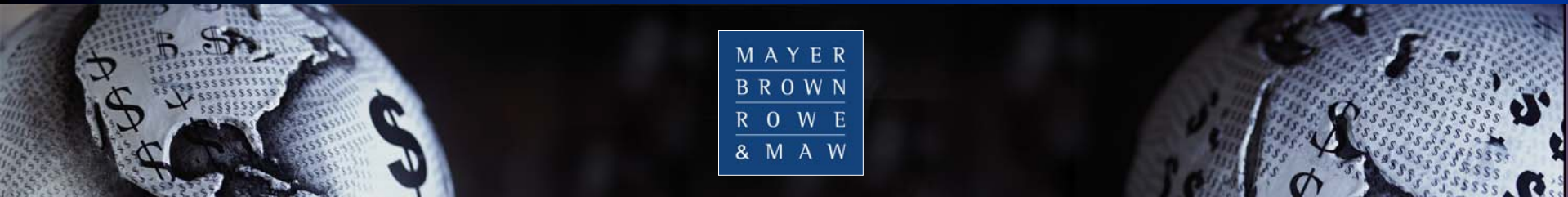


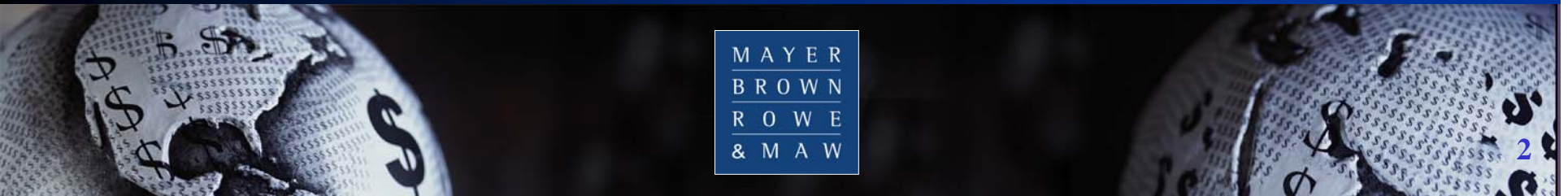
# U.S. Sanctions What's New? What's Next

Wednesday, March 15, 2006



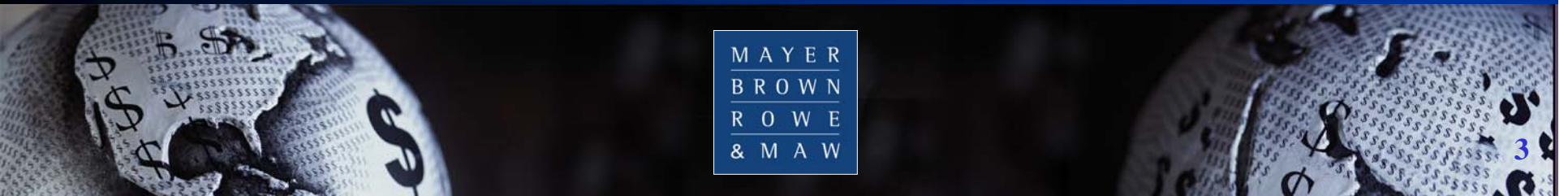
# Potential for New U.N. Sanctions against Iran

Ambassador Richard S. Williamson  
Former U.S. Ambassador to the United Nations Security Council  
Partner, Mayer, Brown, Rowe & Maw LLP  
[rswilliamson@mayerbrownrowe.com](mailto:rswilliamson@mayerbrownrowe.com)  
March 15, 2006



# Where is the E.U. Heading?

Ambassador Günter Burghardt  
Former European Union Ambassador to the United States  
Senior Counsel, Mayer, Brown, Rowe & Maw LLP  
[gburghardt@mayerbrownrowe.com](mailto:gburghardt@mayerbrownrowe.com)  
March 15, 2006



# Dual Use Export Controls

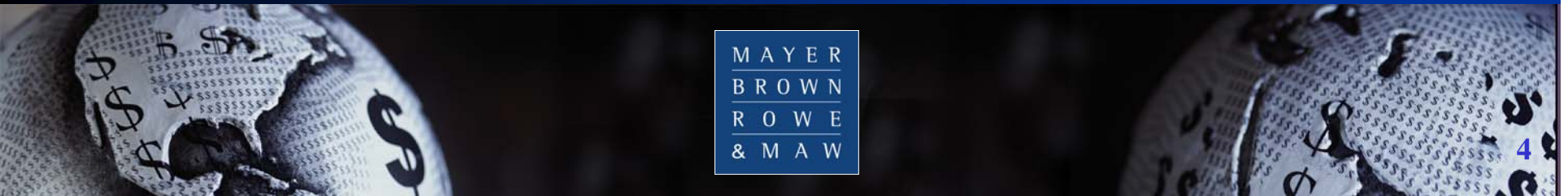
James J. Jochum

Former U.S. Assistant Secretary of Commerce for Export Administration and Import Administration

Partner, Mayer, Brown, Rowe & Maw

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March 15, 2006



# 2005 Policy Developments

- Libya controls liberalized
- Syria controls tightened
- India controls eased



# 2006 Key Issues

- New sanctions on Iran?
- New sanctions on Palestinian Authority?
- Higher penalties for export control violations
- China catch-all controls
- Opening India to nuclear trade
- New control regime for high performance computers

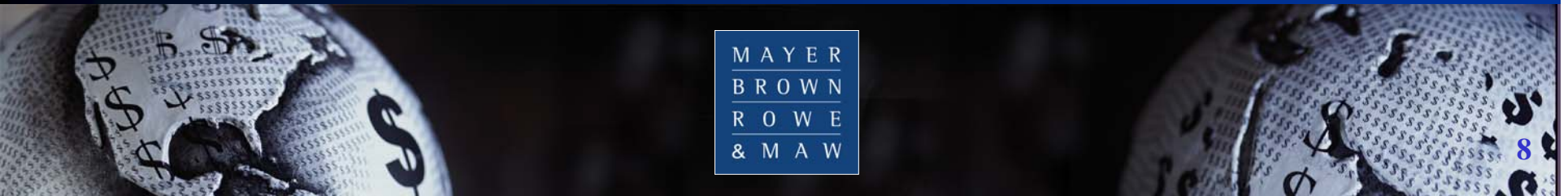


# Enforcement Focus

- Deemed exports: transfers to foreign nationals
- Outsourcing administrative support functions and software development

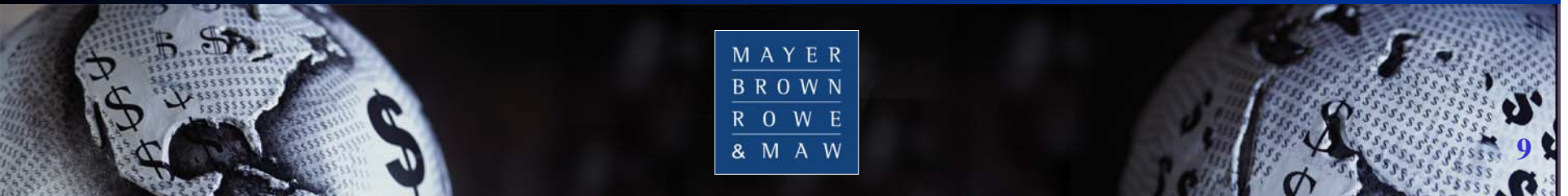
# The New Approach to Sanctions Enforcement

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March 15, 2006



# OFAC's New Approach

- Announced January 2006
- 71 Fed. Reg. 1971 (Jan. 12, 2006)
- Immediately applicable to banks
- Indicative of future enforcement practices with respect to SEC/CFTC-regulated entities and to non-financial sectors (e.g., importers/exporters, software makers, e-commerce)



# Elements of the New Approach

- Emphasis on internal compliance program tailored to entity's risk profile (size, business volume, customer base, product lines)
- Coordination with other regulatory agencies (e.g., the Fed, FDIC, OCC, OTS) in assessing risk and exchanging information on violations

continued ...

# Elements of the New Approach

- Consideration of violations over period of time, taking into account the entity's compliance record, evaluations by other regulatory agencies, and evidence of systemic compliance deficiencies
- Periodic notification of entity by OFAC regarding apparent violations during period of review and proposed enforcement actions

# Elements of Effective Compliance Programs

- Written compliance policy
- Designated implementation responsibility
- Specific compliance measures (e.g., screening procedures, guidelines for U.S. persons, export/re-export controls on U.S. goods/technology)
- Periodic training programs and ready access to legal advice

continued ...

# Elements of Effective Compliance Programs

- Periodic self-certification of compliance
- Maintenance of compliance records
- Application of disciplinary measures
- Periodic internal and external compliance audits

# Key Issues for Parents and Subsidiaries

- All U.S. subs, regardless of ownership, are subject to U.S. sanctions laws
- All non-U.S. subs of U.S. parents are subject to Cuba embargo (but note foreign blocking statutes)
- Non-U.S. parents and subs with U.S. directors or management must prevent their participation in sanctions-related transactions

continued ...

# Key Issues for Parents and Subsidiaries

- U.S. parents must avoid facilitation of foreign subs' sanctions-related transactions, including referral of business, authorization, financing, guaranteeing, or management
- U.S. parents and their subs may not alter policies and procedures to accommodate sanctions-related transactions

# Higher Stakes for Financial Institutions

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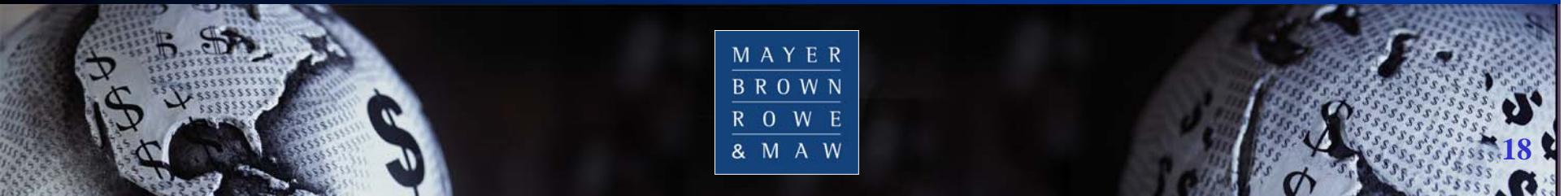
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# Overview

- Increased Coordination Between OFAC and Bank Regulators
  - June 2005 FFIEC BSA/AML Examination Manual
  - January 2006 OFAC Sanctions Procedures for Banking Institutions
- High Profile Enforcement Case Draws Attention to International Operations
  - ABN AMRO
- Trend Toward Adoption of U.S. – Compliant Global Sanctions Policies

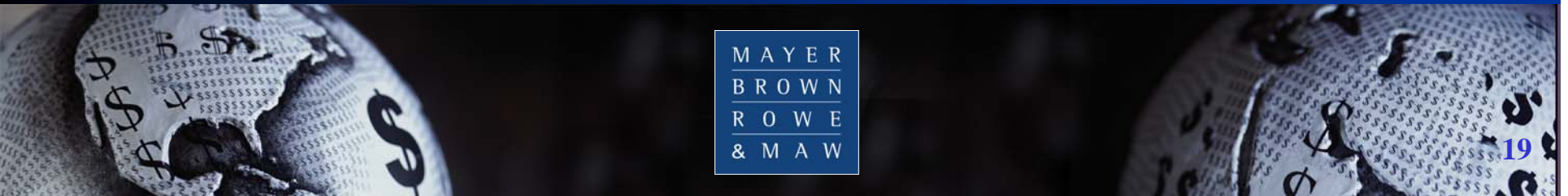
# FFIEC Examination Manual

- OFAC Compliance Program Required
- Risk Based
  - Dependent upon product lines, customer base, nature of transactions and identification of high risk areas
  - Potential High Risk Products
    - International funds transfers
    - Payable through accounts
    - NRA accounts
    - International private banking
    - Cross-border ACH
    - Overseas branches and affiliates
    - Commercial Letters of Credit
    - Transactional electronic banking
    - Foreign correspondent accounts
  - Robust Screening



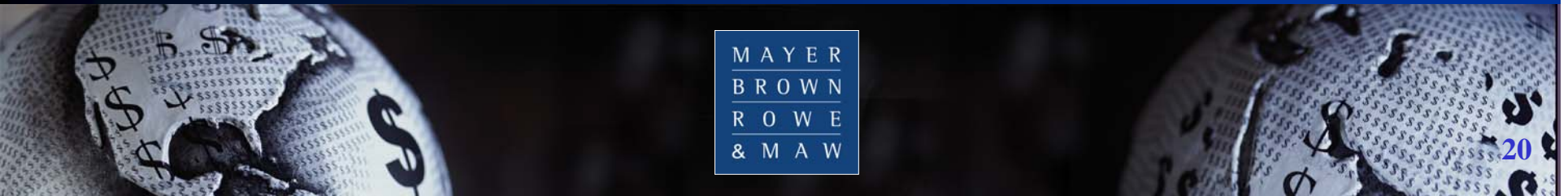
# OFAC Requirements for Banks

- Compliance Program Required
  - Risk Based
- Risk Matrix “Best Practices”
  - Risk fully assessed by management based on customer base and product lines and communicated throughout organization
  - BoD approved program that includes policies, procedures, controls and information systems consistent with risk profiles
  - Staffing levels sufficient to execute program
  - Accountability for OFAC compliance clearly defined and enforced, including designation of a qualified OFAC officer



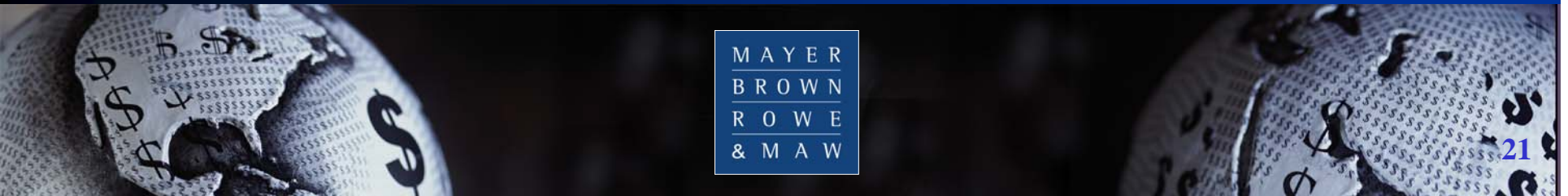
# OFAC Enforcement Procedures

- Factors
  - Nature of Apparent Violations Over Period of Time
    - Egregious violations evaluated in their own context
    - The number of accounts or transactions improperly handled
    - Responses to administrative subpoenas (if any)
    - Number of transactions blocked or rejected
  - History
    - Institution's examination/compliance record
    - Comparison with similarly situated institutions
  - Circumstances Surrounding Apparent Violation
    - Indications of reckless disregard
  - Information Provided by Institution to OFAC
    - Voluntary disclosures not counted as such if another institution also is required to file a report
  - Corrective Measures Taken By Institution
- Coordination with Primary Regulators



# Focus on Global Banks Doing Business in U.S.

- Recognition that OFAC sanctions do not apply to business conducted by foreign banks based outside of U.S.
- Concern that dollar transactions may be structured through U.S. affiliates to avoid U.S. sanctions (e.g., “cover payments”)



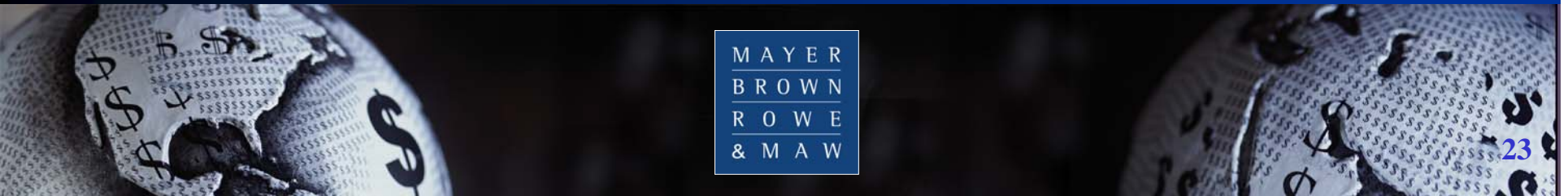
# Focus on Global Banks Doing Business in U.S.

- ABN AMRO
  - Inadequate risk management and legal review procedures
  - Overseas branch developed “special procedures” for funds transfers, check clearing and letters of credit transactions that were designed and used to circumvent OFAC compliance systems in U.S.
  - Many such transactions were permissible (e.g., U-turns) but were conducted in an impermissible way
  - Special procedures should have been reviewed for compliance with U.S. law



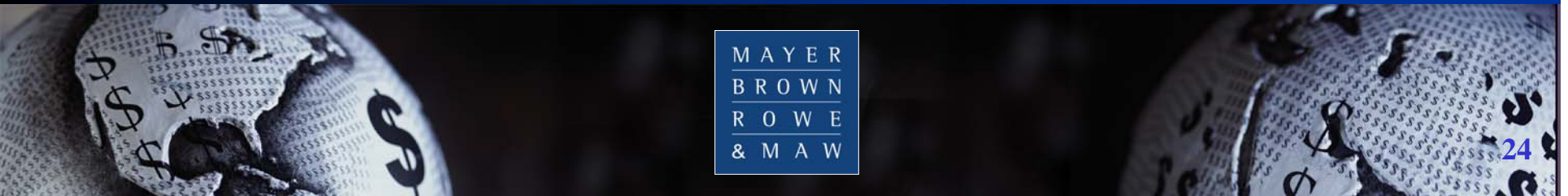
# Filters May Not Provide Adequate Assurance

- Filters effective when transaction parties are identified
- Less effective when parties may not be identified
  - Cover Payments
  - Omnibus Accounts



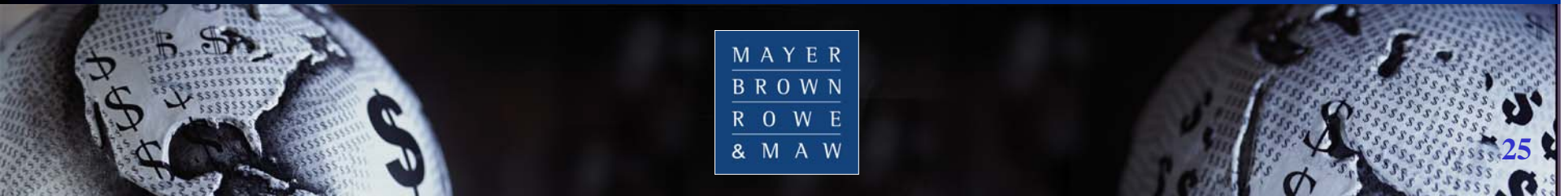
# Adoption of U.S.-Compliant Global Sanctions Policies

- Rather than attempting to insulate U.S. operations alone, foreign banks with U.S. operations moving to global compliance programs
  - Parties subject to U.S. sanctions not served in any jurisdiction, even where legal
  - Recent reports of large banks exiting Iranian business (early exit can have benefits)



# Issues to Watch

- Iran Sanctions
  - Sanctions likely to be heightened
  - U-turns disallowed?
  - Develop exit strategy
- PA Accounts
  - Designation of Palestinian Authority as SDN?
  - Consider exit strategy



# Q&A

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