**Third Listening Session Regarding the Notice of Proposed Rulemaking Titled**

**“Anti-Money Laundering and Countering the Financing of Terrorism Programs”**

This document summarizes a listening session that the Financial Crimes Enforcement Network (FinCEN), a bureau within the U.S. Department of the Treasury (Treasury), held with representatives of financial institutions about the notice of proposed rulemaking (NPRM) titled *Anti-Money Laundering and Countering the Financing of Terrorism Programs* published on July 3, 2024 (Docket Number FINCEN-2024-0013) (Program NPRM). FinCEN is adding this summary of the listening session to the docket for the Program NPRM to help ensure that the public is aware of the listening session and understands the information that was provided to FinCEN in this session. FinCEN did not provide any new substantive information about either proposed rules or substantively respond to any comments during the listening session.

DATE: August 27, 2024

TIME: 1:00 p.m. – 2:00 p.m., Eastern Time

LOCATION: Virtual

ATTENDEES:

FinCEN and Treasury

* Jay Song, Director, Office of Regulatory Policy, Policy Division
* Staff from FinCEN, Office of Terrorist Financing and Financial Crimes, and Treasury’s Office of the General Counsel

Other Attendees[[1]](#footnote-1)

* Yaya Fanusie, Crypto Council for Innovation
* Adam Fleisher, Money Services Roundtable
* Marissa Montalbano, Stripe
* Clay Resnick, Stripe
* Duncan DeVille, Crypto.com
* Becky Catanese, Crypto.com
* Therese Mendello, Mastercard
* Clay Roberts, Western Union
* Ryan Spetoskey, Western Union
* Joe Massey, Via Americas
* Scott Talbott, Electronic Transactions Association
* Kristopher Klaich, Digital Chamber of Commerce
* Jamal El-Hindi, Clifford Chance (on behalf of Digital Chamber of Commerce)
* Mindi[[2]](#footnote-2)

SUMMARY

FinCEN noted at the outset that the comment period is currently open and closes on September 3, 2024, so participants should be aware that FinCEN will be taking notes and will include the notes in the public comment file. FinCEN also explained that it would not be providing substantive remarks on the rule during the listening session and encouraged participants to submit comments through the Federal Register. FinCEN then asked for any reaction or general comments on the Program NPRM.

Crypto Council for Innovation stated they are supportive of the aims of the NPRM but encouraged FinCEN to implement rule text that provides financial institutions with flexibility given financial institutions’ need to allocate their limited resources effectively. Crypto Council for Innovation further stated that it would be good for financial institutions to incorporate the National AML/CFT Priorities (Priorities) and that they are central to the risk assessment process, but that certain Priorities may be more important than others.[[3]](#footnote-3)

Crypto Council for Innovation also expressed a few areas of caution. First, they stated that it may not be appropriate for updates to the risk assessment process to occur with every material change and that it would be better if updates were based on risk. Second, according to Crypto Council for Innovation, geographic restrictions on personnel involved in anti-money laundering and countering the financing of terrorism (AML/CFT) programs should focus on senior management and those involved in program oversight. Crypto Council for Innovation added that they were glad to see encouragement of innovation in the NPRM, but they want to make sure that this is understood at the examiner level. They also would like more feedback from the government on when suspicious activity reports (SARs) are useful, and they encouraged FinCEN to consider the use of regulatory sandboxes.

Digital Chamber of Commerce stated that the notion of AML programs being reasonably designed to “prevent” money laundering is absent from the NPRM, even though prevention has been a concept in past AML program rules. Digital Chamber of Commerce views the removal of this concept in the rule text as a positive since the risk-based approach to AML programs is not meant to prevent everything. On the topic of the NPRM’s proposed requirement that certain persons involved in an AML/CFT program be in the United States and thereby accessible to and subject to the oversight of U.S. authorities, Digital Chamber of Commerce asked whether these persons could agree to be “accessible to and subject to oversight” of FinCEN and U.S. regulators even though they are located outside the United States.

Western Union stated that they were not clear on whether the Program NPRM proposed to apply the same standards to all financial institutions covered by the Bank Secrecy Act (BSA) based on questions included in the Program NPRM. Western Union stated that it is important to create a level playing field and establish consistency across all financial institutions engaged in the same activity.

Digital Chamber of Commerce observed that the Program NPRM proposed that the risk assessment be updated on a periodic basis, including at a minimum when there are material changes, but Digital Chamber of Commerce stated that the notion of “periodic basis” or a timing element can lead to unintended consequences if financial institutions believe that they need to demonstrate that they have gone through the motions. Digital Chamber of Commerce encouraged FinCEN to consider whether a reference to “periodic basis” could be left to guidance or best practices and instead focus the final rule on the financial institution’s responsibility to ensure that the risk assessment is up to date. According to Digital Chamber of Commerce, the rule should require an up-to-date risk assessment instead of updates on a “periodic basis,” which, according to the Digital Chamber of Commerce, is a loose concept and can lead to a check-the-box mentality.

FinCEN provided a final opportunity for the participants to provide any further comment or reactions to the NPRM. Since there were no additional comments, FinCEN concluded the listening session.

1. Individual names based on virtual presence. [↑](#footnote-ref-1)
2. The full name and organization for this individual was not provided. [↑](#footnote-ref-2)
3. *See* AML/CFT Priorities (June 30, 2021), available at [*https://www.fincen.gov/​news/​news-releases/​fincen-issues-first-national-amlcft-priorities-and-accompanying-statements*](https://www.fincen.gov/news/news-releases/fincen-issues-first-national-amlcft-priorities-and-accompanying-statements)*.* [↑](#footnote-ref-3)