# US Enforcement Authorities Tighten Post-Settlement Scrutiny of Financial Institutions

Skadden

January 2016

This article is from Skadden's *2016 Insights* and is available at skadden.com/insights/2016-insights.


**Contributing Partner**

**Jamie L. Boucher**
Washington, D.C.

**William J. Sweet, Jr.**
Washington, D.C.

**Counsel**

**Eytan J. Fisch**
Washington, D.C.

**Associate**

**Lindsey F. Randall**
Washington, D.C.





Four Times Square
New York, NY 10036
212.735.3000

**skadden.com**


Last year, financial institutions continued to settle in record numbers with federal and state criminal and civil authorities in areas including benchmark interest rate manipulation, economic sanctions and anti-money laundering compliance. While each settlement is unique, U.S. authorities have made it universally clear that a settlement should not be viewed as the end of the road. In addition to paying significant fines and sometimes pleading guilty, financial institutions have been required to enter into increasingly more stringent and often costly post-settlement commitments.

Two enforcement trends in 2015 are particularly notable and likely to continue. First, although financial institutions have historically been required to maintain and enhance their compliance programs as a condition of settlement, U.S. authorities have increased their post-settlement oversight. In many of its recent settlements, the New York State Department of Financial Services (NYDFS) has required the settling institution to engage an independent monitor or consultant for a term of one or more years to review the institution's compliance policies and practices, make recommendations, oversee implementation of those recommendations and regularly report back to NYDFS. Similarly, civil and criminal authorities increasingly require institutions to file regular reports detailing the remedial steps taken to ensure ongoing compliance with the agreement.

Second, U.S. authorities are requiring greater cooperation and more self-reporting of potential violations. Federal and state criminal authorities traditionally have required ongoing cooperation from the institution, although more fulsome cooperation and self-reporting are now expected, and the length of time such cooperation is required often is longer. Other agencies also are following suit. The Federal Reserve now regularly makes clear in its orders that it expects ongoing cooperation from the institution with investigations into whether separate actions against employees are appropriate.

Failure to comply with post-settlement commitments could have serious legal consequences for the institution, including prosecution, additional monetary penalties and extensions of the terms of the settlement agreement. Financial institutions have already faced such consequences, and we expect to see further scrutiny in these areas in 2016.