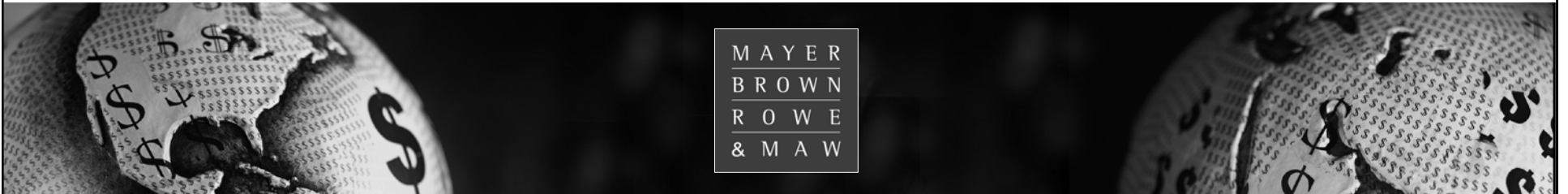


U.S. Sanctions

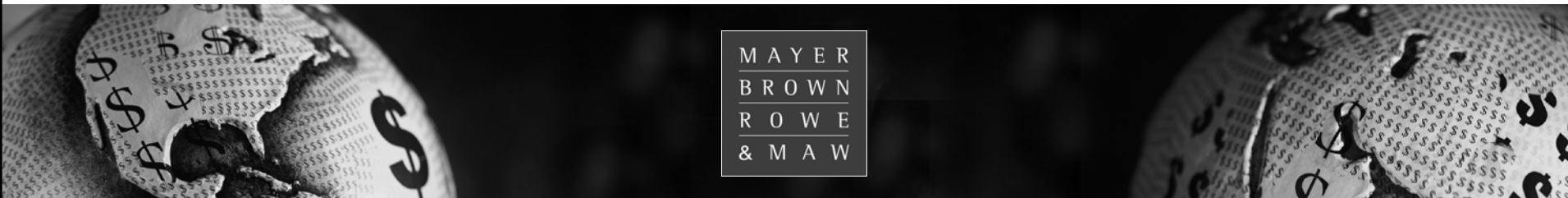
What's New? What's Next

Wednesday, March 15, 2006



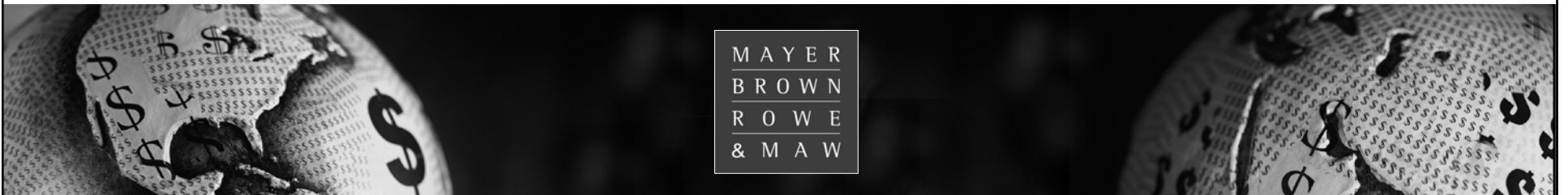
Potential for New U.N. Sanctions against Iran

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



Dual Use Export Controls

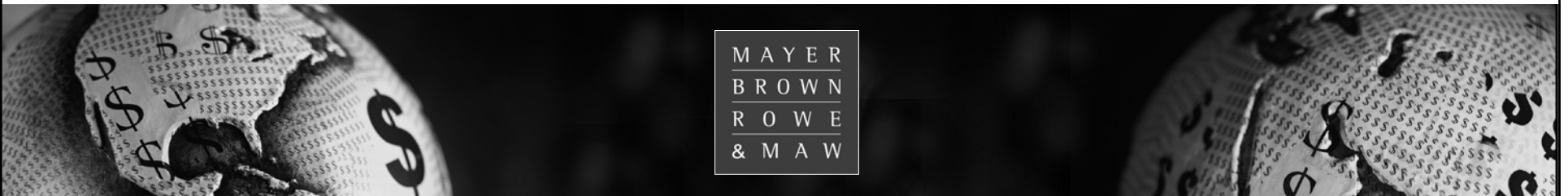
James J. Jochum

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

Partner, Mayer, Brown, Rowe & Maw

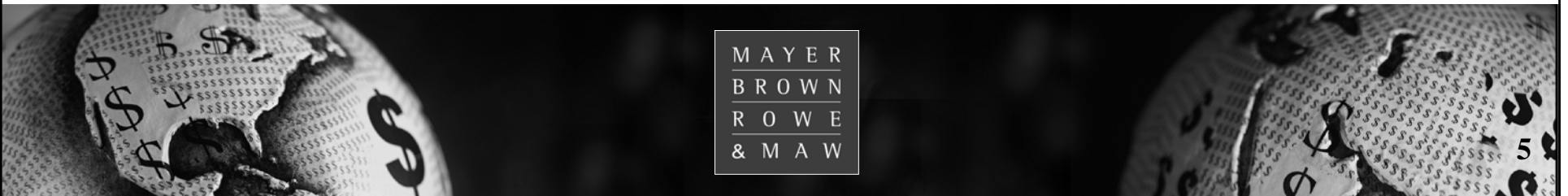
jjochum@mayerbrownrowe.com

March 15, 2006



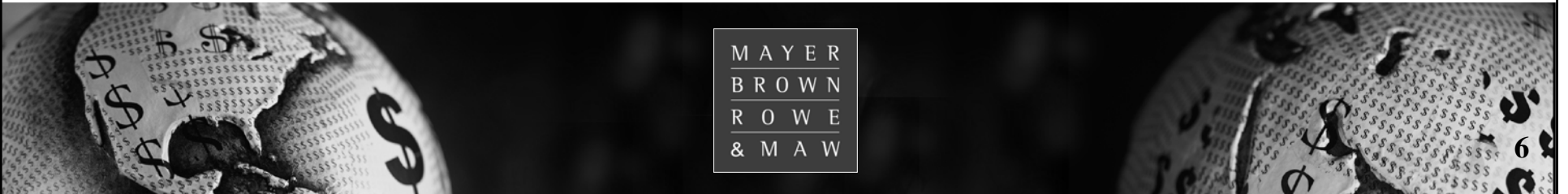
2005 Policy Developments

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



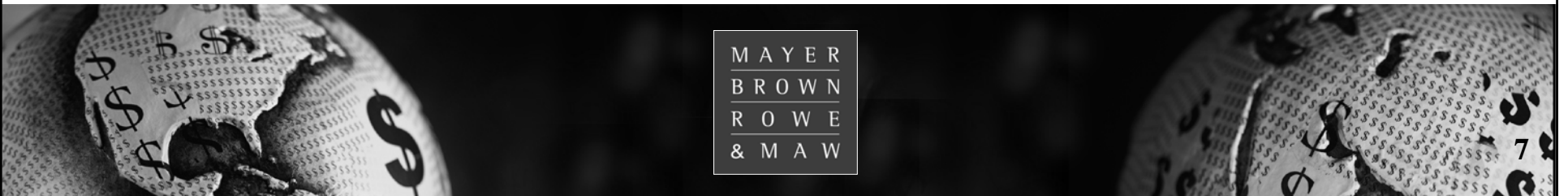
2006 Key Issues

- 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



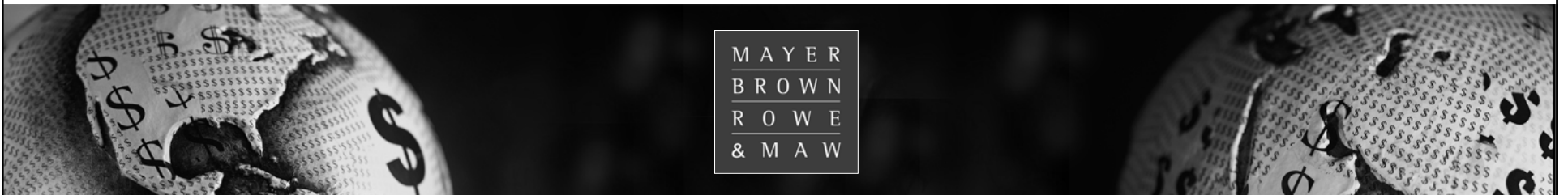
Enforcement Focus

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



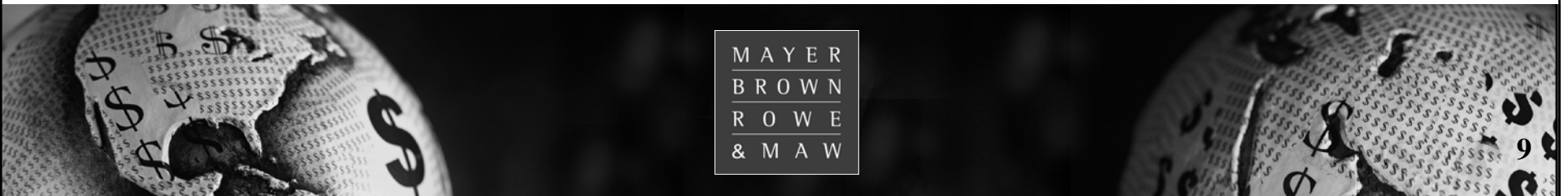
The New Approach to Sanctions Enforcement

Simeon M. Kriesberg
Partner, Mayer, Brown, Rowe & Maw LLP
skriesberg@mayerbrownrowe.com
March 15, 2006



OFAC's New Approach

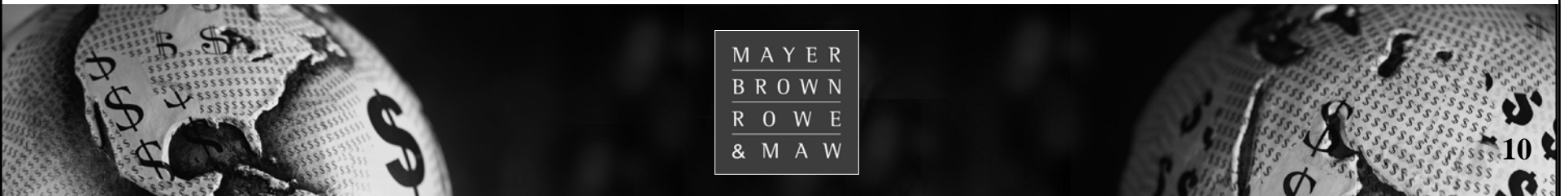
- Announced January 2006
- 71 Fed. Reg. 1971 (Jan. 12, 2006)
- Immediately applicable to banks
- Indicative of future enforcement practices with respect to SEC/CFTC-regulated entities and to non-financial sectors (e.g., importers/exporters, software makers, e-commerce)



Elements of the New Approach

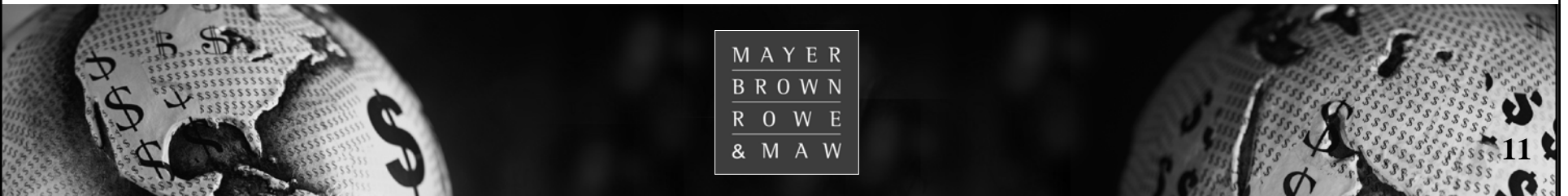
- Emphasis on internal compliance program tailored to entity's risk profile (size, business volume, customer base, product lines)
- Coordination with other regulatory agencies (e.g., the Fed, FDIC, OCC, OTS) in assessing risk and exchanging information on violations

continued ...



Elements of the New Approach

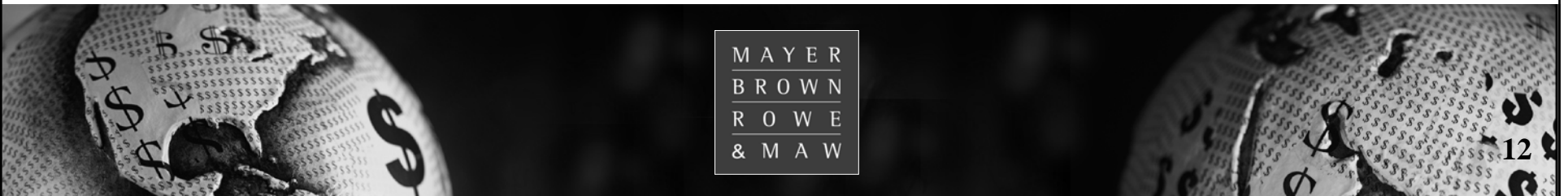
- Consideration of violations over period of time, taking into account the entity's compliance record, evaluations by other regulatory agencies, and evidence of systemic compliance deficiencies
- Periodic notification of entity by OFAC regarding apparent violations during period of review and proposed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



Elements of Effective Compliance Programs

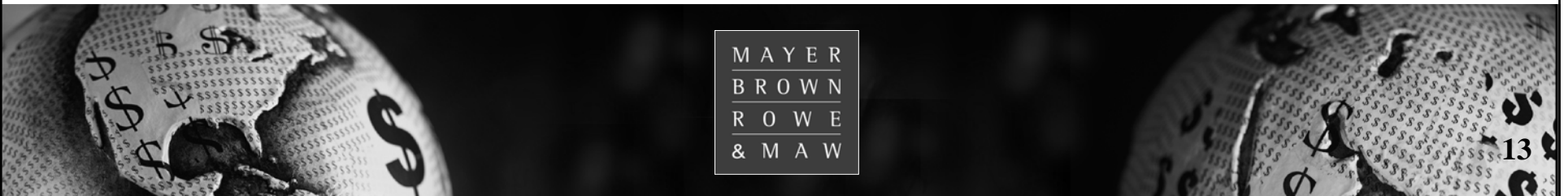
- Written compliance policy
- Designated implementation responsibility
- Specific compliance measures (e.g., screening procedures, guidelines for U.S. persons, export/re-export controls on U.S. goods/technology)
- Periodic training programs and ready access to legal advice

continued ...



Elements of Effective Compliance Programs

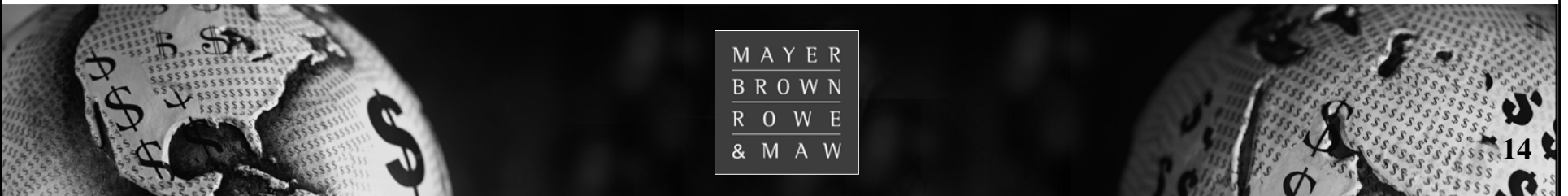
- Periodic self-certification of compliance
- Maintenance of compliance records
- Application of disciplinary measures
- Periodic internal and external compliance audits



Key Issues for Parents and Subsidiaries

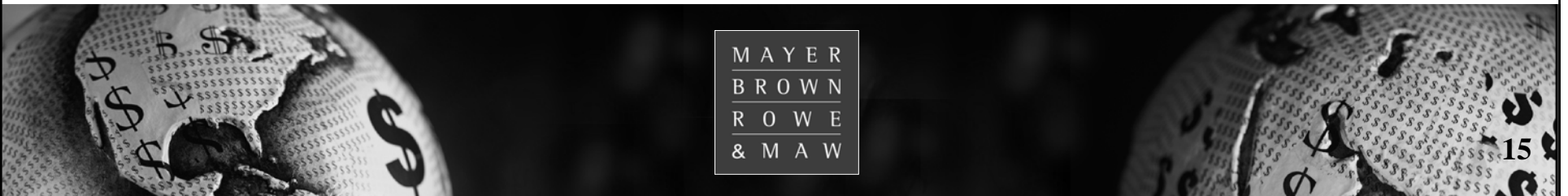
- All U.S. subs, regardless of ownership, are subject to U.S. sanctions laws
- All non-U.S. subs of U.S. parents are subject to Cuba embargo (but note foreign blocking statutes)
- Non-U.S. parents and subs with U.S. directors or management must prevent their participation in sanctions-related transactions

continued ...



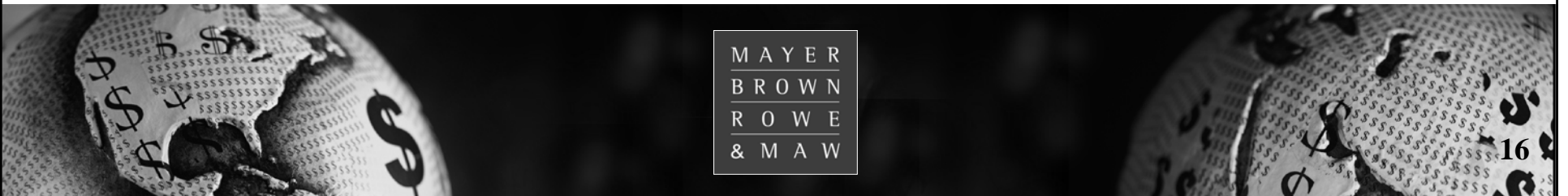
Key Issues for Parents and Subsidiaries

- 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



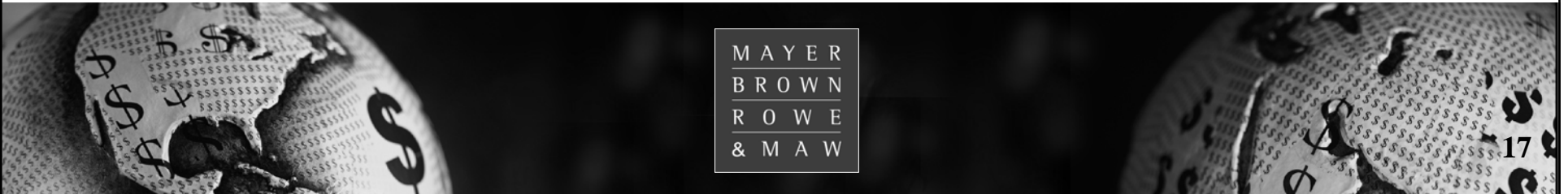
Higher Stakes for Financial Institutions

Thomas J. Delaney
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March 15, 2006



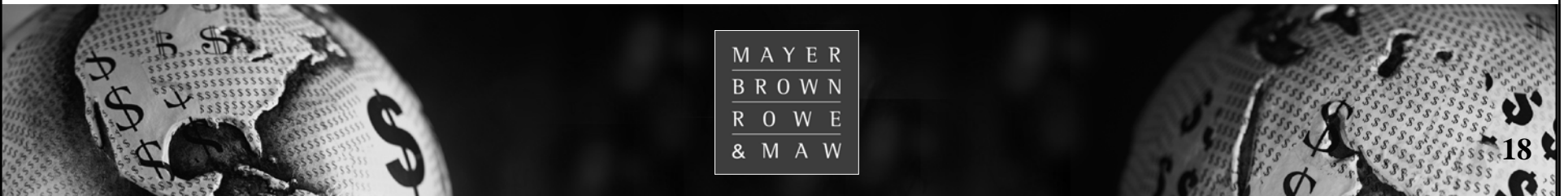
Overview

- 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



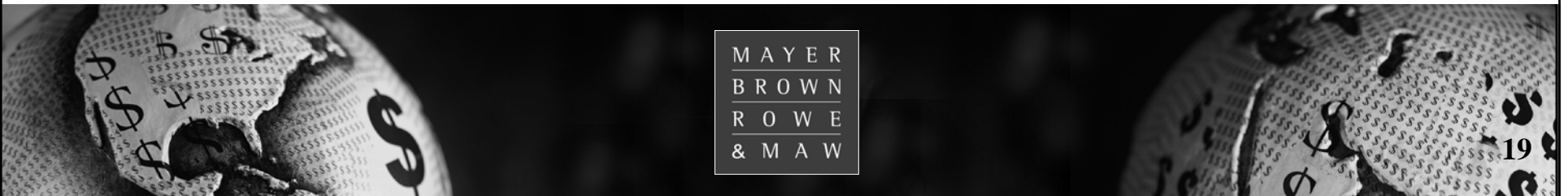
FFIEC Examination Manual

- 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



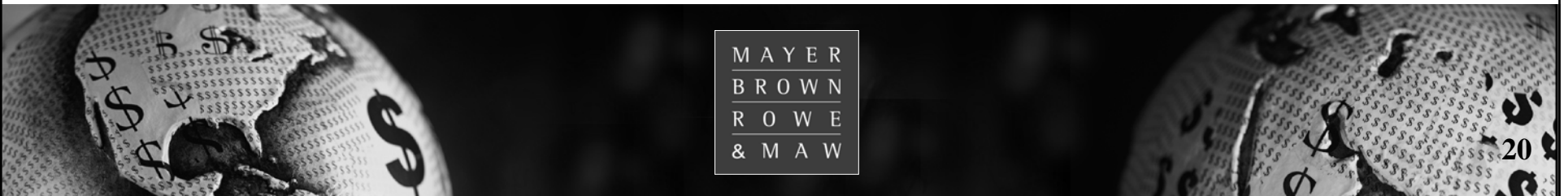
OFAC Requirements for Banks

- 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



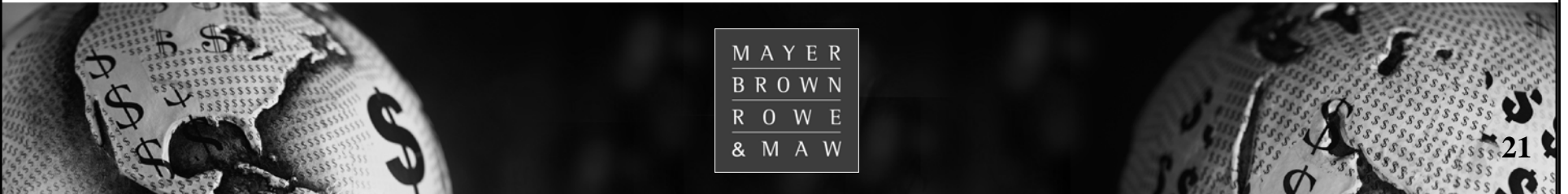
OFAC Enforcement Procedures

- 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



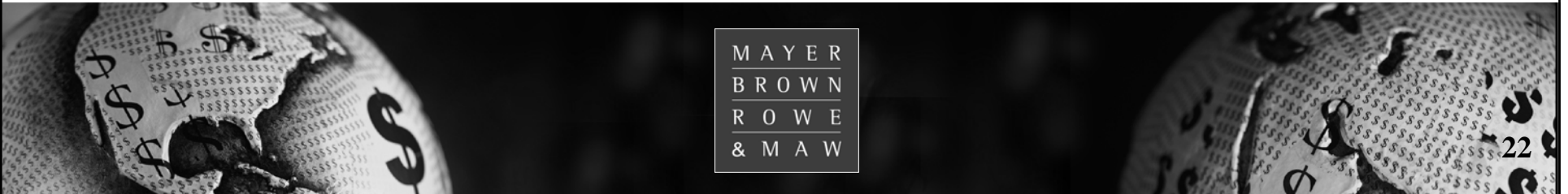
Focus on Global Banks Doing Business in U.S.

- 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”)



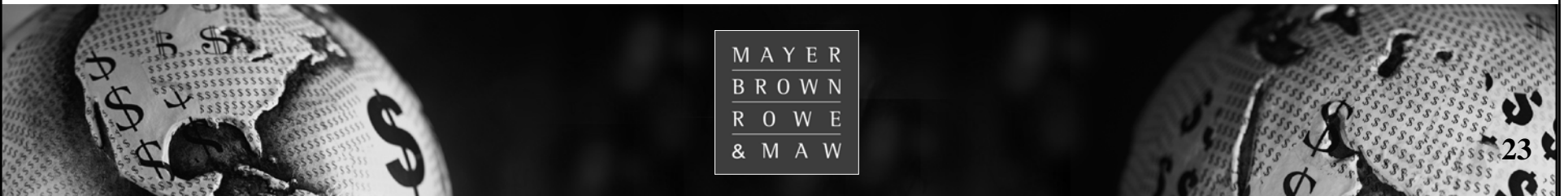
Focus on Global Banks Doing Business in U.S.

- 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



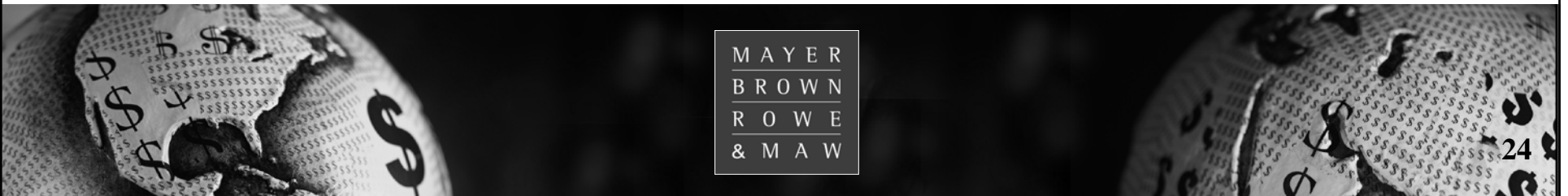
Filters May Not Provide Adequate Assurance

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



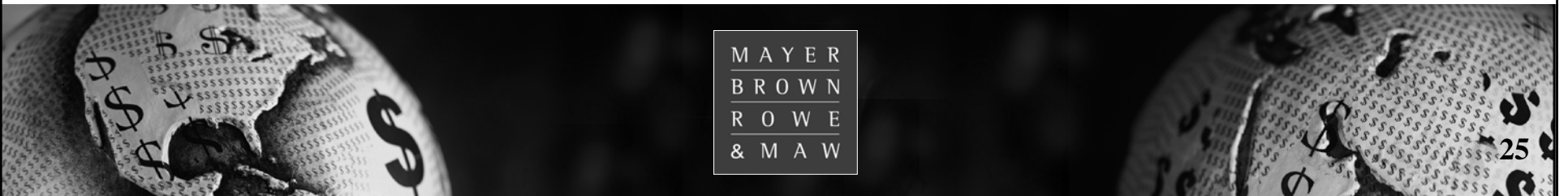
Adoption of U.S.-Compliant Global Sanctions Policies

- 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

