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Lessons for Compliance Officers Arising out of Standard Chartered Bank

If it seems that the performance of the banking industry cannot get any worse, Standard Chartered (“SC”) has brought things to a new low. Yesterday, the NY Department of Financial Services published a thirty-page report <http://www.dfs.ny.gov/banking/ea120806.pdf> outlining the crimes committed by SC. The newspapers today have extensive coverage of the Order.

The only good news is that the Branch personnel do not appear to be complicit in this scheme. It is apparent that the head office and offices outside of the US concocted and executed the scheme and misled the NY Branch into clearing these dollar payments.

Nonetheless, the Department will be holding a hearing soon to decide whether to revoke the SC Branch license. Sadly, for all the innocent US staff, this seems on its face to be a good idea. I hope however that this is not the result crafted by the Department unless the Department requires SC to pay the innocents a healthy and lengthy severance.

What More should the Branch have done?

The Branch does appear to be somewhat of a passive actor in this scenario. Senior executives of the Branch sent memoranda to the head office objecting to the Iranian business. The Order does not go into how the Branch sought to insure further whether the clearing business was operating in accordance with law. It seems the Branch and the Head Office were receiving plenty of legal advice but chose not to follow it. The lesson here is if a Branch suspects that there is misconduct or crime occurring, there must be the most forceful response possible until a whistleblower-type report to the regulators or the District Attorney is needed.

What NY Laws were Violated?

The order does contain a good list of the possible crimes and violations of law just under NY law

committed by S&C and these should be kept in mind when evaluating customer activities for purposes of SAR filings or in connection with any internal investigations:

Failure to Maintain Accurate Books and Records NYBL §200-c

Obstructing Governmental Administration P.L. § 195.05

Failure to Report Crimes and Misconduct 3 N.Y.C.R.R. § 300.1

Falsification of Books and Reports N.Y.B.L. § 672.1

Offering False Instrument for Filing P.L. § 175.35

Falsifying Business Records P.L. § 175.10

The failure to report misconduct is broad in scope and has the potential to require banks and branches to report activities that are wrong but may not seem material in nature or effect.

Reliance on Independent Consultants may be a Slender Reed

Many banks decide to entrust internal reviews to outside experts. The Department's report noted that "SCB carefully planned its deception and was apparently aided by its consultant Deloitte & Touche, LLP which intentionally omitted critical information in its "independent report" to regulators. This is strong language and it will be interesting to see the response. The lesson is to check the checkers and make sure that independent reviews are truly independent. To do so requires that committees of senior staff work with outside parties.

R.C.A.