

## BANKING & FINANCIAL INSTITUTIONS ALERT

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### FDIC Promotes a Risk-Based Approach for Banks

The FDIC recently provided guidance that encouraged financial institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers, without regard to the risks presented by an individual customer or the financial institution's ability to manage the risk. Many financial institutions have been hesitant to provide certain types of banking services that create potential risks because of the myriad of federal regulations that must be followed, including the Bank Secrecy Act (BSA). Financial institutions feared scrutiny of banking regulations and admonishments for even the smallest, most technical violations. In its guidance, the FDIC recognized that it is not possible for a financial institution to detect and report all potentially illicit transactions that flow through an institution. The guidance goes on to state that isolated or technical violations, which are limited instances of noncompliance with the BSA that occur within an otherwise adequate system of policies, procedures, and processes, generally do not prompt serious regulatory concern or reflect negatively on management's supervision or commitment to BSA compliance.

Because of the heightened scrutiny of the financial industry after the economic downfall, many financial institutions have adopted a "no-risk" approach to business instead of a "risk-based" approach. Although this approach might sound like the best way to remain compliant, it has hindered business, stunted growth, and hurt the communities that the banks are supposed to serve. We have witnessed the effects of this nationwide as regional and community banks refuse to participate in the global market place. The real estate market and business opportunities are rapidly expanding with foreign investors, however the regional and community banks will not loan to foreign investors because of due diligence concerns and heightened scrutiny by banking regulators. These banks are losing out on profitable business opportunities because of their aversion to any risk.

The best protection in a risk-based environment is an effective and efficient compliance program. When an institution follows existing guidance, maintains an appropriate risk-based program, establishes policies and procedures, conducts regular audits, and maintains proper reporting mechanisms, the institution will be well positioned to appropriately manage accounts, while generally detecting and deterring illicit financial transactions. A thoroughly analyzed risk can mean profitable business opportunities in the future.

Please contact the following Roetzel attorneys for further information on the development and maintenance of an effective compliance program.

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