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Jeremy Paner Analyzes US Treasury's Anti-Money Laundering Action Against a Swiss Bank

How should Financial Crimes Compliance programs interpret FinCEN's recent proposed imposition of Special Measure Five?
Articles & Press

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Highlights

- Jeremy Paner highlights how FinCEN's use of Special Measure Five against a Swiss bank signals a more aggressive anti-money laundering enforcement posture.
- Increased resources for FinCEN's Enforcement Division suggest that further imposition of special measures can be expected.
- Through the special measures, potential loss of access to the U.S. financial system highlights the critical role of anti-money laundering and sanctions compliance for banks operating globally.

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Jeremy Paner analyzed the recent U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) 311 action targeting a Swiss bank with Financial Crime Digest.

On February 26, FinCEN issued a proposed rule against private Swiss bank MBaer Merchant Bank AG, labeling that bank a primary money laundering concern.

Within a day of that announcement, the Swiss Financial Market Supervisory Authority withdrew MBaer's banking license and ordered the bank into liquidation. A Swiss investigation found "serious, systematic shortcomings" in the bank's anti-money laundering and sanctions compliance program.

Paner told Financial Crime Digest that FinCEN's "use of Special Measure 5 against a Swiss bank signals an increasingly aggressive AML (anti-money laundering) enforcement posture."

"FinCEN has issued similar actions against three European Banks (two banks in Latvia and an Andorran bank) prior to the MBaer action," Paner said. "However, the United States has never issued a proposed rule against a European financial institution in a fully developed financial center."

Paner explained that further imposition of special measures can be expected, given that FinCEN's Enforcement Division, which includes the Office of Special Measures, has been allocated increased resources.

"US government prioritization usually follows resource allocation, so I have strong reason to believe that FinCEN will continue its increasingly aggressive imposition of special measures," Paner said.

Paner explained that FinCEN's authorities are based on the Bank Secrecy Act, which "requires FinCEN to consider certain factors in deciding which special measure it imposes against financial institutions determined to be 'of primary money laundering concern,'" and that ultimately "FinCEN has a lot of discretion in making that determination."

Special Measure Five prevents direct or indirect access to the U.S. financial system. According to Paner, access to the U.S. dollar is critical to financial institutions, as it remains central to global finance.

"As a general matter, no significant financial institution can operate without access to the US dollar," Paner said. "The Atlantic Council maintains an excellent dashboard of the use of the US dollar. According to that group, the US dollar has a 57% share of global foreign exchange reserves, 54% share of export invoicing, and 89% share of foreign exchange transactions."

"In comparison, the Euro has 20%, 30% and 29% share of those reserve, trade and FX transactions," Paner continued. "The Renminbi has a respective share of 2%, 4%, and 9%. So, as a general matter, banks cannot function without access to USD."

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Jeremy P. Paner

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