Fried Frank International Trade and Investment *Alert*™

FinCEN Announces New AML/CFT National Priorities

Overview

On June 30, the Financial Crimes Enforcement Network ("FinCEN") issued its first Anti-Money Laundering and Countering the Financing of Terrorism National Priorities (the "Priorities"). The Priorities were issued pursuant to the Anti-Money Laundering Act of 2020, and will be followed within 180 days by regulations that specify how banks and non-bank financial institutions subject to the Bank Secrecy Act ("BSA") should incorporate the Priorities into their risk-based AML compliance programs. FinCEN's publication of the Priorities does not create an immediate change to BSA requirements, and FinCEN made clear that covered institutions are not required to make any changes to their risk-based AML programs, instead noting only that covered institutions "may wish to start considering how they will incorporate" the Priorities into their AML compliance policies. An interagency statement issued by federal and state financial regulators confirmed that regulators will not evaluate whether banks and other financial institutions have incorporated the Priorities into their risk-based AML programs until after the effective date of the new regulations.

The Priorities

FinCEN identified the Priorities in conjunction with several federal and state regulators, national security and law enforcement agencies, and the Attorney General. The Priorities are:

I. **Corruption**: Corrupt actors and their financial facilitators may seek to take advantages of vulnerabilities in the U.S. financial system to launder their assets and obscure the proceeds of crime, including misappropriation of public assets and bribery.

II. **Cybercrime**: Cyber-enabled financial crime, ransomware attacks, and the misuse of convertible virtual currencies (i.e., cryptocurrencies and digital assets) are areas of particular concern for FinCEN. Covered financial institutions are encouraged to share information about cybercrimes with one another under the BSA's safe harbor provisions.

III. **Terrorist** financing: FinCEN reiterated that covered institutions are required to file Suspicious Activity Reports ("SARs") for potential terrorist financing transactions, as appropriate. FinCEN also emphasized the threat posed by both international and domestic terrorism, including racially or ethnically motivated violent extremists.

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IV. **Fraud**: FinCEN notes that, of the crimes that generate the bulk of illicit proceeds in the United States, fraud generates the largest share of illicit proceeds, and the proceeds of fraudulent activities can be laundered through a variety of methods, including offshore entities, accounts controlled by cyber actors, and money mules.

V. **Transnational criminal organization activity**: FinCEN identified transnational criminal organizations ("TCOs") as a priority threat because of the crime-terror nexus, and noted that Mexican and Russian TCOs operating in the United States are of particular concern.

VI. **Drug trafficking organization ("DTO") activity**: FinCEN highlighted the risk posed by professional money laundering networks in Asia (primarily China) that serve as money brokers in trade-based money laundering schemes and launder proceeds from the sale of narcotics by facilitating the exchange of cash proceeds from Mexican DTOs to Chinese citizens residing in the United States.

VII. **Human trafficking and human smuggling**: FinCEN referred to two previously issued advisories that identified various financial and behavioral red flags of human trafficking and smuggling. The illicit proceeds of human trafficking can include income derived from the housing, transportation, and exploitation of victims.

VIII. **Proliferation financing**: The principal threat of proliferation financing comes from networks of individuals and entities who seek to exploit the U.S. financial system to move funds that will be used to acquire weapons or to further the development of state-sponsored weapons programs. Covered institutions are encouraged to consult Department of the Treasury advisories regarding the exploitation of global supply chains and maritime transportation to finance and facilitate weapons proliferation.

Key Takeaways

One of the more notable items included in the Priorities is convertible virtual currencies ("CVCs"), which can include cryptocurrencies, digital currencies, and digital assets. In 2019, FinCEN issued guidance regarding the application of FinCEN's regulations to business models involving CVCs. The Priorities note that while CVCs are a substantial financial innovation, they have grown into the currency of preference for a variety of online illicit activity, including being used as payment for ransomware tools and services, child exploitation services, and illicit drugs and goods. CVCs have also increasingly been used as a method of paying ransoms to the perpetrators of ransomware attacks. The AML regulations that FinCEN will promulgate will likely cover CVCs and build upon FinCEN's 2016 advisory regarding cyber-enabled crime.

Within 180 days of the publication of the Priorities, FinCEN will promulgate regulations implementing the Priorities. At present, covered institutions do not need to make any immediate changes to their risk-based AML programs in response to the Priorities. Until the effective date of the regulations, federal and state regulators will not evaluate whether covered institutions have incorporated the Priorities into their AML compliance policies and programs.

Given the lack of clarity and concrete recommendations included in the Priorities, banks and other financial institutions may find it difficult to incorporate the Priorities into their AML compliance programs until more concrete guidance (in the form of new regulations) is issued. Nonetheless, financial institutions should review their AML programs and policies and consider how they will incorporate the Priorities into their compliance programs.

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