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Targeting Illicit Finance: The Financial Crimes Enforcement Network’s “Financial Institution Advisory Program”

Introduction

The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, is charged with administering the U.S. government’s financial regulatory regime to counter money laundering, terrorist financing, and other illicit financial activity. Since 1996, FinCEN has periodically issued public and nonpublic “advisories” on these topics.

Some policymakers, including in Congress, have taken an interest in FinCEN’s financial institution advisory program as a means to boost private sector reporting of financial intelligence on key transnational crime concerns and U.S. foreign policy priorities, including counterterrorism. Although Congress has not specifically mandated FinCEN’s advisory program, the 115th Congress has sought to encourage FinCEN to issue advisories on a range of topics, including foreign corruption, human trafficking, proliferation finance, and cybercrime.

FinCEN’s Mandate. FinCEN was created in 1990 as the “financial intelligence unit” (FIU) of the United States. Its mandate includes the collection, analysis, and dissemination to law enforcement of a range of reports on financial transactions collected by private sector entities. This mandate was broadened in 1994 to include regulatory responsibilities administering the Bank Secrecy Act (BSA). Under the 2001 USA PATRIOT Act (31 U.S.C. 310), FinCEN became a Treasury bureau.

Background

The purpose of FinCEN’s advisory program is twofold: (1) to elicit from financial institutions high-quality financial intelligence that, in turn, can be used to further ongoing law enforcement investigations, and (2) to help financial institutions mitigate their exposure to money laundering risks by reminding them of their BSA/AML compliance obligations and developing and sharing with them red flags that may indicate illicit financial activity.

Advisories represent one of several communications tools available to FinCEN to share information with the financial and regulatory communities on current trends in money laundering and priorities for financial intelligence collection. They are informed by various reports financial institutions are required to file with FinCEN under the BSA regarding suspicious transactions or external developments that may trigger heightened financial crime risks.

Advisories may also be issued to signal to the private sector certain current law enforcement interests. In recent years, FinCEN has issued, on average, fewer than 10 advisories annually. The more complex advisories, including a recent advisory issued on Iran in November 2018, can reportedly take up to six months to prepare.

Unlike with FinCEN’s rulemaking activities, its advisories do not add new regulatory obligations. Instead, they are intended to provide relevant context and often detailed descriptions of financial crime methods to better inform a bank’s risk-based anti-money laundering (AML) compliance program. As financial crime patterns evolve, FinCEN has updated and rescinded some advisories. In 2018, FinCEN began translating a few advisories into Spanish, potentially increasing prospective readership.

Public Versus Nonpublic Advisories. Most advisories are publicly disseminated and posted on FinCEN’s website. Additionally, FinCEN issues nonpublic advisories that may include law enforcement-sensitive information. These nonpublic advisories are disseminated to select financial institution recipients through FinCEN’s secure information sharing system—a system also used for its outreach to the financial community pursuant to Section 314(a) of the USA PATRIOT Act of 2001 (P.L. 107-56).

Types of Advisories

Advisories typically share predictable formats, which include background information on the financial crime concern, examples of money laundering typologies, descriptions of redacted or adjudicated law enforcement case studies, and a list of illicit activity red flags that financial institutions could monitor. Beyond the common format, however, they are characterized primarily by their diversity of subjects. Recent public advisories have addressed the following topics:

Supporting National Security Priorities

FinCEN has issued both public and nonpublic advisories on national security priorities. Nonpublic advisories have reportedly addressed current threats related to the financing of terrorism. Public advisories have addressed topics such as the illicit financial activities of Iran (issued in November 2018) and North Korea (issued in November 2017) and how evolving policies toward these countries are affecting U.S. financial institutions’ BSA/AML obligations.

Targeting Proceeds of Foreign Corruption

Several recent advisories have addressed the issue of corrupt senior foreign political figures and their immediate family and close associates (collectively referred to as politically exposed persons). In particular, they examine how such figures access the U.S. and international financial systems to move or hide illicit proceeds and evade U.S. and global sanctions. In June 2018, FinCEN issued an advisory on "Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and their Financial Facilitators." Its issuance followed President Donald J. Trump's December 2017 Executive Order 13818, implementing the Global Magnitsky Act of 2016.

Geographically specific advisories have also focused on political instability in certain countries and sought to help financial institutions identify proceeds of crime and public corruption originating from senior foreign political figures. Since 2011, FinCEN has issued such advisories addressing corruption on Nicaragua, Venezuela, South Sudan, Ukraine, Syria, Libya, Egypt, and Tunisia.

Combating Transnational Crime and Fraud

FinCEN advisories have explored illicit finance activities associated with laundering the proceeds of a variety of specific transnational crimes and major fraud schemes. Recent advisories (2014-2017) have addressed disaster-related fraud, cyber events and cyber-enabled crime, email compromise fraud schemes, and human trafficking and smuggling. Older advisories (2011-2013) have addressed narcotics and bulk currency, as well as a variety of loan scams, financial exploitation of elders, mortgage fraud schemes, and tax refund fraud and identity theft.

Addressing Sector-Specific Laundering Methods

Advisories have sought to identify several key methods of money laundering, such as through the real estate sector. Advisories have also addressed trade-based money laundering (TBML) and a variant of TBML commonly associated with the laundering of drug proceeds in Latin America, called the Black Market Peso Exchange. Other advisories have addressed money laundering through casinos and the exploitation of informal value transfer systems.

Describing FATF Plenary Outcomes

FinCEN uses its advisory program to provide notice to U.S. financial institutions of decisions made at the Financial Action Task Force (FATF), an intergovernmental standards-setting body on AML matters, of which the United States is a member. FATF meets in plenary session three times per year. At its October 2018 meeting, FATF continued to identify jurisdictions with strategic money laundering deficiencies, including North Korea (countermeasures to protect the international financial system recommended) and Iran (enhanced due diligence recommended).

FATF has identified 11 other jurisdictions as also strategically deficient on AML, but engaged with FATF in an ongoing process of improving compliance: the Bahamas, Botswana, Ethiopia, Ghana, Pakistan, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, and Yemen.

Identifying BSA Compliance Trends

Some advisories discuss core BSA concepts, such as promoting a culture of compliance among financial institutions and the confidentiality of suspicious activity reports.

Congressional Focus: Foreign Corruption, Human Trafficking, and Cybercrime

Foreign Corruption. S.Rept. 115-281, accompanying S. 3107 on FY2019 appropriations for FinCEN, among others, expressed concern regarding the "increased use of the U.S. financial system by corrupt foreign government officials and private citizens engaged in criminal enterprises"—and encouraged FinCEN to use its financial intelligence tools to pursue such money laundering by foreign agents.

Human Trafficking. In FY2014, Congress directed FinCEN to issue an advisory on human trafficking (see S.Rept. 113-80, whose language was approved as part of P.L. 113-76). House committee reports accompanying FY2018 (H.Rept. 115-234) and FY2019 (H.Rept. 115-792) appropriations continue to emphasize the importance of FinCEN providing law enforcement assistance for human trafficking investigations.

Cybercrime. S.Rept. 115-281, accompanying S. 3107 on FY2019 appropriations for FinCEN, among others, noted the bureau's recent cyber-related advisories and encouraged FinCEN to continue to issue such advisories to help financial institutions identify and report money laundering of cybercrime proceeds.

Conclusion

FinCEN's advisories represent one of the bureau's most visible tools to communicate AML priorities to financial institutions. In the 115th Congress, House and Senate appropriations committee reports have variously encouraged FinCEN to continue to use advisories as a tool to describe publicly money laundering methodologies and to elicit from the private sector on-target reporting of suspicious financial activity. Some bills in the 115th Congress have also sought information from the executive branch on the possible use of FinCEN advisories to combat proliferation finance (H.R. 6332) and corruption in the Democratic Republic of the Congo (H.R. 6207).

The 116th Congress may continue to seek opportunities to shape FinCEN's plans to produce future advisories on new topics or update previously issued advisories. Some in the 116th Congress may also seek to evaluate the effectiveness of FinCEN's advisories—and measure the extent to which they have contributed to more effective suspicious activity reporting.

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