The Monthly Wrap: September 2022
Your Anti-Money Laundering News

DigiPli

What's Been Happening?

September was a big month for regulatory advancements and messages. The OCC warned of a potential looming crisis - noting similarities to the 2008 financial crisis - if banks and their FinTech partners don't take action regarding their compliance programs. This is a significant statement, and one that should prompt FinTechs and their sponsor banks to assess and incorporate compliance regimens that will meet regulators' increased expectations. **DigiPli's products were built to meet the strictest AML requirements. Talk to us if you want to be ahead of the curve - or want to catch up to the curve.**

In addition, the White House released its Framework for regulating digital assets following its March Executive Order, FinCEN issued the long-awaited rules for a beneficial ownership registry, and another crypto lender got caught in the cross-hairs for an alleged failure to register in connection with the sale of securities.

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Is A Regulatory Tidal Wave Coming?

The OCC, in addition to other US financial regulators, is focusing on risks arising out of bank-FinTech partnerships. Acting OCC Comptroller Michael Hsu expressed concern about the growth and convergence of bank products, FinTechs, Banking-as-a-Service providers and the big tech players. Hsu noted that it's changing the financial industry landscape in a way that has a "nagging familiarity" to the lead-up to the 2008 financial crisis. Failure to act, he stresses, could

Regulators Charge Crypto Lending Platform (Again)

In the latest sign of the escalating tension in the regulation of cryptocurrency products (and, according to many, regulation by enforcement), New York and seven other state regulator charged crypto-currency lender Nexo Group for failing to register its crypto lending product as a security. According to court papers, regulators warned Nexo that the sale of its interest bearing crypto lending product constituted the sale of a security, and instructed it to register as lead to a severe problem or even a crisis. To address this, among other measures, the OCC may subdivide bank-FinTech arrangements into cohorts with similar safety and soundness risk profiles. This will enable the OCC to more clearly assess FinTech-related risks, and set management expectations. But what will change for FinTechs in a 'riskier' cohort? That's still to be answered.

Why this matters. Many newer FinTechs have limited experience operating in a regulated market, and underestimate the importance of compliance controls. As such, added scrutiny on FinTech sponsor banks is likely to 'chill' the growth of bank-FinTech partnerships, and increase FinTechs' compliance burdens and costs. However, the OCC is only one of several regulators focusing on this topic. It's just the tip of the regulatory wave.

a broker-dealer. However, Nexo failed to register and allegedly mis-represented to investors that they're a licensed and registered platform. Given the recent implosion of other crypto-lending companies, coupled with BlockFi's recent $100 million settlement with the SEC and state regulators relating to a similar product, Nexo Group's chances of successfully defending its position seem bleak.

Why this matters. We're in a time of increasing regulatory uncertainty, although potentially clearer standards will arise out of the White House's Framework for Digital Assets. Accordingly, crypto firms and other FinTechs need to carefully consider the changing landscape when exploring new products and services. Industry-accepted norms and practices and can become unacceptable with little to no notice.

Creating Transparency - Beneficial Ownership Rules Finalized

The Anti-Money Laundering Act of 2020 (AMLA 2020) requires FinCEN to implement and maintain a database to identify people who ultimately own or control legal entities (called ultimate beneficial owners, or UBOs). The requirement was designed to add transparency and address deficiencies in the U.S. anti-money laundering (AML) regime previously identified by the Financial Action Task Force. According to acting FinCEN Director

White House Releases Framework for Digital Assets

President Biden issued an Executive Order in March 2022 directing government agencies to explore the risks and benefits in the crypto sector. Since then, various stakeholders in government, industry, and academia worked to advance the six key priorities outlined in the Executive Order. Based on their work, the White House released its next installment, called a Framework for Responsible

Himamauli Das, "[f]or too long, it has been far too easy for criminals, Russian oligarchs, and other bad actors to fund their illicit activity by hiding and moving money through anonymous shell companies and other corporate structures right here in the United States."

We discussed the implications of a beneficial ownership registry when AMLA 2020 was first released. Now, after almost two years, FinCEN published its final rule on September 29. The rule will require most corporations, limited liability companies, and other entities created in or registered to do business in the US to report information about their UBOs to FinCEN. The rule also contains a list of those types of companies that are exempt from the reporting requirements.

But the work isn't yet done. FinCEN must still: (1) establish protocols for who, why and how users can access UBO information, and (2) sync the existing laws regarding UBOs, with this new registry.

Why this matters. Both the government and financial institutions spend significant time and money seeking to determine the ownership structure of legal entities. This rule is the first step in simplifying and streamlining that process, and bringing much needed transparency to corporate structures.

Development of Digital Assets. Key elements of the Framework include:

- Promoting private sector R&D for innovation,
- Directing regulators such as the SEC and CFTC to aggressively pursue investigations and enforcement actions against unlawful practices in the digital assets space,
- Promoting payments initiatives such as encouraging instant payments, improving cross-border payments, and exploring regulation of nonbank payment providers,
- Establishing a standing forum with key stakeholders to share information designed to inform future actions,
- Reinforcing the US's global financial leadership and competitiveness, and
- Mitigating risk via explicit applicability of laws and penalties to the digital asset sector.

Why this matters. Citing the growth in digital assets, and the resulting increased risks, the Framework encourages governmental agencies to work together to promote growth in a "responsible" manner. The Framework is a material, tangible step toward doing so. If implemented, it will significantly shape digital asset regulation in the US for years to come.

'Know Your Wallet' Tool

One of the most challenging aspects of the on/off ramp between crypto and fiat is validating customers' wallets. DigiPli provides a **free tool** to check whether a wallet address was sanctioned by OFAC.

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