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FDIC ADVOCATES RISK-BASED APPROACH TO BANKING SERVICES, DISTANCING ITSELF FROM OPERATION CHOKE POINT

On January 28, 2015, the Federal Deposit Insurance Corporation ("FDIC") issued a statement encouraging institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers.

The FDIC stressed that individual customers within broader customer categories present varying degrees of risk, stating that those institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law.

Recognizing the hesitance of some institutions to provide certain types of services due to concerns that the institutions will be unable to comply with Bank Secrecy Act requirements, the FDIC stated that isolated violations that occur within an otherwise adequate system of policies generally do not prompt serious regulatory concern. The FDIC also provided a telephone number for supervised institutions to call to report concerns that FDIC personnel are not following policies as set forth in the statement.

The statement is being provided in reaction to the FDIC's original 2011 posting on its website of a list of businesses that presented a "higher risk of becoming agents of illegal activity." This list was used by the U.S. Department of Justice ("DOJ") as a part of "Operation Choke Point," a campaign targeting payment processors providing services for "potentially illegal" and fraudulent businesses. In reaction to Operation Choke Point and the FDIC's list, banks have been hesitant to serve higher-risk businesses, in some alleged cases categorically dropping whole segments of industry. The FDIC pulled the original list in July 2014, stating that the list had led to misunderstandings regarding the FDIC's approach to third party payment processors.

Industry organizations and lawmakers leading the congressional investigation into Operation Choke Point hailed the FDIC's statement as an important step forward, but many observers note that changes

at the examiner level are needed for the statement to have a practical, lasting effect. □

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