

Horizon scanner Financial Crime – US



RISK RATING

Potential impact



Legal issue/risk	When?	What's next	Supporting information
<p>OFAC continues to sanction individuals and entities connected to the Burmese military and issue regulations to codify the sanctions on Burma.</p> <p>The US Department of the Treasury's Office of Foreign Assets Control (OFAC) has continued to add Burmese military officials, military entities, and those supporting the military to OFAC's Specially Designated Nationals (SDNs) and Blocked Persons List (SDN List).</p> <p>Pursuant to Executive Order (EO) 14014, the following have been designated as SDNs:</p> <ul style="list-style-type: none"> • Burmese state-owned entities (including entities in the gemstone, timber, and pearl industries); • companies controlled by the Burmese military; and • a government body, government officials, and family members connected to the Burmese military. <p>The US Department of Commerce's Bureau of Industry and Security (BIS) has also added four (4) entities to its Entity List (a list of restricted end-users of US technology) for providing support to the Burmese military.</p> <p>Additionally, OFAC issued the "Burma Sanctions Regulations" at 31 CFR Part 525 in order to codify the sanctions established in EO 14014.</p> <p>For more details regarding US sanctions on Burma, please see our March 2021 Horizon Scanner.</p>	Current	Financial institutions and businesses should continue to monitor sanctions on Burma and ensure they are in compliance with the US program.	<p>Executive Order 14014</p> <p>Treasury Sanctions Key Gems Enterprise in Burma</p> <p>Treasury Sanctions Key Timber and Pearl Enterprises in Burma</p> <p>Treasury Sanctions Military Holding Companies in Burma</p> <p>Treasury Sanctions Governing Body, Officials, and Family Members Connected to Burma's Military</p> <p>Treasury Sanctions Senior Officials and Family Members Connected to Burma's Military</p> <p>Commerce Increases Restrictions on Burmese Military by Adding Four Entities to Entity List in Continued Response to the</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
			Recent Military Coup Publication of Burma Sanctions Regulations
<p>Treasury Releases Report on its Tax Compliance Agenda.</p> <p>On 20 May 2021, the US Department of the Treasury released a report on a set of tax compliance measures aimed at closing the "tax gap" between taxes owed and taxes paid. President Biden's compliance agenda includes:</p> <ul style="list-style-type: none"> • providing additional resources to the IRS to address sophisticated tax evasion; • allowing the IRS to utilize information that financial institutions already know about the accounts they house; • overhauling outdated IRS technology; and • increasing penalties for tax crimes. <p>Treasury expects these measures to bring in an additional \$700 billion in tax revenue over the next decade.</p> <p>In addition, Treasury noted that President Biden is expected to propose a reporting requirement for all virtual currency transactions exceeding \$10,000. This proposal will apply to businesses receiving virtual currency, payment processing services, and cryptoasset exchange accounts.</p>	Current	While these administrative agenda items require additional spending authorization from Congress, the fact that they have been published demonstrates the Biden administration's commitment towards the stated goals. Businesses and financial institutions should continue to monitor IRS announcements and pending legislation.	The American Families Plan Tax Compliance Agenda
<p>IRS financial services campaign to explore the unknown.</p> <p>On 7 June 2021, the IRS announced a compliance campaign on financial services entities engaged in a US</p>	Current	Financial institutions and businesses should continue to monitor IRS campaigns and	IRS Large Business and International Active Campaigns



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>trade or business aimed at reducing an admitted agency blind spot. The campaign is intended to address “whether foreign investors were subject to U.S. tax on effectively connected income from lending transactions engaged in through a U.S. trade or business.”</p> <p>The IRS compliance campaigns illustrate the IRS’s shift to issue-based considerations, focusing on issues that present a significant risk of noncompliance with a goal of making the greatest use of IRS resources.</p>		<p>announcements for new guidance and new rules.</p>	
<p>The Financial Crimes Enforcement Network issued Anti-Money Laundering and Countering the Financing of Terrorism National Priorities.</p> <p>On 30 June 2021, the Financial Crimes Enforcement Network issued the Anti-Money Laundering and Countering the Financing of Terrorism National Priorities (Priorities). The Priorities, which focus on threats to the US financial system and national security, were issued after FinCEN consulted with a number of stakeholders, including the Treasury Department’s Office of Foreign Assets Control and the US Attorney General, as required by the Anti-Money Laundering Act of 2020.</p> <p>The Priorities identify the most significant AML/CFT threats as: (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) proliferation financing.</p> <p>While FinCEN’s press release specifies that the Priorities are not listed in any particular order, it is notable that corruption, which is a priority for the Biden administration, is the first Priority listed. As President Biden explained in his 3 June 2021 National Security</p>	<p>27 December 2021</p>	<p>The Priorities cover a broad range of issues and could have far-reaching consequences for financial institutions. The AML Act requires FinCEN to promulgate rules within the next 180 days (i.e., no later than 27 December 2021) to inform financial institutions as to how they should incorporate the Priorities into their risk-based AML programs. Financial institutions should monitor and consider participating in the rulemaking process.</p> <p>Institutions also should carefully consider the Priorities and incorporate them into their compliance programs, including their AML risk assessments, as regulators will likely be focused on these areas over the next several years.</p>	<p>FinCEN AML/CFT Priorities June 2021</p> <p>Congress passes the Anti-Money Laundering Act of 2020, amending and modernizing the Bank Secrecy Act</p> <p>FinCEN on Fire: Rapid Release of AML Act Updates</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>Study Memorandum, both foreign and domestic corruption threaten US national security by undermining citizens' faith in government, distorting economies, and weakening democratic institutions.</p> <p>The second listed Priority – cybercrime, including cybersecurity and virtual currency – builds on the Biden administration's existing focus on this area. The United States and companies continue to struggle with cybercrime as shown by recent attacks on the nation's fuel and food supplies, including a cyberattack that led to massive shortages at US gas stations.</p>			
<p>Federal agencies appear to be preparing for increased enforcement of digital assets issues.</p> <p>FinCEN and other governmental agencies, including the US Department of Justice and the Commodity Futures Trading Commission, have indicated their increasing focus on investigating and bringing enforcement actions in the digital currency space.</p> <p>On 6 July 2021, the Financial Crimes Enforcement Network hired the first ever Chief Digital Currency Advisor and Director of Strategic Communications.</p> <ul style="list-style-type: none"> Michele Korver will serve as Chief Digital Currency Advisor to the Director of FinCEN. In that role, Korver will work with "internal and external partners toward strategic and innovative solutions to prevent and mitigate illicit financial practices and exploitation." Jayna Desai will serve as Director of the Office of Strategic Communications within FinCEN's Office of the Director, and will "formulate FinCEN's internal and external communications, and 	Current	<p>FinCEN, the CFTC, and other agencies have signalled an increasing focus on cryptocurrency and other digital assets. Financial institutions should ensure that their compliance programs are adequately designed to prevent and detect misconduct involving digital assets in anticipation of the likely increase of scrutiny and enforcement in this space.</p>	<p>FinCEN Welcomes First-Ever Chief Digital Currency Advisor and First Director of Strategic Communications</p> <p>Statement of CFTC Commissioner Dawn D. Stump Aug. 23, 2021</p> <p>Digital Assets: Clarifying CFTC Regulatory Authority & the Fallacy of the Question, "Is it a Commodity or a Security?"</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>oversee media engagement on behalf of the bureau.”</p> <p>The CFTC also has set the ground for increased enforcement involving digital assets. On 23 August 2021, the CFTC published a document setting forth the basis for the CFTC’s position that it has regulatory authority and enforcement authority with respect to futures contracts and derivatives based on digital assets.</p>			
<p>Sanctions and trade restrictions connected to the forced labor and human rights abuses in the Xinjiang region of China.</p> <p>Since 2019, in response to reports of mass arbitrary detention and serious human rights abuses targeting Uyghurs and other ethnic minorities in the Xinjiang region of China, the US government has implemented sanctions and other trade restrictions related to supply chains connected with Xinjiang. Supply chains with heightened risk of human rights abuses (particularly, forced labor) in Xinjiang include: (1) cotton and textile products; and (2) polysilicon products and solar panels.</p> <p>First, OFAC has designated as SDNs Chinese state-owned entities and government officials for their connection to forced labor and other human rights abuses in Xinjiang under the authority of Executive Order 13818. Additionally, on 24 June 2021, BIS added five (5) Chinese entities to its Entity List for “accepting or utilizing forced labor” connected to Xinjiang.</p> <p>Second, US Customs and Border Protection (CBP) issued the following Withhold Release Orders (WROs) on products sourced from Xinjiang:</p>	Current	Financial institutions and businesses should: (1) assess any connections to Xinjiang and ensure compliance with US law; (2) update third-party due diligence practices as needed; and (3) continue to monitor US trade restrictions on Xinjiang.	<p>Treasury Sanctions Chinese Government Officials in Connection with Serious Human Rights Abuse in Xinjiang</p> <p>Publication of Updated Xinjiang Supply Chain Business Advisory</p> <p>Xinjiang Supply Chain Business Advisory</p> <p>Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<ul style="list-style-type: none"> a WRO on cotton and tomato products (including textiles, clothing, canned tomatoes, and tomato sauce) on 13 January 2021; and a WRO on silica-based products manufactured by Hoshine Silicon Industry Co. Ltd. and its subsidiaries on 24 June 2021. <p>Both WROs direct all US ports of entry to detain shipments of these products.</p> <p>Finally, the US government published an updated "Xinjiang Supply Chain Business Advisory" (the Advisory) on 13 July 2021. The Advisory alerts businesses with supply chains exposed to entities connected to Xinjiang, of the legal and reputational risks in dealing with such entities. The legal risks include potential violations of the following:</p> <ul style="list-style-type: none"> US export controls law implemented through the US Department of Commerce's Export Administration Regulations (EAR) and administered by BIS; US forced labor laws, including import/customs law enforced by CBP; and US sanctions administered by OFAC. <p>The Advisory also recommends that financial institutions and businesses with exposure implement heightened due diligence practices and procedures to identify any links to Xinjiang and to ensure compliance with US law.</p>	<p>Current</p>		<p>CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang</p> <p>The Department of Homeland Security Issues Withhold Release Order on Silica-Based Products Made by Forced Labor in Xinjiang</p> <p>FACT SHEET: New U.S. Government Actions on Forced Labor in Xinjiang</p> <p>Commerce Department Adds Five Chinese Entities to the Entity List for Participating in China's Campaign of Forced Labor Against Muslims in Xinjiang</p>
<p>OFAC issues advisory warning of risks to companies and individuals operating in Hong Kong.</p> <p>On 16 July 2021, the US government issued the "Hong Kong Business Advisory" (the Advisory), which describes</p>			<p>Financial institutions and companies operating in Hong Kong should evaluate their US sanctions compliance policies and procedures, as well as the</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>the business and sanctions risks that companies, organizations, and individuals face while operating in Hong Kong.</p> <p>The Advisory highlights:</p> <ul style="list-style-type: none"> the increased safety, security, and data privacy risks and heightened restrictions on access to information in Hong Kong arising from the National Security Law (NSL) passed in China last year on 30 June 2020; the US sanctions program related to the NSL and current situation in Hong Kong, which authorizes sanctions on Foreign Financial Institutions for engaging in certain transactions and includes blocking sanctions on foreign persons involved in passing the NSL and contributing to the erosion of autonomy in Hong Kong; and China's laws, including the NSL and recent rules and guidance, that provide for countermeasures against the US's and other countries' sanctions programs. <p>Significantly, while the Advisory warns of the US sanctions risks while conducting business in Hong Kong and encourages US and non-US entities "to employ a risk-based approach to sanctions compliance", it alerts companies and individuals of the "legal repercussions" that they may face under China's laws for complying with such US sanctions.</p> <p>Finally, also on 16 July 2021, OFAC added seven (7) Chinese government officials to the SDN List pursuant to Executive Order 13936.</p>		potential risks in complying with US sanctions.	Hong Kong-related Designations Updates Executive Order 13936



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
For more details regarding US sanctions on Hong Kong, please see our March 2021 and June 2021 Horizon Scanners.			
<p>President Biden announces three key appointments, potentially forecasting stronger antitrust enforcement.</p> <p>On 20 July 2021, President Biden announced his intention to nominate Jonathan Kanter as Assistant Attorney General for the Antitrust Division at the US Department of Justice. Kanter is a partner at The Kanter Law Group LLP, a boutique antitrust law firm that has represented various companies that have urged antitrust enforcers to challenge Google, including Microsoft Corporation and Yelp, Inc. As Assistant Attorney General for the DOJ's Antitrust Division, Kanter would inherit an ongoing lawsuit against Google and an investigation of Apple Inc. Kanter previously served as an attorney for the US Federal Trade Commission's Bureau of Competition.</p> <p>President Biden has made other notable appointments in the antitrust space, including the appointment of Lina Khan, a Columbia Law School professor and vocal Amazon critic, as Chair of the Federal Trade Commission; and Timothy Wu, a former Columbia Law School professor, as Special Assistant to the President for Technology and Competition Policy at the National Economic Council.</p>	Current	President Biden's appointees previously have taken strong antitrust positions, particularly with respect to Big Tech. Companies should expect increased scrutiny and potential enforcement in the antitrust space.	<p>President Biden Announces Jonathan Kanter for Assistant Attorney General for Antitrust</p> <p>White House Announces Additional Policy Staff</p> <p>President Biden Announces his Intent to Nominate Lina Khan for Commissioner of the Federal Trade Commission</p>
<p>Regulators are focused on ESG issues.</p> <p>Regulators remain focused on ESG – environmental, social, and corporate governance – issues. Financial services initiatives on ESG matters are steadily developing, with a body of rules and regulations coming into force that will impact companies and financial institutions, including investment companies, investment advisers, and private funds. However, there are</p>	Current	The ESG landscape continues to evolve. Companies can expect increased scrutiny and potential enforcement related to ESG issues—specifically with respect to the adequacy of disclosures. Companies should monitor developments and be prepared to quickly implement	<p>Statement - John Coates Acting Director, Division of Corporation Finance</p> <p>Can the SEC Make ESG Rules that are Sustainable?</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>outstanding questions as to how agencies will regulate ESG.</p> <p>In a 11 March 2021 statement, the Acting Director of the SEC's Division of Corporation Finance acknowledged that there is still "substantial debate over the precise contents and details of what ESG disclosures might or should encompass" and that part of the difficulty lies in the fact that ESG is very broad, but also quite specific in that they "can vary significantly based on their industry, geographic location and other factors."</p> <p>On 6 August 2021, SEC Chair Gary Gensler further reinforced the interest in ESG by issuing a statement in support of Nasdaq's proposed rule changes requiring issuers to disclose certain information about the diversity of the company's board and to offer certain companies access to a complimentary board recruiting service.</p>	  	<p>measures to ensure compliance with developing ESG expectations.</p>	<p>Statement of Gary Gensler</p> <p>Eversheds Sutherland - Environmental, social and governance (ESG)</p>
<p>President Biden issues a new Executive Order authorizing sanctions on Belarus.</p> <p>On 9 August 2021, President Biden issued Executive Order (EO) 14038, "Blocking Property of Additional Persons Contributing to the Situation in Belarus", which authorizes sanctions on individuals and entities involved in the undermining of democracy in Belarus, the Belarusian government and officials, and entities operating in various sectors of the Belarusian economy.</p> <p>Specifically, the EO provides for blocking sanctions on the following:</p> <ul style="list-style-type: none"> • entities engaged in the recent actions undermining peace and fundamental freedoms, or related to election fraud or public corruption in Belarus (as well as entities that provide material assistance and support for such activities); 		<p>Current</p>	<p>Financial institutions and business should monitor designations of entities and individuals pursuant to EO 14038.</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<ul style="list-style-type: none"> leaders, officials, senior executives, or members of the board of directors of entities blocked under the EO or otherwise involved in the recent actions undermining peace and fundamental freedoms, or related to election fraud or public corruption in Belarus; Belarusian government agencies, subdivisions, officials and leaders; and entities operating in the Belarusian "defense and related materiel sector, security sector, energy sector, potassium chloride (potash) sector, tobacco products sector, construction sector, or transportation sector" (as well as other sectors to be determined by the US government). <p>Persons that are owned or controlled by the Government of Belarus and persons blocked under the EO are also sanctioned.</p> <p>OFAC designated Belarusian government officials and state-owned entities pursuant to the EO. Additionally, OFAC issued General License No. 4 to allow the "wind down of transactions involving Belaruskali OAO" – an SDN designated under the EO – until December 8, 2021, and FAQs to provide guidance on the EO and General License.</p>	  		Executive Order of August 9, 2021
<p>The US government imposes sanctions on the Nord Stream 2 pipeline project.</p> <p>On 20 August 2021, President Biden issued Executive Order (EO) 14039, "Blocking Property With Respect to Certain Russian Energy Export Pipelines". The EO imposes sanctions on foreign persons providing vessels used in the construction of the Nord Stream 2 and Turkstream pipeline projects pursuant to Section 7503 of the Protecting Europe's Energy Security Act of 2019 (PEESA),</p>		<p>Current</p>	<p>Financial institutions and businesses should ensure that any activities involving the Nord Stream 2 or Turkstream pipeline projects comply with US sanctions on such projects.</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>as amended on 1 January 2021 by the National Defense Authorization Act for FY2021 (FY2021 NDAA).</p> <p>PEESA, as amended, sanctions the following:</p> <ul style="list-style-type: none"> • vessels used for the construction of Nord Stream 2 and Turkstream (as well as any successor projects) and that have “engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level” for such projects; and • foreign persons that have “knowingly” <ul style="list-style-type: none"> ○ provided vessels for such projects, ○ “facilitated deceptive or structured transactions” in order to provide vessels for such projects, ○ provided “underwriting services or insurance or reinsurance” for vessels used in such projects, ○ provided servicing and upgrading for vessels used in such projects, or ○ provided “testing, inspection, or certification necessary or essential for the completion or operation of” Nord Stream 2. <p>However, PEESA provides some limited exceptions and the President “may waive the application of sanctions” if it is in the US national interest. Additionally, before the US government imposes sanctions under PEESA, the US must “consult” the governments of the following countries: Norway, Switzerland, the UK, and member countries of the EU.</p> <p>The EO implements PEESA by authorizing blocking sanctions on foreign persons identified as engaging in the vessel activity (e.g., providing vessels for the Nord</p>			<p>General License and related Frequently Asked Questions; PEESA Designations; Non-Proliferation Designations Updates Executive Order of August 20, 2021 FAQ UKRAINE-/RUSSIA-RELATED SANCTIONS Protecting Europe’s Energy Security Act (PEESA), as Amended Section 7503</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>Stream 2 and Turkstream projects) described above. Pursuant to the EO, OFAC has designated several vessels and entities as SDNs.</p> <p>Finally, OFAC issued and updated several related FAQs, and amended and re-issued General License No. 1A to authorize certain transactions with the Federal State Budgetary Institution Marine Rescue Service (MRS) – an SDN designated under the EO.</p>			
<p>The US Securities and Exchange Commission is seeking notice and comment on issues related to broker-dealers' and investment advisers' digital engagement practices.</p> <p>On 27 August 2021, the SEC issued a public request for notice and comment on matters related to broker-dealer and investment adviser use of digital engagement practices (DEPs). The Commission made this request to better understand market practices, provide a forum for market participants, and facilitate an assessment by the Commission into existing regulations.</p> <p>DEPs include behavioural prompts, differential marketing, game-like features, and other design elements or features designed to engage with retail investors on digital platforms (e.g., websites, portals, and applications), as well as the analytical and technological tools and methods.</p> <p>With this request, the Commission hopes to develop a better understanding of the market practices associated with firms' use of DEPs, and to learn what conflicts of interest may arise from optimization practices and whether those optimization practices affect the determination of whether DEPs are making a recommendation or providing investment advice.</p>	1 October 2021	The notice and comment period ends on 1 October 2021. Broker-dealers and investment advisers, as well as other interested parties, may wish to submit comments and participate in the rulemaking process.	SEC Press Release 2021-167 Request for Notice and Comment



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next	Supporting information
<p>IRS Criminal Investigation Division aims to onboard 240 Agents by the end of 2021.</p> <p>According to the most recent data available, the IRS Criminal Investigation Division has 2,045 special agents. In addition to the agents already added this year, the division is looking to attain 150 more special agents in 2021 and approximately 320 behind-the-scenes personnel, including investigative analysts and forensic and data scientists.</p> <p>At the University of San Diego School of Law-RJS Law Tax Controversy Institute online conference in August, division chief Jim Lee stated that the agency's Criminal Investigation Division will be focused on high-income, global wealth, abusive tax shelters, employment tax cases and "all things international."</p>	Current	Financial institutions and businesses should continue to monitor compliance with IRS guidance and rules. They also should expect increased IRS and DOJ investigative activity through both administrative and judicial processes. This increase in activity may further rise based on the budget allocated to the IRS for fiscal year 2022.	IRS' Criminal Investigation Arm Aims To Hire 240 Agents



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next?	Supporting information
<p>The US Securities and Exchange Commission will propose revisions to the September 2020 amendments to the SEC whistleblower program rules.</p> <p>In September 2020, the US Securities and Exchange Commission introduced two amendments to its whistleblower program rules. These amendments, which have been challenged in court, involved the Commission's ability to make an award to whistleblowers related to enforcement actions brought by other authorities and the Commission's calculation of the award amount.</p> <p>On 5 August 2021, SEC Chair Gary Gensler issued a statement noting concerns that the amendments "could discourage whistleblowers from coming forward." Gensler has instructed the staff to propose revisions to these rules, and specifically to consider whether the Commission should be able to make awards for actions not "covered by an alternative whistleblower program that is not comparable to the SEC's own program, and to clarify that the Commission will not lower an award based on its dollar amount."</p>	End of 2021	The SEC has expressed its intent to consider the potential revisions later this year. In the meantime, companies should review their compliance programs to ensure that their whistleblower reporting lines are functional and that they have implemented robust anti-retaliation programs.	<p>Statement in Connection with the SEC's Whistleblower Program</p> <p>85 Fed. Reg. 70,898 (11 November 2020).</p>
<p>FinCEN solicited public comment on the implementation of the ultimate beneficial ownership register pursuant to the Corporate Transparency Act.</p> <p>The Corporate Transparency Act (which is part of the National Defense Authorization Act for Fiscal Year 2021) requires corporations, limited liability companies, and similar entities to file reports with and keep current information about their beneficial ownership with the US Department of Treasury's Financial Crimes Enforcement Network. These reports must include the full name, date of birth, residential or business address, and information from an identification document or FinCEN identifier number for the beneficial owner(s). FinCEN will maintain this information in a non-public beneficial ownership</p>	1 January 2022	The time to provide comments ended on 5 May 2021. The CTA requires FinCEN to promulgate rules related to the beneficial ownership register no later than 1 January 2022.	<p>Beneficial Ownership Reporting Requirements. Advance notice of proposed rulemaking</p> <p>FinCEN proposes and seeks public comment on new AML Corporate Transparency Act Rulemaking</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next?	Supporting information
<p>database and can disclose information to financial institutions with the reporting company's consent.</p> <p>On 5 April 2021, FinCEN issued an Advance Notice of Proposed Rulemaking seeking input from the public on implementing the CTA's reporting requirements. Specifically, FinCEN requested comment on, among other issues, how to ensure that the reported information is accurate, how to define key terms and concepts, what security and privacy measures should be implemented to protect reported information and limit its use to authorized purposes, and how the reporting requirement may burden small businesses.</p> <p>For more details regarding the Corporate Transparency Act, as well as the Anti-Money Laundering Act of 2020, please see our Q1 Horizon Scanner issued in March 2021.</p>			
<p>The US House of Representatives passes legislation providing statutory authority for insider trading violations.</p> <p>On 18 May 2021, the US House of Representatives passed the Insider Trading Prohibition Act (ITPA). Currently, there is no law that specifically prohibits insider trading. Instead, US prosecutors and regulators rely on fraud statutes to pursue insider trading violations. The ITPA is intended to provide statutory authority for and codify existing insider trading law that has been developed by courts.</p> <p>The ITPA would prohibit individuals from trading a security while "aware of material, nonpublic information related to such security" if the individual "knows, or recklessly disregards that such information has been obtained wrongfully, or that such purchase or sale would constitute a wrongful use of such information." It also would prohibit transmitting material, nonpublic information to others who then trade on the information or further share that information. The ITPA contains</p>	TBD	The US Senate will vote on the bill; however, a date for the vote has not yet been set. The Senate is expected to pass the bill, at which time it will become law.	<p>Insider Trading Prohibition Act</p> <p>Congress.gov H.R. 2655 - Insider Trading Prohibition Act</p>



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next?	Supporting information
a provision that protects employers from incurring derivative liability for their employees' wrongdoing.			



Immediate impact



Short-term impact



On the horizon

Legal issue/risk	When?	What's next?	Supporting information
<p>FinCEN may establish a process for issuing no-action letters.</p> <p>As required by Section 6305(a) of the Anti-Money Laundering Act of 2020, FinCEN conducted an assessment (Assessment) regarding whether it would be helpful to establish a process by which FinCEN could issue no-action letters. On 28 June 2021, FinCEN presented its findings to Congress.</p> <p>FinCEN's Assessment concluded that implementing "a no-action letter process would be a useful complement to its current forms of regulatory guidance and relief." Establishing a process for no-action letters (which agencies such as the US Securities and Exchange Commission and the Office of Foreign Assets Control already use) would allow an entity to submit an inquiry about how the Bank Secrecy Act and other anti-money laundering laws would apply in a particular situation. In addition to providing comfort to the submitting party, FinCEN also would be able to communicate its stance on practical applications of anti-money laundering laws to the public.</p> <p>The Assessment also noted that FinCEN will continue to actively engage with its government partners and the public as it promulgates rules on the no-action letter process to "ensure [that] all constructive feedback" from its constituencies are considered.</p>	TBD	The Anti-Money Laundering Act of 2020 requires that FinCEN propose rules to implement the Assessment's findings and determinations, but the timing of the rulemaking process is unclear. Financial institutions should monitor developments.	<p>FinCEN on Fire: Rapid Release of AML Act Updates</p> <p>FinCEN Completes Assessment on the Use of No-Action Letters</p> <p>Assessment of No-Action Letter in Accordance with Section 6305 of the Anti-Trust Laundering Act of 2020</p>



Immediate impact



Short-term impact



On the horizon

Contacts



Sarah Paul

Partner

US Head of Corporate Crime & Investigations

T: +12 1 23 01 65 87
sarahpaul@
eversheds-sutherland.us



Andrea Gordon

Associate

T: +12 0 23 83 09 55
andrea@
eversheds-sutherland.us



Emily Rosenblum

Associate

T: +1 610 742 0889
emilyrosenblum@
eversheds-sutherland.us



Daniel Strickland

Associate

T: +12 0 23 83 08 97
danielstrickland@
eversheds-sutherland.us



Amanda Oliveira

Associate

T: +12 0 23 83 02 01
amandaoliveira@
eversheds-sutherland.us

This document is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was created; however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. The authors are not responsible for any actions taken or not taken on the basis of this publication. Where references or links are made to external publications or websites, the views expressed are those of the authors of those publications or websites which are not necessarily those of the authors of this document, who accept no responsibility for the contents or accuracy of those publications or websites.

[eversheds-sutherland.com/financialinstitutions](https://www.eversheds-sutherland.com/financialinstitutions)

© Eversheds Sutherland 2021. All rights reserved.

Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.