

FinCEN and Banking Agencies Encourage Innovation in BSA/AML Compliance

December 7, 2018

On December 3, 2018, the Financial Crimes Enforcement Network (“FinCEN”) and the federal banking agencies¹ issued a joint statement (the “Joint Statement”) encouraging banks to consider, evaluate and implement innovative approaches to meeting their Bank Secrecy Act/anti-money laundering (“BSA/AML”) compliance obligations, including by deploying emerging technologies to identify and address vulnerabilities and threats.²

Notably, the Agencies describe their willingness to collaborate with bank management in pilot programs that would allow institutions to implement and test innovative compliance approaches with input and feedback from the relevant supervisor—but without fear of enforcement consequences during the trial period. This model resembles the “regulatory sandboxes” that the Treasury Department and others have advocated in the FinTech context.³

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Although the Joint Statement provides few details about how the agencies expect these pilot programs to work, it includes several helpful statements suggesting their commitment to:

- **Clarifying regulatory expectations.** Implementing innovative approaches will not result in additional regulatory expectations. Instead, the Agencies explain that they will clarify supervisory expectations “as appropriate and necessary.” To that end, Sigal Mandelker, Under Secretary of the Treasury for Terrorism and Financial Intelligence, noted in a speech before industry trade associations soon after the Joint Statement’s release that, beyond encouraging private sector innovation, Treasury is

¹ The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, FinCEN, the National Credit Union Administration and the Office of the Comptroller of the Currency (“OCC”) (together, the “Agencies”).

² Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available [here](#).

³ Debevoise & Plimpton LLP, “A Turning Point for FinTech? OCC and Treasury Signal Commitment to Financial Innovation” (Aug. 10, 2018), available [here](#).

focused on “providing greater clarity to the private sector as to what [their] compliance expectations are and how they can best be met.”⁴

- **Engaging with the private sector.** According to the Joint Statement, FinCEN plans to launch an innovation initiative to learn about and help to foster financial services innovations, including through engagement with its Bank Secrecy Act Advisory Group. Each of the Agencies, moreover, “has, or will establish, projects or offices that will work to support the implementation of responsible innovation and new technology in the financial system.”
- **Providing exemptive relief.** The Joint Statement explains that to the extent necessary to facilitate the development of new technologies and other innovations, FinCEN will consider requests for limited exemptive relief from certain obligations, provided that banks maintain the overall effectiveness of BSA/AML compliance programs.

The Joint Statement is consistent with a statement by the Agencies issued on October 3, 2018, encouraging banks and credit unions to enter into collaborative arrangements to share resources to manage their BSA/AML compliance obligations more efficiently and effectively.

Read together, these statements suggest an increased focus by federal policymakers on the efficiency and effectiveness of the BSA/AML compliance regime and an increased appetite for engaging with the private sector to determine how best to protect the financial system from money laundering and terrorist financing risks.

Members of Congress also have expressed a desire to revise existing money laundering requirements and to modernize the BSA. Congress has held a series of hearings on this topic. To date, legislative efforts have not moved forward, although reports continue to circulate regarding bipartisan initiatives to advance revisions to the BSA/AML compliance regime.

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Please do not hesitate to contact us with any questions.

⁴ Treasury Dep’t., Under Secretary Sigal Mandelker Remarks ABA/ABA Financial Crimes Enforcement Conference December 3, 2018 (Dec. 3, 2018), *available* [here](#).

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