

Congress Hears Administration's View on Updating Anti-Money Laundering Framework

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Following on [last week's hearing](#) in which it heard testimony from private sector representatives, the Senate Banking Committee continued its consideration of possible reforms to the U.S. anti-money laundering ("AML") and countering the financing of terrorism ("CFT") framework with a January 17, 2018 hearing in which it heard testimony from two administration officials, Treasury Under Secretary for Terrorism and Financial Intelligence ("TFI") Sigal Mandelker and Acting Deputy Assistant Attorney General for the Criminal Division M. Kendall Day. Their testimony echoed many of the same themes as the earlier hearing, including the need to modernize the AML/CFT framework to ensure that it is responsive to emerging threats, the importance of transparency regarding beneficial ownership, and the need for increased information sharing both between law enforcement agencies and financial institutions and among financial institutions. The government witnesses seemed less receptive, however, to concerns that the current framework is inefficient and unnecessarily burdensome, and cautioned that any legislation in this area should be carefully crafted and not diminish tools that are currently providing benefits to law enforcement.

In addition to addressing potential reforms, both witnesses discussed illicit finance issues associated with virtual currencies, and Mandelker provided an update on TFI's economic sanctions priorities. Key points from the hearing are discussed below.

AML/CFT Reforms

Both Mandelker and Day identified beneficial ownership as an area where additional statutory authorities would be helpful in increasing the effectiveness of the AML/CFT framework. They noted the Financial Crimes Enforcement Network's ("FinCEN") [Customer Due Diligence Rule](#), which takes effect this coming May, as an important first step in bolstering the U.S. government's ability to combat the use of shell companies and other non-transparent corporate vehicles to conduct illicit activities. While both emphasized the need for additional authorities in this area, neither made any concrete proposals, and Mandelker noted that Treasury needed additional time to develop suggestions.

Mandelker also highlighted the importance of both public-private partnerships and information sharing among financial institutions in improving the effectiveness of the AML/CFT regime. She noted the recent establishment of the [FinCEN Exchange](#), which is a FinCEN-led effort to bring together financial institutions, FinCEN, and law enforcement to enable greater sharing of threat information with financial institutions. Additionally, she spoke of the need to incentivize financial institutions to share information among themselves and develop innovative approaches to detecting illicit activities. In response to questions from Senator Cortez Masto (D-NV), Mandelker expressed openness to extending these outreach efforts, which have focused on financial institutions, to regulated non-depository institutions, such as casinos, as well.

Day additionally suggested legislative changes to enhance the ability of criminal investigators to obtain records from foreign financial institutions, and to clarify the scope of the criminal statute prohibiting engaging in transactions in criminally derived property to address court rulings that have limited the Department of Justice's ability to apply the statute to certain intermediaries involved in such transactions.

Virtual Currency

Both witnesses indicated that their respective agencies are carefully watching developments with respect to virtual currencies, and working to mitigate associated illicit finance risks. Mandelker noted that the United States is one of few countries, along with Japan and Australia, to regulate virtual currency payments/exchange activities, including decentralized convertible virtual currency, for AML/CFT purposes, and that FinCEN has prioritized engagement with and examination of virtual currency providers and exchangers, working with delegated IRS examiners. She highlighted FinCEN's assessment last year of a \$110 million [fine](#) against BTC-e, which was at the time one of the world's largest virtual currency exchanges, as demonstrating FinCEN's commitment to ensure compliance in this space. She also indicated that she was aware of reports indicating possible use of virtual currencies to evade sanctions, including by North Korea, Russia, and Venezuela, and that TFI was closely monitoring such reports, but felt that it had adequate tools to address sanctions evasion in this context.

Mandelker and Day both identified regulatory gaps in foreign countries as a particular challenge in this area. Mandelker referred approvingly to forthcoming changes to the EU anti-money laundering directive to address virtual currencies, and noted that Treasury continues to engage counterparts in bilateral and multilateral settings to encourage the application of AML/CFT standards to virtual currency payments.

Sanctions

Mandelker's written testimony provided a brief overview of TFI's current sanctions and illicit finance priorities. Unsurprisingly, North Korea topped the list, and Mandelker noted that TFI is "laser focused" on disrupting North Korea's use of covert networks to access the international financial system. She emphasized the need for international cooperation to effectively implement measures to cut off North Korea's access to revenues, and indicated that this was a constant focus of her international engagement, and would continue to be so during her upcoming visit to Asia. She also highlighted Iran, Venezuela, and the recently issued global corruption executive order as areas of particular focus for her agency.

A video of the hearing is available [here](#). Senator Crapo's (R-ID) opening statement is available [here](#). Mandelker's written testimony is available [here](#), and Day's is available [here](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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