The Monthly Wrap: November 2021

Developments & Trends In Anti-Money Laundering Compliance

What's Been Happening?

The acting Comptroller of the OCC urged regulatory agencies to work together, rather than independently, to properly regulate the burgeoning FinTech and crypto industries. FinCEN issued guidance regarding an upward trend in environmental crimes and associated illicit financial activity. A brokerage firm filed an appeal to the US Supreme Court alleging the SEC lacked authority to enforce BSA requirements, and regulators jointly issued an urgent call-to-action to address stablecoin payment risks.

Supreme Court declines challenge to SEC's Bank Secrecy Act authority

The **Supreme Court turned down a bid** by brokerage firm Alpine Securities petitioning for a review of the SEC's power to enforce the suspicious activity reporting (SAR) requirements under the Bank Secrecy Act (BSA).

Alpine Securities Corp. **challenged charges brought against it by the SEC** in 2017 regarding violations of the SAR reporting requirements. The firm argued the SEC is overstepping its bounds through its independent interpretation and enforcement of the BSA, which Congress entrusted to the Treasury Department and FinCEN. Alpine's argument **received notable support** from former FinCEN Director James Freis Jr. and Deputy Director Charles Steele, who stated concerns that the SEC's enforcement of the BSA could lead to SEC-regulated firms taking a "better-safe-than-sorry approach" to SARs reporting, "even when they do not believe the conduct meets the threshold set forth in FinCEN's regulations and guidance for suspicious activity."

The bottom line? The Supreme Court's rejection of the petition means that SEC-

Regulators demand Congressional action on stablecoins

Frustrated with the lack of a regulatory framework in the cryptocurrency markets, the President's Working Group on Financial Markets, along with the FDIC and the OCC, **published a report on stablecoins**.

The report, which concludes that Congressional action "is urgently needed to address the prudential risks inherent in payment stablecoins" highlights risks relating to:

- Stablecoin 'runs' if there's a lack of confidence in the instrument,
- Systemic risks inherent in reliance on a small number of stablecoins or stablecoin issuers,
- The lack of a consistent regulatory framework, and
- The potential for money laundering and terrorist financing.

regulated entities may need to consider both FinCEN and SEC interpretations of SAR filing requirements.

AML Tip of the Month - More awareness of environmental crime needed

FinCEN issued guidance highlighting an "upward trend" in environmental crime and associated illicit financial activity, and provided financial institutions with specific guidance on identifying and describing environmental crimes in suspicious activity reports (SARs).

According to the Financial Action Task Force (FATF), environmental crimes are the third most profitable activity for illicit groups, behind trafficking drugs and counterfeit goods. Environmental crimes include the illegal exploitation of natural resources (such as oil, timber, metals, etc.), illegal fishing, illegal trafficking of animals and wildlife, and poaching. BSA/AML officers should take note of the countries FinCEN listed as the biggest offenders of environment crime when updating their risk models.

FinCEN's guidance follows FATF's July 2021 report entitled "Money Laundering from Environmental Crime" in which it laid out information on the scale, nature and typologies of environmental crimes.

The report also outlines several interim measures the agencies intend to take pending Congressional action.

OCC Acting Comptroller discusses “Modernizing the Financial Regulatory Perimeter”

OCC Interim Head Michael Hsu discussed **“Modernizing the Financial Regulatory Perimeter”** and raised interesting points regarding the market capitalization of the FinTech industry today compared to five years ago. In addition, he noted the lack of consolidated supervision over FinTech and crypto firms, and that historically an industry crisis was a driver of further consolidation.

Rather than waiting for the next crisis, he suggested “to be effective, the regulatory agencies, including state regulators, must learn to interact differently and define success differently. There needs to be less regulatory competition and more cooperation, less parochialism, and more teamwork, less go-it alone independence and more interdependence’’.

www.digipli.com | team@digipli.com | 201.255.9440