On the heels of a new administration taking over, the renewed prospect for regulatory reform in financial services, and positive economic developments, growth is top of mind for many financial institutions. However, challenges remain in traditional and emerging areas of risk. Along with the prospects for growth and consolidation, these significant areas of risk complete our list of top considerations for financial institutions in 2017.

Below is our Top 10 for 2017, which we will explore in greater detail over the next few weeks:

1. **Securities Compliance (for publicly traded and privately held banks).** Now is the time of year when publicly traded institutions are preparing for their annual meetings and finalizing the related SEC filings. 2017 brings some new requirements for publicly traded institutions, while other requirements that publicly traded institutions used to focus on are back in the spotlight. Although privately held institutions are not impacted by most of these requirements, securities law matters should nevertheless be a focus for privately held institutions. Whether trying to raise capital or to refinance existing TARP, SBLF, or debt, various securities law requirements need to be complied with by privately held institutions.

2. **Mergers & Acquisitions.** Higher valuations, improving multiples, more capital, and the potential for regulatory relief this year are all contributing to increased consolidation in the financial institutions market in 2017. Potential sellers continue to be motivated by a number of factors, including the continued burden of regulation, competition, unclear succession plans, and the expectation of higher multiples. The time appears ripe for making deals, or at least raising capital to prepare for potential future deals (see #8 on this year’s list).

3. **BSA/AML and OFAC Compliance.** The more things change, the more they stay the same. Thus is the case with the challenge of complying with the Bank Secrecy Act, anti-money laundering, and economic sanctions rules for financial institutions. Even as new technologies, markets, and participants emerge in gray areas of regulation, BSA/AML compliance challenges are remarkably consistent across industries. New rules and guidance issued throughout 2016, along with the debilitating nature of any hiccup in compliance with these rules, means that BSA/AML and economic sanctions compliance remain atop the list of risks for financial institutions.

4. **Cybersecurity.** One of the more dangerous risk areas for financial institutions for some time will be cybersecurity risk. As federal and state regulators continue to pepper financial institutions with new regulations, tools, and guidance, many institutions are struggling to keep up with even the basic tenets of a cybersecurity risk management policy or program. Navigating cybersecurity risk begins with awareness and preparedness, which is what we are focusing on from the outset with our clients. A necessary first step is to conduct a risk assessment that can inform the second step, a response plan to guide a financial institution through the aftermath of a cybersecurity incident.

5. **FinTech.** Financial technology, or FinTech, describes a multitude of firms, activities, and capabilities for financial services. From the automated teller machines (ATMs) of the 1960s through today’s online lending platforms with unique algorithms for underwriting, FinTech has represented, and continues to represent, great challenges and opportunities for financial institutions. Indeed, as more FinTech companies emerge and new partnerships are established with traditional financial institutions, federal and state regulators are taking notice—and even getting in on the innovation game themselves. However, using and/or partnering with FinTech presents traditional risks and compliance challenges that financial institutions need to review.

6. **Third-Party (Vendor) Risk Management.** Third-party risk management continues to receive a heightened degree of attention from the regulatory community, especially the enforcement apparatus. It seems that almost every one of these relationships is subject to increased examiner scrutiny and liability concerns, which is unlikely to abate in 2017. Financial institutions will continue to be liable for the actions of their vendors and cannot risk a bare-bones third-party risk management program.

7. **Corporate Governance and the Culture of Compliance.** A less prescriptive, but still challenging, area of compliance for financial institutions is governance and culture. Much has been discussed in the last year about corporate governance considerations and an institution’s culture of compliance, not only in light of enforcement actions on incentive compensation and sales practices, but also in light of specific guidance on establishing a culture of compliance. These considerations begin with the board of directors and senior management and trickle down through the institution. Tone at the top, communication, and incentives are key to navigating the labyrinth of aspirational guidance from federal and state regulators.

8. **Capital Planning.** As the economy continues to improve, and valuations and capital increases as a result, assessing and...
preparing for capital needs is at the forefront of many institutions’ minds. Whether an institution is thinking about raising capital, using its stock as currency in an acquisition, and/or considering a pay down or refinancing of outstanding debt, careful consideration should be undertaken not only with regard to the capital opportunities of today, but also with regard to planning ahead for future market changes.

9. **Data Security and Privacy.** In addition to cybersecurity concerns, the risk of a data breach incident affecting customer financial or personally identifiable information calls for specific actions on the part of financial institutions. Similarly, compliance with traditional and emerging privacy regulations requires strict standards for housing sensitive data, as well as adherence to traditional federal and state privacy statutes focused on privacy notices and sharing information for marketing purposes.

10. **Compliance with Consumer Laws.** Regardless of any CFPB overhaul, compliance with consumer laws is a traditional challenge for any financial institution offering or providing products or services directly or indirectly to consumers. Mortgage origination and servicing, loan officer compensation, the TILA-RESPA integrated disclosures, fair lending, and unfair and deceptive acts or practices plague consumer finance industry participants due to onerous and even conflicting obligations. One particular highlight this year will be the ongoing implementation of new rules under the Home Mortgage Disclosure Act (HMDA). More data fields means greater scrutiny for those subject to the HMDA reporting requirements.

Schiff Hardin has a dedicated team of financial institution transactional, regulatory, and litigation attorneys with significant experience handling various aspects of bank and non-bank financial institution matters. Our attorneys regularly advise financial institutions on corporate matters, mergers and acquisitions, regulatory compliance, enforcement matters, and litigation throughout the U.S.

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