Tales from the Trenches: BSA/AML
Independent Audit Lessons

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The Trench

- Senior Legal Regulatory Counsel for Standard Chartered Bank, NY (SCB) from 2012 to 2016.
- Chief lawyer to SCB’s Supervisory Remediation Program (SRP), established to implement corrective actions and remediation initiatives under the various enforcement orders and deferred prosecution agreements entered into by SCB in the United States.
- Liaison between (1) Compliance, Financial Crime Compliance, Sanctions; and (2) Everyone else.
(Mariana) Trench: SCB Enforcement Orders

2004: BSA/AML
- NY Fed and NYDFS Joint Written Agreement

2012: “Wire Stripping” BSA/AML
- NYDFS Consent Order
- Federal Reserve Cease and Desist Order
- DoJ and DANY Deferred Prosecution Agreements
- 2nd NYDFS Consent Order (2014 -- Transaction Monitoring)
NYDFS: In the Matter of Deloitte Financial Advisory Services LLP (2013)
And the Lesson...

The importance of ensuring “true independency” in your third-party BSA/AML **Independent** Audits, and tips on how to achieve it.
Overview of *In the Matter of Deloitte*

- October 2004: NY Fed and NYDFS Written Agreement requires SCB to conduct a lookback using a “qualified independent consulting firm”.
- 20 days later, SCB engages Deloitte to conduct the lookback.
- August 2005: Deloitte senior manager discloses confidential supervisory information (CSI) to SCB via email.
- October 2005: Deloitte provides SCB with drafts of the lookback report that include a recommendation to eliminate or restrict “cover payments”.
- SCB objects to the recommendation and Deloitte removes it from the final lookback report submitted to the NYDFS.
Notable Findings by the NYDFS

• NYDFS investigation of the matters relating to SCB’s 2012 Order prompts NYDFS to investigate Deloitte’s 2004-2005 independent lookback.

• In removing the “cover payments” recommendation, Deloitte did not demonstrate the necessary autonomy and objectivity required of consulting firms.

• SCB’s unlawful conduct leading to 2012 Consent Order was “apparently aided” by Deloitte (although no evidence of intentional aiding and abetting).

• Deloitte violated NY Banking law in knowingly disclosing CSI.
Errors Made...

• 20 days later, SCB engages Deloitte to conduct the lookback.

➢ Error: Difficult to conduct a true independent evaluation and selection process of consulting firms in only 20 days.
Errors Made...

- August 2005: Deloitte senior manager discloses confidential supervisory information (CSI) to SCB via email.

- **Error**: Familiarity. The arch-nemesis of independence.
Errors Made...

- October 2005: Deloitte provides SCB with drafts of the lookback report that include a recommendation to eliminate or restrict “cover payments”.

- **Error:** Not providing—or offering to provide upon request—draft reports to the Regulators.
Errors Made...

- SCB objects to the recommendation and Deloitte removes it from the final lookback report submitted to the NYDFS.

- Error #1: SCB – Appears that business objectives may have been put ahead of BSA/AML and financial crime compliance.

- Error #2: Deloitte – Apparently too compromised and conflicted towards its client to take a stand and stick to its initial recommendation.
Tips on How to Achieve Independence

• Be transparent with your Regulators on independent consultant candidates and the selection process.
• Weigh, don’t ignore, prior work done for your institution by possible candidates, particularly consulting work.
• Have a formal process for evaluating possible candidates, selecting candidates for consideration, evaluating candidates, and selecting a candidate.
Tips on How to Achieve Independence

• Document, document and then document the process.
• Do NOT have Bank management be the sole evaluator and selector. The Bank’s Audit committee or other independent body (e.g., a BSA Committee) must be involved in the evaluation and make the final selection.
• If conducted under an enforcement order, be cognizant of Order requirements (e.g., notice/approvals or “non-objection”).
Pay attention to the terms of the engagement agreement. Engagement agreement terms should:

- Be clear consultant is to exercise independent judgment.
- Limit scope to independent work; should not contain consulting work or for recommendations outside the scope.
- Commitment to provide all supporting materials and drafts of the final report to the Regulators upon request.
Tips on How to Achieve Independence

• Make and retain records of supporting materials and drafts provided by consulting firm, as well as recommendations not adopted (e.g., a SAR filing in a lookback).

• Keep records of who is reviewing and commenting on draft final reports, and their comments.

• Be careful with CSI! Train employees on it. Obtain consent from Regulators whenever in doubt.
Tips on How to Achieve Independence

- Consider engaging a qualified law firm to, in turn, engage the independent consulting firm. Benefits include:
  - Attorney-Client Privilege
  - Regulatory and compliance expertise
  - Strong liaison in communications with Regulators
  - Liaison between Bank management and the Bank’s Audit Committee (or other independent committee of the Board), and consulting firm.
  - Can manage, document & communicate evaluation/selection process
  - Negotiate engagement agreement to ensure critical terms are included.
  - Provide advice and training on safeguarding CSI.
Thank you!

Questions?

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