DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

George Stansfield

General Counsel, AXA

THE SPEAKERS

George Stansfield
General Counsel, AXA

John Vasily
Partner, Debevoise & Plimpton LLP

Jean-Marc Desaché
Partner, Gide Loyrette Nouel

William Torchiana
Partner, Sullivan & Cromwell LLP

Fred Reinke
Partner, Mayer Brown LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in his career and his leadership in the profession, we are honoring George Stansfield, General Counsel of AXA, with the leading global honor for General Counsel. AXA is a French global investment, retirement, and insurance group headquartered in Paris. His address will focus on key issues facing the General Counsel of an international financial insurance corporation. The panelists' additional topics include global mergers and acquisitions, capital markets dealmaking, complex business litigation, insurance regulation, and investment management issues.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors including General Counsel.

Jack Friedman
Directors Roundtable Chairman & Moderator

George Stansfield

General Counsel, AXA

AXA redefining / standards®

George Stansfield has been AXA Group General Counsel since 2004, with responsibility for the Group's global legal and compliance matters. In 2010, he became Head of Group Human Resources in addition to his responsibilities as Group General Counsel, and became a member of the Group Executive Committee.

Prior to joining AXA's Group Legal Department in Paris in 1996, George practiced law for 11 years in New York City, where he was a corporate attorney in the Legal Department of AXA Equitable and specialized in merger & acquisition transactions involving financial institutions, securities law and general corporate matters.

George Stansfield graduated from Georgetown Law School with his law degree in 1985 and from Trinity College with a degree in History in 1982. He was admitted to the New York Bar in 1986 and has been licensed as an attorney in New York since that time. In 1993, he spent a year on a management exchange program at Meiji Life in Tokyo.

AXA

"AXA" is the brand name of AXA Equitable Financial Services, LLC and its family of companies. AXA companies offer financial protection and wealth management, and are premier providers of advice, retirement strategies, and life insurance. AXA has been providing stability and reliability to our clients since 1859 to help them live their lives with confidence, and enable them to realize dreams for their loved ones and their legacy.

AXA's primary life insurance company, AXA Equitable Life Insurance Company, is among the largest life insurance and retirement savings companies in the United States, with nearly 2.7 million customers nationwide. More than 5,100 AXA Advisors financial professionals assist individuals, families and business owners in creating strategies that help them move forward on the road to financial security.

JEAN-MARC DESACHÉ: Good morning to you all. It's a great pleasure to welcome you to this seminar for one of our friends, George Stanfield, General Counsel of AXA since 2004, but also head of Human Resources and a member of the Executive Committee of AXA. George's career speaks for itself, and we will certainly hear further on this during our session.

My name is Jean-Marc Desaché, and I am a Senior Partner at Gide in the M&A Department. Our Senior and Managing Partners, Baudouin de Moucheron and Stéphane Puel, were unable to attend this morning. Baudouin is in Hong Kong at the moment, but he asked me, on behalf of our partnership, to thank you all for attending this meeting.

Let me briefly welcome our friends, John Vasily, from Debevoise; William Torchiana, from Sullivan & Cromwell; and Fred Reinke, from Mayer Brown.

General Counsel are more important than ever with boards of directors increasingly looking to them to enhance the financial and business strategies; to address compliance issues; and to ensure the integrity of the operations. The role of General Counsel is of unquestionable importance in the finance industry, where assessment of risk and, in particular, legal risk, are closely linked to business development. Of course, much can be said on this topic, and probably we'll come back to that during our session.

Above all, I wanted to say that we are all here this morning, giving our friendship to George, and that is the most important point we should have in mind.

I would now like to introduce Jack Friedman, the Chairman of Directors Roundtable, who spent a lot of time preparing this event. Thank you, Jack, for your idea, putting us together to honor George this morning. Jack, I leave you the floor to introduce everybody else and open the program.

JACK FRIEDMAN: Thank you. The Directors Roundtable is a civic group that does programming of the highest level for boards of directors and their advisors worldwide. We have organized 800 events over 23 years.

My first visit to Paris was in 1968 when I was a student, and I have enjoyed coming back here ever since.

We are honoring George today, and have previously honored other distinguished world leaders, for the purpose of helping the business community and the larger community understand the realities of operating international corporations. We're not a public relations firm, or a chamber, but we do think that it's very important for people to understand the challenges that General Counsel face on an increasing basis.

This world recognition for George is well-earned. We'll go into some of the areas of his work and some of the issues he handles.

The format for this morning is that George will make some opening remarks, and then each of the panelists will discuss key issues in his area of specialty.

One of the reasons why this recognition is special is that the transcript is made available electronically to 150,000 leaders nationally and globally.

Let me introduce our Guest of Honor, George Stansfield. George is from the Midwestern section of the United States, and went to Georgetown Law School. He worked with Equitable in-house, worked with AXA when they were together with Equitable, and he's been here in Paris for nearly two decades now.

He's very well-known as a global person. Without further ado, I'd like to present our distinguished Guest of Honor.

GEORGE STANSFIELD: Thanks, Jack. I just wanted to start by saying a word of thanks to the Directors Roundtable, to Jack Friedman for organizing this; to Jean-Marc for making the facilities available and all of our friends at Gide, and for all of you for taking the time to come.

As Jean-Marc mentioned, I've been General Counsel of AXA for a bit over a decade, and before the panel discussion, I just wanted to share a couple of thoughts on some of the challenges of being General Counsel

of a global financial institution these days, and in particular, focus some on managing compliance risk.

I believe most of the people in this room know AXA, but for those who may not, we're a global insurance and asset management group based in Paris. We operate on a decentralized basis in 57 countries. We have 157,000 employees and about $90 billion of consolidated revenues.

When I talk about compliance, it's important to spend a couple of minutes on the context. The context drives a lot of the issues we deal with on a day-to-day basis, and that context is one of globalization. Over the past 30 years, you've seen trade markets and business globalize in an exponential way. That's brought economic benefits and opportunities that are incontestable, but it's also brought a world of complexity and ambiguity when it comes to the legal frameworks that govern international business transactions and operations.

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Legal systems remain, for the most part, creatures of individual nation-states that are national in scope. In an attempt to keep pace with globalization, we've layered on top of those national systems a host of international conventions, treaties and organizations that are designed to facilitate trade and international business, and give some coherence to cross-border regulatory oversight. That web of international conventions, coupled with an increasing number of national laws that have extraterritorial effect, can be really mind-numbing in their complexity, and difficult for even the most sophisticated players to navigate on a day-to-day basis.

For those of us who advise global financial institutions, our daily reality is really about navigating those complexities and trying to ensure we stay on the right side of the line in the context where that line is sometimes less than clear, and where things don't usually line up like they're supposed to.

When it comes to managing compliance risk in a global financial institution, the most fundamental point is a very simple one, and that is that the scale of the risks have changed, and they have changed in a big way. Ten years ago, $50 million would have been a significant sanction when you got into a compliance-related matter – whether it was miss-selling, whether it was money laundering, or any other thing – $50 to $100 million would have been an enormous fine. Today, that would seem like a mosquito bite. Within the last 18 months, you've seen BNPP fined $8.9 billion for various OFAC violations; Credit Suisse fined $2.6 billion for cross-border tax evasion; HSBC, $1.9 billion for AML [anti-money-laundering] violations; and

there are a dozen or more fines in the hundreds of millions against international financial institutions.

The BNPP and these other examples are the most recent and spectacular ones. We have what I would call a hyper-enforcement environment, and that enforcement is generally coming out of the U.S., but we see within the EU and the UK a trend in the same direction.

There was a *Bloomberg* article at the end of August 2013, that said the five top U.S. banks over the five-year period between 2008 and 2013 paid, in the aggregate, $135 billion in fines, penalties, and litigation settlements. That was more than the aggregate of all the dividends they paid out over that period.

This is an extremely perilous environment for any global financial institution, and getting compliance right has to be at the top of any General Counsel's list these days. The amount of time and resources spent on this is

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very substantial. Ten years ago, I would have been spending maybe 10%, 15% of my time on these issues. Today, I'm spending well over half, and simply because that is where the very big risks lie in our daily reality.

I just talked about a few of the real-world challenges in managing compliance in a global financial institution, and here I would just make three points. The first one is quite a simple one, but very important, and that is, in the world of compliance, success is defined by the absence of an event. It's not like doing an M&A deal or a financing, where there is a flurry of activity, there's a big bang, there's a press release, there's a headline, and you've done something good. Compliance is about, if everything goes perfectly right — if your team gets it just right — senior management can see precisely nothing. That is the challenge.

In the ecosystem of a large corporation, getting the resources for that is the challenge. There's an aspect which I would call "marketing" — if you don't get credit for your people who are doing that day-to-day, you do not get the resource. You need to educate your management at the senior level and at middle management that the absence of an event is not pure luck. It's not just by chance; it's because you have people around the world working to keep you out of trouble. That simple fact raises a lot of issues. It is incumbent on anyone running a compliance operation to do that exercise. If you don't do it, your people don't get the credit for what they do, and you don't get the resources that you need to be effective.

The second challenge is really about ensuring open lines of communication and real-time information, and ensuring that you operationalize your advice so business-people know what you're talking about; they know where the red lines are. That sounds quite simple, but it's not, especially when you're doing business in 57 countries around the world. All of us have recurring regular reporting cycles — whether it's quarterly, whether it's half-yearly — you need those. You need certifications of compliance; you need the regular reporting. But those are all lagging indicators. What you really need is for people to pick up the phone and call you when they smell smoke, because then you have time to act. You don't need the memo explaining to you why the building burned to the ground three days after it's done. You need to get the information in real-time, and to do that, you need people to pick up their phones and call you. Your org charts and your websites don't really mean anything if you don't have the relationships built so that people feel comfortable that they can pick up the phone and call you.

That sounds rather simple. In a decentralized structure where you've got operating subsidiaries around the world, getting a phone call from a General Counsel who is sitting in Indonesia or far-flung parts of the world on a real-time basis means you need to have the relationship; people need to know you have an open line to them.

The second piece of that is the job is much more. Of course, you need to have state-of-the-art policies, and those need to be

updated on a regular basis — but the job is not about sending out emails. The job — in order to make the impact, you need to drill deep into the operations of the company. In our case, in the insurance business, you need to be sure that the people who are underwriting risk, the people who are paying claims, know how the long arm of the U.S. law can touch them.

The example that we deal with that's a real case is a commercial underwriter underwriting a commercial construction policy in Turkey for a longstanding client who is going to construct a building mostly in Turkey, but then go across the border into Syria and do part of it. The question is, why does that person know to phone home? Why does that person have the slightest clue that OFAC [Office of Foreign Assets Control] could touch that transaction? That's the challenge. It's drilling in to that level of the company, and operationalizing your advice so that the red lines are clear. Also, the businesspeople need to be able to distinguish the mosquitoes from the great white sharks. All risks are not created equal, and for businesspeople, they see rules — lots of rules that range from mildly to very annoying — and if you don't do a good job of giving them pragmatic advice on what can really bite them, they tend to put them all in one bucket.

The last point is about the tone at the top. Everybody talks about the tone at the top. For sure, tone at the top is important, but that's not the real challenge. The real challenge is middle management; it's educating your middle management on how these risks can touch them. My experience is the sophistication of middle management in these things is directly proportional to the enforcement environments in which they've done business. You get very different perceptions of these risks in different parts of the world, where enforcement may be quite lax or nonexistent.

The real challenge is getting everybody up to a common standard. Middle management are the people working hard to achieve their business plans, who have a lot of pressure on them to meet their targets, and who are, in many ways, the least likely to see or to want to see the impact of faraway law on the business that they want to do to achieve their plans.

Those are some of the day-to-day challenges, and the example which I think speaks volumes about the enforcement environment we're living in today, and some of these challenges, is what happened to UBS in February of 2009, when they settled a cross-border tax evasion case for $780 million, and that involved soliciting high-network U.S. clients to put assets in Switzerland and Lichtenstein, undeclared assets. UBS is definitely a world-class financial institution. For sure, their tone at the top is right.

The whistleblower who started that action is a guy named Bradley Birkenfeld; he ultimately went to jail. One of the facts that he admitted to in his plea agreement, which was a rather obscure fact, but it was focused on very intently by the U.S. regulators — and that fact was that on several occasions, he smuggled small cut diamonds in toothpaste tubes out of the U.S. to Switzerland and Lichtenstein to put them in safe deposit boxes. Now, U.S. regulators do associate that kind of activity with organized criminal organizations, not with global financial institutions.

UBS definitely had the right tone at the top and consummate professionals at the top of the organization. If you lose control of your situation in middle management like that, that's what you wake up with. That is the real-world challenge for General Counsel in a global financial institution; it's not so much the tone at the top — it's making sure that you've drilled into the middle management level so that people understand that you can't do that.

In many ways, that example speaks volumes about the challenges. It also, in my eyes, was the starting point of the hyper-enforcement environment we're living in today, because

while that fact is rather obscure, that is why we have FATCA [Foreign Account Tax Compliance Act]. It changed the regulatory tone, and we're still dealing with the fallout of these things.

Those are some of the essential challenges I see. We've spent a huge amount of time on this, and I'll stop there and we will discuss it more later.

JACK FRIEDMAN: I'm not going to name people or companies, but there was a comment made some time ago by the General Counsel of a global bank. He said that some people in middle management may cut corners or violate some rules not only to enrich themselves, but also they think it makes their job more interesting. They want to see what they can get away with. He said that one of the challenges is to try to create a compliance environment where people like them find it uninteresting to stay with the company.

A panelist at another event was the Head of Global Risk Assessment for another world-leading bank. We asked him, "How do you do risk assessment? Do you get reports from all the operating divisions, and then aggregate them up?" He said, "While waiting for the reports from all these groups, we first take information from the largest areas like global real estate and assess them on a priority basis." I'd like to ask George, "How do you get the reports, either by product line, country, or another criteria, in a timely way, so that you can figure out in advance what the risks are?"

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GEORGE STANSFIELD: It goes a little bit to what I just touched on, Jack. We have recurring processes because we publish our financial accounts on a half-yearly basis. We have formal reporting processes that come up to us on compliance and legal risk, regulatory developments, twice a year. In between that, we have an open network between the General Counsels. There are a couple of face-to-face meetings and there are conference calls; I have regular appointments with these people. I have calls with a dozen General Counsels around the world, and we pretty much cover the world with a dozen people. You need a continuing relationship with these people. If you don't have a continuing relationship with them you won't have that relationship at the moments of crisis. My experience in the past, when you didn't have that, we would come in from a holding company at moments where something had blown up, to clean it up. That's not the time you make a relationship. The key is, everybody knows — all the local CEOs — that I've got that line wide open, and we're talking all the time. Nobody has to go talk to their boss and their boss's boss before they call Paris. That is critical in terms of getting real-time information flows. The reporting is usually after the fact, and you definitely need it. It's the real network where it's live, and it's every day. That's how we manage these things, because you need to be preventive; you need to be proactive.

JACK FRIEDMAN: It's more dangerous now, obviously, and it's more than written periodic reports that make a difference.

GEORGE STANSFIELD: Before we go to the Panelists' presentations, I wanted to just say one last word about people. And for anyone who aspires to be the GC of a large multinational company, this is probably the most important thing. When you step in to one of these roles, the thing you realize very quickly is that you are very dependent on those around you. You win or you lose depending on the quality of those people and the relationships you develop with them. Here I am speaking both about your own teams, as well as the outside counsel that you use on a regular basis.

When I think of my experience as General Counsel of AXA over the past decade, it really has been all about those people — the incredible people I have had the opportunity

to work with over all these years all around the world. And my last word is simply to say thanks to all of them for everything you have done for me over the years.

JACK FRIEDMAN: I'd like to have Jean-Marc speak next on his legal topic followed by the other Distinguished Panelists.

JEAN-MARC DESACHÉ: First, I would like to welcome my friends from Gide, and especially Richard Ghueldre and Hugues Scalbert, I see them in the room, and I have the privilege to share with them a close relationship with AXA.

Second, I would like to introduce what makes the role of a General Counsel in the insurance market so regulated and complex.

George, you have the advantage of having studied history as well as law, which obviously gives you a broader view as to where we stand.

Arnold Toynbee in his Study of History was amazed by the internal resources of civilizations which caused them to either evolve or perish.

Our society is constantly evolving and western civilization in that respect can be seen in good health. That's the impression I get as a "lawyer"; with sometimes a strange feeling of "whirling dervish" facing constantly evolving rules.

I imagine it's the same for a General Counsel. Sometimes, we may even fear that we are losing track of where we are heading. We are in a world of techniques where the only driving forces are adaptation and competition.

Our Blue Chip companies reflect this constant adaptation. They adapt, restructure, striving for excellence and to survive.

Financial organizations like AXA, however, also need to be guided and you, George, are at the heart of this guidance and risk management.

You face the constant evolution of regulations, different in each jurisdiction and with extra-territorial implications. As an example

in the M&A field, each large and complex transaction you've completed, notably with regards to the purchase of the Asian minority interest from your Australian listed subsidiary (APH), or the Winterthur acquisition, must have been an incredible challenge; notably dealing with regulators over the world.

More generally, as a General Counsel, you must deal with meeting the demands of this ever-changing world; leading but at the same time delegating to your team; and giving free rein to business people while imposing, in certain cases, restrictions.

JACK FRIEDMAN: Thank you. We invite John Vasily of Debevoise to discuss his special topic.

JOHN VASILY: George mentioned the complex, multinational and often overlapping regulatory regimes that apply to insurance companies. The stakes are high and the consequences of non-compliance potentially severe. So how should these issues be handled in an M&A deal? Specifically, how does a buyer ensure that it is not buying a regulatory nightmare?

Don't worry, I'm not going to deliver another lecture on the need for comprehensive due diligence in connection with an acquisition on the target's regulatory and compliance program, or the need for the correct (but overused to the point of being meaningless) "robust" compliance program. Rather, I am going to focus on the key regulatory and compliance risks to a buyer in an acquisition. Since many companies are now sold by an auction, I'll focus on how these issues play out in an auction context, where addressing these issues is often more challenging.

The obvious risk is that the target company is violating its home country laws, or other applicable laws that pose heightened enforcement risk, and that the buyer will be inheriting historic liabilities, as well as needing to clean up prospectively a target company's regulatory and compliance deficiencies. Even in the auction context, these issues should be subjected to thorough due diligence and addressed in a straightforward manner. The risks are applicable to all bidders, and therefore will likely (but not always) be focused on by all bidders – and the seller can't reasonably object to such relevant due diligence requests. However, it will ultimately be a commercial and possibly a price issue for the bidders, and different bidders (particularly local bidders) may be willing to take more risk. As will be discussed, the competitive dynamics of an

auction will also impact approaches taken by bidders, especially as to the extent of an indemnification that may be requested.

Especially when the bidder is not a local player, the risks may become more complicated and harder to address. An obvious example involves the anti-bribery rules applicable in the United States — the Foreign Corrupt Practices Act — and in the United Kingdom — the U.K. Bribery Act. Under such rules, post-closing violations by a local target that is not previously subject to such rules could nevertheless result in the acquirer being liable for such violations. The issue is by far most pronounced prospectively (e.g., continuing bribery post-closing, which may be difficult to detect on a timely basis), though there are some theories that an aggressive regulator might advance relating to pre-closing violations by the target company of laws that it was not subject to at the time. This can be a hard issue for a foreign bidder to argue, especially in a competitive auction, where sellers are likely to resist extensive due diligence regarding conduct that does not violate local law; this can put foreign bidders at a disadvantage to local bidders.

There are well-worn approaches to this issue, none of which may be entirely satisfactory for fully addressing the issue. Due diligence of a target's compliance and regulatory files, including correspondence with local regulators, is typically attainable — at least to the winning bidder, but typically less available before the final bidder has been selected. Reviewing such files to try to determine if the target's actions complied with the bidder's home country laws may prove significantly harder. The best way to address this, assuming usual limitations on the extent of available diligence, may be through an overall perception of the target's risk environment and the extent of its mitigation of compliance risk, based in large part on discussions with management and compliance personnel. Target companies will often refuse to provide information that relates to laws of which they have no direct knowledge, although a bidder (especially the final bidder) reasonably should be able to discuss generically a target company's risk profile and corporate culture as it relates to matters such as bribery and money-laundering.

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Getting a seller to backstop through warranties the information provided in the due diligence can be more challenging. A seller will typically warrant that the target has not violated any applicable home country laws; however, recovery under such warranties will often be limited by caps, baskets, waivers and other limitations contained in the definitive documents for the sale. It is often much more difficult to have sellers warrant definitive compliance with foreign laws (such as FCPA) that do not typically apply to them. The best that bidders can typically expect is a warrant as to the generic absence of bribery, money laundering and the like. It often can be difficult not to have such a warranty be subject to the typical limitations, absent specific examples of wrongdoing or heightened compliance concerns.

An additional, more subtle issue, is whether a bidder's home country regulator will impose more stringent capital or other regulatory requirements on the target company than its home country regulator. For example, it was widely reported that the U.K. regulators sought to impose higher capital requirements on AIA's Asian operations than AIA's local regulators. Similar issues arising under Solvency II have led in part to U.K.- based insurers selling off their U.S. operations. This "regulatory arbitrage" could put a foreign bidder at a significant disadvantage in an acquisition vis-à-vis local bidders due to the need for the foreign bidder to serve two masters.

So against this backdrop, what is a foreign buyer to do? The first thing is for the foreign bidder to recognize the various issues in play from a commercial standpoint early in the process, and anticipate having to figure in any compliance or regulatory risks into its price. Second, the buyer should push, as hard as reasonably and commercially possible, the traditional approaches to due diligence and indemnification — but recognize the possibility that deal dynamics might limit such approaches. Lastly, and perhaps more importantly, the respective compliance people should try to develop a relationship of trust so that there can be honest discussions about the company's compliance structure, combined with trying to obtain a general sense — through market sources, lawyers, and advisors — of a target company's compliance culture.

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> *– George Stansfield*

JACK FRIEDMAN: Thank you. William Torchiana of Sullivan & Cromwell will be our next speaker.

WILLIAM TORCHIANA: I wanted first to thank Jack Friedman of the Directors Roundtable, as well as the other panelists and, of course, George Stansfield, for the opportunity to join you here this morning. My practice at S&C is focused primarily on insurance industry corporate, M&A and regulatory matters, and I have been fortunate to have worked with George and his colleagues in New York and Paris over many years.

There are three areas I wanted to touch on briefly this morning, where insurance regulation is changing and where George and I have seen the impacts on AXA and the industry as a whole. First, an increasing emphasis on compliance generally; second, a shift in tone at the regulatory level; and, finally, developments involving insurance regulation globally.

On the increasing emphasis on compliance: George and I both began together in the industry roughly 25 years ago, at a time when the compliance and legal functions in the insurance industry looked very different than they do today. To the extent the compliance function existed, it was focused to a large degree on issues around sales practices, policy forms, rates and related filings. Today, however, the insurance industry is subject to a wide array of compliance-related issues, in nearly every jurisdiction in which companies operate, and these are just as broad and just as demanding as those that affect banks, broker-dealers and the rest of the financial services industry: OFAC/sanctions matters, KYC and AML issues, and corruption/FCPA matters, among others. I think that George has done a terrific job of staying "ahead of the curve" in this area, which is not easy in large, global institutions where legal and compliance costs are large and rising, and to some degree, in France where the business culture can be very different.

The recent shift to "regulation through enforcement": I think we have all seen a sea change since the Financial Crisis in how the financial services industry is regulated; the reasons are a mix of political, regulatory and other that I won't try to get into, but the outcome is very clear: what used to be a generally open and collaborative regulatory culture in the insurance industry has been replaced to a large degree by what I refer to as "regulation through enforcement."

Banks and other financial institutions have paid many billions in fines and penalties, and associated litigation/monitoring costs, and have taken most of the headlines in this regard. But the insurance industry is subject to the same trends, and issues which in the past might have been resolved through open discussions with regulators must now be approached differently, and with the recognition that in the current climate there will be far less leeway on the regulators' side, and less opportunity for dialogue, than in the past.

The emergence of global regulatory regimes: this is another post-Financial Crisis development that will have enormous implications for how global companies like AXA are managed and how they compete. The next few years will see major changes in the industry as a result. There are really two often contradictory trends here; first, domestic regulators are more and more concerned about the health of their domestic companies, the protection of local policyholders, and the safety and soundness of the industry in their jurisdiction.

However, the second – and entirely new for the insurance industry – trend is toward the adoption of global regulatory standards. Today there is a new and growing set of regulators and regulations impacting AXA and its peer companies: AXA is now a "global systemically important insurer," one of nine such worldwide G-SIIs; it is part of a larger group of IAIGs (Internationally Active Insurance Groups); and since last week it now has proposed "BCR for GSII" (Basic Capital Rules) to evaluate, which in the coming years will become a set of global ICS (Insurance Capital Standards) which will apply as of 2019. Like the Basel rules for banks, the GSII/BCR process, coupled with the EU's Solvency II adoption in 2016, will profoundly alter the substantive rules applicable to large insurance groups, as well as the nature of the regulatory relationships that George will need to manage.

All in all, it is a difficult, challenging, and changing time for the insurance industry as a whole, and AXA is very fortunate in having George at the helm in the Legal/Compliance area, particularly in the current environment.

JACK FRIEDMAN: Thank you. Fred Reinke of Mayer Brown will now give his presentation.

FRED REINKE: Thank you for including me on this distinguished panel recognizing George Stansfield. George certainly is deserving of this honor, and he brings a wealth of experience and knowledge to his position as AXA Group General Counsel.

With my remarks today, I wanted to provide a brief overview of the current U.S. enforcement environment for foreign multinationals doing business in the U.S. The broad reach of U.S. government enforcement actions against non-U.S. global institutions, particularly the major non-U.S. financial institutions and insurance companies, have become very apparent in light of several very high-profile settlements, beginning with the $8.9 billion BNP Paribas settlement announced recently. Other recent settlements include Total paying $398 million, Royal Bank of Scotland paying $100 million, Credit Suisse paying $715 million and Standard Chartered paying $300 million this year after paying a separate $340 million two years ago.

> "It's drilling in to that level of the company, and operationalizing your advice so that the red lines are clear. Also, the businesspeople need to be able to distinguish the mosquitoes from the great white sharks." – *George Stansfield*

The SEC also has been aggressive in the last few years. In 2012, the SEC brought 734 enforcement actions and recovered $3.1 billion in monetary sanctions; in 2013, there were 686 actions recovering $3.4 billion; and in 2014 (so far) there have been 755 actions recovering $4.2 billion.

This relatively recent increase in the number of significant enforcement actions has been marked by a few interesting points. First, a state-level agency in New York, the New York Department of Financial Services (NYDFS), has shown itself to seek enforcement actions even more aggressively than the U.S. federal government. Second, the NYDFS has frequently required that specific, named executives be terminated as part of any settlement. For example, the NYDFS insisted that BNP Paribas terminate 13 executives as part of their settlement. Third, the NYDFS uses these settlements to issue public statements that bring welcome publicity to the NYDFS and its leadership that will help in future political elections. Each of these settlements is prominently displayed on the NYDFS website.

The U.S. enforcement environment also is marked by another significant aspect that greatly increases the costs to the non-U.S. companies under investigation — the involvement of U.S. class action plaintiff lawyers. These lawyers specialize in bringing private lawsuits against the targeted non-U.S. companies after learning about the details of the enforcement actions, typically after the enforcement actions have resulted in settlements that have been announced publicly. The U.S. legal system permits these lawyers to bring lawsuits against major foreign financial institutions on a contingency basis, so that the lawyers earn a significant percentage of any recoveries in a private litigation settlement. Unlike in England and on the continent, these lawyers will not need to pay the defense costs of non-U.S. defendants if they lose the case, and the cost of commencing these suits is minimal.

At the same time, the costs for the non-U.S. defendants to defend these cases can be very high. Once a case begins, these plaintiff lawyers are able to seek broad discovery from overseas defendants, including emails of overseas employees and broad categories of documents. In addition, it is relatively easy for these lawyers to require overseas executives to appear at video-taped depositions, where executives are asked questions under oath for a full day or even longer.

These cases brought by plaintiff lawyers also become costly because they can be brought as class actions. The U.S. rules on class actions are quite broad, and these lawyers only need to find one individual to bring a suit and that individual can represent an entire class of individuals who are similarly situated. Damages are calculated based on the entire class of individuals, which can often exceed 1,000 in number. Not surprisingly, we frequently see in the U.S. that plaintiff lawyers with large settlement recoveries are among the largest financial contributors to state government leaders seeking finances for their campaigns. France has now introduced class actions, and we may eventually see some of these same concerns arise in the French legal system.

The large size of the penalties imposed on foreign companies by U.S. enforcement authorities has also resulted in enormous increases in revenue to government agencies, which have not formulated appropriate plans for how to use these funds. Enforcement actions have become a form of legislative oversight without the need to seek political consensus to pass laws or issue regulations to govern the actions of companies. The process is akin to imposing significant tax increases on foreign companies, but without any oversight or proper legislative approvals.

> "Middle management are the people working hard to achieve their business plans, who have a lot of pressure on them to meet their targets, and who are, in many ways, the least likely to see or to want to see the impact of faraway law on the business that they want to do to achieve their plans."
>
> – *George Stansfield*

For example, in New York the state government will receive $2.4 billion from the BNP Paribas settlement, yet according to a recent article in the *New York Times*, the government has not determined how best to use these unexpected funds.

These large settlement amounts are arrived at frequently because the foreign defendant companies have little to no leverage to challenge the enforcement action. It is not only politically difficult to resist federal and state government investigations by the agencies that regulate these foreign companies, but many of the laws allegedly being violated have vague and unclear terms that allow for more than one reasonable meaning, making compliance difficult and allowing enforcement agencies to use broad discretion in deciding to bring enforcement cases.

This difficult environment in the U.S. for foreign multinationals has recently had added to it yet another element that will further worsen the atmosphere — the new SEC whistleblower regulations. Beginning in 2011, the SEC has been encouraging employees of companies to inform the SEC of potential wrongdoing at their company, for which the employee will be financially rewarded should the information result in payments of fines. In 2013, over 3,000 whistleblower tips were provided to the SEC. And just a few months ago, a whistleblower was awarded $30 million for information that resulted in a successful prosecution. Previously, a whistleblower had been awarded $14 million as well. Given these enormous potential recoveries, we can expect the number of whistleblower complaints to remain high each year.

JACK FRIEDMAN: Is there anything that can be done at the diplomatic level to persuade the U.S. authorities to be less aggressive with foreign financial institutions?

FRED REINKE: From the European perspective, senior management at the major global companies tends to have strong working relationships with their respective government leaders. Certainly in France and Germany this is true. These strong relationships can sometimes cause senior management to seek out help from their governments in appealing to the U.S. government to be more reasonable in enforcement investigations. Past results have shown this not to be the case however. In the BNP Paribas matter, for example, numerous appeals were made by the French government to seek leniency, but these appeals were unsuccessful. In fact, the White House at one point issued a public statement confirming that it would not interfere in any way with the enforcement discretion and judgment being exercised by federal and state governments in the BNP Paribas matter.

JACK FRIEDMAN: We wish to thank our Guest of Honor and the Distinguished Panelists for sharing their expertise and wisdom with us today. The content was excellent with much in-depth analysis of each area. We would also like to thank the audience for coming to the program.

John Vasily

Partner

DEBEVOISE & PLIMPTON LLP

John Vasily is Co-Chair of the firm's Financial Institutions Group and focuses his practice on cross-border merger and acquisition transactions, including in Asia and Latin America. *Chambers USA* (2014) ranks Mr. Vasily as a leading lawyer for Financial Services M&A, describing him as "absolutely outstanding." He is also recognized by the *IFLR1000* (2012) as a leading lawyer for both Mergers & Acquisitions and for Financial Services Regulatory matters.

Mr. Vasily is also recognized as a leading lawyer by *The Legal 500 Latin America* (2013), *The Legal 500 US* (2013) and as a leading M&A lawyer by *IFLR Expert Guides* (2013). Mr. Vasily was selected as a "Dealmaker of the Year" by *The American Lawyer* in 2011 for his work representing AIG in its worldwide asset disposition program, including the IPO of American International Assurance, AIG's market leading pan-Asian insurance operations. The Debevoise Insurance Group, which he co-chairs, was awarded the *Chambers USA* Awards for Excellence for 2014, stating that Debevoise handles "some of the insurance markets' most significant and high value deals."

Mr. Vasily is an adjunct professor of law at Georgetown University Law School, lecturing on international securities laws. He received a J.D. from Georgetown in 1982 and a B.S. in Accounting from Villanova University in 1979. Mr. Vasily serves on the Board of Visitors of the Georgetown University Law Center and on the Advisory Board for the Law Center's Corporate Counsel Institute.

Debevoise & Plimpton LLP

Debevoise & Plimpton LLP is a premier law firm with market-leading practices, a global perspective and strong New York roots. Our clients look to us to bring a distinctively high degree of quality, intensity, and creativity to resolve legal challenges effectively and cost-efficiently.

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By any measure, Debevoise is among the leading law firms in the world. Nearly 85% of our partners are recognized by *Chambers, Legal 500* or *IFLR*. The firm was also the winner of *The American Lawyer*'s "10-Year A-List," a ranking of the law firms who have earned the highest cumulative score on the A-List since its inception.

Approximately 650 lawyers work in eight offices across three continents, within integrated global practices, serving clients around the world. Our lawyers prioritize developing a deep understanding of the business of our clients. We then pursue each matter with both intensity and creativity to achieve optimal results.

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The firm's culture fosters a collaborative approach across disciplines and regions, and as a result, clients benefit from the dedication, cohesiveness and superior quality that we bring to all of our work worldwide.

Jean-Marc Desaché

Partner

GIDE
GIDE LOYRETTE NOUEL

Jean-Marc Desaché is a member of the business line Mergers & Acquisitions / Corporate and Team Capital Markets. He specialized in IPO operations, privatization and international offers of equity securities or convertible into shares as well as the issuance of innovative products, especially for banks by issuing products *Tier One*. He also acts as counsel in M&A transactions including banks and insurance companies.

He is recognized as a specialist in corporate and securities law, and in this context supports a large number of listed companies and represents them in the French courts in disputes they may encounter. He actively participates in the workplace for reform of company law and securities.

Gide Loyrette Nouel

Open-mindedness, commitment and thoroughness are the three defining pillars of Gide.

"We firmly believe that law is a structuring element of the world, contributing to making it move forward, shaping and adjusting it to the many economic and social changes it faces. With this in mind, we cultivate open-mindedness, commitment and performance as our three defining pillars to bring innovative and pragmatic solutions to our clients on their major legal challenges." – Baudouin de Moucheron, *Senior Partner*

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We are brought together by a common passion for our profession. Practicing law is about being visionary, about never stopping, and about placing curiosity and open-mindedness at the service of our work.

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Established frontiers are no longer enough. Our commitment is to go ever further, to build a multi-disciplinary and multi-cultural expertise that enables us to give our clients the most suitable response to the legal matter at hand.

Creativity
Gide is a proactive firm whose command of and passion for law drive the legal practice in every field it is present in. We always encourage questioning and open-mindedness to offer the best response to our clients wherever the existing legal framework offers none.

Humanity
For us, the human dimension of our profession is paramount. It is the major asset of a successful partnership, whether between Gide lawyers or between Gide and its clients.

Fred Reinke

Partner

MAYER·BROWN

Fred W. Reinke, a partner in Mayer Brown's Washington D.C. office, is the U.S. head of insurance litigation for the firm's global Insurance Industry Group. *Legal 500 2012* recommends him for complex litigation and class actions, and specifically identified Mayer Brown's U.S. insurance litigation practice as one of the leading insurance litigation groups in the country.

Fred handles complex international commercial and class action litigation, particularly on behalf of major European insurance/reinsurance companies and financial institutions. He counsels clients on insurance and reinsurance coverage disputes, governmental and internal corporate investigations, class action defense, banking and other financial transaction-related litigation, civil antitrust litigation, personal jurisdiction defense and appellate matters. He has also conducted numerous internal corporate investigations and guided directors of public and private companies on corporate governance matters and investigations involving various governmental entities, including the SEC, the Department of Justice, the Department of Labor and the Department of Commerce.

Fred has extensive experience in advising and representing French and German companies and banks on a wide array of legal issues in the United States. He is fluent in German.

Education

- St. Olaf College, BA, cum laude, 1983
- University of Hamburg, 1984; Fulbright Scholar
- Columbia Law School, JD, 1987; Harlan Fiske Stone Scholar; Editor, Journal of Transnational Law

Admissions

- District of Columbia
- New York
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. Court of Federal Claims

Activities

- District of Columbia Bar
- American Bar Association
- American Council on Germany
- News & Publications
- "Emphasis on Compliance: Automated and High-Frequency Trading," *New York Law Journal* (subscription required), 5 November 2012
- "Securities Investigations: Internal, Civil and Criminal," *Practicing Law Institute*, August 2012

Mayer Brown LLP

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William Torchiana

Partner

SULLIVAN & CROMWELL LLP

William Torchiana joined Sullivan & Cromwell in 1986 and has been a partner in the Firm's Financial Services Group since 1995. He has broad-based experience in transactional and regulatory matters involving international and domestic insurance and reinsurance companies and other financial institutions. In addition to domestic and cross-border corporate finance transactions, Mr. Torchiana has advised a number of foreign financial institutions on their acquisitions of U.S. and non-U.S. insurers and reinsurers.

Since 2004, Mr. Torchiana has been the managing partner of the Firm's Paris office, and is a member of the Firm's Managing Partners Committee.

Professional Activities and Community Involvement

- Past Insurance Committee Member, ABCNY
- Past Chairman, Board of Trustees, The American Library in Paris
- Trustee, American Library in Paris USA Foundation
- Member, Board of Governors, American Hospital of Paris

Recognitions

- *Chambers Global*: France, Corporate/M&A (2014)
- Named a 2013 "Dealmaker of the Year" by *The American Lawyer* for his role advising ING Groep in a series of worldwide asset sales
- *IFLR1000*: Capital Markets: Equity (2010, 2014, 2015)
- *The Legal 500* EMEA: Insurance: Regulatory and Corporate (2012, 2013, 2014)
- *European Legal Experts*: Corporate/M&A (2008, 2010), Banking & Finance (2002, 2005, 2006, 2007, 2008), Corporate and Commercial (2004, 2005, 2006, 2007)
- *PLC Which Lawyer? Yearbook*: M&A and Corporate Finance (2001-2002, 2002-2003, 2003-2004)
- *PLC Global Counsel Mergers & Acquisitions Handbook* (2001, 2002, 2003-2004, 2004-2005)
- New York Super Lawyers: Securities and Corporate Finance (2010)

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