

FinCEN Director Highlights Value of BSA Reporting; Focuses on Persistent Beneficial Ownership Information Gap

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FinCEN Director Kenneth A. Blanco recently stressed the value of BSA data, especially in the virtual currency space, and highlighted the continuing “national security gap” in collecting beneficial ownership information for AML purposes. Mr. Blanco raised these issues in remarks he delivered on December 10, 2019, at the American Bankers Association/American Bar Association Financial Crimes Enforcement Conference in Washington, DC.

FinCEN Use of BSA Data

Seemingly responding to concerns that have been raised regarding the burdens and utility of Bank Secrecy Act (BSA) reporting, Mr. Blanco began with a robust defense of the obligations. He described the varied constituencies that make use of BSA data, which include more than 350 federal, state, local, and tribal agencies conducting approximately 30,000 searches per day. Mr. Blanco explained that these queries have resulted in identifying 18.2 million filings on average each year that bear on law enforcement and national security interests, and noted that FinCEN's 100+ Suspicious Activity Report (SAR) review teams analyze approximately 60% of all SARs filed annually.

Mr. Blanco also emphasized the importance of FinCEN's new BSA Value Project, which he explained was tasked with developing metrics to track and measure the use of BSA information. To this point, the BSA Value Project has identified over 500 different metrics to help evaluate how regulatory and compliance changes might impact the value of BSA reporting, and “specific challenges” FinCEN must address, such as “the development of shared AML priorities.”

Mr. Blanco stressed that financial institutions also benefit from BSA reporting by identifying bad actors, managing risk more efficiently, and avoiding the financial and reputational “costs from non-compliance.”

Developments in the Convertible Virtual Currency Space

FinCEN issued guidance in May 2019 on the application of its BSA regulations to activities involving convertible virtual currencies (CVCs).¹ It summarizes previously issued guidance in this area, and describes the application of FinCEN requirements to additional CVC-related business models. The May 2019 guidance is available [here](#).

In his remarks, Mr. Blanco reported that since FinCEN issued this guidance, CVC-related SAR reporting has substantially increased. As of November 2019, 2,100 unique filers had referenced advisory key terms from the May 2019 guidance, which Mr. Blanco believes demonstrates that CVC entities “are using the red flags” articulated in the new guidance and “reporting suspicious activity back to us.”

¹ FinCEN defines “virtual currency” as “a medium of exchange that can operate like currency but does not have all the attributes of ‘real’ currency, as defined in 31 CFR § 1010.100(m), including legal tender status.” It further defines convertible virtual currency, or CVC, as “a type of virtual currency that either has an equivalent value as currency, or acts as a substitute for currency, and is therefore a type of value that substitutes for currency.” CVC may refer to what is known as “digital currency,” “cryptocurrency,” or “digital assets,” among other labels. FinCEN May 2019 Guidance, FIN-2019-G001 § 1.3.

Mr. Blanco also addressed trends in the CVC space arising from these reports. In 2019, FinCEN filings that identify potential unregistered, foreign-located money services businesses have risen, in particular with respect to Venezuelan peer-to-peer exchanges. More generally, Mr. Blanco reported that virtual currency exchanges have increased reporting of customer transactions linked to “darknet marketplaces,” and kiosks increased their reporting of CVC-related scams.

Mr. Blanco urged financial institutions to consider the new guidance, examine their CVC reporting practices, and “reevaluate whether their institutions are exposed to cryptocurrency.”

Beneficial Ownership

The Consumer Due Diligence (CDD) Rule, effective May 11, 2018, strengthened the due diligence obligations for financial institutions with respect to who owns, controls, and profits from companies. In his remarks, Mr. Blanco noted that while the CDD rule requires financial institutions to “verify” certain identifying information upon opening an account, it does not require disclosure of “who really owns and controls a business and its assets at company formation.”

Mr. Blanco thus stated that he believes there “is more work to be done,” and that the next step to “closing the national security gap is collecting beneficial ownership information at the corporate formation stage.” Mr. Blanco characterized the absence of a requirement to collect this beneficial ownership data as a “dangerous and widening gap in our national security apparatus,” and described “the secrecy behind shell companies” as a “clear and present danger” to national security.

Mr. Blanco stated that by collecting ownership information at the time of corporate formation, “it would be harder and more costly for criminals, kleptocrats, and terrorists to hide their bad acts, and for foreign states to avoid detection and scrutiny,” and would deny criminals the “ability to profit and benefit from” our financial institutions “while threatening our national security.”

Mr. Blanco stated that FinCEN intends to work with financial institutions and lawmakers to chart an effective way forward. More information about the CDD rule is available [here](#).

Interagency Working Group on AML

Mr. Blanco then addressed the recent accomplishments of the federal interagency group focused on financial institutions’ AML obligations—a collaboration between FinCEN, the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. In October 2018, the group issued a joint statement addressing collaborative arrangements to share resources in the BSA and AML space.² In December 2018, the group encouraged financial institutions to implement innovative pilot programs to combat money laundering, and provided assurances that these pilot programs would not “subject banks to supervisory criticism” even if the programs do not succeed.³ And in July 2019, the group issued a joint statement providing guidance on a “risk focused approach” designed to “tailor examination plans and procedures based on the unique risk profile of each bank.”⁴

Organizational Realignment

In closing, Mr. Blanco noted recent organizational changes at FinCEN. FinCEN’s Liaison Division, which facilitates effective engagement with both government and private sector stakeholders, has been renamed the Strategic Operations Division, and will be led by AnnaLou Tirol, the former head of the

² <https://www.fincen.gov/news/news-releases/interagency-statement-sharing-bank-secrecy-act-resources>

³ <https://www.fincen.gov/news/news-releases/treasurys-fincen-and-federal-banking-agencies-issue-joint-statement-encouraging>

⁴ <https://www.fincen.gov/news/news-releases/federal-bank-regulatory-agencies-and-fincen-improve-transparency-risk-focused>

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Public Integrity Section at the U.S. Department of Justice. Mr. Blanco also noted that the new Global Investigations Division will allow FinCEN to “focus specifically on identifying and targeting illicit finance around the world” through more extensive use of Geographic Targeting Orders and actions under Section 311 of the USA PATRIOT Act to target specific money laundering and terrorist financing risks.

Potential Impact

Mr. Blanco’s statements in general paint a positive picture of recent developments in BSA/AML, with the significant exception of beneficial ownership information. The concern—cast here in national security terms—is one that has been echoed elsewhere, including in the Financial Action Task Force’s December 2016 report,⁵ where “[l]ack of timely access to adequate, accurate and current beneficial ownership information” was described as a “fundamental gap[.]” It is clear that this will continue to be a focus of FinCEN, among other stakeholders, in the time to come.

Mr. Blanco’s remarks are available [here](#).

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⁵ <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>

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