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ALERT

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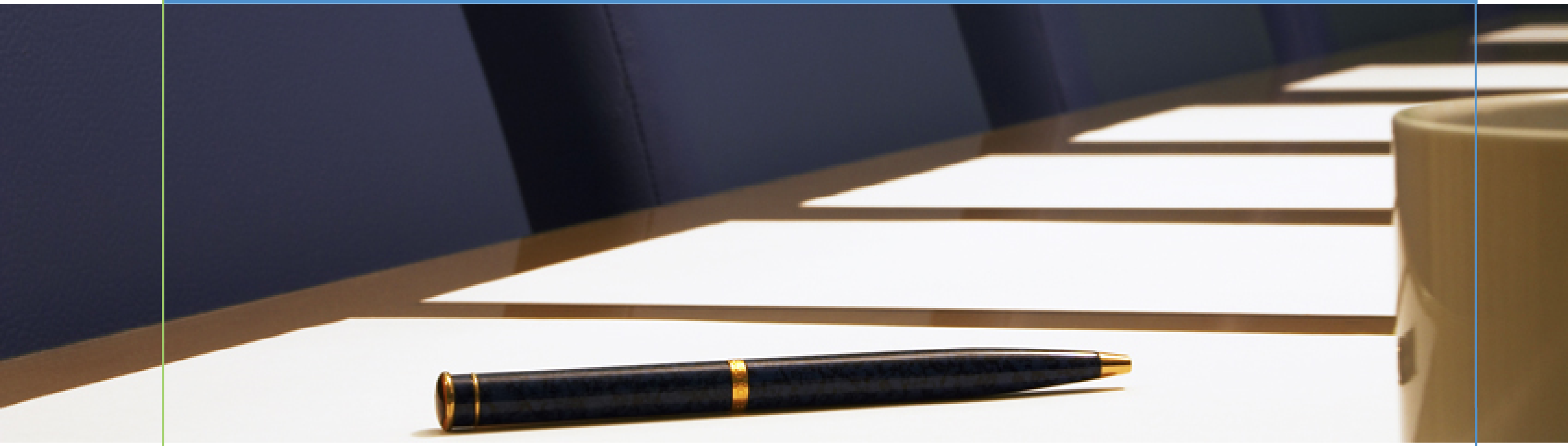

AML Developments – FDIC Announces That It Will End Its Supervisory Trend of Expecting Regulated Institutions to 'De-Risk' Entire Categories of Customers

On Jan. 28, 2015, the Federal Deposit Insurance Corporation (FDIC) in a Financial Institutions Letter (FIL) announced that it would, in effect, do an about-face on its supervisory expectation that banks strongly consider discontinuing the provision of financial services to entire categories of certain purportedly high-risk customers. These categories of customers included, to name a few, non-U.S. companies, online gambling-related operations, online lenders, pharmaceutical sales, telemarketing entities, coin dealers, firearm and ammunition sellers, and even dating services.

The Letter now makes clear that banks regulated by the FDIC, in determining whether to continue – or discontinue – a specific customer relationship, may make that determination based on an individualized case-by-case risk analysis (something bankers have long advocated), as opposed to kicking out an otherwise profitable and risk management-sound customer from the bank simply because that customer happens to be in an industry that a regulator had deemed to be high-risk. But for the U.S. House of Representatives Committee on Oversight Report from Dec. 8, 2014 investigating the FDIC's handling of "Operation Choke Point," the FDIC's FIL might very well never have seen the light of day.

According to that Report, "FDIC, in cooperation with the Justice Department, made sure banks understood — or in their own language, 'got the message' — that maintaining relationships with certain disfavored business lines would incur enormous regulatory risk." The FDIC has now reversed course, recognizing that it "is aware that some institutions may be hesitant to provide certain types of banking services due to concerns that they will be unable to comply with the associated requirements of the Bank Secrecy Act (BSA)." Under the new FDIC approach, FDIC-regulated banks are encouraged to "take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers . . . ."

Financial firms – not just those examined by the FDIC – should be hopeful that the supervisory position of the FDIC expressed in the FIL might spill over to the other federal functional regulators, marking the start of a shift away from industry "de-risking" (and closing the accounts of) entire customer classes and, in its place, restoring reliance on robust know-your-customer or KYC practices, where bankers' reasoned judgments regarding whether they know a specific customer should be entitled to supervisory deference.

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