

KEEPING THE REGULATORS HAPPY

FROM KYC TO SANCTIONS

INTERNATIONAL CASH, TREASURY & RISK FOR FINANCE PROFESSIONALS IN ASIA

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马李顾问

SPOTLIGHT ON REGULATION



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MAJOR US SANCTION FINES (USD)

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
 UBS 100 M	 ABN AMRO 80 M		 National Australia Bank 100 K		 Lloyds TSB 350 M	 RBS / ABM 500 M	 JPM 88.3 M	 HSBC 1.9 B	 RBS 100 M	 BNP 8.9 B
 Banco Santander 20 K					 Credit Suisse 536 M	 Barclays 298 M	 Commerz bank 176 M	 Standard Chartered 667 M	 Intesa Sanpaolo 3 M	 BTM 250 M
					 ANZ 5.8 M	 Compass 607 K	 SG 111 K	 ING 619 M	 Bk of Guam 27 K	 Clearstream 152 M
						 Wells Fargo 68 K	 TransPac 13 K	 BTM 8.6 M	 Compass Bank 20 K	 Bank Moscow 9.5 M

KEY: B – Billion; M – Million, K - Thousand

GLOBAL CONDUCT FINES 2009-2013 (EXCEEDED £166 BILLION)

Financial Institution	Total Cost	Provision YE 2013	Total 2009-2013
Bank of America	39.09	27.31	66.40
JP Morgan Chase & Co	26.61	9.17	35.78
Lloyds Banking Group PLC	8.91	3.82	12.72
Royal Bank Scotland (RBS)	3.54	4.92	8.47
Barclays PLC	4.88	3.01	7.89
Citigroup, Inc	4.55	3.02	7.57
HSBC	4.97	2.24	7.21
Deutsche Bank	3.87	1.75	5.62
UBS	3.08	1.10	4.18
Goldman Sachs	1.48	2.17	3.65
Credit Suisse	2.00	1.58	3.58
Banco Santander	2.42	1.15	3.57
BNP Paribas	0.62	2.92	3.54
Societe Generale (SG)	0.12	0.58	0.70

REPEAT—OR LEARN?

*“... conclude this financial crisis was avoidable. The crisis was the result of **human action** and **inaction**, not of Mother Nature or computer models gone haywire. The captains of finance and the public stewards of our financial system ignored warnings and failed to question, understand, and manage evolving risks within a system essential to the well-being of the public. Theirs was a big miss ...*

... Tone at the top does matter and, in this instance, we were let down. No one said “no.”

Financial Crisis Inquiry Commission 2011

SANCTION, FINES AND PENALTIES

■ JUNE 2014 – BNP PARIBAS

- Agreed to a guilty plea to conspiring to violate US economic sanctions regimes by processing billions of dollars of transactions through the US financial system on behalf of Sudanese, Iranian, and Cuban entities
 - According to the US Department of Justice, the agreement to plead guilty was the first time a global bank has agreed to plead guilty to large-scale, systematic violations of US economic sanctions. On the same date, BNP agreed to enter a guilty plea to 2 New York state criminal charges brought by the Office of the District Attorney of the County of New York
 - Federal Reserve's order prohibits BNP from re-employing or otherwise engaging *11 individuals* who were involved in the actions that resulted in the violations of US economic sanctions laws indicated that it may pursue separate enforcement actions against them
 - DFS required *13 individuals* to be terminated by or separated from BNP as a result of the investigation

SANCTION, FINES AND PENALTIES

■ DECEMBER 2014 – RAFAEL HUI & OTHERS

- In 2012 the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) was enacted – violations resulting in criminal charges
 - Recently Hong Kong, saw the largest, most complex corruption trial in its history (130-day trial with approximately 100 witnesses)
 - Four out of five defendants were sentenced on December 23, 2014, to terms of imprisonment ranging from 5 to 7.5 years
 - Rafael Hui at one point the number two person in the Hong Kong Government between 2005 and 2007 was convicted of 5 counts out of 8
 - Hong Kong regulators are working closer with U.S. regulators

SANCTION, FINES AND PENALTIES

■ MARCH 2015 – SCHLUMBERGER

- A subsidiary of the world's largest oilfield services company pleaded guilty to violating US trade sanctions with Iran and Sudan, and will pay more than \$233 million in fines
 - According to court documents, *employees* provided oilfield services to customers in Iran and Sudan from the US through non-US subsidiaries, including providing technical expertise to fix mechanical failures
 - *Employees* also approved and disguised the company's capital spending requests from Iran and Sudan
 - Schlumberger is also accused of *failing to train its employees* adequately to ensure that employees in the US adhered to the stated sanctions policies and compliance procedures

SANCTION, FINES AND PENALTIES

■ MARCH 2015 – INTERCONTINENTAL EXCHANGE

- Intercontinental Exchange (ICE) received fines of \$3 million for erroneous reporting of trading data
 - According to documents, between October 2012 and May 2014, the ICE futures exchange in New York submitted trading reports containing thousands of errors and omissions to the Commodity Futures Trading Commission (CFTC)
 - The CFTC order requires ICE to create a Chief Data Officer and hire three additional quality assurance staff dedicated to regulatory reporting

SANCTION, FINES AND PENALTIES

■ MARCH 2015 – PAYPAL

- The e-commerce company agreed to pay the US Treasury Department \$7.7 million over alleged US trade sanction violations occurring over several years through 2013
 - Violations alleged that PayPal did not adequately screen transactions involved in the purchase and sale of nuclear weapons, as well as transactions of goods and services going to and from Cuba, Sudan, and Iran
 - Violations alleged that PayPal processed 136 transactions that totaled more than \$7,000 to and from a registered PayPal account to an individual that is on the US government's blacklist for "weapons of mass destruction"

SANCTION, FINES AND PENALTIES

■ MARCH 2015 – COMMERZBANK AG

- The German bank is paying \$1.45 billion in fines to avoid prosecution by the United States and New York State authorities, and agreeing to alleged violations of sanctions against countries, including Iran, and lapses the in prevention of money laundering
 - Employees concealed activity by stripping out information identifying clients that were subject to sanctions in order to process more than \$253 billion in transactions for Iranian and Sudanese companies or organizations
 - Gaps in the bank oversight to prevent money laundering allowed payments to flow through the New York branch that aided an accounting fraud by Japanese optics maker Olympus Corporation
 - Bank also agreed to *terminate some employees* and install an independent monitor agent in its agreement with New York state regulators

SANCTION, FINES AND PENALTIES

■ APRIL 2015 – DEUTSCHE BANK

- The German bank has been fined \$2.5 billion (£1.7bn) for rigging Libor, ordered to *terminate* seven employees in London and accused of being obstructive towards regulators in their investigations into the global manipulation of the benchmark rate
 - One division at the bank had a culture of generating profits without proper regard to the integrity of the market. “This was not limited to a few individuals but, on certain desks, it appeared deeply ingrained,” Georgina Philippou said the acting director of enforcement and market oversight at the Financial Conduct Authority (FCA)
 - Bank failings were compounded by them repeatedly misleading the regulators. The bank took far too long to produce vital documents and it moved far too slowly to fix relevant systems and controls,” said Philippou
 - Last year, the bank was fined £4.7m by the FCA for misreporting 29 million derivatives transactions over 5 years (2007-2014)

SANCTION, FINES AND PENALTIES

■ APRIL 2015 – BNY MELLON

- Financial Conduct Authority fined the bank £126 million for not properly ring-fencing client accounts
 - The bank played down the scale of the comingling of money from the bank with that of clients that occurred over a 6 years
 - In total 17 companies have been fined, including Barclays, JPMorgan Securities, BlackRock Investment Management, Aberdeen Asset Managers, and SEI Investments for non-compliance with client money rules
- In 2016, new UK regulations will take effect that will hold senior management accountable for any client money failings, meaning that future fines will be accompanied by penalties against Directors and executive management

SANCTION, FINES AND PENALTIES

“To further promote anti-corruption efforts, we need to carry forward the successful experiences gained through the Party's long-term anti-corruption practice,” Xi Jinping said when presiding over the group study

In efforts to clean up Communist Party rule, Xi Jinping, has disciplined more than 100,000 officials for various types of economic crimes, including arrests being made of 32 leaders who rank at the level of vice minister or above



1,238 days
18,223 comments
71-page rule
893-page preamble
5 agencies
1 man

It started as one paragraph

JPMorgan met with agencies at least 30 times about the rule

Will it work?

Paul Volcker, former Fed chairman



Dodd-Frank Act



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Economic Crime

ECONOMIC CRIME – ANTI MONEY LAUNDERING

- Since 2009, there have been 24 global banks that have failed to disclose to US regulators that they were knowingly dealing with sanctioned countries, such as Myanmar (Burma), Cuba, Iran, Libya and Sudan
- Most of this conduct was known to senior executives and compliance individuals who chose to ‘turn a blind eye’ to the activity because it was profitable
 - Lack of monitoring wire transfers
 - Failure to implement an automated system to review wire transfers
 - Granting blanket exceptions to Bank policy to high-risk customers
 - Failure to detect large funds transfers through money service bureaus
 - Failure to monitor non-resident alien accounts
 - Failure to address adverse internal audit findings
 - Failure to timely file suspicious activity reports (SARs) as determined by back-filed SARs in compliance with enforcement action

ECONOMIC CRIME – ANTI MONEY LAUNDERING



Responsible Officer (RO); Suspicious Activity reports (SAR), Suspicious Transaction Report (STR), Customer Transaction Report (CTR)

ECONOMIC CRIME – NEED TO KNOW

- AML effectiveness has led to major operational costs due to the lack of standards and understanding
 - Transaction monitoring to detect relevant suspicious activities
 - Customer due diligence training to keep data up-to-date
 - Understanding of privacy laws across Asia hindering customer due diligence
 - Finding adequately skilled resources in the Asian market as well as successfully retaining staff due to the global demand for skilled resources
 - Training employees is difficult as the world is very entwined and identifying the counterparty to a trade or transaction is not always simple
- Board and management must proactively monitor compliance with BSA/AML/ATF laws and discourage excessive risk taking

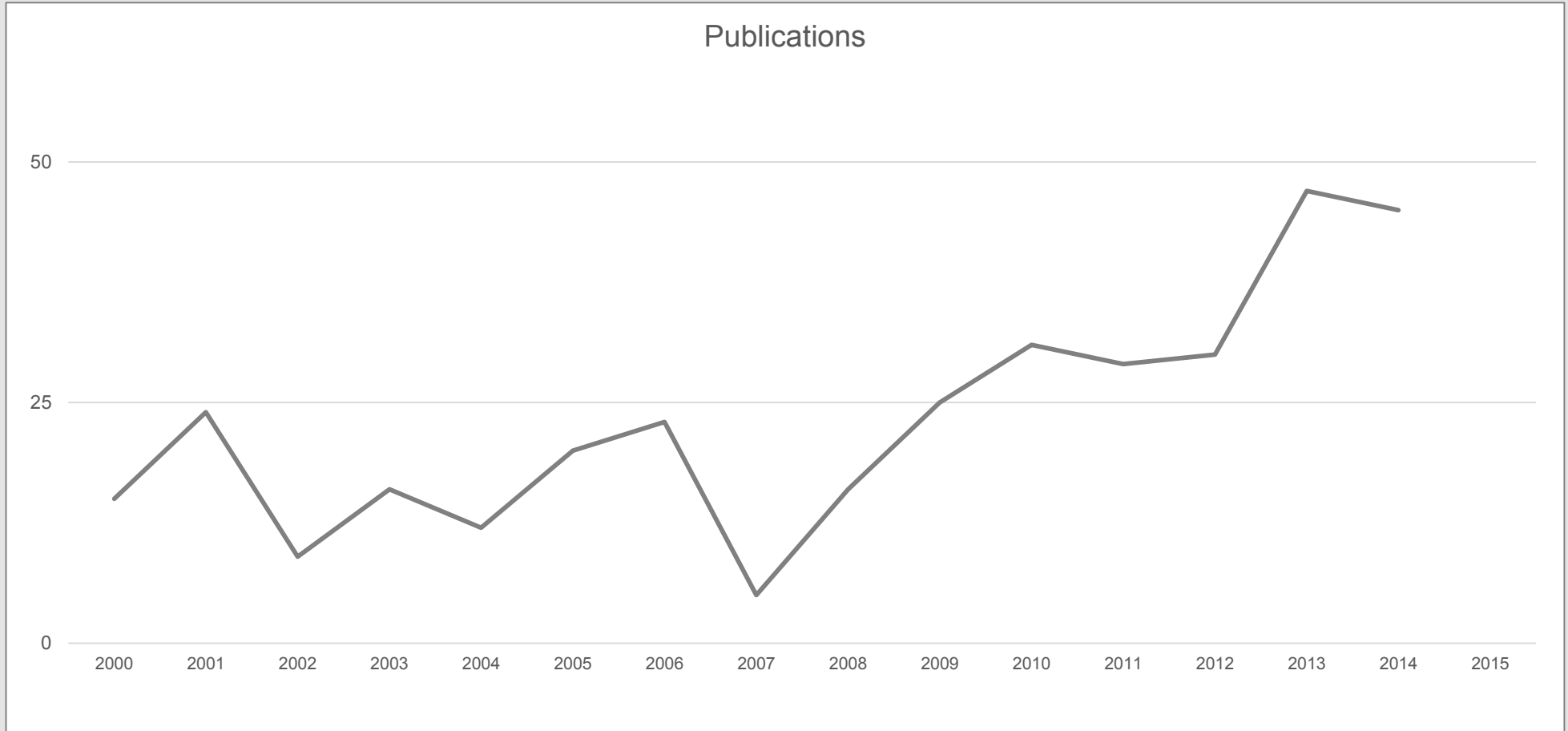
Capital Adequacy and Liquidity

BASEL REGULATIONS

- The objective of Basel through the years has always been to improve the banking sector's ability to absorb shocks arising from financial and economic stress, whatever the source, thus reducing the risk of spillover from the financial sector to the real economy
 - Tighter regulation of the liability side of the balance sheet – stable deposits
 - Capital linked to quality of the liabilities

- Rule enhancements changing how we do business
 - Corporate customers courted by banks today may be shunned tomorrow
 - Holding more capital will increase costs for Treasurers
 - A smart Treasurer will need to be proactive and “KNOW YOUR BANK”

BASEL REGULATIONS AND PUBLICATIONS 2000 - 2014



Standards, Guidelines, Standard Practice publications <http://www.bis.org/bcbs/publications.htm?a=1&mp=any&pi=title&page=1>

BASEL REGULATIONS – NEED TO KNOW

- The quest for higher and better quality regulatory capital levels has led to financial institutions requiring certain best practices
 - Risk appetite and board oversight
 - Integrated stress testing
 - Granular reporting of liquidity, capital and leverage ratios to increase transparency
 - Funding, liquidity and capital plans
 - Counterparty risk and collateral insight
 - Effective business unit allocations
- Corporations also need to stay aware that their preferred bank can cancel their loans should they encounter liquidity or capital constraints

OTC Regulations

OTC REGULATIONS

- The Dodd-Frank Wall Street Reform and Consumer Protection Act has a broad impact on the global financial markets
 - Regulates the practices of Wall Street to prevent another financial crisis by creating a new and complex regulatory regime including: reporting, record keeping, clearing, trade execution, margin and anti-fraud rules

- European Market and Infrastructure Regulation (EMIR)
 - Binding law within the European Union to increase the stability of Over-the-Counter (OTC) derivative transactions

- The Volker Rule
 - Restricts banking entities, which benefit from federal insurance on customer deposits or access to the discount window, from engaging in proprietary trading and from investing in or sponsoring hedge funds and private equity funds

OTC REGULATIONS – NEED TO KNOW

- With derivatives now assuming increased importance to the Treasury departments of Asia-based corporation, understanding the patchwork of changes required in each jurisdictions is vital
 - Define data needs
 - What are the reporting requirements (when, what data, to whom)
 - Can you relying the third-party doing your reporting
 - How do we enhance governance procedures to protect the firm from mistakes
 - What are the jurisdictional changes to clearing and settlement requirements
 - What about confidentiality, are waivers sufficient for each jurisdiction

Tax Transparency

TAX TRANSPARENCY

■ Foreign Account Tax Compliance Act (FATCA)

- A United States federal law intended to detect and deter the evasion of US taxes by US persons who hide money outside the US
- FATCA is the largest of a raft of initiatives aimed at creating full transparency (automatic information exchange) in tax (financial) matters worldwide

■ OECD Common Reporting Standard (CRS)

- OECD expands FATCA for the world
- Automatic Information Exchange becomes reality

TAX TRANSPARENCY – NEED TO KNOW

- The bigger picture is a world of information exchange
 - All ‘Financial Institutions’ required to report
 - Corporations will need to share information on Directors and executive managers
- The need for enhanced governance and compliance processes
- Strict processes: Customer Due Diligence and Know Your Customer
 - Difficult to monitor the change of circumstances, e.g., taxpayer changes domicile

Know Your Customer
Know Your Counterparty

“Know Your Customer is not only about Anti-Money Laundering, Sanctions or Terrorism Financing

It is about knowing who you are doing business with, whether it is lending to them, conducting a transaction for them, and/or taking deposits from them”

KNOW YOUR CUSTOMER

- Global enforcement activity is creating pressure for regional regulators to more actively supervise the implementation of recently enacted AML regulations in line with Financial Action Task Force (FATF) recommendations
- Cornerstone is the Customer Identification Program (CIP) enabling companies to form a reasonable belief that it knows the true identity of each client – individual customer or corporation
 - Do you understand Asian consumer privacy laws and cross-border restrictions?
 - As a corporate with a supply chain, do you know your processing costs
- Other questions, include:
 - How do you manage the risks posed without knowing your client?
 - How do you manage your reputational risk without knowing and updating client data?
 - How do you know your PEP (domestic and/or international)?
 - How do you manage debit/credit tax? (FATCA/CRS)

KNOW YOUR CUSTOMER



KNOW YOUR CUSTOMER – NEED TO KNOW

- Directors, executive and employees should receive specific company training, informing them on all activity and practices that are prohibited
- Internal controls require by employees to maintain accurate transactional data regarding all parties involved in transactions and payment instructions
- Independent testing regularly should be performed, and documented to ensure any deficiencies are corrected
- Examiners are finding policies make reference to the regulations; however, they do not specify practical procedures for how to apply specific regulations
- Firms are experiencing difficulties meeting requirements in cross-border situations due to data privacy /data protection laws and the over-reliance on third parties for customer information

WILL YOU REPEAT—OR LEARN FROM—THESE MISTAKES?

“Current procedures for dealing with misconduct by financial-sector participants are manifestly inadequate as evidenced on the one hand by the pervasiveness of malfeasance in areas ranging from money-laundering controls, to market manipulation, to mortgage marketing, and foreclosure implementation and, on the other, by the almost total absence of successful prosecutions of individuals”

Former US Treasury Secretary, Larry Summers

COMPANY FAILINGS

■ DISREGARD

- Businesses and/or employees may become so apparently successful that they are able to evade or distort the firm's risk appetite or its stated norms and values
- Misaligned rewards or performance indicators
- Inappropriate challenge or support by corporate functions

■ IGNORANCE or A LACK OF UNDERSTANDING FOR RISK

- Indifference to the company's prospects or future
- Lack of respect for opinions and views from the lower levels of the organization

■ ARROGANCE or BAD BEHAVIOR

- Failure to instill risk principles, appetite and culture in the businesses and employees
- Excusing the behavior of employees generating high revenue or volume

MORE REGULATION TO COME

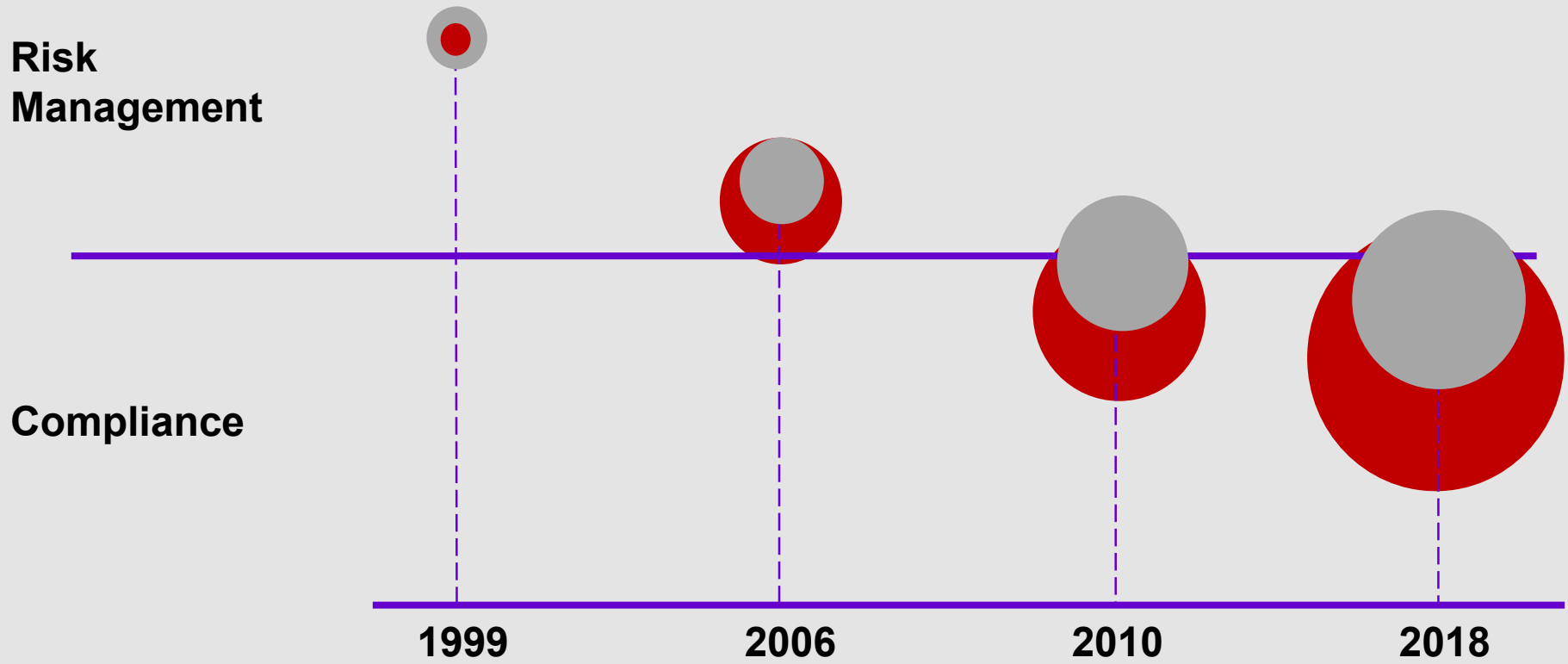


**TOO BIG
TO FAIL = TO EXIST**
BREAK UP THE GIANT CORPORATE BANKS!!

Basel 4



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- Job scope / FTE
- Investment in IT and Data

WHAT MUST YOU DO FOR SAFETY AND SOUNDNESS

“Involves firms having resilience against failure now and in the future, and avoiding harm resulting from the disruption to the continuity of financial services, either in the course of business or in the event of failure”

UK Prudential Regulator Authority

TREASURY PROFESSIONALS

- Keep up to date with the latest regulatory proposals and amendments
- Know what reports need to be submitted, what information is required, and when they are due to the regulators
- Ensure a high degree of transparency with the regulators
 - Do your best and be honest
- Use your regulators, ask them questions
- Always be prepared for a regulatory visit

RISK AND COMPLIANCE PROFESSIONALS

- Have a distinct, agreed upon regulatory plan
 - Focusing on outcome
 - Identify issues
- Ensure a high degree of transparency with the regulators
 - Risk reporting dashboards across the organization
 - Stress tests and contingency plans shared with all stakeholders
- Empower regions to customize GRC practices, within defined thresholds remaining in compliance with local regulations, legislation, and national cultures
- Assess and analyze risks triggered by one geography for their impact on the organizations global risk portfolio
- Substantiate formal onboarding and recurring training programs to instill ethics, compliance, prudent risk taking and the company's risk culture

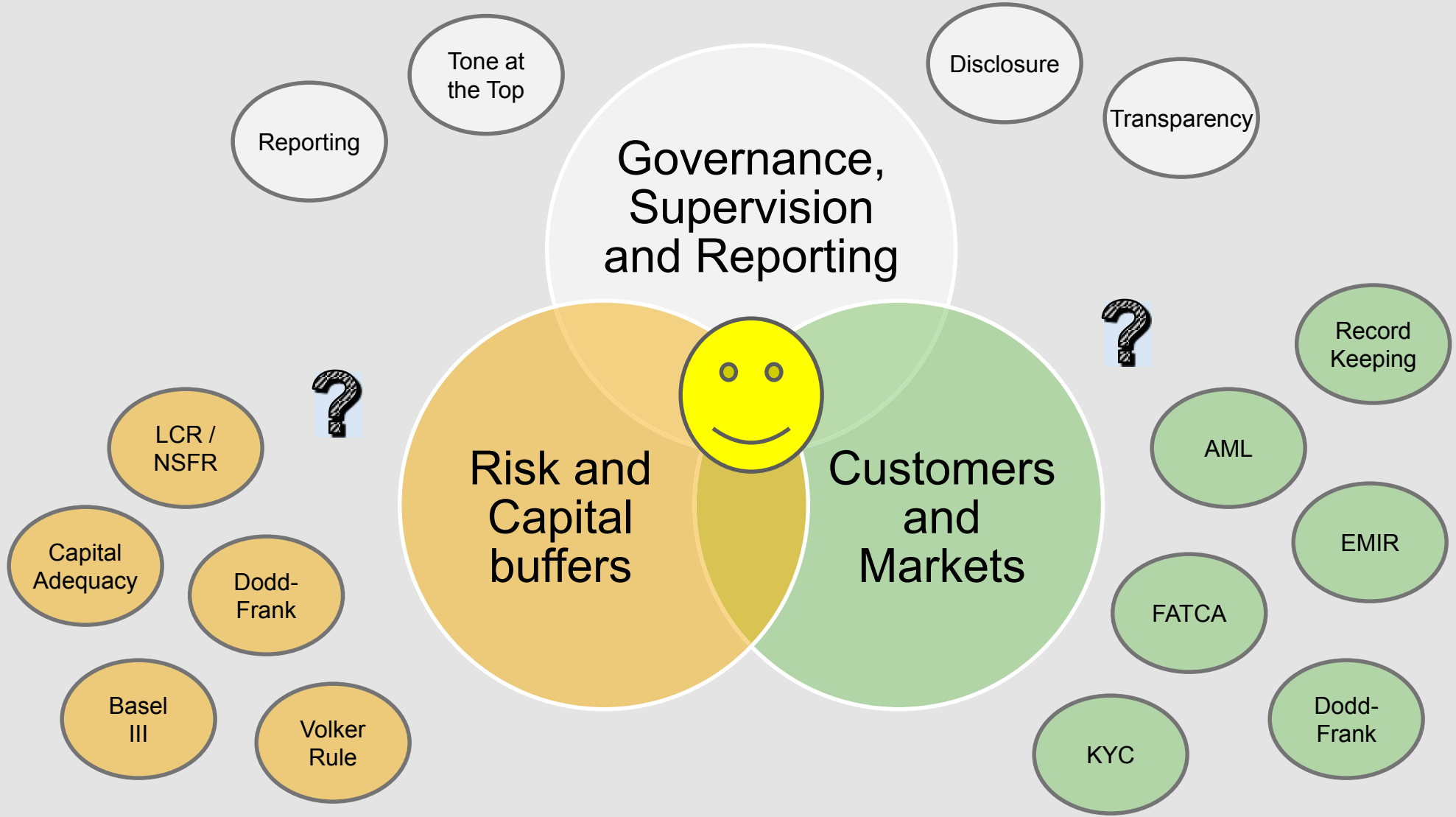
CHIEF RISK OFFICERS

- Ensure the development of an appropriate risk appetite that meets the needs of the firm
- Actively monitor the firm's risk profile relative to its risk appetite, strategy, business and capital plans, risk capacity, as well as compensation programmes
- Ensure the integrity of risk measurement techniques and management information systems (MIS)
- Establish, obtain approval for, and monitor business line /legal entity risk limits
- Escalate promptly to the Board and CEO any material risk limit breaches
- Ensure for the timely disclosure and communication of risk information to all stakeholders, including the regulators

BOARD OF DIRECTORS AND EXECUTIVE MANAGEMENT

- Set the company tone for prudent risk taking
- Encourage a culture of honesty and trustworthiness
- Demonstrate behaviors consistent with the stated risk culture
- Encourage the early identification and escalation of risks
- Consistently rewards proper behavior and punishes actions which violate core values, with **NO** exceptions
- Schedule a regulator conference to understand new regulations or a complicated issue
- Know when to say **NO!**

THE REGULATORY AGENDA IS THERE TO PROTECT THE SYSTEM



REGULATORY COMPLIANCE DOES NOT LEND A COMPETITIVE ADVANTAGE

- Let your risk capabilities shape your strategy and actions
- Lead rather than follow by knowing more than your competitors and bankers
- Prepare for crises and adverse events by asking questions
- Ensure employees are ‘*doing the **right things***’ and know when they are **not**
- Accept the world has changed. Return to the basics of a healthy relationship
 - Trustworthiness
 - Openness
 - Honesty
 - Integrity

THANK YOU

Q&A

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