Late last week, Congressional intelligence committees reportedly received some information from the **U.S. Financial Crimes Enforcement Network (FinCEN)** related to investigations into Russia’s attack on the 2016 U.S. Presidential election and the allegation of collusion with members of the Trump campaign. This followed earlier reports of the Senate Intelligence Committee requesting data from FinCEN, including “information about shell companies, money laundering and the use of property transfers.” Also in the past week, Robert Mueller, Special Counsel, was appointed by the U.S. Department of Justice to conduct an independent investigation regarding Russia’s cyberattack. Taken together, that makes three sets of investigators who may be reviewing and analyzing documents from FinCEN in order to better understand financial connections among the President’s campaign, his business organizations, and Russia.

Though data from FinCEN is just one small piece of a ginormous jigsaw puzzle, the news of such financial information potentially being provided to investigators has led many to ask: What is FinCEN and why should I care? Well, have no fear, we are here to break it down for you.

**FinCEN’s Role in the Investigations**

FinCEN is the agency responsible for collecting financial intelligence to support law enforcement and regulators in the fight against money laundering and terrorism finance. It is also the primary U.S. anti-money laundering (AML) regulator. FinCEN is an agency of the U.S. Department of Treasury.

In its financial intelligence capacity, FinCEN’s role in the Congressional investigations would be to provide financial information regarding Russia’s cyberattack, and regarding any collusion between the Trump campaign and Russia. Senator Mark Warner, the ranking Democrat on the Intelligence Committee has said that documentation from FinCEN will be “absolutely critical to the Russia investigation.” If there were any link between Russian actors and campaign personnel, FinCEN data may show a financial trail.

The White House has stated that any “investigation will confirm what we already know – there was no collusion between my campaign and any foreign entity.” Further, lawyers for President Trump have stated that based on his tax returns, Mr. Trump has had no material income, investments or debt from Russian sources in the last decade, aside from a real estate sale, payments received in connection with the 2013 Moscow Miss Universe pageant, and general income related to Trump hotels, golf courses, and the sale of Trump-branded goods. The FinCEN data, however, has the potential to dig deeper than tax returns.

**FinCEN and the Bank Secrecy Act**

FinCEN administers the Bank Secrecy Act (BSA), the primary U.S. anti-money laundering (AML) statute. Under BSA regulations, a broad range of financial institutions must file Suspicious Activity Reports (SARs) when they detect or suspect violations of federal law or other suspicious transactions related to money laundering activity. Specifically, a SAR filing is required for transactions in which any of the following circumstances is present:

- There is reason to believe a transaction involves insider abuse regardless of the dollar amount;
There is an identifiable suspect and the transaction involves $5,000 or more;

There is no identifiable suspect and the transaction involves $25,000 or more; or

There is suspicious activity indicative of potential money laundering or BSA violations and the transaction involves $5,000 or more.

Additionally, certain financial institutions are required to file “currency transaction reports” with FinCEN for each deposit, withdrawal, exchange of currency, or other payment which involves a transaction of more than $10,000 in cash. BSA obligations apply to a broad range of institutions, including banks and credit unions; dealers in foreign exchange; casinos; insurance companies; stock brokers; mutual funds; credit card system operators; dealers in precious metals; and other specified cash-related businesses.

FinCEN receives approximately 55,000 electronic BSA reports daily. Those data are made available to law enforcement agencies and regulators through a dedicated FinCEN query portal. In addition to collecting routine financial data, FinCEN is authorized under the USA PATRIOT ACT to require U.S. financial institutions to collect targeted financial intelligence.

FinCEN also has sophisticated tools to analyze very large sets of financial data. Those tools include relatively simple watch lists for known criminal actors as well as complex algorithms to identify potential illicit activity. The results can be streamed in real time to investigators and other stakeholders or summarized as “flash reports” to law enforcement agencies, the intelligence community, and other partners.

**Conclusion: Is There a FinCEN in Your Future?**

Of course, it is not yet known whether FinCEN has any data of relevance in the Russia investigations. Those who counsel clients on AML issues know that the vast majority of financial records reviewed in an investigation are quite mundane. But understanding how FinCEN works provides some insight into how connections can be made through analyzing the voluminous financial data that our government collects. That ability is what keeps businesses and individuals on their toes (and up at night), and keeps many of us employed. And that is the capability being leveraged in the current Russia investigations.

But as with many agencies, FinCEN’s daily work outside the glare of the spotlight is likely its more important work. AML regulation continues to evolve, and AML compliance is becoming more important to companies across industry sectors. So you don't have to be a presidential campaign to be concerned about AML issues. As always, we will keep you updated as events warrant.

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