# IAOP Data Security Chapter Meeting
# Jan. 27, 2010


## Theme:
## Security & Privacy Regulations Affecting Outsourcing And How To Comply

Co-hosted by JANUS Associates and Mayer Brown LLP
Held at offices of Mayer Brown, 1627 Broadway, New York City

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# Agenda

| | | |
|---|---|---|
| ▪ Agenda and IAOP Overview | | Jim Adams – JANUS |
| ▪ New Developments in Security & Privacy Laws Affecting Outsourcing | | Rebecca Eisner – Mayer Brown |
| ▪ Practical Approaches to Compliance | | Karl Muenzinger - JANUS |
| ▪ Panel Discussion | Moderator: | David Hudanish – Mayer Brown |
| | Panelists: | Phil Hausler – IBM<br>Benjamin Smith – BlackRock<br>John Mancini – Mayer Brown<br>Matthew Lane – JANUS |

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# Changing Landscape in Privacy and Data Protection Impacts Outsourcing

## IAOP Security Chapter Meeting – NYC  Jan. 27, 2010

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# U.S. Privacy and Data Security Regulation

- Key Laws
  - Gramm-Leach-Bliley Act (GLBA)
  - Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health (HITECH)
  - Fair Credit Reporting Act/FACT Act
  - Federal Trade Commission Act (FTCA)
  - ID Theft Red Flags
  - State Security Laws (e.g., Breach Notification and Encryption)

# U.S. Privacy and Data Security Regulation –

- Updates to HIPAA via HITECH and the American Reinvestment and Recovery Act (ARRA)
- Incorporates breach notification
- Increases individual rights to update information and prevent disclosure to affiliates
- Prohibition on the sale of PHI and restrictions on marketing of PHI
- Access to information and transfer of information must be tracked
- Connecticut Attorney General Blumenthal sues Health Net of Connecticut regarding the disappearance of a portable computer disk drive that Health Net confirms held protected health information and other personally identifiable data about 1.5 million current and former members

# U.S. Privacy and Data Security Regulation

- FACT Act
  - Disposal Regulations
    - Financial institutions and other entities must develop and maintain controls to ensure that they properly dispose of certain “consumer information.”
    - “Consumer information” is “any record about an individual, whether in paper, electronic, or other form that is a consumer report or that is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the institution for a business purpose.”

# U.S. Privacy and Data Security Regulation –

- FTCA
  - Section 5 of the FTCA prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45.
  - FTC has used Section 5 as the basis for some its recent enforcement actions in the privacy and data security area.
- The FTC intends to move forward with action to protect consumer online privacy -- FTC Chairman Jon Leibowitz, Dec. 7.
- FTC Chairman Jon Liebowitz said he favors consumer opt-in as a prerequisite to the use of personal information.
- FTC public roundtable on consumer privacy, Jan. 28, will cover the “privacy implications of several evolving technologies, including social networking and other platform services, cloud computing, and mobile computing”

# U.S. Privacy and Data Security Regulation –

Banking/FTC ID Theft Red Flags Rule

- Entities issuing credit (including telecom, utilities, student loan providers) now have to monitor accounts for activity which may indicate identity theft.
- Compliance required in 2009
- 26 examples of potential red flags in guidance in five key areas:
  - Alerts, Notifications or Warnings from a Consumer Reporting Agency
  - Suspicious Documents or Personal Identifying Information
  - Unusual Use of, or Suspicious Activity Related to, the Covered Account
  - Notice Regarding Possible Identity Theft in Connection With Covered Accounts Held by the Creditor

# U.S. Privacy and Data Security Regulation –

- State Data Security and Breach Laws
  - Absence of comprehensive federal legislation has prompted state legislation – federal legislation proposed.
  - 45 states, Washington DC, Puerto Rico and the Virgin Islands have breach notification and/or data security laws that protect their citizens.
  - Most state laws define sensitive data as including an individual's last name and first name (or first initial) combined with a Social Security number, driver's license or identification card number, or financial account number plus password or access code.
  - There are exceptions (California, most notably).

# U.S. Privacy and Data Security Regulation –

- Nevada Laws
  - Require encryption of (1) electronically transmitted data and (2) data stored on portable devices transported off-site
  - Data collectors collecting payment card data must comply with PCI DSS.
- Massachusetts Data Security Regulations
  - Beginning March, 2010, these regulations require a comprehensive security program and encryption of transmitted data
  - Apply to any party, in any state, that owns, licenses, stores or maintains the personal information of a Massachusetts resident
- New York: issued a comprehensive privacy guide
- California: health care privacy laws

# Litigation & Enforcement Actions (examples)

- *Certegy Check Services v. Lockwood*
- *Pisciotta v. Old Nat'l Bancorp*
- *In re TJX Cos. Retail Security Breach Litig.*
- *In re Hannaford Bros. Co. Customer Data Security Breach Litig. (multi-district)*

# Litigation & Enforcement Actions

- FTC Enforcement Actions
  - Violations of GLBA safeguarding or privacy rules
  - Unfair or deceptive acts or practices
  - Violation of the disposal rule
- FTC has filed at least 23 cases challenging data security practices:
  - CVS Caremark (Feb. 18, 2009) (unsecured trash)
  - Genica Corp (Feb. 5, 2009) (hacker)
  - Premier Capital Lending (Nov. 6, 2008) (hacker)
  - TJMaxx (Mar. 27, 2008) (hacker)
  - Reed Elsevier and Seisint (Mar. 27, 2008) (inadequate security)
  - ValueClick (Mar. 17, 2008) (SQL injection)
  - Goal Financial (Mar. 4, 2008) (employee conduct)
  - Online Apparel (Jan. 17, 2008) (SQL injection)

# Litigation & Enforcement Actions

- State Actions
  - 41 states vs. TJX Cos. (TJ Maxx's parent): $9 million settlement
  - *Texas v. CVS Pharmacy, Inc.,* Tex. Dist. Ct., No. CV-72881 (settlement entered Mar. 25, 2008)(paid state $315,000 for allegedly tossing personal information into the garbage without shredding)
  - Ky. Att'y Gen. conducts sweep to investigate compliance with consumer record disposal law (Nov. 2007) (Office of Consumer Protection notifies 33 businesses of their violations)
  - *Hawaii v. Marn,* Haw. Cir. Ct., No. 07-1-0524-03 EEH, (settled July 19, 2007)(escrow company paid $10,000 fine for allegedly failing to properly dispose of sensitive customer information)

# EU Data Protection and Data Transfers

- EU Directive and Swiss Data Protection Act prohibits the disclosure of EU/CH personal data to third countries who do not provide an adequate level of data protection unless one of very limited options, subject to local data privacy legislation, applies.
  - Switzerland, Argentina, Canada, Isle of Man, Guernsey, Jersey, Israel and Andorra are considered adequate by the EU. ( EU is also considered adequate by Switzerland).
  - US companies that certify to the EU-US Safe Harbor Framework are considered “adequate” by the EU.
  - US companies that certify to the Swiss-US Safe Harbor Framework are considered “adequate” by the Swiss Data Protection Authority.

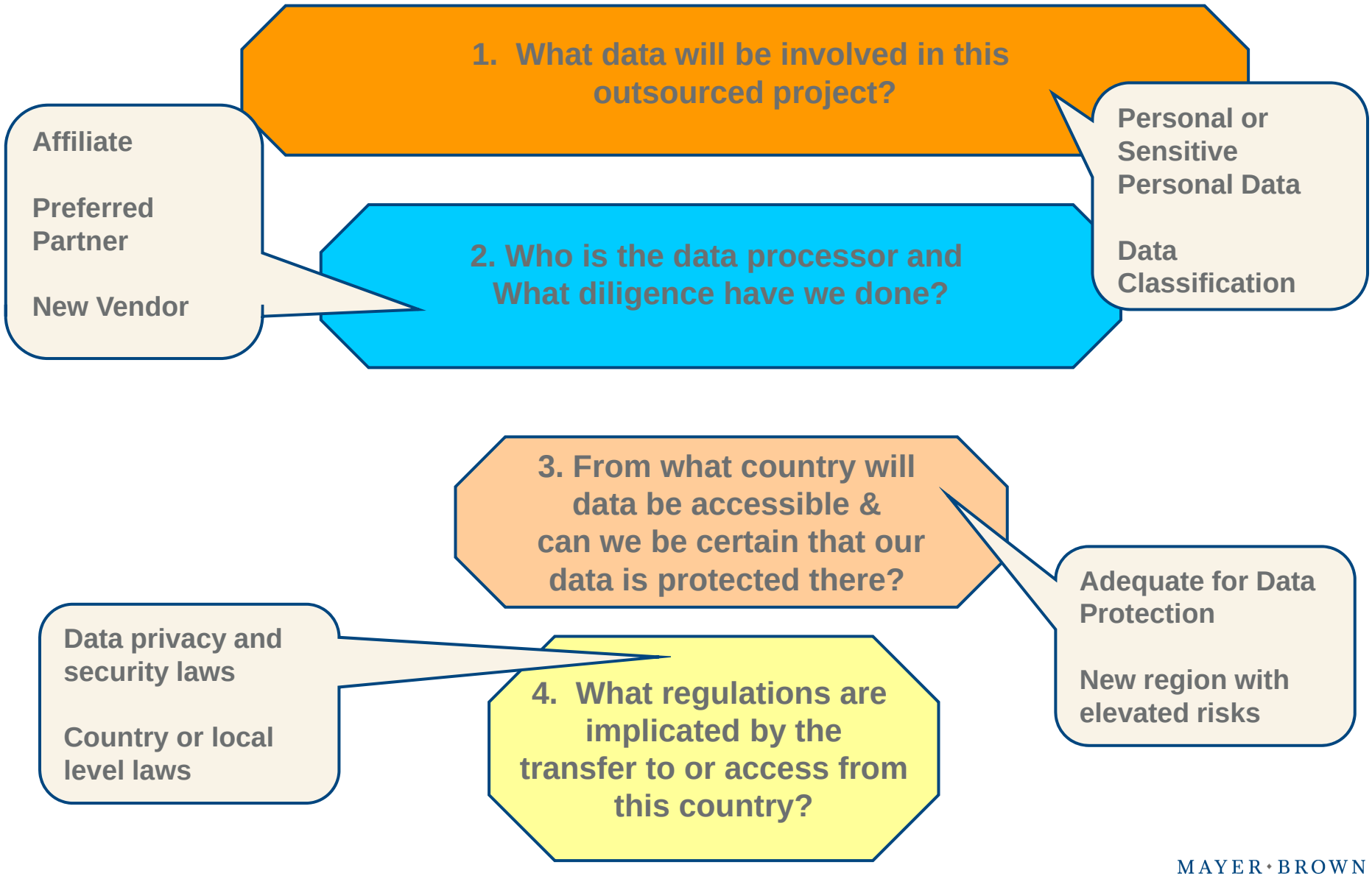
# European Data Protection and Transfer

- Multi-nationals who undertake global projects where data will be centralized must consider personal data protection issues
- These include both transfers among affiliates of data (e.g., all data flowing to US data center for ERP project), AND transfers to third parties
- “Transfer” does not mean file transfer or moving a server – it can mean ability to view data from a location outside of the jurisdiction

# Risk Management in Outsourcing

- Customers cannot deflect responsibility or liability for privacy and security compliance by outsourcing to a provider
- Beyond vague “reasonable security” standards, or technical solutions, the legal standard for privacy compliance is emerging as a process:
  - access assets and risks, plan, implement, monitor, report, repeat and evolve
  - ensuring compliance with third party providers is key to this process – including due diligence
- The contract is only one part of risk management

# Risk Management: Key Questions



# Key Contract Terms: Customer Must Have Topics

- Specific Privacy Requirements for Personal Information (including processing and transfer locations)
- Security Requirements
- Change Control
- Reporting Requirements
- Audit Requirements
- Subcontracting Approval Rights and Flow Down of Provisions
- Incident Plans
- Breach notification
- Changes in Requirements
- Liability
- Costs

# Trends for 2010 and Beyond --

- Business is becoming more global as regulation increases –especially in privacy and security
- Increased regulation will drive service offerings to address key regulatory challenges
- Regulatory requirements are impacting deal structures:
  - Global data project – business process designs to meet privacy and security regulation
  - Global email system – system design must take into account data transfer and data privacy requirements, as well as other regulatory requirements
  - Global spin off of unit – what happens when co-mingled data suddenly has two different owners around the globe?
- Allocation of risk and responsibility for privacy and security compliance will take center stage in contract negotiations

# Clouds on the Horizon?

- Cloud Computing offers great opportunities and challenges
- Microsoft GC has called for the “Cloud Computing Advancement Act” that will promote innovation and protect consumers
- Many consumers and individuals use cloud computing applications already
- Study commissioned by Microsoft:
  - 84% of Americans use web mail service
  - 57% store or share information using a social media site
  - 33% store photos online
- The privacy, security and international issues with cloud computing are far from settled

# Questions?

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## Compliance Strategy:
## A Practical Approach to Vendor Assessment

The International Association of Outsourcing Professionals (IAOP), Security Chapter
Karl W. Muenzinger, CISA CISM CISSP MBCI
January 27, 2010

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# Topics

- Vendor Security Compliance Affects Every Industry
- Managing the Scope of Vendor Assessments
- Managing the Process of Vendor Assessments

# Vendor compliance affects every industry

## Customers are required to monitor the security of their vendors

| Vendor compliance requirements by industry | | |
|---|---|---|
| **Financial Services** | FFIEC | Federal Financial Institutions Examination Council :<br>IT Examination Handbook<br>• Supervision of Technology Service Providers (2003)<br>• Outsourcing Technology Services (2004) |
| | GLBA | Gramm-Leach Bliley Act of 1999 |
| | SOX | Sarbanes-Oxley Act of 2002 |
| | FDIC | IT - Risk Management Program, IT Officer's Questionnaire of 2007 |
| | FACTA | Fair and Accurate Credit Transactions Act Disposal Rule |
| | BASEL II | Sound Practices for the Management and Supervision of Operational Risk |
| | PCI DSS | Payment Card Industry Data Security Standard |
| **Healthcare** | HIPAA | Health Insurance Portability and Accountability Act of 1996 |
| | ARRA | American Recovery & Reinvestment Act |
| | HITECH | Health Information Technology for Economic & Clinical Health Act of 2009 |
| **Government Services** | FISMA | Federal Information Security Management Act of 2002 |
| | --- | State and Municipal Statutes |
| **All Sectors** | FTC | Federal Trade Commission Act |
| | --- | State Data Breach and Privacy regulations |

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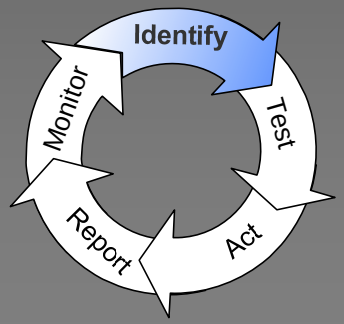
# Three Rules of Vendor Security Compliance

- Risk cannot be outsourced
- Compliance is Not Security, Security is Not Compliance
- Risk Management is the New Compliance Target

Risk Management :
An ongoing cycle of continuous improvement

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Vendor Assessment Project Management :

# Finding the Balance between Time and Scope

## Example of vendor assessment effort

| | |
|---|---|
| 400 | Policy and Procedure questions (20 questions, 20 Policies and Procedures) |
| 600 | Technical Questions (30 per technology, 20 technologies) |
| 100 | Governance Questions |
| 1,100 | Subtotal: Questions per assessment |
| X 30 | Assessments |
| 33,000 | Total Number of Questions! |

- Customer's point of view
  - thousands of answers to review! And that's not including the follow-up inspections!
- Vendor's point of view
  - Reluctance to share business-confidential or proprietary information
  - Disruption from the never-ending audit: "each customer sends us a different list of questions!"

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# Anticipate Scope

## by proactively adopting a common compliance framework :
## COBIT, ISO 27001/27002, or NIST 800-53

| Example : Scope of a HIPAA Audit | | Common or Unique |
|---|---|---|
| Administrative Safeguards | Security Program , Roles and Responsibility | Common |
| | Workforce Security | Common |
| | Access Management | Common |
| | Security Awareness and Training | Mostly Common |
| | Security Incident Response | Common |
| | Business Continuity and Disaster Recovery | Common |
| | Risk Evaluation | Common |
| | **Business Associate Contracts** | **Somewhat unique** |
| Physical Safeguards | Facility Access Controls | Common |
| | Workstation Security | Common |
| | Device and Media Controls | Common |
| Technical Safeguards | Access Control | Common |
| | Audit Controls | Common |
| | Integrity | Common |
| | Authentication | Common |
| | Transmission Security | Common |
| Organizational Requirements | **Group Health Plans** | **Unique** |
| | Policies, Procedures, and Documentation | Mostly Common |

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# Simplify Scope

## Identify overlaps between Compliance Requirements

- Avoid separate compliance efforts for each regulation
- Align Policies and Procedures with common security controls

| Common Security Controls | HIPAA | PCI | FFIEC | FISMA |
|---|---|---|---|---|
| Minimum Necessary Access to Confidential Information | X | X | X | X |
| Encryption of Confidential Data | X | X | X | X |
| User Awareness Training | X | X | X | X |
| Regular Penetration Tests and Vulnerability Assessments | X | X | X | X |
| Business Continuity and Disaster Recovery Plans | X | X | X | X |
| Physical Security | X | X | X | X |
| Change Management and Procurement Practices | X | X | X | X |
| ..... More ..... | | | | |

# Reduce Scope
## by segregating your customer systems and data

- **PCI:** Segregate your network, for a potentially huge cost savings
- **GLBA/FFIEC:** Separate financial customer data from internal support and administrative systems
- **HIPAA:** Segregate Health Records and processes to reduce HIPAA requirements for the rest of the organization

# Risk Based Vendor Assessment

- **Identify** Vendors
- **Prioritize** by Risk
- **Assess** Using a Tiered Approach
- **Record** Proof of the Assessment Process
- **Repeat** Annually, and on Contract Renewal

| Sample of a Tiered Assessment | Low | Medium | High |
|---|---|---|---|
| 1) Business Agreements | X | X | X |
| 2) Questionnaires and check lists | X | X | X |
| 3) Review of Policies, procedures, and documentation | | X | X |
| 4) Independent Vulnerability Assessment and Penetration Test | | X | X |
| 5) Interviews | | Optional | X |
| 6) Standardized Reports:<br>SAS 70 Type II, BITS/Shared Assessments, HITRUST, ISO 27002 certification | Optional | Optional | X |

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# Questionnaire Design:
## Ask Once, Comply Many Times

| Vendor Assessment Question | Answer | HIPAA | PCI DSS | FFIEC |
|---|---|---|---|---|
| Do you keep an Inventory of your Confidential data | Yes | X | X | X |
| Is Confidential Data Encrypted during Transmission | Yes | X | X | X |
| Is Confidential Data Encrypted when stored on Disk or Tape | Yes | X | X | X |
| Independent Vulnerability Assessment in the last 12 months? | Yes | X | X | X |
| Have Contingency Plans been tested in the last 12 months? | Yes | X | X | X |
| ..... More ..... | | | | |

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# Governance, Risk Management and Compliance (GRC) Tools :

## Common Features

- Crosswalk of Compliance Requirements
- Web-based  Vendor Compliance Questionnaires
- Questions are mapped to crosswalk of compliance requirements
- Central Database of Answers and Supporting Documents
- Central tracking of Compliance Gaps
- Workflow for Remediation, Risk Management

# Strategies for Customers
## To Simplify the Assessment Process

- Require the vendor to supply third party reports
  - Vulnerability Assessments conducted by independent experts, SAS 70 Type II, BITS/Shared Assessments, HITRUST, ISO 27002 certification
- Automate the collection of compliance data
  - using a Governance, Risk Management, and Compliance Tool (GRC)
- Outsource the vendor assessment process

# Strategies for Vendors
## To Simplify the Assessment Process

- Align your security program with common security frameworks (ISO 27002, COBIT, NIST 800-53)
  - so that your security program maps to the questions asked during audits
- Maintain a Database of compliance questions and answers
  - using a Governance, Risk Management, and Compliance Tool (GRC)
- Provide standardized third party reports

# The Regulators' Perspective on SAS 70
## and other Standardized Assessment Reports

- Good starting point, but may not address the unique operational risks of the customer
- Point in time audits are not a replacement for an ongoing risk management process
- SAS 70 state the controls that the vendor has in place, but provides limited opinion on what might be missing
  - SAS70 Type I is not adequate : SAS70 Type II is preferred (and more expensive)

# The FFIEC Perspective on SAS 70
## and other Standardized Assessment Reports

"In ***lower risk relationships*** the institution may prescribe the use of standardized reports, such as trust services reports or a Statement of Auditing Standards 70 (SAS 70) report.

However, "Financial institutions should evaluate carefully and critically whether a SAS 70 report adequately supports their oversight responsibilities.

The report may not provide a thorough test of security controls and security monitoring or address whether the vendor is meeting the institution's specific risk mitigation requirements. "

**Federal Financial Institutions Examination Council (FFIEC) IT Examination Handbook: Information Security, July 2006**

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## Final Words

# HONESTY BUILDS TRUST : TRUST LEADS TO INVESTMENT

- Total security is not achievable
- How a company approaches risk management is more important than the existence of risk
- Information security is an opportunity to build trust and bolster the reputation of your brand

# Questions?

Panel Discussion:

# "Managing the Security and Privacy Risks and Opportunities in Outsourcing"

## Participants

Moderator: David Hudanish – Partner, Mayer Brown

Panelists: Phil Hausler – Vice Pres., Banking Industry, IBM

Benjamin Smith – Chief Info. Security Officer, BlackRock

John Mancini – Partner, Mayer Brown

Matthew Lane – Chief Technology Officer, JANUS

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# Thank You For Your Participation

## Your Co-Hosts


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