U.S. CROSS-BORDER INVESTIGATIONS AND ENFORCEMENT ACTIONS

August 13, 2015

Who Am I?

- **Lauren Dickie**
  - **Associate with Quinn Emanuel Urquhart & Sullivan** in Washington, D.C. (2014 – Present)
    - Practice focuses on the representation of corporate clients, including financial institutions, and individuals in white-collar criminal cases and complex civil litigation
    - Current clients include Swiss financial institutions and asset management firms in connection with investigations by the U.S. government of their U.S. business and clients
  - **Assistant United States Attorney ("AUSA"), United States Attorney's Office for the District of Columbia** (2009-2014)
    - Branch of the United States Department of Justice ("DOJ")
    - Responsible for the investigation and prosecution of local and federal crimes
    - Prosecuted a wide range of crimes, including conspiracy and obstruction of justice, and tried more than 40 criminal cases, including approximately 20 jury trial;
    - Conducted over 75 grand jury investigations;
    - Argued appeals in both the D.C. Court of Appeals and the D.C. Circuit
  - **Associate with Latham & Watkins in Chicago** (2005-2009)
    - Practice focused on complex civil litigation

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Introduction

- **U.S. Cross-Border Investigations and Enforcement**
  - The U.S. Government engages in a wide range of cross-border investigations that involve financial institutions.
  - Increased focus on:
    - **Tax evasion;**
    - **Money Laundering; and**
    - **U.S. Sanctions violations, especially sanctions administered by the Office of Foreign Assets Control ("OFAC").**
  - Non-U.S. companies, including financial institutions, facing a U.S. investigation or enforcement action can increase the likelihood of a favorable resolution by proactively assessing and remediating the problem.
  - Non-U.S. companies, including financial institutions, sometimes benefit from proactively developing a cooperation plan with the U.S. Government.
- **Accessing U.S. Courts**
  - Non-U.S. companies injured by fraud or other illegal activity which has some connection to the United States may seek redress in U.S. courts.
  - U.S. counsel can assist non-U.S. companies in navigating issues of jurisdiction and statutes of limitation.

Legal Authority

- **Extraterritorial Application of U.S. Law**
  - U.S. law permits enforcement agencies such as the DOJ and the Securities Exchange Commission ("SEC") to bring civil and criminal actions against non-U.S. companies, including non-U.S. financial institutions, and their employees for violations of U.S. law if the companies' activities are directed toward or take place in the U.S.
  - For financial institutions, this can include:
    - **Traveling to and meeting with clients in the U.S.;**
    - **Sending emails or other correspondence to the U.S.;**
    - **Placing calls to the U.S.; and**
    - **Processing U.S.-denominated transactions**
  - The U.S. Government considers a financial institution's compliance with foreign law to be irrelevant to its criminal and civil liability under U.S. law.

Enforcement Trends: Tax Crimes

- **Tax Enforcement Initiative**
  - Beginning in 2008, the U.S. Government has actively investigated (i) financial institutions, (ii) individual bankers, and (iii) third party service providers in connection with alleged violations of U.S. tax laws.
  - Specifically, prosecutors allege that these entities (i) *knowingly* helped U.S. clients evade their U.S. tax obligations or (ii) provided unregistered brokerage and advisory services in violation of U.S. securities laws.
- **Jurisdictional Focus**
  - To date, **Switzerland** has been the focus.
  - However, the U.S. Government has clearly indicated that it is expanding the scope of its tax investigations to:
  - (i) **other European countries**, including Luxembourg and Liechtenstein,
  - (ii) **the Middle East**,
  - (iii) **Asia including Singapore**, and
  - (iv) **the Caribbean.**

Enforcement Trends: Tax Crimes

- **Implications for Non-U.S. Financial Institutions**
  - Given the U.S. Government's wide-ranging inquiry, non-U.S. financial institutions that provide private banking services to U.S. clients should consider taking **proactive risk-mitigation measures**.
  - Non-U.S. financial institutions should determine **whether, and to what extent, their historical or current business practices generate legal exposure**.

Enforcement Trends: Tax Crimes

- **DOJ Program for Swiss Banks**
  - In August 2013, the DOJ announced a program for Swiss banks not already under criminal investigation to cooperate with the U.S. Government in return for a non-prosecution agreement or deferred prosecution agreement.
  - The DOJ Program requires that Swiss banks committing tax-related offenses pay penalties equal to between 20-50% of their U.S. client assets under management after August 2008.
  - To date, more than 100 Swiss banks have applied to participate in the DOJ Program, which is ongoing.
  - Quinn Emanuel represents numerous banks in the DOJ Program. We also represent asset management firms, individual bankers, and other entities affected by the DOJ Program.

Enforcement Trends: Tax Crimes

- **"John Doe" Summons for Non-Swiss Banks**
  - The U.S. Government has also obtained court orders to obtain data concerning U.S. client accounts held at HSBC India and First Caribbean International Bank.
- **Prosecution of Individual Bankers**
  - Between 2008 and the present, the DOJ has filed criminal charges against at least 24 Swiss bankers, including the former CEO of UBS Global Wealth Management and former head of Credit Suisse's cross-border banking business.
  - U.S. authorities have arrested bankers, investment managers, and attorneys in the United States.
    - For example, in 2014, U.S. authorities arrested Caribbean-based investment managers and an attorney during their visit to Miami, Florida. These individuals ultimately pled guilty to conspiracy to commit money laundering.

Enforcement Trends: Tax Crimes

- **Criminal Conduct at Issue**
  - The DOJ and IRS are investigating financial institutions and individual bankers for **allegedly aiding and abetting tax evasion by U.S. clients, which is a criminal offense under U.S. law**.
  - DOJ and IRS claim that the banks and their employees assisted U.S. taxpayers in avoiding paying U.S. taxes by engaging in the following conduct:
    - **Enabling U.S. clients to open and maintain undeclared accounts**;
    - **Assisting U.S. clients to establish sham offshore structures, such as foundations or trusts, that concealed their assets**;
    - **Maintaining U.S. client accounts in a manner intended to avoid disclosing U.S. clients' assets or income, including the use of anonymous account statements and "hold mail" practices**;
    - **Helping U.S. clients make payments or withdrawals from their accounts in ways designed to avoid detection by U.S. authorities**, including by offering the use of travel cash cards and issuing checks and wire transfers in amounts less than $10,000; and
    - **Marketing the above services to U.S. clients**.
- **Civil Conduct at Issue**
  - The SEC focuses on financial institutions and individual bankers that engaged in unregistered investment advisory and brokerage services in the U.S., which is a civil violation under U.S. law.

Enforcement Trends: Money Laundering

- **Legal Exposure for Financial Services Firms**
  - Financial institutions may face exposure for violating U.S. laws, as well as the laws of other nations, in connection with processing transactions for customers involved in money laundering.
  - Case Studies:
    - **Sovereign Management & Legal, Ltd. ("Sovereign")**
      - DOJ alleged that an entity with a significant Panamanian presence, facilitated hundreds of transactions for an individual who pled guilty to drug trafficking and money laundering.
    - **FIFA**
      - Swiss authorities have publicly undertaken a wide-ranging inquiry into possible cases of money laundering through Swiss bank accounts in connection with FIFA's global activities.
      - DOJ's parallel FIFA-related enforcement efforts have already obtained guilty pleas to money laundering from individual defendants. For example, Charles Blazer stated the following during his plea hearing:
        - "I and others agreed to and transmitted funds by wire transfer and checks from places within the United States to places in the Caribbean . . . to . . . promote and conceal [the] receipt of bribes and kickbacks."
          United States v. Blazer, No. 1:13-cr-00602-RJD (S.D.N.Y. Nov. 25, 2013).
      - Quinn Emanuel represents FIFA in connection with the DOJ investigation

Enforcement Trends: Sanctions Violations

- **Legal Exposure for Financial Services Firms**
  - Similarly, financial services firms may face legal exposure under U.S. sanctions programs based on transactions processed for their customers.
  - Case Studies:
    - **Paypal**
      - In March 2015, Paypal, Inc. ("Paypal") agreed to a USD 7.6 million settlement with the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") stemming from payments Paypal processed.
      - OFAC advanced two main theories of Paypal's liability:
        - (1) Inadequate controls, including a failure to employ adequate screening technology and procedures to identify the potential involvement of U.S. sanctions targets in transactions; and
        - (2) Processing 136 transactions for a customer on OFAC's list of Specially Designated Nationals ("SDNs").
      - According to the public settlement between Paypal and OFAC, Paypal employees repeatedly ignored warnings generated by Paypal's compliance software. Paypal's employees mistakenly believed the automated warnings had merely been generated to confirm the customer's name and address.

Enforcement Trends: Investigative Methods

- **Investigative Methods and Sources of Information for the U.S. Government**
  - The U.S. Government may gather information about non-U.S. financial institutions by any of the following methods:
    - (1) Clients participating in the VDP, which affords participating U.S. taxpayers significant benefits (criminal amnesty and reduced penalties) in return for their provision of information about their offshore bank and other advisors;
    - (2) Requests for information issued directly to financial institutions;
    - (3) Grand jury subpoenas issued to individual bankers, financial institutions, and clients requesting witness testimony and the production of documents;
      - Includes recent use of subpoenas to obtain records from U.S. banks maintaining U.S. dollar correspondent bank accounts for foreign financial institutions
    - (4) mutual legal assistance treaty ("MLAT") or administrative assistance requests for client information submitted to foreign authorities;
    - (5) Requests for interviews of individual bank employees by criminal IRS agents; and
    - (6) Publicly available information, including media reports.

Enforcement Trends: Case Study

- **The Financial Services Entity**
  - Sovereign Management & Legal, Ltd. ("Sovereign") offers financial services including:
    - Offshore banking and brokerage accounts;
    - Anonymous ATM cards; and
    - Formation of offshore corporations in nations such as Panama, Belize, Nevis, and Seychelles.
- **The U.S. Investigation**
  - DOJ's Southern District of New York, the IRS, and DEA conducted parallel investigations.
  - A former U.S. client of Sovereign participated in the VDP and disclosed Sovereign's role in forming Panamanian offshore corporations to the IRS.
  - Separately, DEA determined that U.S. customers used Sovereign accounts to purchase controlled substances over the internet. DEA informed the IRS of its findings.
    - In September 2014, DOJ secured a guilty plea to drug trafficking and money laundering charges in connection with this scheme. *United States v. Williams*, No. 11-cr-1137 (C.D. Cal. 2014).
  - In December 2014, a U.S. federal court granted DOJ's petition for the issuance of "John Doe" summonses requesting records from shipping services (*e.g.*, FedEx, UPS, and DHL). Sovereign allegedly used these services to communicate with U.S. clients.

Enforcement Trends: Implications

- **Implications for Banks Outside Switzerland**
  - Banks operating outside Switzerland may become the focus of a U.S. Government investigation based on information obtained through the following sources:
    - (1) Information provided by Swiss banks, including concerning the destination of their exited undeclared U.S. clients;
    - (2) Undeclared U.S. clients participating in the VDP;
    - (3) Cooperating witnesses, including bankers, financial advisors, lawyers, and accountants; and
    - (4) Other service providers, including fiduciary companies.
- **Consequences of U.S. Enforcement Actions**
  - Significant criminal fines, civil penalties, disgorgement of profits, and/or restitution payments.
  - Collateral consequences include:
    - (1) Reluctance by U.S. investors' to hold the financial institution's securities;
    - (2) Flight of clients from the financial institution due to concerns about its exposure; and
    - (3) Refusal by U.S. banks to maintain or open correspondent accounts, thus impacting the financial institution's ability to clear U.S. dollar-denominated transactions.

Enforcement Trends: Panama

- **Consequences of DOJ Program for Swiss Banks for Financial Institutions in Panama**
  - U.S. Government has indicated that it will use information obtained from DOJ Program to go after financial institutions and individuals in other countries, including Panama
  - FIFA investigation may result in investigations of Panamanian financial institutions through which illicit funds may have flowed
- **Recent Enforcement Actions**
  - Recent enforcement actions suggest that U.S. government has interest in Panama
    - Just yesterday, **a former regional director of global software company SAP International Inc**. pleaded guilty to conspiracy to violate the Foreign Corrupt Practices Act ("FCPA") by participating in a scheme **to bribe Panamanian officials** to secure the award of government technology contracts for SAP.
    - In the plea paperwork, the defendant admitted that he conspired with others, including a Panamanian partner, to bribe government officials.
    - The plea paperwork is "under seal"

Risk-Mitigation Measures

- **Risk Exposure Assessment**
  - We recommend that financial institutions adopt **a phased approach** to determine whether, and to what extent, they have exposure due to their historical or current U.S. business practices.
  - **This phased approach** allows financial institutions to minimize the costs and disruptions associated with conducting an internal review.
  - U.S. counsel can aid in limiting the scope of U.S. investigations.
  - Ideally, U.S. counsel will help clients respond effectively to U.S. authorities without alienating employees or triggering unnecessary collateral effects in competitive marketplaces.

Risk-Mitigation Measures

- **Overview of Three Phases**
  - **Phase 1: Conduct a Risk Profile Assessment**
    - Based on key data points regarding the financial institution's historical and current U.S. business.
  - **Phase 2: Conduct a Preliminary Risk Assessment**
    - Involves additional data analysis, limited review of documents, and limited employee interviews.
  - **Phase 3: Conduct a Comprehensive Risk Assessment**
    - Involves further analysis of relevant data points, an in-depth review of documents pertaining to the U.S. business, and additional interviews of employees involved in the U.S. business, including members of senior management.
  - Depending on the results of these assessments, a financial institution may wish to consider proactively cooperating with the U.S. Government.

Risk Mitigation Measures

- **Prospective Risk-Mitigation Measures**

  - In addition to conducting a risk assessment of its historical and current U.S. business, financial institutions should also consider taking prospective measures to minimize any future risks associated with its U.S. business.

  - Examples of prospective risk-mitigation measures include:
    - **Discontinuing the opening of new U.S. client accounts** without evidence of U.S. tax compliance;
    - **Implementing a phased exit of existing U.S. client relationships**, including both individual and structured accounts, without evidence of U.S. tax compliance;
    - **Eliminating compensation incentives tied to the retention or maintenance of the U.S. clients**;
    - **Enhancing policies and training on new and existing U.S. client relationships**;
    - **Reviewing corporate compliance with U.S. sanctions programs**; and
    - **Considering registering with the SEC as a broker-dealer or investment advisor**.

Seeking Redress in U.S. Courts

- **Access to U.S. Courts**
  - Non-U.S. businesses injured by fraud or other illegal activity that is connected to the United States may be able to seek redress in U.S. courts.
  - Case Study:
    - For example, Quinn Emanuel represents Rio Tinto plc ("Rio Tinto"), a United Kingdom corporation, in connection with claims stemming from an alleged scheme hatched in the United States to fraudulently obtain mining assets in Guinea.
    - Rio Tinto has filed claims alleging billions of dollars in damages in the United States District Court for the Southern District of New York ("SDNY") under the U.S. Racketeer Influence and Corrupt Organizations Act ("RICO"). Its complaint names a number of non-U.S. defendants, including:
      - Vale S.A., a Brazilian corporation whose American Depository Receipts ("ADRs") trade on the New York Stock Exchange;
      - Individual defendants with citizenship in Israel, France, and Guinea; and
      - Multiple non-U.S. privately-held corporations.
    - In December 2014, SDNY Judge Richard M. Berman denied a motion to dismiss Rio Tinto's complaint and ruled that the case should remain in U.S. courts.

About Quinn Emanuel: Overview

- Quinn Emanuel Urquhart & Sullivan ("QE") is the largest business litigation law firm in the world with 700+ lawyers dedicated solely to business litigation and white collar matters.
- Unique for a litigation firm, our practice is truly international. We have offices in New York, Los Angeles, San Francisco, Silicon Valley, Chicago, Washington, D.C., Houston, Seattle, Tokyo, London, Mannheim, Munich, Hamburg, Moscow, Zurich, Paris, Brussels, Hong Kong, Shanghai (license pending), and Sydney.
- Our lawyers have tried literally hundreds of criminal and civil cases to verdict and across all practice areas, we have tried over 2,300 cases, winning 88.2% of them.
- Well over 150 of our attorneys were Federal District, Circuit and Supreme Court clerks and/or law review editors.

About Quinn Emanuel: Our White Collar Practice

- QE is widely regarded as one of the premier white collar and corporate investigation firms in the United States. Our partners have repeatedly been recognized as the very best white collar defense lawyers in the country by numerous legal publications including *Chambers USA*, *The International Who's Who of Business Lawyers*, *Legal 500*, *The Expert's Guide to the World's Leading Lawyers*, and *Best Lawyers*.
- More than twenty of our attorneys previously served as federal prosecutors, including the former U.S. Attorney in Los Angeles, California.
- Our white collar and corporate investigations practice is broad. We have successfully represented corporations and individuals in grand jury investigations, at trial and on appeal. We have conducted sensitive internal investigations for Audit Committees and Special Committees.
- We have defended clients against allegations of health care, securities and government contract fraud; violations of the Foreign Corrupt Practices Act (FCPA), the Anti-Kickback Statute and the False Claims Act; environmental violations; and criminal antitrust price fixing. We have litigated against virtually every enforcement agency including the Department of Justice (DOJ), the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), as well as Attorney Generals and District Attorneys in numerous states.

About Quinn Emanuel: Representations

- **Experience representing clients in the context of the U.S. Government's tax enforcement initiative**:
  - Representation of **Bank Julius Baer**, Switzerland's largest pure private bank, in connection with the DOJ's criminal investigation into the bank's historical U.S. client business;
  - Representation of **nearly 15 banks with operations in Switzerland** that are participating in the DOJ Program for Swiss banks to receive a non-prosecution agreement or non-target letter resolving their potential criminal exposure for assisting clients in evading their U.S. tax obligations;
  - Representation of **a leading, highly prestigious Swiss professional services firm** in connection with a criminal offshore tax investigation; and
  - Representation of **various individual bankers and external asset managers** that are under indictment or the target of an active investigation by the U.S. Government.
- **Other notable representations**
  - **Representation of FIFA** in connection with U.S. and Swiss criminal investigations into allegations of bribery and corruption in the international soccer world.
  - **Representation of an international bank based in Cyprus and Tanzania** in connection with investigation by U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN")

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