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Three Significant Developments in BSA/AML Regulation

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Financial Services

This week has brought three significant developments in Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") regulation and legislation:

- On Tuesday, **the Financial Crimes Enforcement Network ("FinCEN") released an advisory** to U.S. financial institutions highlighting the connection between corrupt senior foreign political figures and their "financial facilitators" and the role they play in promoting human rights abuses and other illicit activities. The facilitators described by FinCEN may include businessmen with close ties to corrupt political regimes or aides to corrupt senior politicians (both formal aides and informal political consultants). The advisory summarizes existing guidance under which U.S. financial institutions are required to take "reasonable, risk-based steps" to identify and limit exposure to tainted funds and assets. It also provides a list of risk factors for identifying corrupt foreign politically exposed persons ("PEPs") and their facilitators, as well as several short "case examples" of financial facilitation methods. At the same time, the advisory emphasizes that "the bulk of PEPs are dedicated public servants and concerns over the criminal and corrupt conduct of some should not be used as the basis to engage in wholesale or indiscriminate de-risking of any class of customers or financial institutions."
- On Wednesday, **Representatives Steve Pearce (R-N.M.) and Blaine Luetkemeyer (R.-M.O.) introduced a bill (H.R. 6068, the Counter Terrorism and Illicit Finance Act)** that would update aspects of the BSA and other related statutes. If passed, the bill would provide important clarity on the circumstances under which a financial institution may share suspicious activity reports ("SARs") with foreign affiliates (including branches and subsidiaries). The bill would also, among other things: increase the threshold for filing currency transaction reports ("CTRs") from US$10,000 to US$30,000; increase certain other monetary thresholds in the BSA and its implementing regulations; instruct FinCEN to establish by regulation a process for the issuance of no-action letters; establish an enforcement safe harbor for the Customer Due Diligence Rule; and require the Treasury Department to coordinate a formal review of potential streamlining of SAR filing requirements. The review would consider, among other things, whether the timeline for filing SARs should be lengthened, the format of SARs can be streamlined, SARs and CTRs can be filed in a more targeted set of circumstances, and more can be done to address the adverse consequences of financial institutions de-risking entire categories of high-risk relationships.
- Also on Wednesday, **many of the same concerns motivating H.R. 6068 were addressed in testimony by Comptroller of the Currency Joseph Otting** to the House Committee on Financial Services. As part of broader testimony on the state of the

federal banking system, Comptroller Otting noted his support for "many of the provisions" in H.R. 6068. He also suggested that the OCC, and potentially other bank regulators, were considering ways to "reform the BSA/AML to be more efficient," including by implementing risk-based enhancements to BSA/AML examination procedures, considering changes to reporting thresholds and simplifying reporting forms and requirements, encouraging law enforcement to provide more feedback to banks, and exploring better use of technology.

Taken together, these developments suggest that while some measure of BSA/AML regulatory relief may be on the horizon, FinCEN and other enforcement authorities remain focused on enforcement issues, particularly as they relate to banks providing services to governments, state-owned enterprises, and prominent businessmen in high-risk countries.

Clients with questions about this week's developments should contact a member of Covington's Financial Services Industry Team:

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