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Information Sharing Exchange Launched by FinCEN to Improve Suspicious Activity Reporting

Article By
Priya Roy
Ballard Spahr LLP
Money Laundering Watch

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FinCEN recently announced the launching of the "FinCEN Exchange" to enhance information sharing with financial institutions. We previously have blogged about the potential benefits of a public-private partnership between law enforcement and financial institutions for both parties as a way to enhance law enforcement's efforts to disrupt and intercept money laundering and terrorist financing as well as a financial institution's ability to identify and accurately report suspicious activity. Information sharing has become a key issue in global conversations about reform of Anti-Money Laundering ("AML") regimes.

The FinCEN Exchange represents a direct response to financial industry requests for more guidance and information from government to help identify and report suspicious activity. Although it is a positive step towards improving the system for reporting suspicious activity, the FinCEN Exchange presumably will create expectations by the government that problems identified by the Exchange will be captured by suspicious activity reporting going forward. Hopefully, the converse also will occur, and expectations regarding the reporting of activity identified as low priority will be lowered, so that industry truly may focus its current resources and not be compelled to expend even more resources on AML compliance.

The importance of an industry partnership has not been lost on FinCEN. Since 2015, FinCEN has been piloting an information sharing exchange and has convened dozens of briefings with over 40 financial institutions and law enforcement agencies. In connection with these briefings, law enforcement agencies have issued requests pursuant to Section 314(a) of the Patriot Act, previously blogged about here, related to specific investigations and financial typologies, which have assisted law enforcement in identifying money laundering operations, human trafficking and smuggling rings, corruption, and trade-based money laundering networks, among other criminal enterprises. Financial institutions benefited from the briefings as well, which helped them by providing focus and clarity in identifying risks and establishing priorities.

The FinCEN Exchange will result in regular briefings once every 6 to 8 weeks with financial institutions, law enforcement, and FinCEN staff to exchange information on priority illicit finance threats, which will include targeted information and broader typologies. The explicit purpose of the exchange is to allow financial institutions to better identify risks and focus on high priority issues while also assisting law enforcement in their efforts to combat financial crime.

In a speech given by Under Secretary Sigal P. Mandelker at the ABA/ABA Financial Crimes Enforcement Conference on December 4, 2017, the Under Secretary introduced the FinCEN Exchange and emphasized the role financial institutions play in implementing laws and regulations designed to protect the financial system and guard against illicit financing operations and money laundering schemes. She highlighted the proactive efforts of the private sector compliance community, stating that "your vigilance makes our tools and authorities that much more effective." The Under Secretary called for increased transparency and accountability in the international financial system and strong and effective AML frameworks to track and target those illicit actors that "try to slip through." She concluded that crucial to the efforts of the Office of Terrorism and Financial Intelligence ("TFI") and the private sector compliance community are the public-private partnerships in which a proactive dialogue may be maintained and information can follow freely between financial institutions, law enforcements, and regulators. The Under Secretary recognized that in order to make their private partners most effective, financial institutions need specific information to enhance their ability to identify suspicious activity.

One thing was clear from the Under Secretary's speech – the institutionalization of the FinCEN Exchange is a result of direct and specific feedback from industry that they require more guidance and information to help identify and report suspicious activity.

While both the press release regarding the FinCEN Exchange and the Under Secretary's speech emphasized that participation in the program is entirely voluntary, and that the program does not intend to add any regulatory burden or additional requirements, it will be interesting to see how FinCEN expects the information that it disseminates and is exchanged at these briefings to be used. It is likely that if financial institutions receive information regarding specific typologies and money laundering methodologies from law enforcement and FinCEN, then the government will expect that those types of transactions are flagged as suspicious going forward – thereby either implicitly or explicitly altering a financial institution's SARs reporting duties. Thus, financial institutions will need to operationalize quickly and efficiently the new information gained regarding specific law enforcement priorities. Information sharing will greatly increase financial institutions' knowledge base – but that base is only as good as its daily application in compliance departments throughout its statewide or countrywide branches.

The public-private partnership is welcome news for financial institutions struggling to understand the black box of ever-changing and ever-evolving financial crimes and schemes – but financial institutions should prepare themselves to deal with the resulting influx of information which they can implement quickly and effectively. One key practical question going forward is whether the FinCEN Exchange truly will improve suspicious activity reporting by enabling financial institutions to spend *less*resources on the monitoring of certain transactions and activity identified as low-level concerns, and thereby focus on the true priorities mutually identified by the government and industry. Conversely, it remains to be seen if the FinCEN Exchange will not be accompanied by a commensurate reduction in government expectations as to certain types of reporting, and instead simply will produce more aggregate data requiring attention and thereby increase the net demands on industry for AML compliance and suspicious activity reporting.

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