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Agencies Encourage Banks to Innovate in BSA/AML Compliance

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On December 3, 2018, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network ("FinCEN"), the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively, the "Agencies") issued a joint statement (the "Joint Statement") encouraging banks to consider, evaluate, and, where appropriate, implement innovative approaches to meet Bank Secrecy Act/anti-money laundering ("BSA/AML") compliance obligations.[1]

Joint Agency Statement

The Agencies expressed an openness to engagement and dialogue with bank management on innovative approaches to BSA/AML compliance programs that increase the effectiveness of such programs and allow banks to maximize the use of their BSA/AML resources. In particular, the Agencies recognize that pilot programs undertaken by banks, in conjunction with existing BSA/AML processes, are an important means of testing and validating the effectiveness of innovative approaches. The Joint Statement encourages banks to engage with the Agencies early in these pilots, and FinCEN will consider requests for exceptive relief to facilitate testing and potential use of new technologies, provided that banks maintain the overall effectiveness of their BSA/AML programs.

Banks can take some comfort from the Agencies' assertion that the Joint Statement will not create new supervisory expectations to innovate, so long as a bank maintains an effective BSA/AML compliance program commensurate with its risk profile. The Agencies stressed that pilot programs that expose gaps in a BSA/AML compliance program will not be a trigger for supervisory action with respect to that program.

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The Joint Statement explains, as an example, that when a bank tests or implements artificial intelligence-based transaction monitoring systems and identifies suspicious activity that would not otherwise have been identified under existing processes, the Agencies will not automatically assume that the bank's existing processes are deficient. In these instances, the Agencies will assess the adequacy of a bank's existing suspicious activity monitoring processes independent of the results of the pilot program.

The Agencies support running existing processes and new, innovative processes in parallel, and encourage bank management to use a cautious and deliberative approach when replacing or augmenting an existing BSA/AML process with new technology. The Joint Statement urges bank management to evaluate whether, and at what point, an innovative approach may be considered sufficiently developed to replace or augment an existing process and to consider and address other factors including, but not limited to, information security issues, third-party risk management, and compliance with other applicable laws and regulations, such as those related to customer notifications and privacy.

BSA/AML and Sanctions Policy Developments

In remarks at the ABA/ABA Financial Crimes Enforcement Conference following the release of the Joint Statement, Sigal Mandelker, Under Secretary of the Treasury over the Office of Terrorism and Financial Intelligence, and Ken Blanco, Director of FinCEN, expanded on the Treasury Department's efforts to drive innovation and support improvements in anti-financial crime compliance[2]. In her remarks, Under Secretary Mandelker underscored the Joint Statement's encouragement of BSA/AML innovation, stressing that "banks should not be deterred from testing innovative ideas out of a concern that it could lead to regulatory criticism." Mandelker also spoke about the Treasury's reinvigorated relationships with the federal banking agencies and other financial regulators; her laser-focus on eliminating vulnerabilities related to technological innovations, including those associated with virtual currencies; and recent efforts by FinCEN and the Office of Foreign Assets Control ("OFAC") to clarify agency compliance expectations through official agency guidance and published details explaining the reasons for agency enforcement action.

Of particular note, Mandelker previewed forthcoming guidance from OFAC regarding the hallmarks of an effective, risk-based economic sanctions compliance program, which should include:

- ensuring senior management commitment to compliance;
- conducting frequent risk assessments to identify and mitigate sanctions-specific risks within an institution and its products, services, and customers;
- developing and deploying internal controls in order to identify, interdict, escalate, report, and maintain records pertaining to prohibited activity;
- engaging in testing and auditing to identify and correct weaknesses and deficiencies, both on specific sanctions compliance program elements and across the institution; and
- ensuring all relevant personnel, particularly those in high-risk areas or business units, are provided tailored training on OFAC obligations and rules in general and the company compliance program in particular.

In his remarks at the conference, Director Blanco formally announced the creation of a FinCEN innovation initiative, as referenced in the Joint Statement. While he did not provide details regarding the initiative, Blanco affirmed FinCEN's commitment to engage with the private sector to discuss pilot programs that test new approaches (and technologies) to BSA/AML compliance.

Mandelker and Blanco lauded the interagency group that produced the Joint Statement, and the October 2018 Interagency Statement on Sharing Bank Secrecy Act Resources.[3] Treasury indicated several more projects will be coming from this working group, including:

- reviewing other ways in which financial institutions can take innovative and proactive approaches to identify, detect, and report financial crime and meet BSA/AML regulatory obligations;

- reviewing the risk-based approach to the examination process;
- reviewing the Agencies' approach to BSA/AML supervision and enforcement;
- exploring concrete ways to increase the value of BSA/AML data across stakeholders; and
- streamlining SAR reporting while retaining value to law enforcement.

The Joint Statement and the ABA/ABA conference remarks highlight that innovation and effectiveness of the BSA/AML regime remain at the top of the agenda for regulators and policymakers, creating opportunities for dialogue between the government and the financial sector aimed at creating a more adaptive, efficient, and ultimately more effective regime for all stakeholders.

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[1] Joint Statement, Federal Reserve System, the Federal Deposit Insurance Corporation, FinCEN, the National Credit Union Administration, and the Office of the Comptroller of the Currency, Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018) available at https://content.govdelivery.com/attachments/USFINCEN/2018/12/03/file_attachments/1116936/Joint%20Statement%20on%20Innovation%20%28Final%2011-30-18%29.pdf

[2] Remarks of Sigal Mandelker, Under Secretary of the US Department of the Treasury, at the ABA/ABA Financial Crimes Enforcement Conference (Dec. 3, 2018) available at https://home.treasury.gov/news/press-releases/sm563

[3] Joint Statement, Federal Reserve System, the Federal Deposit Insurance Corporation, FinCEN, the National Credit Union Administration, and the Office of the Comptroller of the Currency, Interagency Statement on Sharing Bank Secrecy Act Resources (Oct. 3, 2018), available at https://www.fincen.gov/sites/default/files/2018-10/Interagency%20Statement%20on%20Sharing%20BSA%20Resources%20-%20%28Final%2010-3-18%29%20%28003%29.pdf.