Barley Snyder

Preserving Your Company's Future

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The banking world was stunned recently by the revelation that 5,000 employees across the footprint of a national financial institution created fake bank accounts for existing customers in order to meet sales and incentive quotas. Could such a situation be happening at your bank? While it is unlikely to happen on such a large scale at a regional bank, the situation is a wake-up warning call to all banks - whether $100 billion or $100 million in assets - to take a look at their own operations to ensure adequate controls are in place to catch internal manipulation of accounts.

The impact of a situation like this one can be costly:

• These types of problems often result in regulatory fines, as the situation described above resulted in total fines of $185 million from various regulators. The federal Consumer Financial Protection Bureau levied $100 million of those fines - the largest fine it has handed down in its six-year history to date;

• Although customers are to be reimbursed for any lost money under the regulatory settlement, events like this one can tarnish a company's brand and public reputation; an institution's reputation is one of its most valuable assets. Today's banking environment is more intensively competitive than ever, especially on the local level, thanks to the market disruption caused by numerous recent bank acquisitions. The competitive environment makes any negative publicity and resulting customer mistrust even more problematic than normal;

• Dishonest employees, once they are discovered, are almost always fired by banks. Firing employees - especially multiple employees - is disruptive and stressful on an organization and the remaining employees, regardless of the reason for firing. Sudden vacancies create additional stress on remaining employees and take time to fill;

• Internally, the event may be distracting, requiring internal investigations, development of new policies and internal controls, heightened employee policing, and better employee education on conduct expectations in order to fully correct the problem and prevent it from recurring;

• Lawsuits from fired employees and affected customers are likely, leading to further distractions and more unwanted negative publicity; and

• Federal and state regulators will no doubt be keeping a closer watch on all banking institutions for some time moving forward.

Employee dishonesty of this nature, particularly if they are part of a sophisticated scheme, can be hard to uncover. Consider taking steps to avoid similar problems:

• Review existing incentive arrangements and evaluate whether they provide too much risk. How much incentive "should" be paid for the results being sought? Are employees incentivized to go beyond superior performance into manipulation of performance in order to get the offered incentives? What kind of controls are in place to make sure the incentive system is not abused and are the controls adequate for the level of risk provided by the incentive arrangement?;

- Review existing employee policies and your code of conduct. Do they clearly address employee conduct, and do they provide for appropriate consequences where employees are dishonest?; and
- Take a realistic look at your corporate culture. A culture that values performance and good work ethic is one thing - a culture that creates pressure and too much competition among employees may be more likely to incentivize dishonest behavior.

If you think your financial institution may need help in this area, contact Barley Snyder attorneys Kimberly J. Decker or Paul G. Mattaini.