and keep accurate and reasonably detailed books, records, and accounts, as well as maintain adequate internal controls. 15 U.S.C. § 78m.
  - U.S. parent corporations may be held liable for the acts of their foreign subsidiaries where they authorized, directed, or controlled the activity in question, as can U.S. citizens OR residents who are employed by OR acting on behalf of such foreign-incorporated subsidiaries



## The Foreign Corrupt Practices Act (FCPA)

- 1998 Amendments
  - Expanded the FCPA to assert territorial jurisdiction over foreign companies and nations making them subject to the FCPA if they cause, directly or through agents, an act in furtherance of a corrupt payment that takes place within the territory of the United States
  - Essentially, the amendments expanded the reach of the FCPA to foreign companies that operate within the U.S.



## The Foreign Corrupt Practices Act (FCPA)

- Two main components:
  - Anti-bribery provisions; and
  - Record-Keeping and Accounting Provisions and Internal Controls (these apply only to publicly listed companies)
- The FCPA is jointly enforced by the Securities Exchange Commission and the U.S. Department of Justice
  - The SEC generally enforces record-keeping and accounting provisions while the DOJ enforces anti-bribery provisions



## The Foreign Corrupt Practices Act (FCPA)

### FCPA Enforcement Trends

- FCPA investigations and enforcement actions by DOJ and SEC at all-time high: record penalties; disgorgements; individual prosecutions with prison sentences
- M&A delays and price adjustments; as well as enforced compliance monitors
- DOJ's coupling of FCPA prosecutions with other charges
- DOJ/SEC/FBI coordination on the rise and increasing international enforcement and cooperation
- Focus on foreign affiliates in high risk countries — does not have to be “material” or “significant” to U.S. parent operations
- Voluntary Disclosure is the disclosure of potential FCPA violations to the Department of Justice with the expectation that the voluntary nature of the disclosure and remedial actions will be mitigating factors in treatment of the company
  - The DOJ takes several factors into consideration when determining if a disclosure is “voluntary.” These include: whether the person came forward promptly after discovering the noncompliance; the quantity and quality of information provided; whether the disclosure substantially aided the government's investigatory process; and, whether it occurred before a law enforcement or regulatory authority (federal, state or local authority) had already obtained knowledge regarding noncompliance. A disclosure is not considered to be "voluntary" if that disclosure is already specifically required by law, regulation, or permit.



## The Foreign Corrupt Practices Act (FCPA)

### Relevant FCPA Enforcement Actions

#### ▪Siemens – Settlement

- Siemens AG, a German corporation, and three of its subsidiaries, plead guilty on December 15, 2008, to violations of the FCPA. The company and its subsidiaries initially agreed to pay a criminal fine to the Department of Justice and disgorgement of profits to the SEC.
- Summary of Penalties: \$1.6 billion combined fines, paid to German and U.S. authorities and disgorgement of profits; Independent compliance monitor for 4 years, Ongoing investigations of employees and agents; and Ongoing forfeiture action by DOJ to recapture alleged illicit payments.
- Coordinated global investigation by regulatory authorities in more than 10 countries

#### ▪Halliburton and KBR – Settlement

- KBR subsidiary Kellogg Brown & Root LLC bribed Nigerian government officials over a 10-year period, in violation of the FCPA, in order to obtain construction contracts. The SEC also charged that KBR and Halliburton, KBR's former parent company, engaged in books and records violations and internal controls violations related to the bribery.
- Summary of Penalties: \$579 million combined fines and disgorgement of profits; Independent compliance monitor for 3 years; and Independent consultant to review FCPA policies and procedures.
- Individual Penalties: Former KBR Chairman and CEO pled guilty to criminal charges of conspiracy to violate the FCPA and conspiracy to commit mail and wire fraud. Faces 7 years in prison and \$10.8 million in restitution



## The Foreign Corrupt Practices Act (FCPA)

### Corruption and financial institutions

#### ▪ Morgan Stanley – Published Media Reports

- According to the Bank, the focus of the investigation is a Shanghai property deal allegedly made in the early 2000s suspected to be in breach of the rules set forth in the FCPA.
- The Bank has announced that the former China head of the Real Estate Group has been dismissed and the Global head of Property Investing has been placed on administrative leave.
- Bloomberg: [http://www.bloomberg.com/apps/news?pid=20601087&sid=a\\_7xWzTJzjmk&refer=home](http://www.bloomberg.com/apps/news?pid=20601087&sid=a_7xWzTJzjmk&refer=home)

#### ▪ BNP Paribas – Published Media Reports

- Executive in the Shanghai office allegedly bribed a senior government official to win business underwriting Chinese sovereign bonds and allegedly paid \$128,000 to a Ministry of Finance official, in the late 1990s to ensure he did not object to BNP's underwriting mandate.
- Individual Penalties (to date): The Government official found guilty of accepting bribes, and sentenced to life in prison (though this was cut to 13 years on appeal); and BNP employee received only administrative penalties instead of public prosecution.
- Forbes: <http://www.forbes.com/feeds/afx/2007/05/30/afx3768157.html>



## The Foreign Corrupt Practices Act (FCPA)

### Direction from Guidance and Enforcement Actions

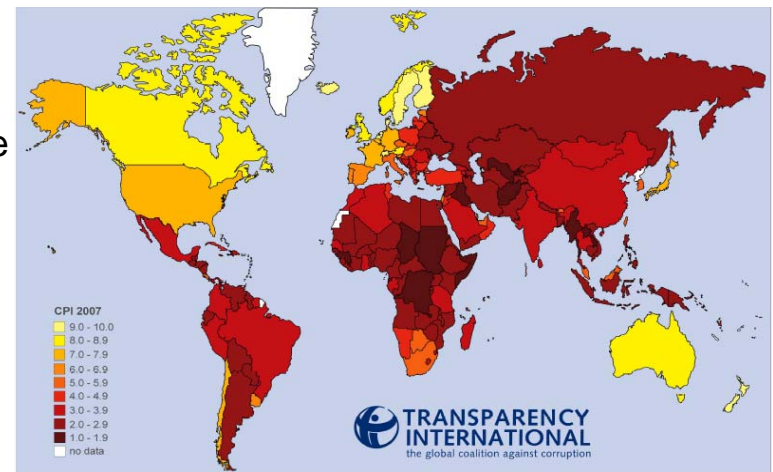
- Adoption of written corporate policy on FCPA compliance
- Adoption of comprehensive procedures for FCPA compliance
- Due diligence on mergers and acquisitions
- Standards on business relationships with reputable partners
- Communication with and training for employees
- Swift action to investigate FCPA allegations
- Regular or periodic internal reviews/audits to ensure compliance
- Anti-bribery provisions in contracts with agents and other third-parties



## The Foreign Corrupt Practices Act (FCPA)

### Global Anti-Corruption Efforts

- Other Anti-Bribery Conventions – Over 100 countries have laws with prohibitions similar to the FCPA
  - Organization of American States (“OAS) Inter-American Convention Against Corruption (1996)
  - Organization for Economic and Cooperative Development (“OECD”) Convention (1997)
  - Council of Europe Convention (1999)
  - United Nations Convention Against Corruption (effective since 2005)
- Recent upsurge in foreign governments enforcing their own anti-corruption laws through criminal prosecution





# FCPA Risk Areas for Financial Institutions

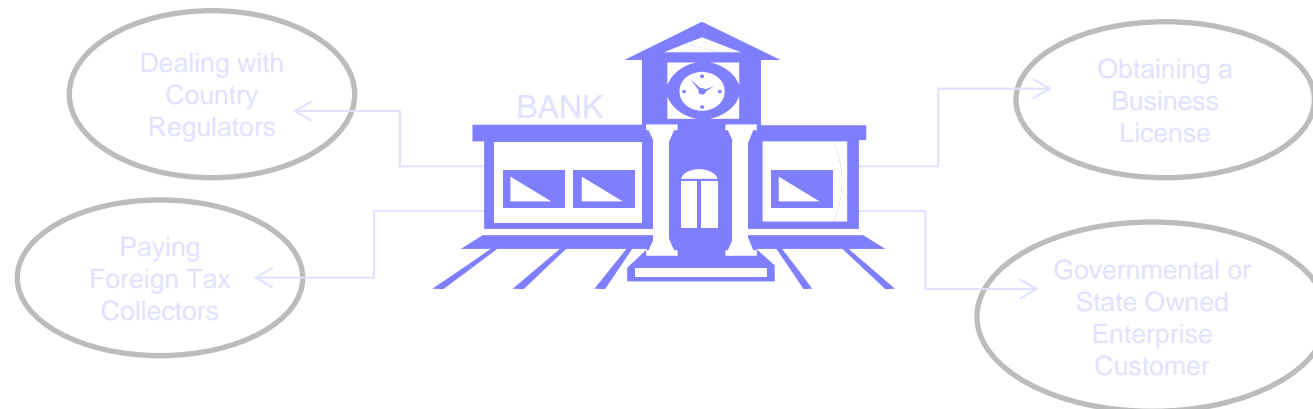


## FCPA Risk Areas for Financial Institutions

Q: Where are banks at risk of violating the FCPA?

A: Anywhere there is a 'Touchpoint' with a government official or their agent, either:

- Directly by the bank's officials
- Indirectly through agents, intermediaries, finders or consultants



Banks may also acquire successor liability for FCPA violations through acquisitions of target institutions who may have built businesses with the aid of unacceptable business practices. Note that both prior violations and ongoing violations before the acquired company is fully "integrated" may be prosecuted against the acquirer.



## FCPA Risk Areas for Financial Institutions

- Developing business of any kind with state owned or controlled entities, regarded as state instrumentalities under the FCPA
  - Government mandates
  - State owned enterprises
  - State owned/controlled investment/pension funds, etc
  - Sovereign wealth funds
  - Newly nationalized banks?

**Many institutions have policies and controls related to gifts, entertainment or any payments made to government agencies, but pay little attention to commercial arrangements with clients who are themselves “government officials” under the FCPA.**



## FCPA Risk Areas for Financial Institutions

- Use of Agents, Finders, and Consultants
  - Finders and consultants prevalent in international banking
  - Agents to resolve business issues with government agencies
- Attaining Critical Approvals:
  - Applying for Licenses, etc
  - Dealing with Foreign Regulators
  - Engaging in Joint Ventures
- Participating in M&A Activities or other Deals
- Hiring Former Regulators
- Tax Payments
- Sponsorship Trips



## FCPA Risk Areas for Financial Institutions

### FCPA Risks and M&A Activity

In June 2008, the Department of Justice issued Opinion Procedure Release 08-02 which provides insight on FCPA due diligence expectations in an M&A context

“ . . . a comprehensive, risk-based FCPA and anti-corruption due diligence work plan which will address, among other things, the use of agents and other third parties; commercial dealings with state-owned customers; any joint venture, teaming or consortium arrangements; customs and immigration matters; tax matters; and any government licenses and permits. Such work plan will organize the due diligence effort into high risk, medium risk, and lowest risk elements; in developing an FCPA risk assessment, a company should carefully consider the question: “If there were FCPA violations within my organization, where and how would they occur?”

### Implications

- Clear expectation for FCPA M&A due diligence established
- Transactions cannot structure around liability
- Key issue is the ongoing benefit of the corrupt activity; if this accrues to the acquirer, successor liability may ensue



# FCPA Compliance for Banks



## FCPA Compliance for Banks

Many financial institutions have taken notice of these trends and are responding by performing:

- Corruption Risk Assessments – focused on government “Touchpoints”
- Compliance Program Assessments – looking at controls around payments to government agencies, officials and government controlled clients
- Internal Audit Reviews – testing of controls and transactions around government relationships, expenses, gifts and entertainment, agents and consultants

### FCPA Risk Assessment

- Focused on government “Touchpoints”
- Mix of high risk client relationships, geographies and products
- Equally important is understanding of how the bank interacts with them
- For example, employees interacting with government customers or regulators should be heavily weighted when risk ranking the customers as well as when designing the training program



## FCPA Compliance for Banks

### Risk Based FCPA Compliance Program

- Clearly articulated standards and procedures that include: Investigation, Rapid Response, and Disciplinary policies
- Due diligence and monitoring of agents and business partners
- Standards and procedures apply to all: ALL directors, officers, employees, “agents”, and “business partners”
- Compliance Chief who reports to Compliance or the Audit Committee
- Periodic training and annual certification for employees

### FCPA Internal Audit Reviews – Questions to Ask

- Have any payments been made, offered or authorized contrary to FCPA?
- How is FCPA policy being monitored and enforced?
- What are the policies, procedures, internal controls and prevailing culture and actual day to day practices regarding payments?
- Are all of the bank’s transactions executed in accordance with management authorization?
- Are all of the bank’s transactions recorded properly?



# AML Requirements and Corruption



## AML Requirements and Corruption

### The Relationship between AML Laws and Corruption

- Corruption relates to AML for banks
  - Corrupt monies, whether from bribes or other misconduct of government officials, has become a priority in regulations
  - The same prosecutorial focus on corruption in FCPA cases is reflected in legislation and AML regulations and guidance
  - These are tied together because corrupt monies almost always are placed in the financial system



## AML Requirements and Corruption

In 2002, The USA PATRIOT Act expanded previous money laundering laws to include foreign crimes involving corruption such as bribery and misappropriation of funds.

- The purpose of this addition was to make it illegal for a bank in the United States knowingly to accept funds that were the proceeds of foreign corruption
- The addition of foreign corruption crimes was based primarily on findings that senior foreign political figures were using U.S. bank accounts to hide and profit from misappropriated funds looted from their home countries
- Key anti-money laundering (“AML”) provisions of The USA PATRIOT Act
- Obligate U.S. financial institutions to exercise due diligence when opening and administering accounts for foreign political figures
- Deem corrupt acts by foreign officials as an allowable basis for U.S. money laundering prosecutions

1. FCPA violations may first be discovered by the Bank from significant news items, and then the bank should consider whether transactions should be assessed for AML reporting obligations
2. Fulfill backwards looking obligations could arise from current knowledge of criminal activity`



## AML Requirements and Corruption

### Summary of Relevant AML Statutes

- 18 U.S.C. § 1956 – US AML statutes criminalize financial transactions that are known to involve the proceeds of a “specified unlawful activity.”
- 18 U.S.C. § 1956(c)(7)(B)(iv) – Bribery of foreign government officials is a “specified unlawful activity” under the statutes, even where the underlying bribery had no connection to the US.
- 18 U.S.C. § 1956(c)(7)(D) – A felony violation of the FCPA is also a “specified unlawful activity.”

Any U.S. financial transaction involving the payment of a bribe or the proceeds of a business relationship procured through foreign bribery may constitute a substantive violation of these statutes and any party that conducts such a transaction with the requisite knowledge may face criminal prosecution.

- 18 U.S.C § 981 (a)(I)(A) – The funds underlying such transactions are subject to forfeiture;

The relationship between the anti-bribery and anti-money laundering laws creates serious consequences for individuals and companies that knowingly transfer bribe payments or proceeds through the U.S. financial system. The criminal penalties for money laundering are severe, often exceeding the penalties under the FCPA and foreign anti-bribery laws. Additionally, the Alternative Fines Act, which allows the DOJ to seize twice the gain from an unlawful activity, can be applied to FCPA offenses.



## AML Requirements and Corruption

Banks need to be vigilant as FCPA investigations may lead to scrutiny of the banks' customers, their assets, and/or payments being processed by the bank – potentially raising questions about quality of KYC and monitoring programs required by AML regulations, and what the bank should have reasonably known.

Because these prosecutions have such a high profile, prosecutors are prone to “follow the money” through financial and other companies, creating scrutiny through the process of how banks have detected and reported corrupt payments.



## AML Obligations Related to Corruption



## AML Obligations Related to Corruption

### Money Laundering and Corruption

#### ▪ Proceeds of Corrupt Activity and the Banks Clients/Products

- Corporate client engaged in construction in developing country – use of loan proceeds to pay bribes to government officials
- PEPs
  - Operating accounts for foreign officials who then use the bank to process proceeds of corruption
  - For example, round dollar payments from high risk jurisdictions contemporaneous with activities in the target



## AML Obligations Related to Corruption

### AML Risks Related to Corruption

#### ▪ Processing Direct or Indirect Corrupt Payments:

- FCPA violations may be indirect payments: passing through the hands of an overseas partner or agent, and then end up with the foreign official for an unlawful purpose.
- Red Flags for AML and/or FCPA (existence of red flags heightens responsibility to detect):
  - Unusual payment patterns or financial arrangements
  - History of corruption within the country
  - Unusually high commission
  - Customer appears to lack the qualifications needed for stated business purpose of a transaction
- Open issue: When and how intensely should a bank specifically inquire about governmental connection of payments it is processing or facilitating?



## AML Obligations Related to Corruption

### Case Study – Riggs Bank – Published Media Reports and Public Domain Documents

- Riggs Bank merged with PNC Bank in 2005 in the midst of its failure to comply with legal obligations to establish and maintain an effective AML program.
- Specifically, it is alleged that Riggs Bank allowed or, at times, actively facilitated misuse of the U.S. financial system by corrupt leaders such as: Former Chilean President Augusto Pinochet; and Government leader Teodoro Obiang Nguema Mbasogo and his relatives of Equatorial Guinea.
  - Augusto Pinochet: Despite red-flags that existed with regard to Mr. Pinochet’s source of wealth and public allegations of serious wrongdoing and corruption, Riggs Bank allegedly assisted Pinochet in evading legal proceedings related to his accounts and resisted regulatory oversight of these accounts. Specifically, it is alleged that Riggs Bank:
    - Opened multiple accounts and accepted millions of dollars in deposits from Mr. Pinochet with no serious inquiry into questions regarding the source of his wealth;
    - Helped him set up offshore shell corporations and open accounts in the names of those corporations to disguise his control of the accounts;
    - Transferred \$1.6 million from London to the United States while Mr. Pinochet was in detention and the subject of a court order to attach his bank accounts;
    - Concealed the existence of the Pinochet accounts from OCC bank examiners for two years.



## AML Obligations Related to Corruption

### Case Study – Riggs Bank – Published Media Reports and Public Domain Documents

- Equatorial Guinea Government Leaders: By 2003, the embassy accounts for Equatorial Guinea (“E.G.”) had become the Bank’s largest single relationship, with balances and outstanding loans that together approached \$700 million. Specifically, it is alleged that Riggs Bank:
  - Opened multiple personal accounts for the President of E. G., his wife and other relatives
  - Helped establish offshore shell corporations for the E.G. President and his sons;
  - Accepted \$13 million in cash deposits into accounts controlled by the E.G. President and his wife with few questions asked;
  - Allowed wire transfers withdrawing more than \$35 million from the E.G. account containing oil revenues for transfer to two unknown companies with accounts in bank secrecy jurisdictions
  - Exercised such lax oversight over the E.G. account manager that, among other misconduct, he was able to wire transfer more than \$1 million in E.G. oil revenues to an account he controlled at another bank.
- By failing to meet AML obligations, Riggs Bank:
  - Paid \$41 million in Bank Secrecy Act and AML fines;
  - Agreed to pay \$9 million to Pinochet victims for concealing and illegally facilitating; movement of Pinochet money out of Britain;
  - Completed a merger with another bank while under duress; and
  - Some of its executives faced criminal trials.



# AML Compliance Implications



## AML Compliance Implications

### Guidance: Financial Crimes Enforcement Network

- April 2008 – FINCEN issued FIN-2008-G005 – provides guidance for filing SARs regarding the proceeds of foreign corruption
  - FINCEN issued this guidance to instruct financial institutions on their obligation to file a SAR on transactions that may involve senior foreign political figures who are seeking to move the proceeds of foreign corruption to or through the US financial system
  - The guidance specifically instructs SAR filers to use the phrase “foreign corruption” in cases where it is suspected; this is expected to alert law enforcement as early as possible
  - In addition, financial institutions are reminded of section 312 of the USA PATRIOT Act
    - “requires banks [and other financial intermediaries] to establish and maintain a due diligence program for private banking accounts... included in this requirement is the duty to conduct enhanced scrutiny of any private banking account that is maintained for senior foreign political figures in order to detect and report the proceeds of foreign corruption.”
  - In the final notes of this guidance, FINCEN notes that it is “consistent with the Department of the Treasury’s efforts to ensure that U.S. financial institutions are not used as a conduit for laundering the proceeds of financial and other crimes, including corruption.”



## AML Compliance Implications

### Guidance: The Department of the Treasury (and others)

- January 2001 – Guidance issued in response to Action Item 2.1.1 of the National Money Laundering Strategy for 2000. Note that this guidance reflects longstanding government concern with AML and corruption payments.
- This guidance included a list of “red-flags” or features of transactions that are indicative of transactions that may involve the proceeds of foreign official corruption and that warrant enhanced scrutiny
- Within the comprehensive listing of red-flags are some that are of particular note with respect to corruption:
  - Routing a transaction through a financial institution that is unaccustomed to doing business with foreign persons;
  - Use, by a PEP, of accounts at a nation's central bank or other government-owned bank as the source of funds in a transaction;
  - Frequent or excessive use of funds transfers or wire transfers in or out of an account;
  - Wire transfers to or for the benefit of a PEP where the beneficial owner or originator info is not provided with the wire transfer;
  - Large currency or bearer instrument transactions either in or out of an account of a PEP;
  - High-value deposits or withdrawals, particularly irregular ones, not commensurate with the type of account or what is known and documented regarding the legitimate wealth or business of the PEP; and
  - An inquiry by or on behalf of a PEP regarding exceptions to the reporting requirements of the Bank Secrecy Act or other rules requiring the reporting of suspicious transactions.

Link: <http://www.treas.gov/press/releases/docs/guidance.htm>



## AML Compliance Implications

Driven by the Bank's Risk Profile/Risk Assessment

### ▪ PEP Identification and Policy

- Compliance may require an expanded approach to PEPs that might include a review of significant in-country news contemporaneous with their transactions
- Relationship managers may be trained/tasked with identifying country trends and political developments, such as government transitions, to highlight risk situations for the accounts they handle

### ▪ Enhanced Due Diligence Procedures

- Investigation protocols that highlight risks for corrupt payments that involve government officials and may be FCPA violations
- Design of KYC triggers for this sort of enhanced diligence, including file updates
- Training relationship managers to better determine links between customers, counterparties and government officials, regarding relationships and transactions
- Revisiting choice of databases for different risk populations

### ▪ Transaction Monitoring System

- Additional scenarios and rules may need to be created to search for possible corrupt indirect payments

### ▪ Continuous Training

- Employee vigilance and reporting process will likely be a key source for actionable corruption alerts



# Addressing Corruption Risk



## Addressing Corruption Risk

### Future State: A Likely Increase in paired Anti-Corruption and AML Enforcement

- September 2008 – Mark Mendelsohn, Deputy Chief of the Fraud Section at the DOJ's Criminal Division – Individuals to be Targeted:

“The number of individual prosecutions has risen – and that’s not an accident. That is quite intentional on the part of the Department. It is our view that to have a credible deterrent effect, people have to go to jail. People have to be prosecuted where appropriate. This is a federal crime. This is not fun and games.”

- October 2008 – Financial Week Article – “Cash crunch could result in more corruption cases,”

In the article, Steven Tyrrell, the head of the Justice Department's fraud section, says the credit crisis may produce a crop of additional Foreign Corrupt Practices Act cases. The targets this time would be banks and others that went looking for cash from sovereign wealth funds in exchange for favors rendered to the host-country's rulers. "Mr. Tyrrell," the article says, "noted the recent boom of sovereign wealth funds is an area at the top of the Justice Department's hit list, though it has not yet [as of the date of the article] garnered any definitive cases."



## Addressing Corruption Risk

### Banks' Ability to Leverage AML compliance program for FCPA purposes

- The same proven techniques that are essential to the success of anti-money laundering compliance are also key to the successful application of a risk-based approach to FCPA compliance.
- Banks that are seeking to create or strengthen their corruption compliance programs will find there is a lot of knowledge (both process knowledge and customer knowledge) contained within their AML compliance program that can and should be leveraged.
- Identifying elements of FCPA compliance will sharpen banks' ability to spot corruption risk in customers and transactions undertaken.



## Addressing Corruption Risk

### Risk Assessments and Governance

- Most banks have established AML risk assessment processes. Data collection and processes can be leveraged to focus on:
  - Government clients,
  - Agents, consultants, intermediaries and employees interacting with government officials
  - High risk geographies and product/services
- AML compliance requirements include the establishment of a system of governance and controls for the AML program, including:
  - Compliance officer
  - Policies and procedures
  - Training
  - Independent testing
- AML skills, experience and processes can be leveraged for FCPA compliance purposes



## Addressing Corruption Risk

### Monitoring and Surveillance

FCPA and AML Compliance Monitoring and Surveillance are different in nature:

- FCPA focused on internal books and records (GL, AR, Expense records) related to employees and agents dealings with government officials
- AML focused on client activity which is suspicious

However AML experience can be leveraged in creating robust FCPA monitoring programs, either as part of the AML transaction monitoring system, or otherwise:

- Identification and enhanced due diligence of state owned/controlled entities and PEPs
- Risk management of agents and intermediaries - risk assessment, due diligence and contractual approaches
- Knowledge of corruption typologies
- Knowledge of high risk geographies
- Ability to establish scenarios and thresholds for internal monitoring
- Risk based AML compliance monitoring and internal audit approaches can be adapted for FCPA purposes



## Addressing Corruption Risk

### Investigation Protocols

AML and Sanctions Compliance have established, many times in internal FIUs, robust investigation protocols which can be leveraged for FCPA purposes. Whether to merge these functions is an open issue for banks.

- Review of suspicious alerts/activity
- Collation of internal information available
- External sources of information and access to databases
- Adverse news monitoring and knowledge of typologies/current events
- Protocols for investigations:
  - Independence
  - Involvement of Board
  - Involvement of internal and external counsel
  - Preservation of records and data
  - Confidentiality
  - Reporting decisions
  - Remedial activity
  - Voluntary disclosure



## Addressing Corruption Risk

### Final Thoughts – What should banks do?

- Identify clients are state instrumentalities for FCPA/anti-corruption compliance purposes
  - State owned enterprises and other government controlled customer relationships pose substantial risk
- Focus on the corruption risk related to agents and intermediary relationships
  - Your institution may be liable for actions of finders, agents and others
- Understand the linkages to your AML program
  - Enhance AML program to focus on detecting and reporting corruption related activity
  - Seek to leverage capacity in AML program to achieve more effective compliance to address FCPA and AML risks

Recognize that a bank can become embroiled in the news and prosecutorial attention arising from corrupt payments. Document an assessment of the risks for the business model and customer base, and deploy your resources and capabilities accordingly.



## Appendix – Useful Websites

Deloitte Anti-Corruption Survey:

[http://www.deloitte.com/dtt/press\\_release/0,1014,sid%253D2007%2526cid%253D245032,00.html](http://www.deloitte.com/dtt/press_release/0,1014,sid%253D2007%2526cid%253D245032,00.html)

Department of Commerce: [www.ita.doc.gov/legal](http://www.ita.doc.gov/legal)

Department of Justice: [www.usdoj.gov/criminal/fraud/fcpa](http://www.usdoj.gov/criminal/fraud/fcpa)

Department of State: [www.state.gov/e/eb/cba/gc](http://www.state.gov/e/eb/cba/gc)

Organization of American States (OAS): [www.oas.org](http://www.oas.org)

Organization for Economic Cooperation and Development (OECD): [www.oecd.org](http://www.oecd.org)

Council of Europe: <http://conventions.coe.int>

UN Convention Against Corruption: [www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html)

Transparency International: [www.transparency.org](http://www.transparency.org)

2006 CPI Index: [www.transparency.org/cpi](http://www.transparency.org/cpi)



# Questions?

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Clint Stinger is a Principal with Deloitte Financial Advisory Services' LLP. Mr. Stinger's 18 years of professional experience includes more than 10 years based in Asia, where he provided Anti-Money Laundering (AML), Sanctions and Foreign Corrupt Practices Act (FCPA) related consulting, due diligence and investigative services to our global clients.

Mr Stinger has extensive experience in China, Indonesia and other regional jurisdictions and has led major due diligence engagements on IPO and M&A transactions in China. His industry experience includes banking and securities, fund management, insurance and consumer finance.

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