Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—FinCEN proposed rule seeks to strengthen, modernize money-laundering, terrorism countering policies, (Jun. 28, 2024)

Banking and Finance Law Daily Wrap Up

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This rule tracks with last week's agency proposed rule on bank risk assessment of AML/CFT programs.

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) announced a notice of proposed rulemaking designed to strengthen and modernize existing anti-money laundering and countering the financing (AML/CFT) programs. The proposed amendments, made under the Bank Secrecy Act as enacted by the Anti-Money Laundering Act of 2020, will explicitly require that AML/CFT programs be effective, risk-based, and reasonably designed. FinCEN director Andrea Gacki praised the proposal as "a significant milestone in FinCEN's efforts to implement the AML Act." The proposed rule tracks with a similar proposal offered last week by the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and National Credit Union Administration which would alter the risk assessment mechanics used by the agencies in the AML/CFT context. Comments on the proposed rule are due by Sept. 3, 2024.

FinCEN's Proposed Rule. By crafting flexible standards for effectiveness, risk base, and reasonable design, the proposed rule seeks to allow financial institutions to utilize the risk assessment process individually to prioritize their own risks and focus their attention and resources in a manner consistent with the risk profile of each individual financial institution. Such consideration would be based on the total amount and nature of resources available to identify, manage, and mitigate illicit finance activity risks.

Each institution would craft its own risk assessment process and utilize that process to develop policies, procedures, and controls to manage and mitigate risks. The proposed rule would require covered financial institution to consider (1) the AML/CFT Priorities, as appropriate; (2) the money laundering and terrorist financing risks of the financial institution, based on a periodic evaluation of its business activities, including products, services, channels, customers, intermediaries, and geographic locations; and (3) reports filed by financial institutions pursuant to 31 CFR chapter X. Institutions would also impose periodic review and update their risk assessment process at any point where there have been material changes to their risks.

A newly adopted purpose statement would also provide direction to the review process. That statement directs financial institutions to the following priorities for their AML/CFT programs: (1) That the program complies with the Bank Secrecy Act and the requirements and prohibitions of FinCEN's implementing regulations; (2) That the program focuses attention and resources in a manner consistent with the risk profile of the financial institution; (3) That the program may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; (4) That the program provides highly useful reports or records to relevant government authorities; (5) That the program protects the financial system of the United States from criminal abuse; and (6) That the program safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

Additional policy considerations within the proposed rule are intended to address de-risking so as to prevent financial institutions from declining to provide services, to encourage new innovation to fight money-laundering and terrorism funding and establishing feedback loops to review the efficacy of the proposed changes.

Alignment with recent agency rule proposal. As noted, this rule tracks with last week's rule proposal by the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and

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National Credit Union Administration. That proposal would align the agencies' AML/CFT requirements with the instant FinCEN rule proposal. (See *Banking and Finance Law Daily*, Jun. 21, 2024).

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