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FinCEN to Focus Enforcement on Virtual Currency Platforms and Emerging Technologies

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

August 14, 2018 – On August 9, 2018, Kenneth A. Blanco, the Director of the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), announced at the Chicago-Kent Block (Legal) Tech Conference that additional resources would be devoted to the identification and correction of anti-money laundering/combating the financing of terrorism ("AML/CFT") compliance shortcomings involving virtual currency platforms and other emerging financial technologies.

Blanco warned of a concerning trend in this space where virtual currency platforms and other "covered" financial institutions have developed AML/CFT compliance programs only after having received notice of an examination. He emphasized that a "strong culture of compliance" must be built from the ground up, especially for new technologies. He also stressed that the scope of the definition of "money services businesses" subject to AML/CFT rules and regulations could reach a wide variety of new technologies, including virtual currency trading platforms, administrators, virtual currency kiosk (or ATM) companies, crypto-precious metals dealers, and individual peer-to-peer exchangers (both registered and unregistered).

Covered institutions which do business in whole or substantial part in the United States and fail to comply with AML/CFT rules will be subject to enforcement by FinCEN and may face penalties. Blanco stressed that "FinCEN prioritizes ensuring that all exchangers and administrators comply with the BSA [Bank Secrecy Act] and its implementing regulations regardless of their size." Blanco pointed to FinCEN's recent enforcement action against BTC-e as an example of how virtual exchanges can violate their regulatory responsibilities. BTC-e was a foreign-located digital currency exchanger that served 700,000 customers at its peak. Blanco explained that, because of its lack of "even basic controls to prevent the use of its services for illicit purposes," BTC-e "attracted and maintained a customer base that included many criminals who desired to conceal proceeds from crimes such as ransomware, fraud, identity theft, public corruption, and drug trafficking." FinCEN, in partnership with law enforcement and the U.S. Department of Justice, led a civil investigation that ultimately resulted in a $110 million penalty against BTC-e and a $12 million penalty against one of BTC-e's administrators. Criminal charges against the exchange and one individual followed.

Virtual currency platforms and other emerging financial technologies should be on notice that they may qualify as money services businesses subject to AML/CFT requirements, and take appropriate measures to register with FinCEN, implement a strong compliance program, and satisfy reporting obligations including the filing of Suspicious Activity Reports ("SARs") and Currency Transaction Reports ("CTRs"). Blanco stressed the need for collaboration between money services businesses and regulators to identify and stop money laundering and other illicit activity. In particular, he said SARs allow "the industry [to] focus on legitimate applications and innovations, and stamp out negative perceptions of virtual currency as the coinage of the dark web and bad actors." Such reporting is necessary, according to Blanco, to gain "public trust and reliance in the good work being done in the financial innovation space."

Blanco assured that FinCEN will continue to assist emerging financial technologies with their compliance efforts through information sharing programs and guidance. In particular, FinCEN is promoting the use of FinCEN Exchange – a cyber-defense program offered by Treasury, which provides a platform to engage with other industry participants on new developments, concerns, risks and threats that are occurring in the market. Blanco said FinCEN "will continue to update [its] guidance relating to emerging technology, such as virtual currency, in close dialogue with industry" and is "focused on swiftly and continuously building our capabilities and understanding in the emerging technologies space to (a) rapidly identify risks, (b) close gaps, and (c) support responsible innovation through clarity."

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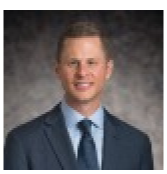

Ryan Fayhee

Tyler Grove

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