

FINCEN AND FEDERAL BANKING AGENCIES ISSUE JOINT STATEMENT ENCOURAGING FINTECH SANDBOXES FOR AML COMPLIANCE

On December 3, 2018, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network ("**FinCEN**"), the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively, the "**Agencies**") issued a joint statement ("**Statement**") encouraging banks and financial institutions to utilize innovative technology-enabled approaches to meet their Bank Secrecy Act/anti-money laundering ("**BSA/AML**") compliance obligations.

The Statement, in a sense, is creating a fintech sandbox for BSA/AML compliance innovation, because it indicates that the Agencies may provide feedback on banks' pilot programs but will not otherwise subject these programs to supervisory criticism, even if such programs prove unsuccessful. Even if a pilot program exposes gaps in a bank's existing compliance program, the Agencies will not automatically assume that the banks' existing processes are deficient. Regulators will continue to assess the adequacy of BSA/AML compliance programs independent of pilot programs and their outcomes.

The Statement explicitly states that the implementation of innovative approaches in banks' BSA/AML compliance programs will not result in additional regulatory expectations. Further, the Statement indicates that the Agencies will not penalize or criticize banks that choose not to pursue innovative approaches so long as they maintain effective BSA/AML compliance programs commensurate with their risk profiles. Yet the Statement notes that some banks have become "increasingly sophisticated in their approaches to identifying suspicious activity, commensurate with their risk profiles," which suggests that the Agencies may soon adjust their regulatory expectations concerning BSA/AML compliance approaches for complex high-risk activities. Accordingly, it may be beneficial for banks to be on the forefront of developing innovative technology-enabled approaches for BSA/AML compliance and to actively participate in discussions about the development of such approaches before they become established industry practices and regulatory expectations.

The Agencies have emphasized their continued commitment to engage with the private sector by establishing projects or offices that will work to support the implementation of responsible innovation and new technology in the financial system, understand the related risks, and encourage discussion of regulatory principles, processes, and expectations. The Statement has also invited feedback on how the Agencies can best support the industry's innovative efforts.

The Statement recognizes that technological innovation, including artificial intelligence, can strengthen and enhance banks' overall compliance programs, including in areas such as risk identification, transaction monitoring, and suspicious activity reporting. To further encourage banks to experiment with artificial intelligence and other technologies, when appropriate, the Statement indicates that FinCEN will consider requests for exceptive relief under 31 CFR 1010.970, so long as banks maintain the overall effectiveness of their BSA/AML compliance programs.

At the same time, the Statement reiterates the importance of complying with BSA/AML regulations as critical to protecting the U.S. financial system. Banks must continue to meet their compliance obligations and ensure their bank's security as they develop pilot programs and other innovative technology-enabled approaches. Importantly, the Statement also cautions that bank management should prudently evaluate whether, and at what point, innovative approaches may be considered sufficiently developed to replace or augment existing BSA/AML compliance processes.

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