

KIRKLAND ALERT

November 2016

New York State Department of Financial Services Fines Mega Bank and its New York Branch \$180 Million for Alleged Violations of State Anti-Money Laundering Laws

Overview

Mega International Commercial Bank Co., Ltd. (“Mega Bank”) is a Taiwan-based international financial institution with approximately \$103 billion in assets, including \$9 billion at its New York branch (“New York Branch”). During a recent examination, regulators from the New York State Department of Financial Services (“NYDFS”) discovered numerous deficiencies in Mega Bank’s Anti-Money Laundering Laws (“AML”) compliance function. On August 19, 2016, the NYDFS entered into a consent order with Mega Bank and its New York Branch in which Mega Bank agreed to pay \$180 million penalties and install an independent monitor for alleged violations of New York State AML requirements.¹

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“Numerous Deficiencies” Identified by the Consent Order

According to the consent order, Mega Bank had demonstrated “numerous deficiencies” with respect to AML compliance. The six key deficiencies have been summarized below:

1. ***Lack of Oversight by the Head Office.*** Some of the branch’s quarterly compliance meeting minutes that were supposed to be forwarded to the Taiwan Head Office either omitted critical information on suspicious transactions or were not sent out at all. In addition, because the Head Office failed to ensure that the New York Branch would translate numerous documents from Chinese to English, the effectiveness of the regulators’ examination had been undermined.
2. ***Lack of Compliance Expertise.*** The Mega Bank New York Branch’s Chief Compliance Officer (CCO) and BSA³/AML Officer lacked familiarity with U.S. regulatory requirements.
3. ***Conflicts of Interest.*** Mega Bank’s compliance structure had created a potential conflict of interest because the New York Branch’s CCO had assumed key business and operational responsibilities in addition to her compliance responsibilities.
4. ***Poor Internal Controls.*** Mega Bank and its branches failed to periodically review their surveillance monitoring’s filter criteria, explain the transaction validation process, or justify how the selection criteria had been implemented. In

addition, the New York Branch's BSA/AML risk assessment processes lacked a thorough review of the branch's customers, products, services and geographic locations served.

5. ***Suspicious Activities Involving Mega Bank's Panama Branches.*** Mega Bank operates a branch in Panama City and another in Panama's Colon Free Zone. Although Panama has been recognized as a high-risk jurisdiction for money-laundering, Mega Bank failed to implement a risk-based compliance infrastructure to monitor transactions involving Panama. The NYDFS also found evidence of money laundering and suspicious transactions between the New York and Panama Branches.
6. ***Failure to Conduct Adequate Customer Due Diligence.*** Mega Bank failed to follow its own policies and procedures for enhanced due diligence.

Settlement Provisions of the Consent Order

On August 19, 2016, to resolve this matter without further proceedings, Mega Bank agreed to (i) pay a \$180 million fine imposed by the NYDFS within 10 days from the date that the Consent Order has been executed; (ii) engage an independent consultant, to be chosen by the NYDFS, so that these deficiencies identified by the regulators can be addressed immediately; and (iii) install an independent monitor for two years, also to be selected by the NYDFS, to conduct a comprehensive review of the effectiveness of the branch's BSA/AML compliance program.

Implications

On August 23, 2016, a few days following the imposition of the NYDFS's \$180 million penalty on Mega Bank, the Taiwanese government announced its own criminal investigation against Mega Bank with respect to the underlying conduct that led to the consent order. The series of events demonstrate that banks based in Greater China with foreign operations are increasingly becoming the targets of intense regulatory scrutiny by the U.S. regulators, and the trend reflects that U.S. enforcement proceedings could trigger parallel investigations by regulators from the banks' home countries. In addition, this NYDFS enforcement action serves as an important reminder for all non-U.S. banks operating in the U.S. that in addition to federal agencies, the state regulators are instrumental to the enforcement landscape. As a matter of regular business practices, each Greater China-based bank with U.S. operations may need to start considering how to promptly and effectively enhance its BSA/AML compliance program by designating an independent, dedicated and experienced BSA/AML compliance officer, implementing a set of risk-based policies and procedures for customer due diligence and transaction monitoring, and using a qualified third-party consultant to periodically assess the overall adequacy and effectiveness of the organization's BSA/AML compliance program.

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- 1 NYDFS Consent Order under New York Banking Law §§ 39 and 44 (Aug. 19, 2016), available at: <http://www.dfs.ny.gov/about/ea/ea160819.pdf>.
 - 2 “BSA” stands for “the Bank Secrecy Act.”

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