

Agencies and Regulators Focus on AML Compliance for Cryptocurrency Industry

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This year, regulators, supported by a slate of new legislation, have focused more of their efforts on AML violations and compliance deficiencies than ever before. As we have written about in the [“AML Enforcement Continues to Trend in 2021”](#) advisory, money laundering provisions in the National Defense Authorization Act for fiscal year 2021 (the NDAA) expanded the number of businesses required to report suspicious transactions, provided new tools to law enforcement to subpoena foreign banks, expanded the AML whistleblower program, and increased fines and penalties for companies who violate anti-money laundering provisions. The NDAA, consistent with Treasury regulations, also categorized cryptocurrencies as the same as fiat currencies for purposes of AML compliance.

In addition, as discussed in our advisory [“Businesses Must Prepare for Expansive AML Reporting of Beneficial Ownership Interests,”](#) the NDAA imposed new obligations on corporations, limited liability companies, and similar entities to report beneficial ownership information. Although the extent of that reporting has not yet been defined, the notice of proposed rulemaking issued by FinCEN raises serious concerns that the Treasury Department may require businesses to report beneficial ownership information for corporate affiliates, parents and subsidiaries; as well as to detail the entity’s relationship to the beneficial owner. Shortly after passage of the NDAA, Treasury Secretary Janet Yellen stressed that the Act “couldn’t have come at a better time,” and pledged to prioritize its implementation.

Money laundering in the cryptocurrency space has attracted increased attention from regulators and the IRS may soon have an additional tool at its disposal if H.R. 3684 (the bipartisan infrastructure bill) is signed into law. That bill includes AML provisions that would require stringent reporting of cryptocurrency transactions by brokers. If enacted, the IRS will be able to use these reports to identify large transfers of cryptocurrency assets, conduct money laundering investigations, and secure additional taxable income. Who qualifies as a “broker,” however, is still up for debate but some fear the term may be interpreted to encompass cryptocurrency miners, wallet providers and other software developers. According to some cryptocurrency experts, such an expansive reporting regime would prove unworkable for the industry. In response, an anonymous source from the Treasury Department told Bloomberg News that Treasury was already working on guidance to limit the scope of the term.

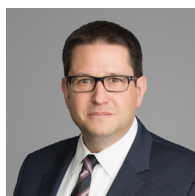
In addition to these legislative developments, regulators are already staking their claims over jurisdiction to conduct AML investigations in the cryptocurrency area. This month, SEC Chair Gary Gensler, in arguing that the SEC had broad authority over cryptocurrency, claimed that cryptocurrency was being used to “skirt our laws,” and likened the cryptocurrency space to “the Wild West . . . rife with fraud, scams, and abuse” — a sweeping allegation that received much backlash from not only cryptocurrency groups, but other regulators as well. CFTC Commissioner Brian Quintez, for example, tweeted in response: “Just so we’re all clear here, the SEC has no

authority over pure commodities . . . [including] crypto assets.” Despite this disagreement, both regulatory agencies have collected millions of dollars in penalties from companies alleged to have violated AML laws or BSA reporting requirements. Just last week, a cryptocurrency exchange reached a \$100 million settlement with FinCEN and the CFTC, stemming from allegations that the exchange did not conduct adequate due diligence and failed to report suspicious transactions.

With so many governmental entities focused on combatting money laundering, companies in the cryptocurrency space must stay abreast of these fast-moving developments. The combination of increased reporting obligations, additional law enforcement tools, and heightened penalties make it essential for cryptocurrency firms to institute strong compliance programs, update their AML manuals and policies, conduct regular self-assessments, and adequately train their employees. Companies should also expect additional regulations to be issued and new legislation to be enacted in the coming year. Stay tuned.

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