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The New York Department of Financial Service's New Anti-Money Laundering Regulation: A Model for Improvement

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I. INTRODUCTION

Organizations such as ISIS, al Qaeda, Hezbollah, and Boko Haram rely on vast amounts of money moving around the world to fuel their terror efforts.[1] These funds are utilized for a number of purposes such as salaries and benefits, recruitment, bribes, explosives, guns, and tactical gear.[2] Without substantial funding, a terrorist organization either will not be able to execute attacks, or the impact of their attacks will be reduced.[3] For example, it is estimated that the September 11, 2001 attacks on the World Trade Center, paid for by al Qaeda, cost between $400,000 and $500,000 to plan and execute.[4] A significant portion of that money went toward paying the nineteen operatives responsible for the execution of the attack.[5] Khalid Sheik Mohammed, the "principal architect of the 9/11 attacks," used wire transfers and cash to provide the funds.[6] These funds were either carried into the United States[7] or deposited overseas and then accessed from within the United

1. Michael Freeman, *Introduction to Financing Terrorism: Case Studies*, *in* FINANCING TERRORISM: CASE STUDIES 3, 3 (Michael Freeman ed., 2012).

2. *Id.*

3. *See id.* (describing the 1993 bombing of the World Trade Center and noting that the organizer, Ramzi Yousef had stated that if he had been able to obtain more funds, the bomb used would have contained more explosives and created destruction on a much larger scale).

4. THOMAS H. KEAN & LEE H. HAMILTON, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 169 (2004).

5. *Id.* at 172.

6. *Id.* at 145.

7. Multiple operatives received cash before traveling to the United States. Michael Freeman & Moyara Ruehsen, *Terrorism Financing Methods: An Overview*, 7 PERSPECTIVES ON TERRORISM, no. 4, Aug. 2013, at 5, 8, http://calhoun.nps.edu/bitstream/handle/10945/35989/Freeman_Terrorism_Financing_2013.pdf?sequence=1&isAllowed=y. The operatives brought this cash into the United States, often declaring it at customs. *Id.* The most money brought in by one operative was $35,000 by Zacarious Moussaoiu. *Id.* He declared this money at customs. *Id.*

States.[8] Mohammed's nephew, Ali Abdul Aziz Ali, also wired $114,500 to the United States that was used by an associated cell in Hamburg to pay for flight training.[9] This amount was transferred over the course of only five transfers that ranged from $5,000 to $70,000, and went undetected by authorities.[10]

A significant amount of money utilized by terrorist organizations flows through financial institutions globally.[11] Terrorist organizations raise money through multiple avenues, including criminal activity[12] and private donations from interested individuals or groups.[13] These organizations exploit a number of different methods to move their capital through the financial system; these methods are constantly evolving, leading to difficulties in cracking down on the activities.[14] The most common methods include, but are not limited to: setting up offshore shell companies, front organizations, or trusts to receive money; transferring money from the bank accounts of charitable and non-profit organizations under the guise of a "gift;" and purchasing real estate and art to conceal the origination of money.[15] Terrorist

8. KEAN & HAMILTON, *supra* note 4, at 172.

9. KEAN & HAMILTON, *supra* note 4, at 224. According to the 9/11 Commission report, Ali was not required to provide identification when making these transfers, nor were the aliases that he chose questioned about their authenticity or validity. KEAN & HAMILTON, *supra* note 4, at 224.

10. KEAN & HAMILTON, *supra* note 4, at 224.

11. *See generally* Maria A. de Dios, *The Sixth Pillar of Anti-Money Laundering Compliance: Balancing Effective Enforcement With Financial Privacy*, 10 BROOK. J. CORP. FIN. & COM. L. 495 (2016) (describing the current status of AML laws and the need for a global system to prevent money laundering and the financing of terrorism).

12. *See generally* FIN. ACTION TASK FORCE, EMERGING TERRORIST FINANCING RISKS 13–23 (2015) [hereinafter FATF, TERRORIST FINANCING RISKS], http://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf (highlighting the traditional and known methods used by terrorist organizations to generate revenue for their operations). Terrorist organizations engage in significant criminal activity, the proceeds of which help to fund their terror efforts. *Id.* They engage in identity theft to directly steal funds, fraud, illegal smuggling of goods, bank robberies, drug trafficking, extortion, kidnapping. *Id.*

13. *Id*. at 13.

14. *Id*. at 20–23.

15. PETER REUTER, CHASING DIRTY MONEY: THE FIGHT AGAINST MONEY LAUNDERING 27–33 (2004); FATF, TERRORIST FINANCING RISKS, *supra* note 12, at 13–20 ("[T]errorist organi[z]ations rely on numerous sources of income and . . . they use a range of methods to move funds, often internationally, to their end point without being detected."). The Federal Deposit Insurance Corporation ("FDIC") has included in their DSC Risk Management Manual of Examination Policies a fairly exhaustive list of "money laundering red flags." FIN. DEPOSIT INS. CORP., DSC RISK MGMT. MANUAL OF EXAMINATION POLICIES § 8.1, at 39–44 (2005) [hereinafter BSA MANUAL], https://www.fdic.gov/regulations/safety/manual/

organizations are also increasingly relying on cash in an effort to avoid monitoring and detection of their operations.[16] Often, transfers involving banks are smaller in size in an effort to limit exposure and avoid detection, and may later be combined with other deposits for financing purposes.[17] Money launderers use small-scale transfers to structure deposits, which can often evade the reporting thresholds for Customer Transaction Reports ("CTR") and Suspicious Activity Reports ("SAR"), which are required under the Bank Secrecy Act ("BSA").[18] CTRs require reporting of "currency transactions" over $10,000, while SARs require reporting of transactions over $5,000 that may involve money laundering or violations of the BSA.[19] All financial institutions are susceptible to small-scale transfers.[20] Because of their large size and substantial number of transactions, however, the vulnerability of large financial institutions is particularly concerning, as

section8-1.pdf. Such red flags include, *inter alia*, structured or recurring, non-reportable transactions; customer refusal or reluctance to provide information or identification; multiple third parties conducting separate, but related, non-reportable transactions; transactions which are not consistent with the customer's business, occupation, or income level; numerous deposits under $10,000 in a short period of time, accounts with a high volume of activity and low balances; and large amounts of cash maintained in a safe deposit box. *Id.*; *see* Tom Wright & Bradley Hope, *Behind the IMDB Scandal: Banks That Missed Clues and Bowed to the Pressure*, WALL ST. J., http://www.wsj.com/articles/behind-the-1mdb-scandal-banks-that-missed-clues-and-bowed-to-pressure-1473109548 (updated Sept. 6, 2016, 1:31 AM) ("That the alleged fraud could roll on for so long without detection suggests weaknesses in a global system designed to clamp down on money laundering, a problem U.S. and other western leaders have pledged to fix.").

16. FIN. ACTION TASK FORCE, MONEY LAUNDERING THROUGH THE PHYSICAL TRANSPORTATION OF CASH 3 (2015) [hereinafter FATF, MONEY LAUNDERING], http://www.fatf-gafi.org/media/fatf/documents/reports/money-laundering-through-transportation-cash.pdf.

17. *See* FATF, TERRORIST FINANCING RISKS, *supra* note 12, at 21 (noting that money laundering sometimes involves structured deposits of cash into bank accounts that are later transferred elsewhere).

18. *Infra* Part III; *see also* BSA MANUAL, *supra* note 15, § 8.1, at 40–44 (highlighting the various methods used by money launderers to prevent detection, including the structuring of deposits, which is the most common suspicious activity reported to FinCEN).

19. 31 C.F.R. § 1010.311 (2016) (CTRs), 12 C.F.R. § 21.11(c)(1)–(4) (SARs); *see also infra* Part III (describing CTRs, SARs, and their reporting requirements).

20. *See* FATF, TERRORIST FINANCING RISKS, *supra* note 12, at 21 ("[T]errorism financing through the banking sector is often small-scale and be difficult to distinguish from the large number of legitimate financial transactions undertaken each day."); Banking Division Transaction Monitoring and Filtering Program Requirements ("NYDFS Regulation") § 504.1 (effective Jan. 1, 2017), http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp504t.pdf; *see also* KEAN & HAMILTON, *supra* note 4, at 224 (describing how Ali Abdul Aziz Ali transferred $114,500 undetected into the United States through smaller transfers that "were essentially invisible amid the billions of dollars flowing daily across the globe").

they are less likely to detect these transactions taking place.[21]

The BSA,[22] originally passed in 1970, requires banks to provide certain records that are otherwise not obtainable in order to assist the federal government in combating money laundering.[23] Banks do this by filing reports on currency transactions and customer relationships in the form of CTRs and SARs.[24] However, the BSA's regulations must be expanded at both the state and federal level to ensure sufficient regulation to prevent money laundering and the financing of terrorism.[25]

New York has recently adopted a regulation, to be enforced by the New York Department of Financial Services, to enhance these efforts.[26] It increases regulation in an area that is vulnerable and subject to significant corruption, and its implementation could have a dramatic impact on the financing of terrorism.[27] The regulation provides a higher level of structure to the existing federal BSA and anti-money laundering

21. *See* FATF, TERRORIST FINANCING RISKS, *supra* note 12, at 21 ("The sheer size and scope of the international financial sector gives terrorist groups and financiers the opportunity to blend in with normal financial activity to avoid attracting attention.").

22. The BSA's full title is the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970.

23. The Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970, 31 U.S.C. § 5311 *et seq* (2015).

24. *See* BSA MANUAL *supra* note 15, § 8.1, at 1–5, 45–48 (describing the process of filing a CTR or SAR and the effectiveness of these reports); *see also* 31 U.S.C. § 5318(g)(1) (2015) (allowing for the Secretary of the Treasury to require reporting of suspicious transactions).

25. *See* NYDFS Regulation § 504.1 (noting that shortcomings have been found in the compliance with BSA/AML laws and regulations that necessitated the clarifying regulation).

26. *Id*. The New York Department of Financial Services has even more recently proposed legislation to protect financial institutions from cyber attacks, which can also provide a source of funding for terrorism. *See* Greg Farrell, *New York Financial Regulator Rolls Out Cybersecurity Proposals*, BLOOMBERG (Sept. 13, 2016, 11:55 AM), https://www.bloomberg.com/news/articles/2016-09-13/new-york-financial-regulator-rolls-out-cybersecurity-proposals (describing the recently proposed legislation that would protect financial institutions from cyber attacks). The proposed legislation would require banks and insurance companies to create cybersecurity programs and designate an "internal cybersecurity officer." *Id.*

27. *See* NYDFS Regulation § 504 ("[T]he Department has reason to believe that financial institutions have shortcomings in their transaction monitoring an filtering programs."); *see also* CONNIE M. FRIESEN & JOEL D. FEINBERG, SIDLEY AUSTIN LLP, UPDATE: NEW YORK BANKING REGULATOR ISSUES ANTI-MONEY LAUNDERING RULES FOR TRANSACTION MONITORING AND FILTERING PROGRAMS 4 (July 7, 2016), http://www.sidley.com/~/media/update-pdfs/2016/07/20160707-banking-and-financial-services-update-1.pdf (stating that the Department of Financial services "can be expected to take an aggressive approach in the enforcement of the Final Rule").

("AML") laws that guide New York state regulated institutions.[28] "Regulated institutions" include (1) "all banks, trust companies, private bankers, savings banks, and savings and loan associations chartered" in New York; (2) "all branches and agencies of foreign banking corporations licensed" in New York; and (3) "all check cashers and money transmitters licensed" in New York.[29] The regulation could establish an important precedent of states taking affirmative steps to combat money laundering and the financing of terrorism.[30] However, this additional regulation only represents a model for improvement, which should be followed by other states.[31] The federal government should collaborate with states, such as New York, to pass similar meaningful and productive legislation to reduce the utilization of financial institutions for purposes of money laundering and the financing of terrorism.[32]

This Note examines in depth the New York Department of Financial Service's recently enacted AML regulation and argues for similar regulations nationwide. Part II of this Note highlights current federal law and regulations relating to AML and the financing of terrorism.[33] Part III discusses the New York Department of Financial Services regulation in its proposed and final form.[34] Part IV analyzes the regulation and highlights the critiques of the proposed regulation, challenges that regulated institutions will face in implementing the regulation, and unintended consequences of the regulation.[35]

28. *See* FRIESEN & FEINBERG, *supra* note 27, at 4 (advising that regulated institutions "should review and, where necessary, enhance its existing programs to ensure that they are reasonably designed and risk-based to meet the NYDFS' requirements").

29. NYDFS Regulation § 504.2; *see infra* Part II.

30. *See* Press Release, New York Department of Financial Services, DFS Issues Final Anti-Terrorism Transaction Monitoring and Filtering Program Regulation (June 30, 2016) [hereinafter NYDFS Anti-Terrorism Legislation Announcement], http://www.dfs.ny.gov/about/press/pr1606301.htm (discussing compliance gaps in the financial regulatory framework that the regulation seeks to close).

31. *See id.* ("'It is time to close the compliance gaps in our financial regulatory framework to shut down money laundering operations and eliminate potential channels that can be exploited by global terrorist networks and other criminal enterprises.'").

32. *See* NYDFS Regulation § 504.1 (indicating that there are shortcomings in financial institutions' compliance with BSA/AML regulations and laws, prompting the need for this regulation).

33. *See infra* Part II.

34. *See infra* Part III.

35. *See infra* Part IV.

II. ANALYSIS OF CURRENT FEDERAL STATUTES AND REGULATIONS

Although originally conceived as an AML law, the BSA has evolved to also encapsulate terrorism financing.[36] The BSA requires financial institutions to maintain records in relation to particular transactions, as well as customer information, and regulates the disclosure of those records for assistance in law enforcement efforts.[37] The purpose of the BSA is to ensure financial institutions maintain appropriate types of records "where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings" or "in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."[38] The USA Patriot Act amended and expanded the BSA after the September 11, 2001 terrorist attacks on the World Trade Center to include the language on intelligence, counterintelligence, and international terrorism.[39]

Two reports through which covered institutions fulfill these requirements include CTRs and SARs.[40] These reports are filed with the Financial Crimes Enforcement Network ("FinCEN"), the agency tasked with supervising and enforcing the provisions of the BSA.[41] A CTR is used to report any "currency transaction" over $10,000, for which the bank must obtain identification information of the person attempting to conduct the transaction.[42] "Currency transaction" is defined as "any transaction involving the physical transfer of currency from one person to another and covers deposits, withdrawals,

36. *See* Bank Secrecy Act § 101, 12 U.S.C. § 1829b(a)(1)(A) (2015) ("[S]uch records may have in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism . . . .").

37. 12 U.S.C. § 1829b(a)(2); *see also* BSA MANUAL, *supra* note 15, § 8.1, at 1 ("The purpose of the BSA is to require United States (U.S.) financial institutions to maintain appropriate records and file certain reports involving currency transactions and a financial institution's customer relationships.").

38. 12 U.S.C. § 1829b(a)(2).

39. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act"), 50 U.S.C. § 1816(a) (2015).

40. BSA MANUAL, *supra* note 15, § 8.1, at 1.

41. BSA MANUAL, *supra* note 15, § 8.1, at 2. FinCEN, originally created in 1990, was made a separate bureau within the Department of the Treasury in the USA PATRIOT Act. *Financial Crimes Enforcement Network*, U.S. DEPARTMENT OF THE TREASURY, https://www.treasury.gov/about/history/Pages/fincen.aspx (last visited Jan. 25, 2017).

42. 31 C.F.R. § 1010.311 (2016).

exchanges, or transfers of currency or other payments."[43] A SAR is used to report a transaction under various circumstances, including: (1) insider abuse involving any amount; (2) violations aggregating $5,000 or more where a suspect can be identified; (3) violations aggregating $25,000 or more regardless of potential suspects; and (4) transactions aggregating $5,000 or more that involve potential money laundering or violate the BSA.[44] A transaction can involve, but is not limited to, a deposit; withdrawal; transfer between accounts; exchange of currency; extension of credit; sale of a stock, bond, certificate of deposit, or other monetary instrument or investment security; or any other payment, transfer, or delivery by, through, or to a bank.[45] Records that are filed under the BSA must be maintained for five years.[46] Once a CTR or SAR has been filed, a financial institution is not permitted to notify its customer.[47] FinCEN receives all CTRs and SARs and coordinates enforcement among various federal agencies, as they do not have any independent enforcement authority.[48]

Since the passage of BSA, it has been expanded and strengthened through multiple pieces of legislation[49] including the

43. BSA MANUAL, *supra* note 15, § 8.1, at 1. "Currency" is defined as "currency and coin of the U.S. or any other country as long as it is customarily accepted as money in the country of issue; and a cashier's check . . ., bank draft, traveler's check, or money order having a face amount of not more than $10,000." 31 C.F.R. § 1010.330(c)(1).

44. 12 C.F.R. § 21.11(c)(1)–(4).

45. 31 C.F.R. § 1010.100(bbb)(1).

46. 31 C.F.R. § 1010.306(a)(2).

47. 31 U.S.C. § 5318(g)(2).

48. BSA MANUAL, *supra* note 15, § 8.1, at 2.

49. More recently, in a continued effort to increase protections against money laundering and the financing of terrorism, the House of Representatives Task Force to Investigate Terrorism Financing has recently proposed five pieces of legislation to further the effort to combat money laundering and the financing of terrorism. Press Release, U.S. Representative Stephen Lynch (D-MA), Terrorist Financing Task Force Introduces Counterterrorism Strategy (June 29, 2016), http://lynch.house.gov/press-release/terrorist-financing-task-force-introduces-counterterrorism-strategy. These pieces of legislation include H.R. 5594, H.R. 5607, H.R. 5603, H.R. 5602, and H.R. 5606. *Id.* These bills would, among other goals, increase the power of the Treasury by authorizing the Secretary of the Treasury to combat money laundering and the financing of terrorism. *Id.* Stephen Lynch is a ranking member of the House of Representatives Terrorist Financing Task Force, a task force created by the Financial Services Committee. *Id.* The Task Force was created in 2015 and is charged with investigating how terrorist organizations utilize the global financial system to finance their activities and passing legislation to combat those efforts. *See* Press Release, Fin. Servs. Comm., U.S. House of Representatives, Committee to Create Bipartisan Task Force to Investigate Terrorist Financing (March 19, 2015), http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=398815.

Money Laundering Control Act of 1986 and the Annuzio-Wylie Anti-Money Laundering Act of 1992.[50] The Money Laundering Control Act criminalized money laundering by individuals as well as the facilitation of money laundering by financial institutions.[51] The Anunzio-Wylie Anti-Money Laundering Act required each financial institution to establish anti-money laundering programs, which were to include, at a minimum: "(1) the development of internal policies, procedures, and controls; (2) the designation of a compliance offer; (3) an ongoing employee training program; and (3) an independent audit function to test programs."[52]

III. NEW YORK DEPARTMENT OF FINANCIAL SERVICES REGULATION 504

A. Background of New York Proposed Regulation

In December 2015, Governor Andrew Cuomo announced proposed regulations by the New York Department of Financial Services designed to combat money laundering and the financing of terrorism within New York regulated financial institutions.[53] The purpose of the proposed regulation was to fill gaps in the current regulatory scheme promulgated by the current BSA/AML laws and regulations and Office of Foreign Assets Control ("OFAC") requirements.[54] Before proposing this regulation, the New York Department of Financial Services conducted a series of investigations at numerous financial institutions into compliance with current AML laws, sanctions violations, and the impact on terrorist financing.[55] Based on

50. Money Laundering Control Act of 1986 § 1352(a), 18 U.S.C. §§ 1956, 1957 (2015); Annunzio-Wylie Anti-Money Laundering Act of 1992, 31 U.S.C. § 5318(h)(1) (2015).

51. 18 U.S.C. § 1956.

52. 31 U.S.C. § 5318(h)(1).

53. Press Release, New York Department of Financial Services, Governor Cuomo Announces Anti-Terrorism Legislation Requiring Senior Financial Executives to Certify Effectiveness of Anti-Money Laundering Systems (December 1, 2015), http://www.dfs.ny.gov/about/press/pr1512011.htm; *see also* Banking Division Transaction Monitoring and Filtering Program Requirements and Certifications ("Proposed NYDFS Regulation") § 504 (proposed Dec. 1, 2015), http://www.dfs.ny.gov/legal/regulations/proposed/rp504t.pdf (the proposed rule that accompanied the announcement of new regulations by Governor Cuomo).

54. Proposed NYDFS Regulation § 504.1.

55. NYDFS Anti-Terrorism Legislation Announcement, *supra* note 30.

this information, the Department of Financial Services determined that there were "shortcomings" generated by "a lack of robust governance, oversight, and accountability at senior levels."[56] To overcome these shortcomings, the regulation seeks to clarify the requirements of a transaction monitoring program and a watch list filtering program within a regulated institution.[57] It was designed to create a system that can better monitor and detect transactions involving those individuals and organizations on OFAC sanction lists in an effort to ultimately prevent them altogether.[58]

High profile BSA/AML enforcement actions instituted by the New York Department of Financial Services, as well as the federal government, likely contributed to the Department's determination that this regulation was necessary.[59] For example, in March 2015, Commerzbank, a German lender, agreed to pay $1.45 billion to settle allegations of money laundering violations.[60] These allegations involved countless transactions that Commerzbank had made through financial institutions located in the United States involving sanctioned parties, as well as the bank's engagement in practices that prevented the detection of these transactions.[61] In its consent order to Commerzbank, the Department stated that:

> [Commerzbank] maintained ineffective compliance procedures relating to due diligence on its foreign branches and its customers, failed to share information about customers or transactions necessary for BSA/AML compliance with the appropriate New York-based compliance personnel, and constructed its monitoring process and tools so as to reduce the number of alerts that would be generated and require further

56. NYDFS Proposed Regulation § 504.1.

57. *Id.*

58. *Id.*

59. *See id.* ("The Department of Financial Services . . . has recently been involved in a number of investigations into compliance by Regulated institutions . . . .").

60. Samuel Rubenfeld and Eyk Henning, *Commerzbank Settles U.S. Allegations of Sanctions, Money-Laundering Violations*, WALL ST. J., http://www.wsj.com/articles/commerzbank-to-settle-u-s-allegations-of-sanctions-and-money-laundering-violations-1426177346 (updated Mar. 12, 2015, 4:00 PM).

61. *Id.*

investigation.[62]

The deficiencies described in the case of Commerzbank, as well as other incidents involving New York-regulated institutions, go to the heart of the shortcomings that the regulation is attempting to remedy, making it more likely that these enforcement actions served as a contributing factor to the adoption of this regulation.[63]

B. The Final Rule

On June 30, 2016, the New York Department of Financial Services issued the final rule ("Final Rule").[64] This rule was passed under the authority granted to the Department of Financial Services under New York Financial Services Law § 302[65] and New York Banking Law §§37(3)[66] and (4).[67] The Final Rule mandates "[r]egulated [i]nstitutions" to (1) maintain a transaction monitoring program, (2) maintain a watch list filtering program, and (3) complete an annual certification to ensure compliance.[68] For purposes of the Final Rule, "regulated institutions" include "bank regulated institutions" and "nonbank regulated institutions."[69] "Bank regulated institutions" include "all banks, trust companies, private bankers, savings banks, and

62. Commerzbank AG, 1 (New York Dep't of Fin. Servs. Mar. 12, 2015) (consent order), http://www.dfs.ny.gov/about/ea/ea150312.pdf.

63. *See id.* at 2 ("Commerzbank failed to maintain sufficient controls, policies, and procedures to ensure compliance with the Bank Secrecy Act and other anti-money laundering laws and regulations ('BSA/AML') of the United States and New York.").

64. Banking Division Transaction Monitoring and Filtering Program Requirements ("NYDFS Regulation") § 504 (effective Jan. 1, 2017), http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp504t.pdf. The regulation, in its final and codified form, is referred to as the "Final Rule." FRIESEN & FEINBERG, *supra* note 27, at 4.

65. N.Y. FIN. SERV. LAW § 302.a (McKinney 2016) ("The Superintendent shall have the power to prescribe . . . rules and regulations and issue orders and guidance involving financial products and services . . . .").

66. N.Y. BANKING LAW § 37(3) (McKinney 2016) ("[T]he superintendent may require any banking organization, licensed lender, licensed casher of checks, licensed mortgage banker, foreign banking corporation licensed by the superintendent o do business in this state, bank holding company and any non-banking subsidiary thereof, corporate affiliate of a corporate banking organization . . . and any non-banking subsidiary of a corporation which is an affiliate of a corporate banking organization . . . to make special reports to him at such times as he may prescribe.").

67. *Id.* § 37(4) ("The superintendent . . . may prescribe the form and contents of all periodical and all special reports.").

68. NYDFS Regulation §§ 504.3–504.4.

69. *Id.* § 504.2(e).

saving and loan associations chartered pursuant to the New York Banking Law" and "all branches and agencies of foreign banking corporations licensed . . . to conduct banking operations in New York."[70] "Nonbank regulated institutions" include "all check cashers and money transmitters licensed" in New York.[71] The Final Rule does not extend regulation to any institution that is not regulated by the New York Department of Financial Services, such as federal savings and loan banks, federal savings banks, or national banks.[72]

The Final Rule took effect on January 1, 2017, with the first compliance certification due on April 15, 2018.[73] As this date is only slightly more than fifteen months after the rule took effect, regulated institutions will have to make swift changes to their systems in order to ensure compliance.[74] For institutions that have been maintaining systems that are deficient under this standard, this may result in significant cost.[75]

The transaction monitoring program, which can be either manual or automated, requires regulated institutions to monitor transactions that have already been completed to ensure compliance with anti-money laundering and BSA regulations.[76] This program must include eight minimum attributes, to the extent applicable:

> (1) be based on the Risk Assessment of the Institution;
> (2) be reviewed and periodically updated at risk-based intervals to take into account and reflect changes to applicable BSA/AML laws, regulations and regulatory

70. *Id.* § 504.2(b).

71. *Id.* § 504.2(d).

72. *Id.* § 504; *see also* CHRISTOPHER L. ALLEN ET AL, ARNOLD & PORTER KAYE SCHOLER LLP, NEW YORK'S FINAL AML RULE AND STRATEGIC ALTERNATIVES (July 12, 2016, 11:47 AM), http://www.arnoldporter.com/en/perspectives/publications/2016/07/new-final-aml-rule-and-strategic-alternatives ("[T]he final rule does not apply to bank and nonbank institutions not already subject to the supervision of the DFS, such as national banks, federal savings banks, and federal savings and loan associations chartered by the Office of the Comptroller of the Currency or U.S. out-of-state banks with branch officers or other facilities located in New York.").

73. NYDFS Regulation § 504.6.

74. SATISH M. KINI ET AL, DEBEVOISE & PLIMPTON LLP, CLIENT UPDATE: NYDFS ISSUES FINAL ANTI-MONEY AND SANCTIONS RULE 2 (July 6, 2016), http://www.debevoise.com/~/media/files/insights/publications/2016/07/20160706_nydfs_issues_final_anti_money_laundering_and_sanctions_rule.pdf.

75. *Id.*

76. NYDFS Regulation § 504.3(a).

> warnings, as well as any other information determined by the institution to be relevant from the institution's related programs and initiatives; (3) appropriately match BSA/AML risks to the institution's businesses, products, services, and customers/counterparties; (4) BSA/AML detection scenarios with threshold values and amounts designed to detect potential money laundering or other suspicious or illegal activities; (5) end-to-end, pre- and post-implementation testing of the Transaction Monitoring Program, including, as relevant, a review of governance, data mapping, transaction coding, detection scenario logic, model validation, data input and Program output; (6) documentation that articulates the institution's current detection scenarios and the underlying assumptions, parameters, and thresholds; (7) protocols setting forth how alerts generated by the Transaction Monitoring Program will be investigated, the process for deciding which alerts will result in a filing or other action, the operating areas and individuals responsible for making such a decision, and how the investigative and decision-making process will be documented; and (8) be subject to an on-going analysis to assess the continued relevancy of the detection scenarios, the underlying rules, threshold values, parameters, and assumptions.[77]

This program allows institutions to determine whether the reporting of a particular transaction is necessary within the BSA/AML framework.[78]

The second requirement, the watch list filtering program, requires regulated institutions to monitor transactions before they are completed to ensure compliance with AML and BSA regulations.[79] This program requires regulated institutions to "interdict," or intercept, transactions made by individuals and entities that are prohibited from making such transactions by financial authorities such as the OFAC.[80]

77. *Id.* § 504.3(a).
78. *Id.* § 504.2 (defining "transaction monitoring program").
79. *Id.* § 504.3(b).
80. *Id.*

The OFAC works to enforce economic sanctions against targeted foreign countries, individuals, entities, and practices to further U.S. foreign policy and national security objectives.[81] It maintains and publishes sanctions lists of "individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries."[82] It also maintains and publishes non-country specific lists that detail individuals, groups, or entities such as terrorist groups, with whom United States citizens or permanent residents are not allowed to engage in transactions.[83] The Final Rule seeks to further these objectives by providing guidance on how to maintain a transaction monitoring program and a watch list filtering program that prevents transactions with these sanctioned entities, groups, or individuals.[84]

The watch list filtering program must meet five minimum attributes, to the extent applicable.[85] It must:

> (1) be based on the Risk Assessment of the institution; (2) be based on technology, processes or tools for matching names and accounts, in each case based on the institution's particular risks, transaction and product profiles; (3) include end-to-end, pre- and post-implementation testing of the Filtering Program, including, as relevant, a review of data matching, an evaluation of whether the OFAC sanctions list and threshold settings map to the risks of the institution, the logic of matching technology or tools, model validation, and data input and Program output; (4) be subject to on-going analysis to assess the logic and performance of the technology or tools for matching names and accounts, as well as the OFAC sanctions list and the threshold

81. FED. DEPOSIT INS. CORP., BANK SECRECY ACT, ANTI-MONEY LAUNDERING, AND OFFICE OF FOREIGN ASSETS CONTROL, https://www.fdic.gov/regulations/resources/director/virtual/bsa.pdf.

82. *See Office of Foreign Assets Control – Sanctions Programs and Information*, U.S. DEP'T OF TREASURY, https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx (last visited Nov. 9, 2016) (containing information on the sanctions lists and allowing users to simultaneously search all the lists).

83. *Id.*

84. *See* NYDFS Regulation § 504.3(b) (requiring that programs be "reasonably designed for the purpose of interdicting transactions that are prohibited by OFAC").

85. *Id.*

> settings to see if they continue to map to the risks of the institution; and (5) documentation that articulates the intent and design of the Filtering Program tools, processes, or technology.[86]

In addition to the specific requirements of each program, both the transaction monitoring and watch list filtering programs must require, to the extent applicable:

> (1) identification of all the data sources that contain relevant data; (2) validation of the integrity, accuracy and quality of data to ensure that accurate and complete data flows through the Transaction Monitoring and Filtering Program; (3) data extraction and loading processes to ensure a complete and accurate transfer of data from its source to automated monitoring and filtering systems, if automated systems are used; (4) governance and management oversight, including policies and procedures governing changes to the Transaction Monitoring and Filtering Program to ensure that changes are defined, managed, controlled, reported, and audited; (5) vendor selection process if a third party vendor is used to acquire, install, implement, or test the Transaction Monitoring and Filtering Program or any aspect of it; (6) funding to design, implement and maintain a Transaction Monitoring and Filtering Program that complies with the requirements of this Part; (7) qualified personnel or outside consultant(s) responsible for the design, planning, implementation, operation, testing, validation, and on-going analysis, of the Transaction Monitoring and Filtering Program, including automated systems if applicable, as well as case management, review and design making with respect to generated alerts and potential filings; and (8) periodic training of all stakeholders with respect to the

86. Id.

Transaction Monitoring and Filtering Program.[87]

Together, the transaction monitoring and filtering programs are intended to prevent or interdict illegal or suspect transactions.[88]

The third requirement, the annual certification, requires that regulated financial institutions complete an Annual Board Resolution or Senior Officer(s) Compliance Finding, due by April fifteenth of each year to the Superintendent of the New York Department of Financial Services, stating that the bank is complying with the regulation.[89] Under the proposed rule, this requirement was controversial because the filing of an incorrect or false certification statement could have resulted in criminal penalties for the "Certifying Senior Officer" of the bank.[90] In the Final Rule, the Department of Financial Services removed the possibility of criminal penalties against the filing officer.[91] Instead, the "regulation will be enforced pursuant to, and is not intended to limit, the Superintendent's authority under any applicable laws," meaning the Superintendent can take any measures allowable under currently existing laws to enforce the regulation.[92]

IV. ANALYSIS OF THE NEW YORK REGULATION

Adopting regulations to combat money laundering by state-chartered banks strengthens the existing regulatory structure enacted to prevent the financing of terrorism.[93] The federal government has traditionally regulated financial institutions in regards to AML measures.[94] Federal regulations apply to all financial institutions,

87. *Id.* § 504.3(c).

88. *See id.* § 504.1 (describing the ultimate goals of the increased regulations).

89. *Id.* § 504.4.

90. Banking Division Transaction Monitoring and Filtering Program Requirements and Certifications ("Proposed NYDFS Regulation) § 504.5 (proposed Dec. 1, 2015), http://www.dfs.ny.gov/legal/regulations/proposed/rp504t.pdf ("A Certifying Senior Officer who files an incorrect or false Annual Certification also may be subject to criminal penalties for such filing.").

91. *See* NYDFS Regulation § 504.5 ("This regulation will be enforced pursuant to, and is not intended to limit, the Superintendent's authority under any applicable laws.").

92. *Id.*

93. MICHAEL T. GERSHBERG, STEVEN M. WITZEL & JUSTIN A. SCHENCK, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP, NEW YORK DEPARTMENT OF FINANCIAL SERVICES PROPOSED RULE TO INCREASE AML AND SANCTIONS COMPLIANCE REQUIREMENTS (Mar. 28, 2016), http://documents.lexology.com/86410726-7cb6-4de1-9ad9-dc1c19e5db24.pdf.

94. *See* BSA MANUAL, *supra* note 15, § 8.1, at 1–48 (describing the federal BSA/AML

regardless of whether their charter comes from the federal government, state government, or a foreign government.[95] Although state banks and other nonbank financial institutions are typically smaller in asset size and can more easily monitor transactions and detect suspicious activity, their vulnerability to money laundering remains high.[96] The Final Rule is intended to fill the gaps left in the regulatory scheme that allow this vulnerability.[97] It was not enacted without analysis, commentary, and criticism, however.[98] Additionally, the Final Rule presents many challenges for regulated institutions and could result in unintended consequences for the state of New York.[99]

A. Critique of the New York Regulation

Prior to adoption, many experts, including banking groups such as the American Bankers Association, felt the proposed regulation did not align with present federal regulations.[100] These experts believed that the proposed regulation would not hinder terrorist efforts to move money through the financial system because the regulation will often be inconsistent with federal regulations.[101] In the opinion of the New York Bankers Association, "the proposal w[ould] layer duplicative and sometimes inconsistent requirements over an already comprehensive set of federal rules."[102]

regulatory structure).

95. Suzanne Barlyn, *Bank Groups Pan Proposed New York Rules to Prevent Illicit Financing*, REUTERS (Apr. 1, 2016, 12:31 PM), http://www.reuters.com/article/new-york-moneylaundering-rules-idUSL2N17417D.

96. *See* FATF, EMERGING TERRORIST FINANCING RISKS, *supra* note 12, at 21 ("The sheer size and scope of the international financial sector gives terrorist groups and financiers the opportunity to blend in with normal financial activity to avoid attracting attention.").

97. *See* NYDFS Anti-Terrorism Legislation Announcement, *supra* note 30 ("It is time to close the compliance gaps in our financial regulatory framework to shut down money laundering operations and eliminate potential channels that can be exploited by global terrorist networks and other criminal enterprises.").

98. *See Barlyn*, *supra* note 95 (discussing the criticism that various banking groups gave about the proposed rule).

99. *See* ALLEN ET AL, *supra* note 72 (discussing "strategic alternatives" banks can act upon to avoid compliance with the final rule).

100. Barlyn, *supra* note 95.

101. Barlyn, *supra* note 95.

102. Barlyn, *supra* note 95. The American Bankers Association also felt that the proposed rule would create inconsistent regulations and lead to a decrease in effectiveness of the Regulations. Barlyn, *supra* note 95. To view the comment submitted by the President and CEO of the American Bankers Association, go to http://www.aba.com/

The New York Department of Financial Services, as a result, adjusted the Final Rule to reflect many of these objections.[103] Most notably, the criminal liability provision for compliance officers was removed from the regulation, although under existing law bank officials may still be criminally liable as a result of submitting false reports.[104] An interesting consideration in regards to this regulation is whether criminal penalties will still be pursued for violations of this regulation.[105] While the Final Rule does not specifically call for criminal liability as the proposed rule did, New York state law still allows for criminal liability, inter alia, for offering a false instrument for filing and failing to maintain accurate books and records.[106] There is no doubt that the Department of Financial Services possesses the ability to bring criminal charges, but whether they will exercise that ability to enforce the regulation remains to be seen.[107] Regardless, these state laws are important tools that the New York Department of Financial Services can utilize if abuse of the regulation occurs.[108]

B. Challenges in Implementing the New York Regulation

The Final Rule presents numerous challenges for covered institutions, but the legislation is an essential step towards offering better protection to New York financial institutions and the greater financial system from money laundering.[109] This in turn can have a positive effect on reducing terrorist financing.[110] One challenge that

Advocacy/commentletters/Documents/cl-NYDFS-TransactionMonitoring2016.pdf.

103. KINI ET AL, *supra* note 74, at 1–2.

104. DAVIS POLK & WARDWELL LLP, CLIENT MEMORANDUM: NYDFS ISSUES FINAL RULE ON TRANSACTION MONITORING AND FILTERING PROGRAMS FOR REGULATED INSTITUTIONS 5 (July 22, 2016) [hereinafter DAVIS POLK], https://www.davispolk.com/sites/default/files/NYDFS.Final_.Transaction.Monitoring.7.22.16.pdf.

105. *See id.* ("It is still possible to be criminally liable for violations of the Final Rule under existing New York banking and penal laws . . . .").

106. *See* N.Y. PENAL LAW §§ 175.10 (McKinney 2016) (Falsifying Business Records), 175.35 (Offering False Instrument for Filing); N.Y. BANKING LAW § 672.1 (McKinney 2016) (Falsification of Books and Reports).

107. DAVIS POLK, *supra* note 104, at 5.

108. *See* DAVIS POLK, *supra* note 104, at 5 (stating that it is "still possible to be criminally liable for violations of the Final Rule under existing New York banking and penal laws").

109. *See* KINI ET AL, *supra* note 74, at 4–5 (describing the difficulties that covered institutions will face in implementing the regulations).

110. Barlyn, *supra* note 95.

covered institutions will face is the short time frame available for implementation.[111] The Final Rule became effective on January 1, 2017, and the first compliance finding is due April 15, 2018, so institutions must act quickly to implement the transaction monitoring and watch list filtering programs.[112] While some institutions, particularly larger ones, already have similar programs in place, they will surely have to go further in their efforts.[113] Based on the findings by the Department of Financial Services prior to proposing this regulation, these programs were inadequate and ineffective in preventing these transactions from taking place.[114] With the implementation of these programs, particularly in institutions that do not already have them in place, comes a large cost.[115] To implement these programs, institutions will be forced to run risk assessments and determine whether or not their present programs comply with the regulation.[116] If the institution determines that their systems are not sufficient then they will have to spend additional money implementing these programs prior to the first compliance finding due date.[117]

Another hurdle that covered institutions will have to contend with is the ambiguous language of the Final Rule.[118] The Final Rule

111. KINI ET AL, *supra* note 74, at 4.

112. KINI ET AL, *supra* note 74, at 2. In May of 2016, the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") passed legislation that expanded requirements for customer due diligence, which covered institutions will have to implement in addition to the Final Rule. Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016) (to be codified at 31 C.F.R. pts. 1010, 1020, 1023, 1024, and 1026); SATISH M. KINI ET AL., DEBEVOISE & PLIMPTON LLP, CLIENT UPDATE: FINCEN ISSUES NEW RULE REQUIRING IDENTIFICATION OF BENEFICIAL OWNERS AND RISK-BASED CUSTOMER DUE DILIGENCE 1 (May 16, 2016), http://www.debevoise.com/~/media/files/insights/publications/2016/05/20160516b_fincen_issues_new_rule_requiring_identification_of_beneficial_owners_and_risk_based_customers_due_diligence.pdf.

113. *See* FRIESEN & FEINBERG, *supra* note 27, at 4 ("[E]ach regulated institution should review and, where necessary, enhance its existing programs to ensure that they are reasonably designed and risk-based to meet the NYDFS' requirements.").

114. *See* Banking Division Transaction Monitoring and Filtering Program Requirements ("NYDFS Regulation") § 504.1 (effective Jan. 1, 2017), http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp504t.pdf ("As a result of these investigations, the Department identified shortcomings in the transaction monitoring and filtering programs of the institutions attributable to a lack of robust governance, oversight, and accountability at senior levels.").

115. KINI ET AL, *supra* note 74, at 4.

116. KINI ET AL, *supra* note 74, at 4.

117. KINI ET AL, *supra* note 74, at 4.

118. KINI ET AL, *supra* note 74, at 4.

contains technical industry language that is not defined in the regulation.[119] While the requirements are fairly well outlined in the Final Rule, implementation will almost certainly look different at each institution and there will not be a "one size fits all" solution.[120] Accordingly, the Department of Financial Services will have to develop a strategy for analyzing compliance of such varying degree.[121]

C. The Unintended Consequences of the New York Regulation

A thought-provoking potential side effect of the regulation is the possibility of a decrease in regulated financial institutions that are chartered or licensed in New York.[122] This regulation has the potential to pose significant costs for some institutions, and at the very least provides significantly more regulation.[123] In addition, there is also the possibility of liability for individuals responsible for certification.[124] The increased costs and regulations, as well as potential liability may drive regulated institutions to consider "strategic alternatives" to avoid having to comply with the regulation, which would dictate that the institution not be under the supervision of the New York Department of Financial Services.[125] To accomplish this, New York state-chartered banks may choose to convert to a nationally chartered bank or relocate to another state and take up charter in its new home state.[126] Additionally, state-licensed nonbank institutions may convert to a

119. KINI ET AL, *supra* note 74, at 4.

120. KINI ET AL, *supra* note 74, at 4.

121. *See* KINI ET AL, *supra* note 74, at 4–5 ("Implementation of these requirements may look different at each institution, and it is not clear how the NYDFS will seek to assess covered institutions' efforts to comply . . . .").

122. *See* ALLEN ET AL, *supra* note 72 (stating that increased compliance measures may lead institutions to seek a different charter or relocate operations to a new geographic area).

123. KINI, ET AL, *supra* note 74, at 4 ("For some institutions, the cost of implementing the required changes may be high.").

124. *See* DAVIS POLK, *supra* note 105, at 5 (indicating that criminal liability is still a possibility for certifying officers under existing New York banking and penal laws); N.Y. Penal Law §§ 175.10 (McKinney 2016) (Falsifying Business Records), 175.35 (Offering False Instrument for Filing); N.Y. Banking Law § 672.1 (McKinney 2016) (Falsification of Books and Reports).

125. *See* ALLEN ET AL, *supra* note 72 (providing alternatives to implementing the increased regulations, including converting to a national bank charter or relocating operations to a new state).

126. *See* ALLEN ET AL, *supra* note 72.

national license.[127] It is entirely possible that this well-meaning regulation could produce unintended negative consequences for New York, including the loss of fee revenue collected from regulated institutions.[128] This is particularly true if the federal government does not adopt a similar regulation nationally, which could result in a significant number of state entities switching their charters or licenses to their national equivalent.[129]

On the other hand, in terms of national policy, New York's increased regulations allow the federal government to observe the effects and consequences of these new requirements, and make a reasoned decision whether similar legislation is necessary or feasible at the federal level.[130] The United States' dual banking system, in which states are intended to be laboratories for experimentation, gives the federal government the benefit of "testing" legislation or regulations before they are adopted on a national level.[131] If this regulation is successful in limiting or preventing money laundering, and as a result, the financing of terrorism, the federal government should pass similar and meaningful legislation to increase regulations.[132]

V. CONCLUSION AND RECOMMENDATION

Through the Final Rule, New York is cracking down on financial institutions in an effort to prevent money laundering and the financing of terrorism.[133] The new regulation enhances the security of the already existing federal BSA/AML laws and clarify the requirements and expectations for financial institutions.[134] Despite the

127. *See* ALLEN ET AL, *supra* note 72.

128. *See* ALLEN ET AL, *supra* note 72.

129. *See* ALLEN ET AL, *supra* note 72.

130. *See* COMPTROLLER OF THE CURRENCY, NATIONAL BANKS AND THE DUAL BANKING SYSTEM 8 (2003), https://www.occ.gov/publications/publications-by-type/other-publications-reports/national-banks-and-the-dual-banking-system.pdf ("[T]he varied powers and regulatory approaches possible in different states enable state systems to serve as laboratories for innovation . . . .").

131. *Id.* at 10.

132. *See id.* at 8–9 (describing the functionality of the state banking systems as laboratories for innovation and change at the federal level).

133. *See* Banking Division Transaction Monitoring and Filtering Program Requirements ("NYDFS Regulation") § 504.5 (effective Jan. 1, 2017), http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp504t.pdf ("This regulation will be enforced pursuant to, and is not intended to limit, the Superintendent's authority under any applicable laws.").

134. *Id.* § 504.1.

costs and difficulties that covered institutions will face during initial implementation, the long-run benefits of the Final Rule will outweigh the short-term drawbacks.[135] Financial institutions, particularly large institutions, conduct such a high volume of transactions on a daily basis that without effective monitoring programs, suspect transactions can slip through the cracks.[136] New York has taken existing regulations and expanded them to further protect the financial system through its regulated institutions, including state-chartered banks.[137]

It is now incumbent on the federal government to follow the example set by the state of New York and increase regulation for nationally chartered banks.[138] High profile enforcement actions against institutions such as JP Morgan Chase and Citigroup in recent years have suggested that the current BSA/AML regulations are not stringent enough to adequately protect our financial system from the consequential vices that necessitate enforcement actions.[139] The unintended consequences of this regulation that may result, namely the state to federal charter flip, highlight the necessity of Congress adopting a similar regulation at the federal level.[140] If this regulation were passed on a national level, it would circumscribe any attempt for an institution to avoid compliance by seeking a national charter or license.[141]

Although nationally chartered banks are already subject to a substantial amount of regulation, they house a significant portion of the nation's assets and play an integral role in the global economy.[142] If

135. *See id.* (seeking to clarify the requirements for financial institutions to reduce shortcomings and improve the systems for greater effectiveness).

136. *See* FATF, TERRORIST FINANCING RISKS, *supra* note 12, at 21 ("[T]errorism financing through the banking sector is often small-scale and can be difficult to distinguish from the large number of legitimate financial transactions undertaken each day.").

137. *See* NYDFS Regulation § 504.1 (clarifying transaction monitoring and watch list filtering program requirements and adding an annual certification requirement).

138. *See* NYDFS Anti-Terrorism Legislation Announcement, *supra* note 30 (describing the increased regulations that will close gaps in the current regulatory scheme).

139. *See generally* Jill Schlesinger, *JPMorgan Chase: Bank Faces Major Regulatory Action*, CBS: MONEYWATCH (Jan. 11, 2013, 8:03 AM), http://www.cbsnews.com/news/jpmorgan-chase-bank-faces-major-regulatory-action/ (describing the enforcement action JP Morgan Chase faced in relation to it's AML and compliance programs and noting other major AML enforcement actions).

140. *See* ALLEN ET AL, *supra* note 72 (describing steps that covered institutions can take to avoid compliance with the regulations, including adopting a national charter).

141. ALLEN ET AL, *supra* note 72.

142. *See Large Commercial Banks, Federal Reserve Statistical Release*, FED. RESERVE BD., https://www.federalreserve.gov/releases/lbr/current/ (updated June 30, 2016) (ranking the largest commercial banks in the United States by consolidated assets and indicating what

efforts to hinder exploitation of the financial system to aid money laundering and the financing of terrorism are to be successful, regulations must be stricter in these areas.[143] The federal government must work in conjunction with states, such as New York, to ensure that its regulations are sufficient and do not provide conflicting requirements that place an ever-growing demand on financial institutions.[144] If the existing regulatory structure stays intact as is, an infinite number of transactions will remain undiscovered, as they do today, and the prevalence of terrorism will not decrease.[145] This regulation has effects that reach beyond the state of New York, and money laundering does not happen there exclusively.[146] For this or similar regulations to be effective, their mandates must be implemented across all state and federal jurisdictions.[147]

ROY G. DIXON III*

charter the bank holds).

143. *See* NYDFS Anti-Terrorism Legislation Announcement, *supra* note 30 ("It is time to close the compliance gaps in our financial regulatory framework to shut down money laundering operations and eliminate potential channels that can be exploited by global terrorist networks and other criminal enterprises.").

144. NYDFS Anti-Terrorism Legislation Announcement, *supra* note 30.

145. NYDFS Anti-Terrorism Legislation Announcement, *supra* note 30.

146. *See, e.g.*, KEAN & HAMILTON, *supra* note 4 (highlighting the global reach and effects of terrorism).

147. *See* COMPTROLLER OF THE CURRENCY, *supra* note 130, at 8–9 (describing the state banking system as laboratories for change at the national level).

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