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August 2014

REGULATORY UPDATE ON RECENT FINCEN ANTI-MONEY LAUNDERING DEVELOPMENTS

AUTHORS

D. E. Wilson, Jr.
Ralph E. Sharpe
Andrew E. Bigart

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This Alert provides a brief update on recent developments involving the Financial Crimes Enforcement Network (FinCEN), a bureau within the U.S. Treasury responsible for developing anti-money laundering (AML) requirements for financial institutions. While many in Washington have left the city for the summer, FinCEN has been unusually busy, announcing a significant proposed rulemaking on customer due diligence on beneficial owners, issuing several advisories on AML issues, and publishing enforcement actions.

FinCEN Issues Proposed Rules to Enhance Financial Transparency

On August 4, 2014, FinCEN published a **proposed rule** that would require financial institutions subject to Customer Identification Procedures (CIP) (banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers) to identify beneficial owners of legal entity customers and subject them to customer due diligence (CDD) requirements. Specifically, FinCEN proposes to amend its existing AML rules for CDD to explicitly address the following "pillars," which FinCEN believes are fundamental to an effective AML program:

- identifying and verifying the identity of customers (which is already required as part of an institution's CIP);
- identifying and verifying the identity of beneficial owners of legal entity customers (*i.e.*, the natural persons who own (25% or more) or control legal entities);
- understanding the nature and purpose of customer relationships; and
- conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.

Of particular importance, FinCEN proposes that financial institutions collect beneficial owner information at the time a new account is opened using a standard certification form. Financial institutions would then verify the identity of beneficial owners pursuant to their existing CIP practices.

This proposal has been in development for a number of years, going back to FinCEN's announced notice of proposed rulemaking in March 2012, which was subject to significant industry comment and a public hearing. See, *e.g.*, Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence (October 5, 2012). Comments on the proposed rule are due on October 3, 2014.

FinCEN Advisories on AML Compliance

Advisory Promoting a Culture of Compliance

On August 11, 2014, FinCEN issued an **advisory** underscoring the need for financial institutions to develop a "culture of compliance." According to FinCEN, recent enforcement actions have highlighted a pattern of deficient leadership and organizational focus when it comes to AML/BSA compliance. The advisory states that a financial institution can strengthen its BSA/AML compliance culture by ensuring that:

- its leadership actively supports and understands compliance efforts;
- BSA/AML compliance is not compromised by revenue interests;
- information is shared within relevant departments to further BSA/AML efforts;
- adequate resources are devoted to its compliance function;
- the compliance program is tested by an independent and competent party; and
- its leadership and staff understand the purpose of its BSA/AML efforts.

Advisory on FATF-Identified Jurisdictions with AML/CFT Deficiencies

On August 5, 2014, FinCEN **advised** U.S. financial institutions that the international Financial Action

Task Force (FATF) had updated its list of jurisdictions with strategic AML/CFT deficiencies. These changes will impact U.S. financial institutions' obligations and risk-based approaches for the relevant jurisdictions.

FinCEN Reporting Initiative on Cross-Border Cash Couriers

On August 1, 2014, FinCEN, in coordination with its Mexican counterpart, the Unidad de Inteligencia Financiera (UIF), **announced** a series of reporting initiatives to improve the transparency of cross-border cash movements involving armored car services and other common carriers of currency. The Geographic Targeting Order requires enhanced cash reporting by these businesses at the San Ysidro and Otay Mesa Ports of Entry in California. FinCEN also issued updated guidance on the filing of Currency and Monetary Instruments Reports, which are filed when \$10,000 or more in currency is moved across the U.S. border.

FinCEN Enforcement Actions

FBME Bank Ltd.

On July 17, 2014, FinCEN **announced** that it had named FBME Bank Ltd. (formerly the Federal Bank of the Middle East) as a foreign financial institution of primary money laundering concern under Section 311 of the USA PATRIOT Act. Section 311 authorizes FinCEN to require domestic financial institutions and financial agencies to take certain "special measures" to address identified money laundering concerns. Under this authority, FinCEN has proposed to prohibit financial institutions from opening or maintaining correspondent accounts for or on behalf of FBME. According to FinCEN's press release, the proposed measures are based on FBME's weak AML controls, the fact that the bank openly advertises that it is willing to facilitate the evasion of AML regulations, and the bank's history of evading regulatory oversight.

Mian, Inc. (d/b/a Tower Package Store)

On July 15, 2014, FinCEN **assessed** a \$45,000 civil money penalty against Mian, a money services business, alleged to have committed various violations of the BSA. According to FinCEN, Mian failed to implement an effective written AML program, provided check cashing services without complying with applicable reporting requirements, and routinely failed to file timely currency transaction reports.

Release of "SAR Stats," FinCEN's Successor Publication to "By the Numbers"

In July, FinCEN **published** its first edition of "SAR Stats," a new publication that provides a detailed summary of the suspicious activity reports (SARs) filed with FinCEN. The report examines data in the 1,369,529 SARs filed between March 1, 2012 and December 31, 2013. In addition to providing data on these SARs, including a breakdown by type of financial institution, the publication provides guidance on recent trends, best practices for SARs, and other helpful information, such as a spotlight on new developments (in the initial issue, Bitcoins). Copies of SAR Stats, as well as the prior "By the Numbers" publications, can be found at www.fincen.gov/news_room/rp/sar_by_number.html.

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Please let us know if you have any questions about the recent FinCEN developments discussed above or other AML issues.

Upcoming CLE Webinar

"Anti-Money Laundering: Lessons for U.S. Financial Institutions from Recent Enforcement Actions" for the American Law Institute

Thursday, August 14, 2014 | 12:00 – 1:30 p.m. ET

Join us for this CLE program about anti-money laundering enforcement for a concise and illuminating discussion of the latest developments in BSA/AML enforcement activities and what those enforcement actions mean for U.S. financial institutions.

Speakers:

D. E. Wilson, Jr., Venable LLP

Ralph E. Sharpe, Venable LLP

Heather A. Lowe, Global Financial Integrity

[Please click here to register and for more information.](#)