The Monthly Wrap: February 2022

Developments & Trends In Anti-Money Laundering Compliance

What's Been Happening?

A continued theme from last month, that individuals can be held liable for inadequate compliance oversight, is highlighted in a recent FINRA finding. While regulators made a statement with a first-of-its-kind fine to a crypto lender, the NFT space is seeing increased fraud, and the need for regulatory action is needed to bolster trust in that marketplace. Meanwhile, enforcement agencies such as the the FBI are building out departments to help tackle emerging market illicit activities. Lastly, of course, are the continued updates to the Russia-related sanctions programs of various governments.

FBI puts pieces in place for new cryptocurrency unit

The FBI's newly formed National Cryptocurrency Enforcement Team (NCET) named its first director, Eun Young Choi. The NCET's mandate is broad, blurring lines between traditional white collar and other federal crime and the emerging technologies associated with cryptocurrency and cyber-instrumentalities, neither of which are governed by clear, subject matter specific statutes. The NCET has been directed to "assist in tracing and recovering assets lost to fraud and extortion, including cryptocurrency payments to ransomware groups" and to pursue its own cases against entities that "enable the misuse of cryptocurrency and related products to commit or facilitate criminal activity." The NCET will pull resources and expertise from a variety of areas, including the DOJ Criminal Division's Money Laundering and Asset Recovery Section (MLARS) and Computer Crime and Intellectual Property Section (CCIPS), along with other sections and the various U.S.

FINRA holds Compliance Officer accountable for AML oversight lapses

The requirements relating to building and implementing an effective AML program can be found within many US rules and regulations. While having a robust AML program is key, it is equally critical to adhere to the controls and oversight set forth within the program. Recently, an AML Compliance Officer found out just how critical following procedures is when they were faced with FINRA charges regarding improper supervision of the firm's AML program.

FINRA determined that the Compliance Officer failed to adhere to many of the requirements set forth in FINRA Rules 3310(a) and 3310(b), which specifically mandate that firms establish internal controls reasonably designed to achieve compliance with the Bank Secrecy Act. While regulators continue to modify and institute new guidelines around AML, the trend of holding individuals accountable continues to accelerate. CCOs and AML Heads should ensure there are QA processes, and targeted

Attorney Offices as needed. Further, the NCET will be guided by the Department's Cryptocurrency Guidance and Enforcement Framework published last year.

metrics in place to ensure gaps in procedures or aging alerts are properly identified and addressed.

BlockFi to pay $100 million in fines to SEC and various States

The Securities and Exchange Commission (SEC) charged BlockFi Lending LLC (BlockFi) with failing to register the offers and sales of its retail crypto lending product. The SEC also charged BlockFi with violating the registration provisions of the Investment Company Act of 1940.

To settle the charges, BlockFi agreed to pay a $50 million penalty, cease its unregistered offers and sales of the lending product and attempt to bring its business within the provisions of the Investment Company Act within 60 days. BlockFi's parent company also announced it intended to register under the Securities Act of 1933 the offer and sale of a new lending product. BlockFi agreed to pay an additional $50 million in fines to 32 states to settle similar charges.

This is notable as it's the first case of its kind for crypto lending platforms. Will this set the stage for confirming that crypto lending products are "securities" that require SEC registration and corresponding oversight?

Note that there are multiple other cryptocurrency lending platforms that are still in discussions with the SEC and state attorney generals regarding their own crypto lending activities.

Massive increases in NFTs creating risk of fraud

Non-fungible tokens, or NFTs, are blockchain-based digital assets that are designed to be unique units, unlike cryptocurrencies whose units are fungible. NFTs can be associated with images, videos, audio, physical objects, memberships, and countless other developing use cases. They typically give the holder ownership over the data or media the token is associated with, and are commonly bought and sold on specialized marketplaces. Over $44 billion of NFTs were sold in 2021. Of course, whenever there's massive growth in a new market, there's bound to be criminal activity.

A recent report by Chainalysis noted two main types of illicit activity relating to NFTs. First, wash trading is where the seller is on both sides of the transaction, with the goal to inflate the value of the NFT by selling the NFT to a "new" wallet owned by the same person. Wash trading in conventional securities is prohibited but no enforcement actions have been taken thus far in NFT wash trading despite blockchain analytics' ability to identify abusers. Second, money laundering through NFTs, while still still modest in amount compared to traditional techniques, has the potential to increase quickly. Although in 2021 most NFT-related money laundering involved scams and stolen funds, certain sanctioned wallet addresses also purchased NFTs.

AML Tip of the Month: Keeping updated on Russian-related sanctions

We've all been following the Russian invasion of Ukraine, with new information and reports published on what seems to be an hourly basis. Given the rapidly evolving nature of various governments' responses, keeping track of the sanction-related requirements is challenging for those of us with even the most highly automated sanction screening tools. The US Treasury has been issuing Press Releases regarding updates to the sanctions program, along with publishing FAQs. But to keep up-to-date on the latest developments you can subscribe directly to OFAC email alerts here.
