THE NEED FOR DATA TRANSFERS

Financial services companies in the US need personal data transferred from other countries for numerous reasons:

• Personnel management

• Requirements to report on various financial transactions, including those involving foreign persons

• Internal investigations

• Sarbanes-Oxley compliance (Whistleblower Hotlines)

• Discovery in litigation
FOREIGN LAWS AFFECTING TRANSFERS

- Data Protection Laws (e.g., Adequacy requirement in EU law)
- Bank Confidentiality/Secrecy Laws
- Blocking Statutes
- Technology Restrictions
- Other Export Controls
SOLUTIONS

• Consent and its Limitations

• EU Devices for Cross-Border Transfers
  -- Binding Corporate Rules
  -- Safe Harbor (essentially unavailable to Financial Institutions)
  -- Model Contracts

• Other international transfer regimes: APEC Cross-Border Transfers and Accountability

• Techniques for Internal Investigations/Regulatory Demands

• Resolving Discovery Disputes Caused by Data Protection Laws
ANTI-MONEY LAUNDERING AND KNOW YOUR CUSTOMER REQUIREMENTS

- Compliance often requires cross-border transfers of data
- Article 29 Working Party June 2011 opinion on data protection relates to the prevention of money laundering and terrorist financing ("WP 186") and provides some guidance
- Outsourcing still is an available option, if used with care
WHISTLEBLOWING HOTLINES

• Multiple laws affect implementing hotlines
• In the EU, Article 29 Working Party Opinion 117 provides guidance
• How companies can comply with the requirement for a Hotline and comply with data protection laws
LOOKING AHEAD

• The impact of new data protection laws

• The potential of trade agreements to resolve the issue of cross-border transfers

• Ensuring compliance with data transfer laws