Litigation | December 2008

U.S. Treasury Proposes Changes to Anti-Money Laundering Regulations

The Financial Crimes Enforcement Network ("FinCEN") recently announced it will reorganize and streamline its anti-money laundering regulations to make them easier to understand. FinCEN also plans to withdraw outdated proposed rules for investment advisors, unregistered investment companies and commodity trading advisors.

Background

Since the Bank Secrecy Act ("BSA") was enacted in 1970, financial institutions operating in the U.S. have become subject to an increasing array of anti-money laundering ("AML") regulations, promulgated mainly by FinCEN, the U.S. Treasury agency primarily responsible for administering the BSA. Following the terrorist attacks on September 11, 2001, the BSA was significantly enhanced by the USA PATRIOT ACT, which broadened the applicability of the BSA and resulted in even more stringent (and burdensome) AML regulations to prevent money laundering and terrorist financing.

As a result of this piecemeal implementation over several years and administrations, the AML regulations have come under criticism in the financial community for being disorganized and difficult to understand. In response, FinCEN promised in 2007 that it would take "a fresh look at BSA regulation to ensure that it is being applied efficiently and effectively." The two recent actions by FinCEN reflect its efforts in this regard, and coincide with a turnover in U.S. administration and a widening crisis in the global financial markets.

Changes to the AML Regulations

Perhaps the most meaningful improvement among FinCEN's proposed changes – which are not intended to be substantive – is the grouping of the AML regulations by financial industry. Currently, the various regulations applicable to a particular type of financial institution are scattered throughout a subchapter of Title 31 of the Code of Federal Regulations. A securities broker-dealer, for instance, may have to scan through dozens of irrelevant regulations just to find which ones apply to it, and which do not.

Instead, a new chapter of the C.F.R. dedicated to FinCEN will begin with a "General Provisions" section setting forth the AML regulations applicable to all financial institutions, followed by separate sections pertaining to each category of covered financial institution, as follows:

Structure of New 31 C.F.R. Chapter X	
1010:	General Provisions
1020:	AML Rules for Banks
1021:	AML Rules for Casinos and Card Clubs
1022:	AML Rules for Money Services Businesses
1023:	AML Rules for Brokers or Dealers in Securities
1024:	AML Rules for Mutual Funds
1025:	AML Rules for Insurance Companies
1026:	AML Rules for Futures Commission Merchants and Introducing Brokers in Commodities
1027:	AML Rules for Dealers in Precious Metals, Precious Stones, or Jewels
1028:	AML Rules for Operators of Credit Card Systems
1029–1099:	[reserved]

Another useful improvement is the new numbering scheme proposed by FinCEN, which will assign the same suffixes to analogous requirements across the various categories of financial institutions. For example, any regulation that ends in .320 will pertain to the requirement to file suspicious activity reports (SARs), and any regulation that ends in .410 will address the types of records required to be maintained. Together with the grouping of regulations by category, the new numbering scheme will make the AML regulations easier to identify and more user-friendly.

In a related move, FinCEN has withdrawn three proposed rules that would have required investment advisors, unregistered investment companies and commodity trading advisors to implement AML programs. Originally proposed in May 2003, these proposed rules were met with a negative reaction from the investment community and had languished without implementation since then. The notice of withdrawal, which is effective immediately, explained that "FinCEN has determined that it will not proceed with an anti-money laundering program requirement [for the covered entities] without publishing a new proposal." Whether new rules are ever proposed remains to be seen.

Conclusion

These recent actions by FinCEN can be considered positive developments in AML enforcement, especially given the current distress in the financial markets. While the withdrawal of the outdated proposed rules is effective immediately, the reorganization of the AML regulations will take effect in the new U.S. administration, which itself may bring further changes to AML enforcement in the coming years.

If you wish to receive more information on the topics covered in this memorandum, you may contact your regular Shearman & Sterling contact person or any of the following:

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