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# NYDFS Issues FAQs on its New AML Regulation

Advisory

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The New York Department of Financial Services (DFS) recently issued frequently asked questions (FAQs) relating to its new anti-money laundering (AML) rule (Part 504), which became effective on January 1, 2017 and requires submission of the first annual certification of compliance to the DFS by April 15, 2018.<sup>1</sup> The FAQs are the first and only formal guidance issued to the banking industry regarding the new regulation.

As [previously discussed](#), Part 504 requires Regulated Institutions to establish and maintain a transaction monitoring and filtering program with particularized attributes aimed at curing potential shortcomings in existing AML programs.<sup>2</sup> New compliance measures include a requirement to conduct end-to-end, pre-and post-implementation testing of the transaction monitoring program, specific data mapping processes, and particularized oversight structures to ensure that changes to anti-money laundering programs are defined, managed, controlled, reported, and audited. In addition, on an annual basis, either the board of directors as a governing body or a senior officer personally must certify that the new program is compliant and that the governing body or individual certifying has undertaken all necessary steps to make such certification.

As Regulated Institutions continue to implement measures to comply with Part 504 and prepare to submit certifications for the first time in April, they should carefully review the FAQs and adjust their implementation plans accordingly. As one example, FAQ #5 and its response clarifies that Regulated Institutions are not required to conduct a vendor selection process for vendors engaged prior to the effective date of Part 504, as Section 504.3(c)(5) may have suggested. However, in the same response, the DFS clarifies that Section 504.3(c)(7) requires Regulated Institutions to engage qualified consultants responsible for the design, planning, implementation, operation, testing, validation, and on-going analysis of transaction monitoring and filtering programs, and that processes should be in place to confirm such qualification. This guidance is useful in that it alleviates the concern for Regulated Institutions to conduct and document vendor selection processes on all existing vendors prior to the April 15<sup>th</sup> certification. It also suggests Regulated Institutions should ensure they maintain adequate policies and procedures addressing risk management of third party service providers, and such policies and procedures should be relied on in certifying compliance to the DFS.

The DFS's FAQs are reproduced below.

## 1. What as of date should a Regulated Institution use for the "as of" date for its transaction monitoring and filtering program certification?

Regulated Institutions should submit the required certification covering the prior calendar year by April 15 of each year.

## **2. May a Regulated Institution submit a certification under 3 NYCRR 504.7 if it is not yet in compliance with the requirements of Part 504?**

The Department expects full compliance with the regulation. A Regulated Institution may not submit a certification under 3 NYCRR 504.7 unless the Regulated Institution is in compliance with the requirements of Part 504 as of the effective date of the certification.

## **3. Should a Regulated Institution send additional documentation along with the certification proving that the system is in compliance?**

The Regulated Institution must submit the compliance certification to the Department and is not required to submit explanatory or additional materials with the certification. The certification is intended as a stand-alone document required by the regulation. The Department also expects that the Regulated Institution maintains the documents and records necessary that support the certification, should the Department request such information in the future. Likewise, under 3 NYCRR 504.3(d), to the extent a Regulated Institution has identified areas, systems, or processes that require material improvement, updating or redesign, the Regulated Institution must document such efforts and maintain such schedules and documentation for inspection during the examination process or as otherwise requested by the Department.

## **4. Does the Department require a pre-implementation testing for systems the Regulated Institutions used that that were operational prior to the Regulation?**

The Department will not require full end-to-end, pre implementation testing of systems that the Regulated Institution uses that were operational prior to the effective date of the regulation, as is required when adopting new systems. However, under 3 NYCRR 504.3(a)(2), Regulated Entities' systems and programs must "be reviewed and periodically updated at risk-based intervals" and thus Regulated Institutions are expected to conduct periodic risk based systems testing and data validation on all systems that support the transaction monitoring and filtering program.

## **5. Does the Department require the Regulated Institution to conduct a vendor selection for the systems that are already in place prior to the Regulation?**

The Department does not require a Regulated Institution to conduct a vendor selection process for vendors that were engaged prior to the effective date of the regulation, as is now required when hiring a new vendor to acquire, install, implement or test the transaction monitoring and filtering program. However, on an ongoing basis, 3 NYCRR 504.3(c)(7) requires Regulated Institutions to engage qualified personnel or outside consultants for these purposes and as such Regulated Entities should have processes in place to confirm that the personnel and vendors it has engaged to execute its transaction monitoring and filtering program are qualified and competent.<sup>3</sup>

Regulated Institutions interested in assistance with implementing measures to comply with Part 504 are encouraged to contact any of the authors listed below or your Arnold & Porter Kaye Scholer contact. The firm's financial services team would be pleased to assist with any questions you may have about Part 504, its certification, or AML compliance more broadly.

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1. Banking Division Transaction Monitoring and Filtering Program Requirements and Certifications, 3 N.Y.C.R.R. 504.
2. Part 504 broadly applies to two classes of institutions (collectively, Regulated Institutions): (i) Bank Regulated Institutions and (ii) Nonbank Regulated Institutions. Bank Regulated Institutions include all banks, trust companies, private bankers, savings banks, and savings and loan associations chartered under New York Banking Law (NYBL) and all foreign bank branches and agencies licensed under NYBL to conduct banking operations in New York. Federally chartered, New York branches and agencies of foreign banks are not subject to the Final Rule. Nonbank Regulated Institutions include all check cashers and money transmitters licensed under NYBL.
3. [Frequently Asked Questions Regarding 3 NYCRR 504](#) (Oct. 26, 2017).

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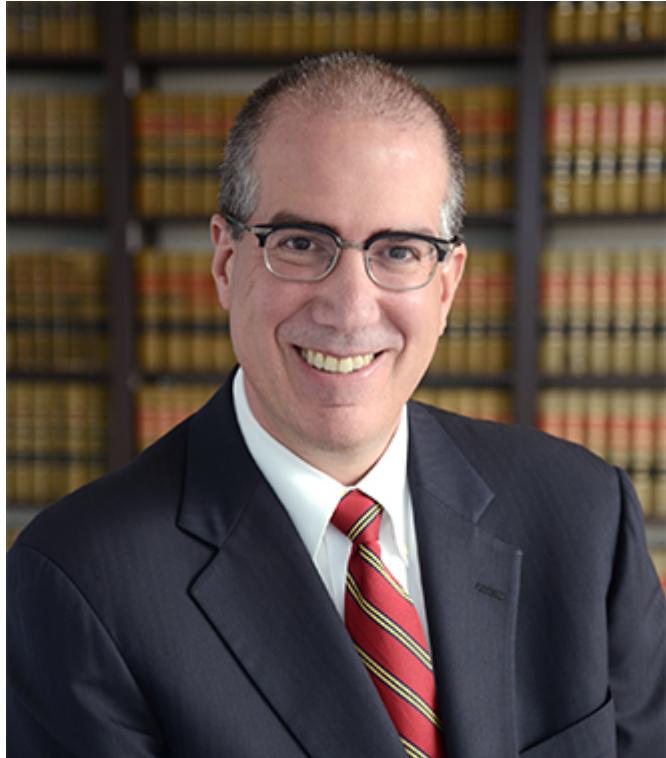
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