

**THE ROLE OF FINCEN, THE U.S. FINANCIAL INTELLIGENCE UNIT,
IN THE U.S. ANTI-MONEY LAUNDERING REGIME and OVERVIEW OF THE U.S.
ANTI-MONEY LAUNDERING STRUCTURE AND AUTHORITIES**

REPORT TO THE CULLEN COMMISSION

By Stephanie Brooker¹

I. INTRODUCTION

This report discusses the role of the Department of the Treasury, Financial Crimes Enforcement Network (“FinCEN”) as the United States Financial Intelligence Unit (“FIU”) and as the Treasury bureau that administers, interprets, and enforces the Bank Secrecy Act, the primary U.S. legal authority for anti-money laundering regulatory requirements for financial institutions and other covered businesses.

Section II of this report provides an overview of FinCEN, including its history, mandate, and structure. Section III discusses other government entities with AML regulatory enforcement authority and their coordination with FinCEN. Section IV discusses FinCEN’s enforcement process and examples of notable enforcement actions and initiatives. Section V discusses FinCEN’s current focus on Bank Secrecy Act modernization and new legislation that furthers that goal and expands FinCEN’s authority and mandate. Section VI compares and contrasts

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FinCEN with FINTRAC.

II. **FINCEN OVERVIEW**

A. **FinCEN's History and Mandate**

FinCEN was created in 1990 as an office within Treasury with a comparatively limited mandate of analyzing data and providing strategic and tactical case support to law enforcement authorities. At that time, another Treasury office, the Office of Financial Enforcement, was responsible for the administration and enforcement of the Bank Secrecy Act.

The Bank Secrecy Act is the primary anti-money laundering legal authority in the U.S. and consists of the BSA statutory provisions (the "BSA Statute"),¹ and their implementing regulations (the "BSA Regulations"²; collectively with the BSA Statute, the "BSA"). The BSA Statute was originally enacted in 1970, long before money laundering became a crime in 1986, and expanded in scope several times by statutory amendments, including, most significantly, in 2001 by the USA PATRIOT Act ("the PATRIOT Act")³ and this past January 2021 by the Anti-Money Laundering Act of 2020 ("2020 AML Act").⁴ Among other authorities, the BSA Statute gives the Secretary of the Treasury the authority to implement reporting, recordkeeping, and anti-money laundering program requirements by regulation for financial institutions and other businesses listed in the BSA statute.⁵

In 1994, FinCEN's function and that of the Office of Financial Enforcement were merged under FinCEN, resulting in FinCEN's current dual role as the United States FIU and as the administrator and enforcer of the BSA.⁶ As the FIU, FinCEN is responsible for the dissemination and analysis of information, including information collected under the BSA, in

support of efforts by local, state, federal, and foreign law enforcement, and regulatory authorities against money laundering, terrorism, and other financial crime. In 2001, FinCEN achieved legal status as a Treasury bureau under a provision in the PATRIOT Act with a mandate set forth by statute,⁷ and as discussed in detail in Section V, in January 2021, FinCEN's mandates were expanded and strengthened by the 2020 AML Act.

The Director of FinCEN reports directly to the Treasury Undersecretary of the Office of Terrorism and Financial Intelligence ("TFI"). TFI develops and implements the National Money Laundering Strategy for combatting terrorism and financial crimes, leads the U.S. delegation to the Financial Action Task Force ("FATF"), and also oversees the Office of Foreign Assets Control, the Treasury office responsible for administering and enforcing economic and trade sanctions. Because it is part of the larger Treasury financial intelligence and anti-financial crime function and because of its unique role as the FIU and bureau responsible for implementing the BSA, FinCEN has a key role in developing AML policy within the United States government.

B. FINCEN'S STRUCTURE

FinCEN conducts its work through seven divisions, each of which is headed by an Associate Director and all of which report up to the Director of FinCEN.⁸ They are the Global Investigations Division, the Intelligence Division, the Enforcement Division, the Policy Division, the Strategic Operations Division, the Technology Division, and the Management Division. The divisions work closely together and their functions often overlap. FinCEN has not made any public statements about whether the organization and responsibilities of the divisions may be adjusted based on the new functions created by the 2020 AML Act.

The **Enforcement Division**, discussed further below in Section IV(A), is responsible for

BSA compliance and civil enforcement, including through the imposition of civil money penalties. The division coordinates with federal and state agencies that have compliance and examination responsibilities for the financial institutions and other businesses subject to the BSA, generally through FinCEN delegations and memoranda of understanding.

The **Strategic Operations Division** (the successor to the former Liaison Division) creates and maintains partnerships with the industry, state, local, and federal agencies, non-US law enforcement and regulatory authorities, and FIU counterparts. It administers agreements to share information, including information reported under the BSA, with appropriate security and confidentiality safeguards. The division also helps disseminate information about FinCEN's evolving strategic priorities and assessments of criminal threats to the financial system, such as cybercrime. In addition, the division coordinates FinCEN's speaking engagements and meetings with industry representatives and financial institutions.

This division also supports the work of the Bank Secrecy Act Advisory Group ("BSAAG"), which is a statutorily created advisory group through which Treasury receives advice on the reporting requirements of the BSA and informs private sector representatives on how the information they provide is used.⁹ BSAAG is chaired by the Director of FinCEN and composed of federal and non-federal law enforcement and regulators, financial institutions, and trade associations located within the United States. Other than the federal regulators, which have permanent membership, each member is selected for a three-year term.

The Strategic Operations Division also works with the Policy Division to issue guidance in the form of Advisories to educate on emerging threats based on the work of the Intelligence Division and FinCEN's work with other law enforcement agencies. Advisories have been issued

to provide guidance to financial institutions and other businesses regarding how to identify red flags and how to exercise BSA responsibilities, particularly with respect to filing Suspicious Activity Reports (“SAR”), in response to those issues. Recently, FinCEN has issued numerous Advisories regarding fraud that exploits circumstances and vulnerabilities associated with the COVID-19 pandemic, such as unemployment insurance fraud, health insurance and health care fraud, and COVID-19 financial relief fraud. Other recent Advisories have related to cybercrime, ransomware, human trafficking, synthetic opioid trafficking, and art and antiquities. FinCEN has also issued advisories describing how the BSA requirements for money service businesses (“MSBs”) apply to various types of virtual currency businesses.¹⁰

In addition, the Strategic Operations Division coordinates ad hoc outreach and training to groups of financial institutions in different locations about their financial crimes risk and supports the formal private sector outreach programs initiated in the last few years, FinCEN Exchange and Innovation Hours, discussed below. The division also trains state and federal BSA examiners.

The **Policy Division** is responsible for developing and revising BSA regulations, interpreting BSA laws and regulations, and providing BSA compliance guidance. Financial institutions and other businesses can seek from the Policy Division formal guidance in the form of a public administrative ruling (issued with the requestor’s name omitted) or informal letter guidance applicable only to a requestor. They can also pose questions by telephone or email to FinCEN’s regulatory help line, which will escalate compliance questions that are novel or difficult to address to the Policy Division, which, in turn, may necessitate a written request for guidance. The administrative ruling process is defined by regulation,¹¹ but the other processes are informal. As discussed, the Policy Division works closely with the Strategic Operations

Division in disseminating compliance guidance.

The **Global Investigations Division** is responsible for investigating domestic and international issues and applying certain BSA enforcement authorities in response. Its primary responsibilities are to administer the authority of Section 311 of the PATRIOT Act and to issue BSA geographic targeting orders (“GTO”). Under Section 311 of the PATRIOT Act, FinCEN can impose a range of special measures on certain BSA-covered financial institutions (banks, broker-dealers, futures commission merchants, introducing brokers in commodities and mutual funds) relating to a foreign jurisdiction or foreign financial institution that has been designated as posing primary money laundering concern.¹² One of the measures frequently imposed is to prohibit these financial institutions from providing correspondent accounts directly or indirectly to a financial institution or in a country designated as posing primary money laundering concern.

This Section 311 designation can be based on a number of types of money laundering concerns, including terrorism, proliferation of weapons of mass destruction, and transnational crime. It can also be applied to rogue state or countries that lack AML controls. At times, there have been designations against Nauru, Iran, Burma, and North Korea. All of the Section 311 actions taken since 2001, and their current status are public and available on FinCEN’s website.¹³

The BSA also provides FinCEN with the authority to impose through GTOs additional recordkeeping or reporting obligations on a financial institution or other trade or business in a given domestic geographic area to address a justified law enforcement need.¹⁴ FinCEN can initiate GTOs on its own initiative or at the request of a law enforcement agency. GTOs can be issued for a period of six months and extended for additional six month periods if the need

continues. Unlike the Section 311 actions, not all GTOs are public.

With respect to public GTOs, beginning in 2014, FinCEN issued GTOs to address drug money laundering in certain industries, including the garment industry in Los Angeles and the electronics industry in South Florida.¹⁵ The longest standing GTOs, which are discussed further in Section IV(F), relate to money laundering through residential real estate.

The **Intelligence Division** is responsible for analyzing BSA reporting data and other financial intelligence and disseminating related information and analyses. It also identifies transnational and domestic financial crime trends and targeted information, in support of the other FinCEN divisions and federal, state, local, and foreign authorities.

The **Technology Division** is responsible for selecting, maintaining, and safeguarding the systems and technology needs that support FinCEN's functions, including data collection of BSA reporting information.

The **Management Division** is responsible for operational services, such as facilities, physical security, and human resources.

C. **FinCEN's Public Engagement**

Industry engagement is key to FinCEN's work in developing policy, facilitating BSA compliance interpreting requirements, and developing new regulatory initiatives. FinCEN is constantly seeking input from the businesses and financial institutions subject to the BSA and giving them feedback, both formally and informally. FinCEN management meets regularly with financial institutions and their trade associations and participates in many of their conferences and meetings by invitation. Many of the speeches are posted on the website so that the

information provided can reach a broader audience.¹⁶

Through its work and interaction with law enforcement, FinCEN identifies pressing and evolving financial crime issues and develops Advisories, as discussed above, that provide guidance on identifying problems and reporting them to FinCEN.¹⁷

FinCEN also issues fact sheets about certain BSA provisions. For instance, the latest fact sheet was a discussion of FinCEN's evolving expanded position on the permissible uses of Section 314(b) of the PATRIOT ACT and the implementing BSA regulations.¹⁸ Section 314(b) authorizes voluntary information sharing among and between financial institutions or other businesses subject to a BSA AML program requirement or associations of financial institutions for the purpose of identifying and reporting suspicious activity.¹⁹ Participants must register with FinCEN, and if they follow the requirement and use the information for a permissible purpose, they are protected from liability to the customers based on the sharing. The fact sheet was meant to encourage more Section 314(b) sharing.

FinCEN also publishes its Administrative Rulings, as discussed, which have been informative to institutions facing similar issues as the requestor.²⁰ However, there have been few rulings issued in recent years.

In addition, the regulatory process itself provides for industry feedback on the burden or compliance difficulties posed by a proposed regulation and informs regulatory policy. By law, federal regulations are required to be proposed for public notice and comment. FinCEN generally receives a large number of detailed comments on regulatory proposals and posts the comments on its website. FinCEN is required to address the comments and why they were or were not accepted or how they were considered in the final rulemaking. The proposed and final

rulemakings are published in the *Federal Register*. If a regulatory requirement is complex or new, FinCEN may provide the industry a lengthy delayed effective date and continue to have a dialogue with the industry on compliance issues.

When final BSA regulations are issued, or later when FinCEN learns from industry feedback of compliance issues relating to specific requirements, FinCEN may issue interpretive guidance, sometimes in the form of Frequently Asked Questions or “FAQs.” For instance, with respect to the CDD Rule which came into effect in May 2018 and included the requirement for certain financial institutions to obtain beneficial ownership information on legal entity customers, FinCEN has issued three sets of FAQs – one when the final rule was issued, one before it went into effect, and one in August 2020 to address additional industry issues that have arisen since it has gone into effect.²¹

FinCEN’s public enforcement action assessment documents are written in sufficient detail also to be useful to financial institutions to understand what can lead to compliance breakdown and how to avoid them.

As noted, since 2018, FinCEN and the federal bank regulators have organized a working group to study how to make compliance more effective and risk-based. This group has issued several guidance documents for banks, for instance, on compliance innovation, and most recently, on addressing Politically Exposed Persons risk and customer due diligence on charities.²² FinCEN also participated with the federal bank regulators in their ongoing project to update the BSA/AML bank examination manual.

D. FinCEN’s Industry Outreach Programs

As noted, there is the statutorily required BSAAG, which meets as a group approximately quarterly but works frequently on specific issues through subgroups that meet more frequently. BSAAG is a key source of industry outreach and mechanism for industry feedback.

A constant refrain from the industry for decades has been that they do not receive enough feedback from law enforcement about how BSA reports are being used, which SARs are and are not particularly useful, and emerging money laundering typologies. In response, in December 2017, FinCEN launched the FinCEN Exchange program, which formalized and expanded existing FinCEN and law enforcement meetings to exchange information with groups of financial institutions in different geographical locations.²³ FinCEN had always done similar outreach and training on an ad hoc basis by invitation, but this program formalized the public-private information exchange. FinCEN Exchange topics are not typically public, but sometimes, announcements are made about them. For instance, FinCEN announced that a FinCEN Exchange session in November 2020 dealt with ransomware and followed-up with an Advisory on the same problem.²⁴

Since July 2019, FinCEN also has been conducting monthly “Innovation Hours” meetings (virtual during the pandemic) to hear interested parties discuss their experience and ideas for applying technology solutions to address financial crime, such as applying machine learning and artificial intelligence to identify suspicious activity and solutions for BSA compliance by virtual currency businesses.²⁵ In addition to financial institutions and other businesses subject to the BSA, technology providers and other non-BSA-covered financial businesses, such as investment funds, can request these meetings.

In addition, FinCEN recently announced that it will hold a Tech Symposium, on a date

and with participants yet to be announced, and asked for public input on planning.²⁶ This new initiative is in response to a provision in the 2020 AML Act that requires a global tech symposium with representatives from domestic and international law enforcement and intelligence, regulators, senior financial institution executives, technology providers, and academics to focus on how technology can assist with fighting financial crime.²⁷

III. **OTHER U.S. AUTHORITIES WITH AML REGULATORY RESPONSIBILITY**

The roles and responsibilities for AML regulatory compliance and enforcement are complex and do not rest exclusively with FinCEN. Because FinCEN has no examination staff, it has delegated BSA examination authority for various categories of financial institutions to their Federal Functional Regulators (federal bank, securities, and commodity and futures regulators).²⁸

The federal banking regulators (the Office of the Comptroller of the Currency (the “OCC”), the Board of Governors of the Federal Reserve (“Federal Reserve”), the Federal Deposit Insurance Corporation (“FDIC”), and the National Credit Union Administration (“NCUA”)) have parallel regulatory authority to require BSA compliance programs and suspicious activity reporting for the institutions for which they are responsible.²⁹ Consequently, the bank regulators have both delegated examination authority from FinCEN, as federal functional regulators, and independent regulatory enforcement authority, including civil money penalty authority.

BSA examination authority for broker-dealers has been delegated to the Securities and Exchange Commission (“SEC”), as their federal functional regulator. The SEC has delegated some of its authority to the Financial Industry Regulatory Authority (“FINRA”), the self-regulatory organization (“SRO”) for broker-dealers. The SEC also has incorporated BSA

compliance by broker-dealers into SEC regulations, and consequently, has independent authority to enforce the BSA.³⁰ As approved by the SEC and in accordance with FinCEN as authorized by BSA regulations, the AML program requirements for broker-dealers are contained in a FINRA Rule.³¹ Both the SEC and FINRA have independent enforcement authority that can be used against firms and related individuals.

Similarly, BSA examination authority for futures commission merchants (“FCMs”) and introducing brokers in commodities (“IB-Cs”), which are financial institutions under the BSA, has been delegated by FinCEN to the Commodity Futures Trading Commission (“CFTC”), as their federal functional regulator. The CFTC also has incorporated BSA compliance into its regulations.³² The CFTC has delegated authority to the National Futures Association (“NFA”) as that industry’s SRO, and NFA has promulgated an AML program rule.³³ Also, like the SEC and FINRA, the CFTC and NFA have independent enforcement authority, including civil money penalty authority.

Examination responsibility for the housing government-sponsored enterprises (the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae)) is with the Federal Housing Finance Agency, the conservator for these entities.

For most other financial institutions and businesses subject to AML Program requirements, the examination authority has been delegated to the Internal Revenue Service (“IRS”). This includes MSBs, casinos and card clubs (a type of California-licensed gaming establishment), insurance companies (with respect to certain covered life and investment products), dealers in precious metals, stones, and jewels, operators of credit card systems, and

non-bank residential mortgage originators and lenders. In practice, because they are service providers to banks, the BSA programs of the credit card systems are reviewed by one of the federal banking regulators on a rotating basis.

States also have a role to play both under their independent authority and by agreement with FinCEN. Many states impose parallel AML requirements on state-licensed financial institutions, *e.g.*, state-licensed banks and MSBs, such as check cashers and money transmitters. Coverage and requirements vary by state, but usually, filing of SARs and Currency Transactions Reports (“CTRs”) with FinCEN will satisfy state reporting requirements.

The New York State Department of Financial Services (“DFS”), for example, is an active state regulator in AML compliance and enforcement with respect to the MSBs and banks it licenses. In some cases, it has brought enforcement actions with large civil money penalties against New York branches and subsidiaries of foreign banks even where neither FinCEN nor a federal regulator has imposed a penalty.³⁴ DFS has also joined coordinated settlements with federal authorities in other cases. DFS is also active in licensing and regulating the virtual currency industry and reviews AML programs as part of the licensing process.

FinCEN also relies on the examination resources of states in BSA enforcement for the insurance and MSB industries because of the efficiency of teaming with prudential supervisors and to supplement the limited examination resources of the IRS. FinCEN has entered a number of agreements with state insurance commissioners providing for BSA examinations of insurance companies by state insurance examiners. While IRS continues to examine some MSBs, including convertible virtual currency exchangers, for many years, in coordination with FinCEN, state MSB regulators have been conducting MSB BSA examinations. The examinations are

usually conducted with one state in the lead and sometimes with FinCEN's participation. BSA/AML examinations of major nationwide MSB companies are primarily conducted by teams of state examiners. The states may impose enforcement actions against the MSBs pursuant to their independent authority under state law. FinCEN would have the authority to take additional enforcement measures.

IV. ENFORCEMENT OF THE BSA

A. Overview of FinCEN's Enforcement Structure

As mentioned, FinCEN's Division of Enforcement is responsible for enforcing the BSA. The Enforcement Division has an Associate Director of Enforcement, a Deputy Associate Director, and assistant directors for various types of financial institutions. The number of staff assigned to a matter depends on the complexity of the case. In some cases, Enforcement staff will discuss issues with the examining or investigating agencies or prudential supervisors, such as gaming authorities, and may attend the settlement meetings.

FinCEN may learn about conduct that potentially violates the BSA by information that it receives as part of its function, including from SAR information. In addition, FinCEN has entered into agreements with the federal regulators and IRS whereby significant BSA violations identified in the examination process are referred with related documents to FinCEN for review and possible enforcement action. The Department of Justice also may refer a matter that raises concerns about a financial institution's BSA compliance.

FinCEN's enforcement process is informal and, until recently, has been largely opaque to the public. There are no statutory or regulatory provisions that govern the process, and it was not

until last year that FinCEN formally articulated the types of enforcement actions they will consider and the criteria considered in assessing which action to take. FinCEN's investigation of a matter can result in no action, a non-public warning letter of reprimand, equitable remedies, including an injunction, or the assessment of a civil money penalty, frequently with undertakings.³⁵ If FinCEN finds during its review that there are potential criminal BSA violations, it can refer the matter to the Department of Justice. Unlike for FINTRAC, there is no public matrix describing how a penalty will be calculated.

In determining which action to take, FinCEN will consider: (i) the nature and seriousness of the violations, including the extent of possible harm to the public and the amounts involved; (ii) the impact or harm of the violations on FinCEN's mission to safeguard the financial system from illicit use, combat money laundering, and promote national security; (iii) pervasiveness of wrongdoing within an entity, including management's complicity or knowledge of the conduct; (iv) history of similar violations, or misconduct in general; (v) financial gain or other benefit resulting from, or attributable to, the violations; (vi) the presence or absence of prompt, effective action to terminate the violations upon discovery, including self-initiated remedial measures; (vii) timely and voluntary disclosure of the violations to FinCEN; (viii) the quality and extent of cooperation with FinCEN and other relevant agencies; (ix) the systemic nature of the violations; and (x) whether another agency took enforcement action for related activity.³⁶ FinCEN often concludes that enforcement action by the financial institution's Federal Functional Regulator or SRO is sufficient. While all proposed settlements are approved by the Director of FinCEN, there is no right of administrative appeal from a FinCEN assessment.

In practice, FinCEN notifies the financial institution that it has opened an investigation and can ask for additional information and documents, including a written response to the

alleged violations. If requested, Enforcement Division personnel will meet with the financial institution one or more times to hear its defense, and its explanation of remedial measures implemented to improve its compliance structure and ensure violations do not take place in the future. At the conclusion of the process, FinCEN will then present the proposed terms of the public settlement and a draft consent agreement and will negotiate the proposed terms to some extent.

Financial institutions generally cooperate fully in these investigations and in almost every case, consent to the assessment.³⁷ FinCEN seldom employs its summons authority to obtain documents or speak to financial institution employees.³⁸ It is understood that if the financial institution does not consent to pay the proposed penalty amount and comply with proposed compliance undertakings, FinCEN will assess a larger penalty or the maximum penalty allowed under the BSA. As authorized by the BSA statute, FinCEN, through the Department of Justice, would then bring a civil collection action against the financial institution in federal court. Accordingly, financial institutions tend to settle to avoid the attention to their non-compliance from protracted litigation and a possible negative response if their prudential supervisors perceive them to be uncooperative. Successful litigation most likely would depend on the financial institution being able to prove that FinCEN lacked authority, did not provide due process, or acted in an arbitrary and capricious manner in assessing the penalty.

B. Money Penalties for BSA Non-Compliance

Willful violations of the BSA are subject to both criminal and civil penalties against the financial institution involved and/or their officers, directors, or employees.³⁹ The criminal penalties are enforced by the Department of Justice, and the civil penalties are enforced by

FinCEN. As noted, federal and state regulators and the SROs for the securities and futures and commodities industries have independent penalty authority and can also impose civil money penalties or bring public enforcement actions without imposing monetary penalties on the same conduct.

Many financial institutions, where ineffective BSA controls have allowed illegal proceeds to flow through the institution undetected, have been sanctioned under the BSA rather than under the criminal money laundering statutes. Since 2002, 38 regulated financial institutions have pled guilty or have reached settlements with the Department of Justice, generally based on alleged BSA criminal violations (generally, either failure to maintain an adequate anti-money laundering program and/or failure to file required SARs) and paid substantial penalties.

FinCEN has defined *willful* in the civil penalty context in the text of various penalty assessments:

In civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the BSA, or that the entity or individual otherwise acted with an improper motive or bad purpose.⁴⁰

The BSA statute sets forth the maximum civil money penalties for different types of violations and the daily penalty for AML compliance program violations with a process for penalty adjustments based on inflation. For instance, the maximum penalty authorized per reporting violation, such as failure to file a SAR, is \$25,000, but if the amount involved in a transaction is more than \$25,000, the penalty can be the amount involved, not to exceed

\$100,000. There also is authority to impose penalties for negligent violations, but to our knowledge, that authority has never been used.⁴¹

In conjunction with civil money penalties, FinCEN also frequently imposes undertakings on financial institutions, which can be extensive and expensive to the financial institution. For instance, FinCEN can require a SAR lookback to identify and report previously non-filed suspicious activity for a period of time based on criteria approved by FinCEN and often with the required assistance of a third-party consultant acceptable to FinCEN. While there is no specific statutory authority, FinCEN also believes it has the authority to bar an individual from future employment with a BSA financial institution, either permanently or for a specified period of time.

The U.S. government has always seen the publication of significant enforcement actions, including the BSA, as a useful tool to promote compliance, and accordingly, when a money penalty has been assessed, it has been Treasury's or FinCEN's policy to issue a press release and make the penalty assessment document public. The assessment documents are available on the FinCEN website going back to 1999.⁴² Financial institutions review these assessments to understand the alleged failings and gain insight into FinCEN's compliance expectations.

As one can see from those published documents, the BSA civil money penalty authority has not been used frequently, especially in recent years. In 2020, for instance, FinCEN only assessed two civil money penalties. From 1999 to date, there have been only 101 civil money penalty actions against all types and sizes of financial institutions and their principals, officers, or employees. There has been no FinCEN public enforcement action against an insurance company. The financial institutions against which civil money penalties have been imposed

range from a small, one location MSB to the largest banks in the United States. One penalty has been assessed (\$25,000) against a bank employee for illegal disclosure of SARs.⁴³

What the public enforcement actions appear to have in common is that FinCEN perceived the non-compliance at issue as egregious and that enforcement was needed to correct the conduct and to promote compliance generally or within an industry. In many, but not all, cases, it was alleged that the BSA control failures allowed specific criminal conduct to take place through the financial institution for a substantial period of time undetected.

Formal, public BSA enforcement actions against financial institutions and related individuals, with or without civil money penalties, are much more frequently brought by the Federal Functional Regulators and the SROs, particularly FINRA, and contribute to the overall enforcement of the BSA.

C. Coordinated Enforcement Action Resolutions

If there is a related BSA criminal case or enforcement action by a regulator that will result in a civil money penalty by the regulator and FinCEN, FinCEN will attempt to work with the Department of Justice and/or the regulator(s) involved to coordinate the settlement of all the enforcement actions so that the actions can all be announced on the same date. This is preferable for the financial institution because the negative publicity comes all at once, and arguably for the government as well, because there would be a greater impact from the publicity if the penalty were larger and more agencies were involved.

On at least two occasions, FinCEN has not been ready to settle with a bank when the bank regulator was ready to assess a civil money penalty and the bank regulator has published its

penalty assessment. In these cases, the related FinCEN penalty came more than a year later. Generally, FinCEN relies heavily in its investigations on examinations of the criminal investigators and the regulators, but may raise additional issues in support of the penalty, for instance, based on a review of FinCEN SAR or CTR filing issues. The work of the Enforcement Division is historical and penalties can relate to violations that took place several years ago.

D. Enforcement Actions Intended to Promote Compliance

There are three groups of FinCEN enforcement actions that have been focused in recent years on promoting compliance.

1. Casinos

In 2013, there was a criminal settlement of a case against a major Las Vegas casino company based on AML program and SAR violations largely related to compliance failures with respect to one casino patron. The patron was allegedly a Mexican drug dealer and the largest revenue producer for one of the company's casinos.⁴⁴ FinCEN did not impose a penalty in that case; however, following that action, in the 2012-2013 timeframe, FinCEN communicated to the casino industry in speeches by the Director, in IRS industry conferences, and through the IRS examination process that it expected risk-based BSA/AML compliance that included know your customer due diligence on a casino's largest players and improved suspicious activity reporting.

From 2014 to 2017, FinCEN brought a total of nine enforcement actions against casinos and card clubs based on AML program and SAR filing violations.⁴⁵ The largest penalty was \$12 million. Three of the actions were in coordination with criminal settlements, and one was against a casino employee involved in one of the criminal actions.⁴⁶ In two instances, the

Nevada gaming regulator brought related state enforcement actions under gaming laws.⁴⁷ In one of the card club cases, the State of California brought a related penalty against the card club for failure to disclose the federal investigation.⁴⁸ In the same time period, there was a criminal action against another card club where the gaming authority in California revoked the card club's license from the owners and forced a sale. FinCEN did not bring an enforcement action in that case.⁴⁹

Most of the casino cases began with BSA examinations of the casinos by a dedicated IRS team that was based in Las Vegas and responsible for BSA examinations of Nevada and New Jersey casinos, many of whom have State gaming regulatory experience.

This casino enforcement initiative heightened focus on casino BSA/AML programs and establishing know your customer programs, including the source of funds of large and higher risk casino customers. The major casino trade association, the American Gaming Association, has also issued best practices guidance for the casino industry since 2014.⁵⁰

FinCEN was concerned not only with technical BSA compliance by the casino industry, but with whether all actors within the industry had the requisite culture of compliance to sustain effective risk-based programs in the long run. In 2014, FinCEN issued guidance for financial institutions on establishing a culture of compliance, which while addressed to all financial institutions and expected to be considered by all financial institutions, was understood to have been based on FinCEN's experience with casinos.⁵¹ The main tenets of a culture of compliance as set forth in the guidance are: leadership engagement (management and board) and support for BSA/AML compliance; compliance should not be compromised for revenue interests; adequate independence, authority, and resources, including systems resources for the compliance function;

communication of relevant information among financial institution functions; effective independent testing (audit) of the program; and training of the leadership and employees on how reports filed under the BSA are used by the government.

FinCEN now must address the changing face of the gaming industry. The BSA regulations for casinos have not been amended in many years (there were a few amendments in 2006) and were written when all legal gaming was conducted in brick and mortar buildings. The regulations need to be updated or FinCEN needs to issue guidance to address issues related to online casinos and sports betting. In recent years, principally because of a Supreme Court case in 2018 that enabled sports betting,⁵² and because of the pandemic, the online gaming industry has become legal in a growing number of states and has been a financial success story. Under many state gaming laws, operators of online gaming operate under a physical casino's state license by an agreement with the casino. The BSA obligations of online operators are not addressed in the regulations. The BSA requirements apply to casinos, defined as entities licensed by a state authority as casinos.⁵³ Arguably, if there were an enforcement issue, responsibility and liability for any actions of the operator would rest with the casino licensee.

Also, the BSA regulations contemplate that a player will physically present a government-issued identification document when opening an account.⁵⁴ This is not practical when opening an online gaming account. The BSA regulations may need to be amended or FinCEN guidance issued to explicitly allow for digital identification for casinos, as permitted for banks and broker-dealers.

2. *Cryptocurrency Exchangers*

There is a current focus by the US government, as in many other FATF countries, on

cryptocurrency and AML controls. FinCEN issued guidance in 2013 and 2019 stating that certain business models involving virtual currency are MSBs and money transmitters under the BSA and therefore subject to FinCEN registration and AML program requirements, including SAR reporting, funds transfer recordkeeping, and customer identification at certain thresholds.⁵⁵ DOJ and other federal and state agencies also have the authority to regulate and impose penalties against virtual currency businesses.

Since 2014, FinCEN has brought four enforcement actions against virtual currency businesses or their principals, including substantial penalties against two non-U.S. based⁵⁶ companies alleged to have failed to report extensive illegal activity.⁵⁷ The penalties in two cases were in conjunction with a related criminal settlement against the principal and founder of the company,⁵⁸ and in another case, the FinCEN penalty (\$60 million)⁵⁹ was assessed against the principal/founder while the criminal investigation of the company's principal continued.

We believe that these enforcement actions and related criminal enforcement, along with the compliance tension caused by the specter of an IRS examination and referral to DOJ and/or FinCEN, are part of FinCEN's effort to persuade virtual currency businesses to comply with the BSA or to cease doing business in the United States. Many in the industry are making substantial efforts to comply with the BSA and ensure that they only do business with persons who are using cryptocurrency for legal purposes. We anticipate that FinCEN, DOJ, and other U.S. state and federal regulators will continue to bring enforcement actions against virtual currency businesses.

3. *Financial Institution Senior Compliance Executives*

FinCEN has imposed two substantial civil money penalties against senior executives

responsible for the BSA/AML compliance function at major financial institutions. The first was against the Chief Compliance Officer and member of executive management for a major global money transmitter alleged to have allowed independent agents to engage in widespread consumer fraud after the activity had been identified by the compliance function. FinCEN imposed a \$1 million dollar penalty on the person who refused to settle.⁶⁰ The ensuing legal action against him in federal court to collect the penalty was ultimately settled over three years later for \$250,000 and a three-year bar from the MSB industry.⁶¹

In 2020, a \$450,000 civil money penalty was imposed on a senior executive of a major U.S. bank who was the executive responsible for the BSA/AML compliance for failure to provide the necessary resources to implement an effective BSA program, which allegedly resulted in a failure to identify and report extensive suspicious activity. As in the other case, it was alleged that a warning by BSA compliance staff about resources and potentially unidentified suspicious activity went unheeded.⁶²

Both of these FinCEN enforcement actions followed related criminal actions against the financial institutions. These actions were designed by FinCEN to send a strong compliance message to compliance personnel at financial institutions that, in rare and allegedly egregious cases where those responsible for compliance willfully take actions to undermine compliance allegedly in the interest of revenue concerns, FinCEN will consider individual liability, even if the Department of Justice did not identify any individuals as criminally liable.

E. Challenges for BSA Enforcement

The enforcement process at FinCEN can take a very long time. As a result, actions may arise for conduct that took place many years prior and for which remediation has already

occurred. On occasion, FinCEN has even brought actions years after the prudential regulator imposed a civil money penalty for the same conduct.

In addition, compared to other U.S. law enforcement and regulators, FinCEN brings very few public enforcement actions per year. Indeed, since 2018, FinCEN has brought only 1-3 of such cases per year. This is in part due to the substantial resources financial institutions have spent to implement compliant AML programs, but it may also reflect some inefficiencies in the enforcement process.

IRS has lacked sufficient examination resources since the BSA's inception. To this point, it is interesting to note that there has never been a public enforcement action against an insurance company and only one action against a dealer in precious metals, stones, or jewels despite both being subject to the BSA for almost 15 years. When BSA requirements are imposed on dealers in antiquities, as is required by the 2020 AML Act, there is a question whether there will be adequate examination resources for this new industry with no state supervisors. There would be similar questions if measures are taken to expand BSA requirements to the real estate industry or art dealers.

There may be efficiencies in delegating BSA penalty authority. In 1994, Congress directed FinCEN to delegate its civil money penalty authority for depository institutions to their federal regulators, according to terms and conditions at FinCEN's discretion,⁶³ but FinCEN never acted on that direction. Although FinCEN has been reluctant to delegate its penalty authority, doing so could result in greater efficiencies in enforcement processes for BSA noncompliance. For one, it would avoid having two separate entities looking into the same conduct and necessitating banks to go through the enforcement process and associated

discussions twice. Moreover, the potential deterrent benefit from an incremental additional penalty imposed by FinCEN after one has been imposed by a regulator is likely not worth the burden and expense of separate actions.

Another potential means by which enforcement efficiencies could occur is if FinCEN were to have its own examination team that could join BSA examinations as soon as significant issues are identified by IRS or the regulators in the interest of a coordinated resolution. If FinCEN had its own examiners, it would be able to conduct targeted examinations based on forensic reviews of BSA data or other gathered intelligence, even if outside the examination schedule of the regulators or IRS.

F. FinCEN's Use of Real Estate GTOs for Enforcement Purposes

FATF recommendations provide that formal AML measures, including customer due diligence and suspicious activity reporting, should be imposed by governments on real estate agents, a category of Designated Non-Financial Businesses and Professions.⁶⁴ Unlike Canada, the United States has not squarely implemented FATF's recommendation and has instead chosen to address the issue through GTOs.

FinCEN's real estate GTOs address law enforcement's concern about persons anonymously purchasing high-end residential real estate in desirable metropolitan locations through shell companies using illegal source funds by requiring title insurance companies to report beneficial ownership information for legal entities purchasing such real estate without financing. The first of these GTOs was issued in January 2016, and they have been reissued and expanded as to the covered locations and threshold sales amount since then. Specifically, the current GTO requires that title insurance companies must, within 30 days of closing, report to

FinCEN any non-financed residential real estate sales in a number of major U.S. counties to legal entity buyers (other than U.S. public companies) when the purchase is for \$300,000 or more and made all or in part with currency, money instruments, wire transfers, and/or virtual currency.⁶⁵ Residential real estate includes properties with four or fewer units. The reports must also include beneficial ownership information at a 25% or more threshold for the purchasing legal entity, and the title insurance companies must verify the identity of the beneficial owners and their representatives using documentary means.

Law enforcement has found these GTOs to be highly useful. In a speech in June 2019, the Director of FinCEN, Kenneth Blanco, discussed the usefulness of GTOs and of adding new markets to the coverage, stating:

GTOs have provided FinCEN with valuable insight into the ways that illicit actors move money in the U.S. residential real estate market, and help us better understand how actors in markets with relatively fewer AML protections respond to new reporting requirements.⁶⁶

The utility of these GTOs was also noted in an August 22, 2017 FinCEN Advisory on the money laundering risks of real estate transactions, including purchases of luxury property with shell companies and all cash real estate transactions.⁶⁷ The Advisory stated that, as of May 2, 2017, over 30% of the real estate transactions reported under the GTOs involved either a beneficial owner or purchaser representative that had been the subject of SARs. FinCEN advised that bad actors may use real estate purchases to launder criminal proceeds because of the limited transparency that such transactions can have and the ability of such purchases to appreciate, involve large sums of money in a single transaction, and shield funds from market instability and exchange-rate fluctuations. As FinCEN had previously done in statements, the guidance also encouraged real estate brokers, escrow agents, title insurance companies, and other real estate

professionals to voluntarily file SARs if certain red flags for money laundering are present. Such voluntary reporting is consistent with AML guidance provided by the real estate trade association, the National Association of Realtors.

In the National Strategy for Combating Terrorist and Other Illicit Financing 2020 (“2020 National Strategy”), issued by the Department of the Treasury on February 6, 2020, Treasury reaffirmed the utility of the real estate GTOs, but also acknowledged that they do not address all perceived money laundering vulnerabilities and could sometimes be evaded.⁶⁸ Treasury did not suggest, however, that there were any near-term plans to propose regulations to extend the BSA requirements to real estate professionals or implement the GTOs on a permanent basis.

While the GTO statute does not specify a limit on the number of times a GTO may be reissued, after nearly five years, there is a legal question as to whether Treasury is authorized to use what was clearly intended to be a temporary tool under the statute on a permanent basis, and whether at some point, there should be a requirement for formal notice and comment on the reporting requirements. This is largely a theoretical concern – the title insurance industry appears to be fully onboard with the GTOs and is unlikely to challenge them.

There are other AML provisions that could come into play in a real estate transaction. If someone purchases real estate in part or in full with over \$10,000 in cash, the business accepting the cash, *e.g.*, a real estate agent or title company, would be subject to the currency reporting requirement for non-financial institution trades and businesses under parallel BSA and IRS Code requirements.⁶⁹ This requirement would not apply to a private sale between a purchaser and buyer.

In addition, there is the possibility of prosecution under the AML criminal statutes if a

real estate professional conducts a transaction with knowledge that the funds used to purchase the property were the proceeds of illegal activity. Knowledge can be based on willful blindness, including failure to inquire when faced with red flags. For instance, in 1992, a real estate agent in North Carolina was convicted of money laundering for a real estate transaction that ended up involving illicit proceeds.⁷⁰ In that case, the agent's client, ostensibly the owner of an auto repair shop, purchased a beach house and asked the agent to record a lower than actual purchase price claiming that he did not want his parents to know how much he paid for the property. The buyer then presented a briefcase of cash to the sellers to make up the difference in price. The client turned out to be a drug dealer.

V. FINCEN'S CURRENT AREAS OF FOCUS

A. BSA Modernization

BSA modernization, sometimes also referred to as BSA effectiveness, is currently a topic of prime focus for FinCEN. Despite comprehensive legal and regulatory requirements and compliance efforts and cooperation by BSA-covered entities, only a small fraction of illicit financial activity is likely being identified and addressed by authorities. For the last few years, FinCEN has been leading the U.S. effort to turn this situation around by addressing how to improve and modernize the BSA to make compliance more effective and efficient. This effort is based on a growing consensus among FinCEN, regulators, law enforcement, Congress, and BSA-covered entities that the U.S. AML regulatory regime should be modernized and improved to more efficiently harness the compliance resources of BSA-covered entities to detect and report information that is useful to law enforcement. A few proposed means of achieving this goal that have been a focus include through technological innovation, regulatory updates to reporting

requirements, particularly with respect to thresholds and data sharing, regulatory updates for novel businesses, such as online gaming and virtual currencies, and enhanced communication between law enforcement and the regulated industry.

The need for BSA modernization is a result of the BSA no longer fully or adequately addressing the current environment and means in which financial transactions occur. The BSA requirements were developed piecemeal over the last fifty years and have not been reviewed comprehensively to determine their continued effectiveness to address money laundering in 2021. Some of the requirements are decades old and were developed with only in-person transactions involving cash, checks, money orders, and wire requests in mind. Mobile payments, online loan applications, virtual currency, online gaming, and payment instructions over the dark web (or any web) were not contemplated.

Some of the requirements and regulatory expectations may not only be inefficient and needlessly complex, but also at odds with a risk-based approach. For instance, the significant resources required for rule-based systems to identify suspicious activity, which have long been the financial institution norm and are accepted by regulators, appear to outweigh the degree to which they produce useful information for government authorities. Moreover, the information provided from these systems may be months old before it reaches law enforcement. In addition, the SAR and CTR filing thresholds have not been updated for inflation or otherwise, which results in a significant amount of resources spent filing reports that have little or no material value to authorities and many of which are never even reviewed by the government. To assist with making these internal compliance processes more efficient, the financial industry has long requested additional feedback from law enforcement about the type of information that is of most use and interest to them and which types of reports are being reviewed and leading to

investigations and prosecutions.

Although the U.S.'s strong enforcement of the BSA has improved compliance, it may have had the unintended consequence of regulated entities placing a higher emphasis on addressing regulatory risk than on addressing money laundering risk. Fear of regulatory criticism or enforcement may inhibit regulated entities from innovating and redeploying compliance resources on a risk basis.

For the last few years, FinCEN has been evaluating how to achieve BSA modernization. They have been assessing which regulatory requirements can be eliminated or simplified to reduce the burden on regulated entities, and what other measures can be implemented to make compliance more effective and efficient. FinCEN has also been promoting better communication and information exchange between law enforcement and the financial industry in the interest of furthering these goals. These efficiency efforts have been occurring in coordination with the financial industry, financial regulators, and law enforcement. The Director of FinCEN has been meeting regularly with counterparts from the federal banking regulators on BSA issues, and they have convened a working group that is reviewing how to improve compliance efficiency. The group has issued a number of guidance papers on various issues for banks, including technology innovation in compliance.⁷¹

A focal point for putting this efficiency policy discussion into action has been through BSAAG. FinCEN and a BSAAG subgroup, known as the AML Effectiveness Working Group, have been working together on BSA modernization goals for a number of years, and their work culminated in September 2020 with a public Advance Notice of Proposed Rulemaking asking for comments to assist FinCEN in drafting future regulations that will define and measure an

effective and reasonably designed AML program, based on a risk assessment that is informed by active communication between the financial industry and law enforcement.⁷² One of the concepts put forth for comment was having FinCEN issue a list of strategic national AML priorities every two years that would assist financial institutions in focusing their compliance efforts. FinCEN received extensive comments (108) from many financial institutions, trade associations, and other stakeholders. The comments will be considered and incorporated in time into revisions to the BSA regulations.

At the same time, the U.S. Congress has been addressing these issues and provided a push for modernization within the 2020 AML Act. To an extent, the 2020 AML Act removed some of FinCEN's flexibility to consider various means of improving BSA effectiveness. For instance, the 2020 AML Act requires that FinCEN issue national AML priorities and codifies FinCEN's public-private partnership initiatives.

B. The 2020 AML Act

The 2020 AML Act is aimed at combatting financial crime more effectively and efficiently through intergovernmental communication, public-private partnership, improvements to existing requirements, and the use of innovative technology. Unlike the extensive BSA requirements enacted by the PATRIOT Act, most of the 2020 AML Act provisions are directed to FinCEN and other government authorities, and have less immediate impact on financial institutions.

The section of the 2020 AML Act that has perhaps received the most attention is the Corporate Transparency Act ("CTA"), which requires that certain small companies report beneficial ownership information and that FinCEN establish and maintain a new corporate

registry consisting of that information.⁷³ These provisions are in response to the longstanding issue of alleged money laundering through anonymous shell companies. FATF has long-discussed this issue and recommended that governments obtain access to beneficial ownership information for legal entities to address the issue.

Reporting companies, which include certain U.S. entities organized under state law and foreign entities that obtain authority to do business in the United States from state authorities, will be required to register with FinCEN and provide information about their beneficial ownership at formation and update the information within a year if it changes. The CTA defines beneficial ownership as someone who owns directly or indirectly 25% or more ownership interest in the legal entity or executes “substantial control” (not defined) over the entity. The CTA includes a long list of the types of companies that are exempted from this requirement, including, among others, public companies, U.S. financial institutions, trusts, and companies with more than 20 employees, \$5 million annual revenue, and a physical location in the United States.

Initially, the beneficial ownership reporting requirement will apply to newly organized entities, but within two years after the system is operational, all existing reporting companies must also report their beneficial ownership information. There are criminal and civil penalties for failure to report, providing false or inaccurate information, and for improper disclosure of information.

As mentioned, the CTA requires that FinCEN maintain a registry of this beneficial ownership information, but it will not be a public registry. The information will be accessible to federal agencies, upon request, solely for national security, law enforcement, and intelligence

purposes, as well as to federal functional regulators and state, local, tribal, and foreign law enforcement agencies under certain, specified circumstances. In addition, with the permission of the legal entity customer, the information will be available to financial institutions subject to beneficial ownership requirements (banks, broker-dealers, IB-Cs and FCMs).

It is not yet clear what impact the registry will have on financial institutions required to obtain beneficial ownership information for legal entity customers. This will likely turn on whether the information in the FinCEN registry will be verified in some manner and to what extent FinCEN provides that financial institutions may rely on information in the registry. On April 1, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking (“ANPRM”) regarding their requirement to establish a registry of beneficial ownership information pursuant to the CTA.⁷⁴ This ANPRM requests comments on 48 questions related to the registry requirement, some of which relate to these issues of verification of information submitted to the registry and financial institutions’ potential ability to rely on the information in the registry.

Once the system is in effect, FinCEN is required to rescind the current beneficial ownership requirements and redraft them to eliminate overlap in the interest of reducing regulatory burden. Financial institutions are concerned that they may be obligated to verify the beneficial ownership they have against the registry information and perhaps file SARs if there is a discrepancy.

The registry will be a significant undertaking for FinCEN and will require acquisition of new systems and additional personnel. While initial regulations on administering the requirements must be proposed within one year, it may take significantly longer for the system to become fully operational with a comprehensive registry of beneficial ownership information, per

the CTA.

In addition, the 2020 AML Act directs FinCEN to create a pilot program that allows financial institutions to share SARs with their non-U.S. financial institution branches, subsidiaries, and affiliates, with some jurisdictions excepted.⁷⁵ In the interest of information security because of the highly sensitive nature of SARs, there are stringent restrictions on SAR disclosure that currently prohibit this type of sharing.⁷⁶ Under guidance issued by FinCEN and the Federal Functional Regulators in 2006, SAR sharing can take place by banks, broker-dealers, IB-Cs, and FCMs with a parent or lead financial institution for enterprise risk management purposes, but not with foreign affiliates.⁷⁷ However, although generally prohibited, FinCEN recently has been allowing broader sharing consistent with the 2020 AML Act's proposed pilot program on a limited, pilot basis.⁷⁸ Accordingly, this appears to be another example of the Act codifying something FinCEN is already doing.

Among other measures, the 2020 AML Act also: (i) clarifies FinCEN's authority to apply the BSA to certain virtual currency businesses by expanding the definitions of financial agency and financial institution to include businesses involved in the exchange or transmission of "value that substitutes for currency"⁷⁹; (ii) directs the establishment of new administrative functions for FinCEN, such as domestic liaisons and international attachés posted at a number of U.S. embassies⁸⁰; (iii) requires public-private partnership, including on technological innovation, in some ways codifying what FinCEN is already doing⁸¹; (iv) increases and creates additional BSA penalties⁸²; (v) strengthens and increases whistleblower rewards for BSA/AML violations⁸³; (vi) adds dealers in antiquities to the list of financial institutions covered by the BSA statute and requires implementing regulations for them⁸⁴; and (vii) requires FinCEN to engage in various studies and Congressional reports related to potential means of improving BSA effectiveness,

including a review of SAR and CTR reporting thresholds.⁸⁵

The 2020 AML Act did not include a couple of measures that may have been expected. First, it did not expand the real estate GTOs to commercial real estate, which was a provision in earlier drafts of the bill. Second, although the Act requires a study on AML threats posed by the industry, it did not bring dealers in high-end art under the BSA, which has long been a supported effort along with bringing dealers in antiquities under the BSA, which the Act did do. Third, the Act did not bring investment funds (other than mutual funds, which are already covered) under the BSA, which has been an expected addition for many years. Indeed, in 2015, FinCEN issued a notice of proposed rulemaking that would have addressed the perceived investment fund gap in BSA coverage by applying AML program and SAR requirements to SEC-registered investment advisers who administer and manage most of the funds, but the proposed regulations were never finalized.⁸⁶ Treasury has not included following through with the proposal in the National Strategy priorities,⁸⁷ raising questions as to whether it has been abandoned or rescinded. Shortly after the latest 2020 National Strategy was published, an FBI report was leaked that stated that investment funds pose significant money laundering risk and that the lack of BSA coverage was a contributing factor. It is still possible that FinCEN will go forward with the earlier proposal or a new proposal to address this perceived gap.⁸⁸

C. Next Steps for BSA Modernization and the 2020 AML Act

It will take a while for the new 2020 AML Act and other BSA modernization efforts to be fully implemented. The extent to which BSA modernization efforts will ultimately be successful will likely turn on whether the following five factors occur:

1. *Enforcement Moratorium* – FinCEN and the federal regulators should issue a clear

statement that they will refrain from enforcement actions if a regulated entity makes risk-based decisions to trim aspects of their AML compliance programs that are not strictly required in the interest of dedicating more resources towards areas of most law enforcement utility, such as customer due diligence and the identification of suspicious activity.

This statement should also protect regulated entities that innovate and move away from a burdensome rule-based system to identify suspicious activity to more of a behavioral model. There should be a grace period within which financial institutions are protected from regulatory liability to effect and review the change.

For this moratorium to be effective, FinCEN will have to engage state financial regulators, particularly, the New York State DFS, for consistency in examination and enforcement practices.

2. *Retraining of Examiners* – There should be a major retraining of rank and file financial institution examiners to be more risk-based in their approach to examination and enforcement. Too often examiners have cited issues that are not rooted in legal and regulatory requirements and are based only on parochial views of what should be the best practice. Examiners will have to understand what impact the moratorium will have on the examination process.

3. *Law Enforcement Flexibility* – As FinCEN considers regulatory relief in the interest of BSA effectiveness and in support of technological innovation, law enforcement must also be willing to cede incremental potential law enforcement benefits to allow for reductions in overly burdensome processes. This will be particularly important as FinCEN considers streamlining SAR requirements and reducing the monetary thresholds for CTRs, which law enforcement has

historically resisted. While the FinCEN Director has said it is not the intention that issuing national priorities will be “additive” in terms of compliance burden,⁸⁹ there is a danger that in practice, there will not be a commensurate reduction in compliance burden for what is not a priority.

4. *Adequate resources at FinCEN* – FinCEN will need significant increases in personnel with the right skills to sustain the momentum on modernization and fulfill all of the new requirements imposed by the 2020 AML Act in an efficient manner, while continuing the agency’s business as usual.

5. *Adequate compliance resources at financial institutions* – Some concerns have been expressed that, in the post-pandemic period, AML compliance resources may become a victim of cost cutting measures. There needs to be enough personnel resources with the right skills and experience to study and implement innovation and rapidly respond to changes made by FinCEN as it implements the 2020 AML Act.

VI. FINCEN COMPARED TO FINTRAC

FinCEN’s and FINTRAC’s missions are comparable, but the ways in which the missions are executed differ. With its understanding with OSFI in November, FINTRAC is responsible for all AML compliance and enforcement for all financial institutions and businesses subject to AML requirements in Canada. FinCEN, on the other hand, shares responsibility for AML compliance with Federal Functional Regulators, the SROs, IRS, and state supervisors. While their activities are coordinated with FinCEN and form the basis for FinCEN enforcement actions, all but the IRS also have independent authority to act alone in enforcement matters.

Although FinCEN could benefit from having a team of examiners or investigators, as discussed above, the multiagency approach has advantages. The obvious benefit is that FinCEN can use the resources of the other agencies and SROs and benefit from their expertise and knowledge of the financial institutions they regulate. In addition, they contribute to the overall BSA/AML compliance effort by issuing communications and guidance to the financial sectors for which they are responsible.

At the end of the day, the main goal is the same for FinCEN and FINTRAC on the compliance and enforcement side, which is maintaining adequate resources and dedicated and qualified staff to ensure that financial institutions maintain risk-based and effective AML programs based on a strong culture of compliance and provide useful information to law enforcement.

One of the challenges of the U.S. multi-agency approach has been the application of consistent standards among regulators and even between divisions or regions of the same regulator. For instance, the standards of one Federal Reserve Bank may be more exacting than another Federal Reserve Bank, and NYDFS, for example, may cite as violations issues that the federal regulator may only consider as warranting criticism. Civil penalty approaches may also be different. For example, FINRA much more frequently brings enforcement actions against BSA/AML compliance officers than FinCEN does.

FINTRAC does not have the challenge of carrying on its FIU responsibilities and at the same time putting in place the infrastructure to build and maintain a national corporate registry, as required by the 2020 AML Act. It appears that Canada is studying an approach regarding access to beneficial ownership information and, if it adopts a registry function, it would not

necessarily be an FIU function and could be housed in a government entity other than FINTRAC.

Another challenge that FinCEN has at this time is the level of detailed requirements set forth within the 2020 AML Act. For instance, Congress required FinCEN to appoint an Innovation Officer and to set-up a subgroup in BSAAG for technology. This level of direction to Treasury and FinCEN from Congress and the accompanying level of reporting is unprecedented.

A. **Conclusion**

I hope this information has been helpful to the Commission, and I would be happy to address any questions it may have.

B. ENDNOTE

¹ 31 U.S.C. § 5311 et seq., 12 U.S.C. §§ 1829b and 1951–59.

² 31 C.F.R. Chapter X.

³ Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001).

⁴ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395. Division F, Anti-Money Laundering Act of 2020 (“AMLA”).

⁵ 31 U.S.C. § 310 (FinCEN’s statutory mandate).

⁶ *Id.*

⁷ Pub. L. No. 107-56, Title III, Subtitle B, § 361(a)(2), 115 Stat. 272, 329-32; *see* Treasury Order 180-01 (Sept. 26, 2002), *available at* <https://www.federalregister.gov/documents/2002/10/21/02-26656/treasury-order-180-01-financial-crimes-enforcement-network>.

⁸ FinCEN, Organizational Chart, *available at* <https://www.fincen.gov/sites/default/files/shared/OverallChart.pdf>.

⁹ Pub. L. 102-550, Title XV, § 1564, 106 Stat. 3672,4073 Oct. 28, 1992.

¹⁰ FinCEN, Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001 (Mar. 18, 2013), *available at* <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>; FinCEN, Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001 (May 9, 2019), *available at* <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

¹¹ 31 C.F.R. §§ 1010.710-717.

¹² 31 U.S.C. § 5318A.

¹³ FinCEN, 311 Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern, *available at* <https://www.fincen.gov/resources/statutes-and-regulations/311-special-measures>.

¹⁴ 31 C.F.R. § 1010.370.

¹⁵ *See, e.g.*, FinCEN, FinCEN Issues Geographic Targeting Order Covering the Los Angeles Fashion District as Part of Crackdown on Money Laundering for Drug Cartels, (Oct. 2, 2014), *available at* <https://www.fincen.gov/news/news-releases/fincen-issues-geographic-targeting-order-covering-los-angeles-fashion-district>; *see also* FinCEN, FinCEN Targets Money Laundering Infrastructure with Geographic Targeting Order in Miami, (Apr. 21, 2015), *available at* <https://www.fincen.gov/news/news-releases/fincen-targets-money-laundering-infrastructure-geographic-targeting-order-miami>.

¹⁶ *See* FinCEN, Speeches, *available at* <https://www.fincen.gov/news-room/speeches>.

¹⁷ *See* FinCEN, Advisories, *available at* <https://www.fincen.gov/resources/advisoriesbulletinsfact-sheets/advisories>.

¹⁸ FinCEN, Section 314(b) Fact Sheet (Dec. 2020), *available at* <https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf>.

¹⁹ 31 C.F.R. § 1010.520.

²⁰ *See* FinCEN, Administrative Rulings, *available at* <https://www.fincen.gov/resources/statutes-regulations/administrative-rulings>.

²¹ FinCEN, Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (July 19, 2016), *available at* https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf; FinCEN, Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (April 3, 2018), *available at* https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf; FinCEN, Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions (Aug. 3, 2020), *available at* https://www.fincen.gov/sites/default/files/2020-08/FinCEN_Guidance_CDD_508_FINAL.pdf.

²² Bd. of Governors of Fed. Reserve Sys., et al., Joint Fact Sheet on Bank Secrecy Act Due Diligence Requirements for Charities and Non-Profit Organizations (Nov. 19, 2020), *available at* <https://home.treasury.gov/system/files/266/2020-11-19-Charities-Fact-Sheet-FINAL.pdf>; Bd. of Governors of Fed.

Reserve Sys., et al., Joint Statement on Bank Secrecy Act Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons (Aug. 21, 2020), *available at*

https://www.fincen.gov/sites/default/files/shared/PEP%20Interagency%20Statement_FINAL%20508.pdf; and

Bd. of Governors of Fed. Reserve Sys., et al., Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), *available at*

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20181203a1.pdf>

²³ FinCEN, FinCEN Launches “FinCEN Exchange” to Enhance Public-Private Information Sharing (Dec. 4, 2017), *available at* <https://www.fincen.gov/news/news-releases/fincen-launches-fincen-exchange-enhance-public-private-information-sharing>.

²⁴ FinCEN, FinCEN Holds Virtual FinCEN Exchange on Ransomware (Nov. 12, 2020), *available at*

<https://www.fincen.gov/news/news-releases/fincen-holds-virtual-fincen-exchange-ransomware>.

²⁵ FinCEN, FinCEN’s Innovation Hours Program, *available at* <https://www.fincen.gov/resources/fincens-innovation-hours-program>.

Director Blanco also discussed the program in his prepared remarks delivered virtually to the American Bankers Association/ American B Association Financial Crimes Enforcement Conference on December 10, 2020. (*available at* <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-virtually-american-bankers>).

²⁶ FinCen, FinCEN Statement on Financial Crimes Tech Symposium (Feb. 4, 2021), *available at*

<https://www.fincen.gov/news/news-releases/fincen-statement-financial-crimes-tech-symposium>.

²⁷ AMLA, § 6211.

²⁸ 31 CFR § 1010.810. The Federal Functional Regulators are defined under the BSA regulations as: the OCC, Federal Reserve, FDIC, NCUA, SEC (broker-dealers and mutual funds), and CFTC (FCMs and IB-Cs). The SEC and CFTC retain authority, but also have delegated authority to the SROs, FINRA and NFA. 31 CFR § 1010.1000(r).

²⁹ *See, e.g.*, 12 C.F.R. §§ 21.21 (OCC BSA program requirement), 21.11 (OCC suspicious activity reporting requirement).

³⁰ 17 C.F.R. §§ 240.17a-8, 405.4.

³¹ FINRA Rule 3310.

³² 17 C.F.R. § 42.2.

³³ NFA Compliance Rule 2-9(c).

³⁴ Branches of foreign banks can be licensed by either the OCC of the Federal Reserve. If by the Federal Reserve, they are also licensed by the state banking authorities where they operate and subject to both federal and state compliance and enforcement.

³⁵ FinCEN, Financial Crimes Enforcement Network (FinCEN) Statement on Enforcement of the Bank Secrecy Act (Aug. 18, 2020), *available at*

https://www.fincen.gov/sites/default/files/shared/FinCEN%20Enforcement%20Statement_FINAL%20508.pdf.

³⁶ *Id.*

³⁷ In the early 1990s, we understand that the Department of the Treasury referred to the Department of Justice a civil penalty assessment against a small bank in New Jersey that refused to settle with FinCEN. The bank ultimately settled. As noted below, a penalty action against the former compliance official at MoneyGram, Thomas Haider, also was the subject of federal litigation. **[Discuss Alpine Securities and/or Pacific Bank ?]**

³⁸ 31 U.S.C. § 5318(a)-(d); 31 C.F.R. § 1010.911-917.

³⁹ *See* 31 CFR § 1010.820; 31 CFR § 1010.840; 12 USC §§ 1956-57; 31 USC § 5322.

⁴⁰ *See, e.g.*, Financial Crimes Enforcement Network, Dep’t of the Treasury. *In the Matter of: Cap. One, Nat’l Ass’n, McLean, Va.* (Jan. 15, 2021), *available at*

https://www.fincen.gov/sites/default/files/shared/Assessment_CONA%20508.pdf.

⁴¹ 31 U.S.C. § 5321. The civil penalties are discussed in the BSA regulations at 31 C.F.R. § 1010.820.

⁴² This list of the public enforcement actions where civil money penalties were imposed since 1999 and the assessment documents can be found at <https://www.fincen.gov/news-room/enforcement-actions>.

⁴³ Final Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of Frank E. Mendoza* (Dec. 15, 2011), *available at* https://www.fincen.gov/sites/default/files/enforcement_action/2020-05-21/ASSESSMENT_without_consent.pdf.

⁴⁴ U.S. Dep’t of Justice, Non-Prosecution Agreement, Las Vegas Sands Corp. (Jan. 17, 2017), *available at* <https://www.justice.gov/opa/press-release/file/929836/download>; Press Release, U.S. Dep’t of Justice, Las Vegas

Sands Corporation Agrees to Pay Nearly \$7 Million Penalty to Resolve FCPA Charges Related to China and Macao (Jan. 19, 2017), available at <https://www.justice.gov/opa/pr/las-vegas-sands-corporation-agrees-pay-nearly-7-million-penalty-resolve-fcpa-charges-related#:~:text=Pursuant%20to%20the%20non%2Dprosecution,U.S.%20Sentencing%20Guidelines%20fine%20range.&text=The%20Fraud%20Section%20is%20responsible%20for%20investigating%20and%20prosecuting%20all%20FCPA%20matters.>

⁴⁵ FIN-2018-02, *In the Matter of Artichoke Joe's* (May 3, 2018), available at https://www.fincen.gov/sites/default/files/enforcement_action/2018-05-03/AJC%20Assessment%2005.03.18.pdf;

FIN-2017-05, *In the Matter of Artichoke Joe's* (Nov. 15, 2017), available at https://www.fincen.gov/sites/default/files/enforcement_action/2017-11-17/AJC%20Proposed%20Assessment%20Signed%2011.15.17.pdf;

FIN-2016-05, *In the Matter of CG Technology, L.P.* (Oct. 3, 2016), available at https://www.fincen.gov/sites/default/files/enforcement_action/2016-10-03/20161003%20Cantor%20Assessment%20Final.pdf;

FIN-2016-04, *In the Matter of Hawaiian Gardens Casino, Inc.* (July 15, 2016), available at https://www.fincen.gov/sites/default/files/enforcement_action/2016-09-09/20160715%20HG%20Assessment%20Final.pdf;

FIN-2016-03, *In the Matter of Sparks Nugget, Inc.* (Apr. 5, 2016), available at https://www.fincen.gov/sites/default/files/enforcement_action/Sparks_Nugget_EA.pdf;

FIN-2015-11, *In the Matter of Oaks Card Club* (Dec. 17, 2015), https://www.fincen.gov/sites/default/files/enforcement_action/20151217_Oaks_Assessment.pdfhttps://www.fincen.gov/sites/default/files/enforcement_action/20151217_Oaks_Assessment.pdf;

FIN-2015-10, *In the Matter of Desert Palace* (Nov. 6, 2015), available at https://www.fincen.gov/sites/default/files/enforcement_action/Caesars_Palace_ASSESSMENT.pdf;

FIN-2015-07, *In the Matter of Hong Kong Entertainment (Overseas) Investments, Ltd* (June 3, 2015), available at https://www.fincen.gov/sites/default/files/enforcement_action/Tinian_Dynasty_Assessment.pdf;

FIN-2015-02, *In the Matter of Trump Taj Mahal Associates, LLC* (Mar. 6, 2015), available at https://www.fincen.gov/sites/default/files/enforcement_action/20150302%20Assessment%20of%20Civil%20Money%20Penalty%20Trump%20Taj%20Mahal%20%28post-approval%20by%20bankruptcy%20court%29.pdf;

FIN-2014-05, *In the Matter of George Que* (Aug. 20, 2014), available at https://www.fincen.gov/sites/default/files/enforcement_action/GeorgeQue_Assessment_20140820.pdf;

⁴⁶ *In the Matter of George Que*.

⁴⁷ Nev. Gaming Comm'n, NGC 15-04, *Nev. Gaming Control Bd. v. Caesars Entm't Corp.* (Sept. 11, 2015), available at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=10371>; Nev. Gaming Comm'n., NGC 17-05, *Nev. Gaming Control Bd. v. CG Tech. Holdings, LLC* (Nov. 15, 2018), available at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=14079>.

⁴⁸ Press Release, Office of Cal. Att'y Gen., Attorney General Becerra Secures \$3.1 Million Settlement from Hawaiian Garden Casino (Dec. 5, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-secures-31-million-settlement-hawaiian-gardens-casino>; Cal. Gambling Control Comm'n, HQ 2016-00004AC, *In the Matter of Hawaiian Gardens Casino, Inc., Stipulated Settlement, Decision, and Order* (Dec. 5, 2019), available at <https://oag.ca.gov/system/files/attachments/press-docs/HG%20-%20Approved%20Stip%20Decision%20Order%20HG%2012.5.19.pdf>.

⁴⁹ Press Release, U.S. Dep't of Justice, Normandie Casino Operator Agrees to Plead Guilty to Federal Felony Charges of Violating Anti-Money Laundering Statutes (Jan. 22, 2016), available at <https://www.justice.gov/usao-cdca/pr/normandie-casino-operator-agrees-plead-guilty-federal-felony-charges-violating-anti>.

⁵⁰ The current version of this document, *Best Practices for Anti-Money Laundering Compliance 2019-2020*, is available at https://www.americangaming.org/wp-content/uploads/2019/12/AGA-AML-Best-Practices_12-9.pdf. The author currently serves as BSA/AML counsel to the AGA.

⁵¹ FinCEN, *Advisory to Financial Institutions on Promoting a Culture of Compliance*, FIN-2014-A007 (Aug. 11, 2014), available at <https://www.fincen.gov/news-room/enforcement-actions>.

⁵² *Murphy v. NCAA*, No. 16-476, 584 U.S. ____ (2018).

⁵³ 31 C.F.R. § 1010.100 (t)(5) (definition of casino).

⁵⁴ 31 C.F.R. § 1021.410(a) (account opening requirements for casinos).

⁵⁵ The requirements for MSBs are found at 31 C.F.R. Part 1022.

The Advisories are: Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001 (Mar. 18, 2013), *available at* <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf> and Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001 (May 9, 2019), *available at* <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

⁵⁶ While the BSA generally has no extraterritorial application, MSBs with no physical presence in the United States can be subject to the BSA if they do business in “substantial part” in the United States, generally understood to mean a large number of U.S. customers. (Substantial is not defined.) 31 C.F.R. § 1010.100(ff) (definition of MSB). This is the basis for penalties against CVC exchangers located outside the United States.

⁵⁷ *See, e.g.*, Financial Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of Eric Powers*, *available at* https://www.fincen.gov/sites/default/files/enforcement_action/2020-05-21/Assessment%20Eric%20Powers%20Final%20for%20Posting%2004.18.19.pdf (Apr. 18, 2019); Financial Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of Ripple Labs Inc., XRP II, LLC* (May 5, 2015), *available at* https://www.fincen.gov/sites/default/files/shared/Ripple_Assessment.pdf; Financial Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of Larry Dean Harmon d/b/a Helix* (Oct. 19, 2020), *available at* https://www.fincen.gov/sites/default/files/enforcement_action/2020-10-19/HarmonHelix%20Assessment%20and%20SoF_508_101920.pdf; Financial Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of BTC-E a/k/a Canton Business Corporation and Alexander Vinnik* (July 26, 2017), *available at* https://www.fincen.gov/sites/default/files/enforcement_action/2017-07-26/Assessment%20for%20BTCeVinnik%20FINAL%20SignDate%2007.26.17.pdf.

⁵⁸ *In the Matter of Larry Dean Harmon d/b/a Helix* and *In the Matter of BTC-E a/k/a Canton Business Corporation and Alexander Vinnik*, *supra*.

⁵⁹ *In the Matter of Larry Dean Harmon d/b/a Helix*, *supra*.

⁶⁰ Financial Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of Thomas E. Haider* (Dec. 18, 2014), *available at* https://www.fincen.gov/sites/default/files/enforcement_action/2020-05-21/Haider_Assessment.pdf.

⁶¹ Press Release, FinCEN, FinCEN and Manhattan U.S. Attorney Announce Settlement with Former MoneyGram Executive Thomas E. Haider (May 4, 2017), *available at* https://www.fincen.gov/sites/default/files/2017-05/HaiderSettlement_050417.pdf

⁶² Financial Crimes Enforcement Network, Dep’t of Treasury, *In the Matter of Michael LaFontaine* (undated), *available at* https://www.fincen.gov/sites/default/files/enforcement_action/2020-05-21/Michael%20LaFontaine-Assessment-02.26.20_508.pdf.

⁶³ 31 U.S.C. § 5321(e).

⁶⁴ FATF Recommendation 22 provides that the customer due diligence recommendation applies to real estate agents with respect to the buying and selling of real estate, and Recommendation 23 provides that the recommendations relating to suspicious activity reporting also apply. FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations 19-21 (updated Oct. 2020), *available at* <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

⁶⁵ FinCEN, Geographic Targeting Order (Nov. 4, 2020), *available at* https://www.fincen.gov/sites/default/files/shared/508_Real%20Estate%20GTO%20Order%20FINAL%20GENERIC%2011.4.2020.pdf.

⁶⁶ FinCEN, Prepared Remarks of FinCEN Director Blanco at the NYU Law Program on Corporate Compliance and Enforcement (June 12, 2019), *available at* <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-blanco-nyu-law-program-corporate-compliance-and>.

⁶⁷ FinCEN Advisory, Advisory to Financial Institutions and Real Estate Firms and Professionals, FIN-2017-A003 (Aug. 22, 2017), *available at* https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory_FINAL%20508%20Tuesday%20%28002%29.pdf.

⁶⁸ U.S. Dep’t of Treasury, National Strategy for Combating Terrorist and Other Illicit Financing 2020, at 16-18 (Feb. 6, 2020), *available at* <https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf>.

⁶⁹ 31 U.S.C. § 5331; 31 C.F.R. § 1010.330.

⁷⁰ *U.S. v. Campbell*, 977 F.2d 854 (4th Cir. 1992).

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- ⁷¹ See FinCEN, FinCEN Launches “FinCEN Exchange” to Enhance Public-Private Information Sharing (Dec. 4, 2017), *available at* <https://www.fincen.gov/news/news-releases/fincen-launches-fincen-exchange-enhance-public-private-information-sharing>.
- ⁷² Anti-Money Laundering Program Effectiveness, 85 Fed. Reg. 58,023 (Sept. 17, 2020), *available at* <https://www.govinfo.gov/content/pkg/FR-2020-09-17/pdf/2020-20527.pdf>.
- ⁷³ AMLA, § 6403, codified at 31 U.S.C. § 5336.
- ⁷⁴ FinCEN, Advance Notice of Proposed Rulemaking (April 5, 2021), *available at* <https://www.federalregister.gov/documents/2021/04/05/2021-06922/beneficial-ownership-information-reporting-requirements>.
- ⁷⁵ AMLA, § 6212.
- ⁷⁶ See, e.g., 31 C.F.R. § 1020.320(e) (SAR disclosure for banks).
- ⁷⁷ FinCEN, Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies (Jan. 20, 2006), *available at* <https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-guidance-sharing-suspicious-activity-reports>; FinCEN, Sharing Suspicious Activity Reports by Depository Institutions with Certain U.S. Affiliates, FIN-2010-G006 (Nov. 23, 2010), *available at* <https://www.fincen.gov/resources/statutes-regulations/guidance/sharing-suspicious-activity-reports-depository-institutions> (SAR sharing guidance for depository institutions).
- ⁷⁸ Public remarks of Director Blanco at the Securities Industry and Financial Markets Association 2021 AML and Financial Crime Virtual Conference on February 23, 2021.
- ⁷⁹ AMLA, § 6102, amending the definition of financial institution in 31 U.S.C. § 5312 (a)(2) and of money transmitter business subject FinCEN registration in 31 U.S.C. § 5330.
- ⁸⁰ AMLA, §§ 6106-07.
- ⁸¹ AMLA, §6103.
- ⁸² AMLA, §§ 6309-10, 6312.
- ⁸³ AMLA, § 6314.
- ⁸⁴ AMLA, § 6110.
- ⁸⁵ AMLA, §§ 6204-05.
- ⁸⁶ Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52, 680 (Sept. 1, 2015), *available at* <https://www.govinfo.gov/content/pkg/FR-2015-09-01/pdf/2015-21318.pdf>.
- ⁸⁷ See, e.g., 2020 National Strategy, *available at* <https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf>.
- ⁸⁸ FBI, Bulletin, (U) Threat Actors Likely Use Private Investment Funds to Launder Money, Circumventing Regulatory Tripwires (May 1, 2020), *available at* <https://blueleaks.io/jric/files/DDF/200501%20LES%20FBI%20Intelligence%20Bulletin%20-%20Threat%20Actors%20Likely%20Use%20Private%20Investment%20Funds%20to%20Launder%20Money,%20Circumventing%20Regulatory%20Tripwires.pdf>.
- ⁸⁹ Public remarks of Director Blanco at the Securities Industry and Financial Markets Association 2021 AML and Financial Crime Virtual Conference on February 23, 2021.

