

CLIENT ALERT

FinCEN Announces New Global Investigations Division and New Leader for Liaison Division

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On August 28, 2019 the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) announced the launch of a Global Investigations Division (GID), which will be led by Matthew Stiglitz, a former Principal Deputy Chief in the Department of Justice's (DOJ's) Criminal Division. The GID replaces and expands on FinCEN's Office of Special Measures (OSM), which was a part of FinCEN's Enforcement Division. On September 3, 2019, FinCEN also announced that AnnaLou Tirol would depart her role as the Acting Chief of the DOJ's Public Integrity Section to serve as the head of FinCEN's Liaison Division.

The new GID will oversee FinCEN's use of Section 311 of the USA PATRIOT Act and a variety of unique enforcement information collection authorities available to FinCEN, including Geographic Targeting Orders (GTOs) and Foreign Financial Agency (FFA) regulations. FinCEN's use of these authorities has expanded substantially over the last several years, and GID will continue to use them to investigate and take actions against targets "that have a nexus to the proliferation of weapons of mass destruction, rogue state actors, transnational organized crime, international narcotics trafficking, and terrorism." GID will also look to increase cooperation and coordination with foreign counterparts. This signals a continued expansion of FinCEN's role with respect to foreign national security threats.

FinCEN's Liaison Division administers the Bank Secrecy Act Advisory Group (BSAAG), a group of representatives across different categories of financial institutions regulated under the Bank Secrecy Act (BSA), and also organizes information-sharing partnerships between law enforcement and regulated industry, as well with foreign governments. These functions too have expanded in recent years, leading FinCEN in December 2017 to launch a new "FinCEN Exchange" program to institutionalize more frequent and reciprocal sharing between law enforcement and financial institutions, making use in particular of FinCEN's authority under Section 314(a) of the USA PATRIOT Act to request information from financial institutions regarding accounts and transactions with persons suspected of money laundering or terrorist activity. FinCEN also has said that its sharing with foreign governments has including sharing "in crisis situations," which again may point to an increased role for the agency in national security matters.

Practical Considerations

FinCEN's creation of the GID suggests potential increased use of Section 311, GTOs, FFAs, and other information gathering authorities. BSA rules require U.S. financial institutions to engage in enhanced due diligence to ensure that their foreign correspondent accounts are not used to process transactions for prohibited foreign financial institutions designated under Section 311 authorities, including through "nested" correspondent accounts. U.S. financial institutions should be alert to accounts where the risk of nested correspondents for designated targets is elevated. GTOs and FFA regulations may alert financial institutions to areas of potential money laundering or other risk which should be investigated similar to potential risks identified by other FinCEN information requests, such as those under Section 314(a) of the USA PATRIOT Act. That is especially true in cases like the real estate GTOs, where FinCEN has encouraged third parties to file SARs on transactions that also may

involve U.S. financial institutions, and where any such SARs might cause FinCEN or other regulators to conclude that any financial institutions involved in the transactions also were required to file.

Regulated financial institutions may wish to consider the option of participating in FinCEN Exchange and related efforts, which may provide information on money laundering or terrorist financing risks and better suspicious activity reporting, or applying for membership in BSAAG, which affords a useful window into FinCEN's enforcement priorities and the agency's approach to its authorities.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Carlton Greene

Partner – Washington, D.C.
Phone: +1 202.624.2818
Email: cgreene@crowell.com

Rebecca Monck Ricigliano

Partner – New York
Phone: +1 212.895.4268
Email: rricigliano@crowell.com

Nicole Sayegh Succar

Counsel – New York
Phone: +1 (212) 803-4031
Email: nsuccar@crowell.com