ALERT MEMORANDUM

Congress Overhauls AML Framework, Mandating Disclosure of Beneficial Ownership Information

December 17, 2020

As part of the National Defense Authorization Act for 2021 (the "NDAA"), Congress has passed the most significant U.S. anti-money laundering ("AML") legislation since the USA PATRIOT Act of 2001, the "Anti-Money Laundering Act of 2020" ("AMLA 2020").[1] Although President Trump has threatened to veto the NDAA, the majorities supporting the legislation would be sufficient to override the veto if members do not change their votes.

The legislation requires U.S. corporations and LLCs and non-U.S. corporations and LLCs registered to do business in the United States to disclose information on their underlying beneficial owners to the Financial Crimes Enforcement Network ("FinCEN") of the Department of the Treasury ("Treasury"), if there is no applicable exemption. After implementation, we expect financial institutions no longer to bear the primary burden of establishing the underlying beneficial ownership of many customers as they will have access to the disclosures (with customer consent).

AMLA 2020 also makes sweeping changes to other areas of the U.S. AML regime, including by: (i) providing more guidance and feedback to financial institutions on AML compliance programs required under the Bank Secrecy Act,[2] (ii) increasing resources and enhancing enforcement tools to police AML compliance, and (iii) implementing initiatives to strengthen and modernize FinCEN and AML supervision writ large.

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[1] The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395 (Conference Report Dec. 2, 2020), 116th Cong. (2020) §§ 6001-6511.
[2] The Bank Secrecy Act ("BSA") refers to the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001, and other legislation.

KEY TAKEAWAYS

Notable aspects of AMLA 2020 include:

- **Registration of Beneficial Ownership**. In a major shift from current practice, AMLA 2020 requires "reporting companies" to file beneficial ownership information with FinCEN. Broad classes of companies are exempt, including partnerships, trusts, certain regulated, nonprofit, and government entities, and certain large companies with a minimum number of employees and amount of revenue. We expect this revision to relieve financial institutions of the primary burden of establishing the beneficial ownership of many legal entity customers by allowing them to rely on reporting to FinCEN. Companies should review AMLA 2020, including the definition of "reporting company" and the related exemptions, to determine whether it will impose reporting requirements on them.
- **Announcement of AML Priorities**. Financial institutions will be expected to integrate publicly-announced priorities into their AML risk assessment processes, and regulators will examine financial institutions on this integration. The impact of these changes is unclear and will depend greatly on implementation by FinCEN and other financial regulators.
- **SAR Feedback and Guidance**. AMLA 2020 requires FinCEN to establish streamlined processes, including automated processes, to file certain categories of noncomplex SARs, including potentially for structured transactions, which could lessen compliance burdens. AMLA 2020 also calls for FinCEN to provide feedback on SARs to financial institutions who filed them.
- **Subpoena Power over Foreign Banks with U.S. Correspondent Accounts**. AMLA 2020 expands the government's ability to subpoena records from foreign banks with U.S. correspondent accounts to include any account held at the bank worldwide.
- **Whistleblower Program**. The BSA whistleblower program as revised by AMLA 2020 is substantially similar to that implemented by the SEC under the Dodd-Frank Act and may result in significant whistleblower awards and related enforcement actions. New anti-retaliation provisions may also significantly affect financial institutions. Internal compliance programs should be reviewed to assess changes that may be required in light of the expanded whistleblower program.
- **Additional Penalties and BSA Violations**. AMLA 2020 prescribes additional penalties for certain BSA violations and criminalizes the concealment from financial institutions of the involvement of designated entities of money laundering concern and senior foreign political figures in financial transactions.
- **Virtual Currency**. AMLA 2020 bolsters FinCEN's statutory authority to regulate virtual currency and virtual currency exchanges.
- **Sharing SARs with Foreign Affiliates**. AMLA 2020 provides for a pilot program under which financial institutions may share SARs with foreign subsidiaries and affiliates. EU "obliged entities" may wish to revisit any analysis under CDR 2019/758 as to whether their U.S. subsidiaries or branches are prohibited or restricted from sharing suspicious activity reports with other entities in their group
- **Strengthening FinCEN and AML Collaboration**. AMLA 2020 generally strengthens FinCEN as an agency and establishes mechanisms to improve domestic and international AML collaboration.
- **Review of Existing Regulations and Changes**. AMLA 2020 provides for numerous reviews related to updating BSA regulations, including with respect to effectiveness and costs.

I. Registration of Beneficial Ownership

In a major shift from current practice, AMLA 2020 requires "reporting companies" (a term discussed below) to file beneficial ownership information with FinCEN. Currently, beneficial ownership information does not generally need to be reported to the federal or state governments but must be collected by financial institutions at account opening under FinCEN's customer due diligence rule (the "CDD Rule").[3]

Implementation and Timeline

FinCEN must issue regulations to implement AMLA 2020's beneficial ownership filing requirement within one year after its enactment. After the effective date of such regulations, newly formed or registered reporting companies would be required to report beneficial ownership information immediately, while reporting companies already in existence or registered would be required to report after a two-year period. Reporting companies would thereafter need to update beneficial ownership information within a year of changes.

Unlike a number of European jurisdictions, beneficial ownership information will not be publicly available in the form of a registrar of companies. Instead, FinCEN may disclose beneficial ownership information to (i) U.S. federal law enforcement agencies (including for the purpose of providing it to non-U.S. authorities), (ii) with the authorization of a court official (such as a judge or magistrate), state, local, and tribal law enforcement agencies seeking such information as part of an investigation, and (iii) financial institutions (and their regulators) to facilitate compliance with due diligence requirements for consenting customers. Unlawful disclosures of beneficial ownership information would be subject to penalties.

In light of the beneficial ownership reporting requirements and financial institution access to those reports, AMLA 2020 requires FinCEN to revise the CDD Rule to "reduce any burdens" on financial institutions and customers that are "unnecessary or duplicative."

We expect this revision to relieve financial institutions of the primary burden of establishing the underlying beneficial ownership of many legal entity customers under the CDD Rule by allowing them to rely on reporting to FinCEN where applicable.

However, not all entities are covered by the registration requirement (notably foreign entities not registered to do business in the United States and partnerships), and there are also entities exempt from the definition of "reporting company" that are not exempt under the CDD Rule, such as FinCEN-registered money transmitters and certain large companies with a minimum number of employees and amount of revenue. It remains to be seen how FinCEN will harmonize the CDD Rule with AMLA 2020.

Companies should review AMLA 2020, including the definition of "reporting company" and the related exemptions to determine whether it will impose reporting requirements on them.

Reporting Companies Definition

The concept of "reporting companies," which are companies subject to AMLA 2020's beneficial ownership reporting requirements, appears to be generally consistent with the "legal entity customer" definition under the CDD Rule (apart from the treatment of partnerships, business trusts, and foreign entities not registered to do business in the United States).

A "reporting customer" is defined as "a corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe." Notably, partnerships, trusts, sole

[3] See Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29,397 (May 11, 2016).

proprietorships, and unincorporated associations are not captured by this definition. However, AMLA 2020 requires the Government Accountability Office to perform a study with respect to the collection of beneficial ownership information for partnerships, trusts, and other legal entities.

Importantly, as under the CDD Rule, certain legal entities are explicitly exempted, including:

(i) Entities that have a class of securities registered under Section 12 or that are required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act");

(ii) Domestic government agencies and instrumentalities and certain legal entities that exercise governmental authority;

(iii) Banks (as defined under Federal Deposit Insurance Act, the Investment Company Act of 1940, or the Investment Advisers Act of 1940) and credit unions;

(iv) Bank holding companies and savings and loan holding companies (each as defined under relevant statute);

(v) Certain entities registered with the Commodity Futures Trading Commission, including futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, swap dealers, or major swap participants;

(vi) Certain financial institutions registered with the U.S. Securities and Exchange Commission ("SEC"), including broker-dealers, exchange or clearing agencies, investment companies and investment advisers;

(vii) Any other entities registered with the SEC under the Exchange Act;

(viii) State-regulated insurance companies;

(ix) State-regulated insurance producers that have an operating presence at a physical office in the United States;

(x) FinCEN-registered money transmitters;

(xi) Public accounting firms registered under the Sarbanes-Oxley Act;

(xii) Public utilities that provide telecommunications services, electrical power, natural gas, or water and sewer services within the United States;

(xiii) Financial market utilities designated as systematically important pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

(xiv) "Pooled investment vehicles"[4] that are operated or advised by an entity defined in clause (iii) or an SEC-registered broker-dealer, investment company, or investment adviser;

(xv) Certain organizations exempt from tax under the Internal Revenue Code of 1986

(xvi) Certain U.S. entities that operate exclusively to provide assistance to, or hold governance rights over, organizations described in clause (xv);

(xvii) Entities that (A) employ more than 20 employees on a full-time basis in the United States; (B) filed in the previous year Federal income tax returns in the United States demonstrating more than $5 million in gross receipts or sales in the aggregate, including the receipts or sales of other entities owned by the entity and other entities through which the entity operates; and (C) have an operating presence at a physical office within the United State;

(xviii) Entities of which the ownership interests are owned or controlled, directly or indirectly, by one or

[4] "Pooled investment vehicle" is defined as "(A) any investment company, as defined in section 3(a) of the Investment Company Act of 1940 or (B) any company that (i) would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act and (ii) is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the SEC."

more entities described in the above clauses (other than clauses (x), (xiv) and (xvi));

(xix) Certain inactive entities that are not owned, directly or directly, by a foreign person; and

(xx) Entities or classes of entities determined to be exempt by the Secretary of Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security.

Beneficial Owner Definition

"Beneficial Owner" Definition

AMLA 2020 defines as a beneficial owner "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity or (ii) owns or controls not less than 25 percent of the ownership interests of the entity." However, certain exceptions apply, including with respect to minors, intermediaries, employees, persons with a right of inheritance and creditors.

AMLA 2020 does not define "substantial control," the contours of which may be addressed in FinCEN's implementing guidance.

Identification and Verification of Beneficial Ownership Information

Reporting companies would need to provide to FinCEN, for each beneficial owner, (i) full legal name, (ii) date of birth, (iii) current residential or business street address, and (iv) a unique identifying number from a non-expired U.S. passport, identification document issued by a State, local government, or Indian Tribe, or driver's license or, if none of the foregoing is available, a non-expired foreign passport. FinCEN may also issue beneficial owners a unique identifier that can be used in place of providing all the information again.

Penalties

Willfully providing (or attempting to provide) false or fraudulent beneficial ownership information (including identifying documents or photographs) to FinCEN, and willfully failing to report complete or updated beneficial ownership to FinCEN is punishable by (i) a civil penalty of not more than $500 for each day the violation continues and (ii) a criminal fine of not more than $10,000 and up to two years of imprisonment.

Unauthorized knowing disclosure or use of beneficial ownership information is punishable by (i) a civil penalty of not more than $500 for each day the violation continues and (ii) a criminal fine of not more than $250,000 and up to five years of imprisonment, or, if it occurs while violating another U.S. law or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, a fine of not more than $500,000 and up to 10 years of imprisonment.

II. Additional Guidance and Feedback on AML Compliance Programs

Revisions to BSA Statutory Purposes and Announcement of AML Priorities

AMLA 2020 emphasizes that AML compliance programs must be risk-based—"including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities"—confirming previous guidance and comments from regulators to that effect.[5] Under AMLA 2020, and similar to a proposed rule issued by FinCEN in September 2020,[6] risk-based compliance programs will be guided in part by publicly-announced AML priorities. Not later than 180 days after enactment of AMLA 2020, and at least every four years thereafter, the Secretary of Treasury (in consultation with the Attorney General, other federal and state regulators, and national security agencies) must announce public priorities for AML policy.

[5] See FinCEN, Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 22, 2019).

[6] See Anti-Money Laundering Program Effectiveness, 85 Fed. Reg. 58,023 (Sep. 17, 2020).

Financial institutions will be expected to integrate those public priorities, as appropriate, into their AML risk assessment processes. AMLA 2020 requires regulators, in supervising and examining financial institutions, to measure the integration of these priorities into AML compliance programs.

On the other hand, AMLA 2020 provides that in imposing requirements for the filing of suspicious activity reports ("SARs"), the Secretary of the Treasury must consider the burdens imposed by the means or form of reporting on those required to provide SARs, its efficiency, as well as its benefits for federal law enforcement. In addition, the filing of SARs must be guided by a financial institution's AML compliance program, including "risk assessment processes . . . that should include a consideration of priorities established by the Secretary of the Treasury."

Explicit and specific guidance from regulators on priorities (and items that are not priorities) may ultimately help financial institutions focus their AML compliance programs, but the impact of these changes is unclear and will depend greatly on implementation by FinCEN and other financial regulators, most importantly a willingness to accept a diversion of resources from non-priority areas rather than rendering all priorities cumulative.

SAR Feedback and Guidance

Streamlined SAR Filing

Financial institution advocacy for automated filing of SARs for certain activity, including structuring, found a welcome audience in Congress. AMLA 2020 requires FinCEN to establish streamlined processes, including automated processes, to file certain categories of noncomplex SARs. In establishing those processes, FinCEN is required to consider structured transactions and certain fund and asset transfers with little or no apparent economic or business purpose. Structured transactions may account for nearly a fifth of all SAR activity and automated reporting would allow financial institutions to focus resources on more complex transactions.[7] However, it remains to be seen whether FinCEN will join the Office of the Comptroller of the Currency in endorsing the automated filing of SARs for structuring.[8]

Feedback and Guidance on SARs

Responding to another frequent request of financial institutions, AMLA 2020 requires FinCEN to solicit feedback from law enforcement on SARs and provide information to financial institutions on SARs they filed that proved helpful. Although AMLA 2020 does not mandate that law enforcement provide feedback on SARs, it requires the DOJ to provide Treasury with an annual report that includes statistics, metrics, and other information on the use of data derived from SARs and other reports filed by financial institutions, including whether such reports contained information acted on by law enforcement agencies.

FinCEN will also publish at least semi-annually threat pattern and trend information and typologies, including data to be included in algorithms as appropriate, to inform financial institutions about the preparation, use, and value of SARs.

As with the public selection of AML priorities, the utility of feedback on SAR filings will depend greatly on implementation by regulators, as well as the availability of feedback from law enforcement.

III. Resources and Tools to Police AML Compliance

Subpoena Power over Foreign Banks with U.S. Correspondent Accounts

AMLA 2020 expands the government's ability to subpoena foreign bank records under 31 U.S.C. § 5318(k). Previously, Treasury or Department of Justice ("DOJ") could issue a summons or subpoena to foreign banks that maintain correspondent accounts in the United States only for records relating to the particular correspondent accounts, "including records maintained outside of the United States relating to the

[7] See OCC Interpretive Letter 1166 (October 2019).

[8] Id. The Interpretive Letter specifically noted that FinCEN has the ultimate interpretive authority with respect to the BSA and the SAR reporting form.

deposit of funds into the foreign bank."[9] Under AMLA 2020, subpoenas could be issued for records relating to "any account at the foreign bank, including records maintained outside of the United States" as long as the records are "the subject of" a federal criminal investigation, a civil forfeiture action, any investigation of a violation of U.S. AML laws, or an investigation pursuant to Treasury's "special measures" authority under 31 U.S.C. § 5318A.[10] Thus, foreign banks with correspondent account relationships in the United States could potentially be required to produce records regarding any account held at the bank worldwide.

The NDAA provides for service of a subpoena for foreign bank records (i) in person; (ii) by mail or fax in the United States if the foreign bank has a representative in the United States; or (iii) if applicable, in a foreign country under any mutual legal assistance treaty, multilateral agreement, or other request for international legal or law enforcement assistance. A financial institution with which a foreign bank maintains a correspondent relationship is required to maintain records in the United States including the name and address of a person who resides in the United States and is authorized to accept service of process for the covered foreign bank records.

Foreign banks that receive a subpoena would be prohibited from notifying the accountholder about the existence of the subpoena. Violation of the nondisclosure requirement could be sanctioned by a civil penalty of either "double the amount of the suspected criminal proceeds sent through the correspondent account of the foreign bank in the related investigation" or not more than $250,000 if no such proceeds can be identified.

Although a foreign bank could challenge a subpoena or the nondisclosure requirement in federal district court, the court would be prohibited from quashing or modifying the subpoena on the sole basis that compliance would conflict with foreign bank secrecy or confidentiality laws. If the foreign bank fails to comply with or unsuccessfully challenges the subpoena, the government would have a statutory enforcement remedy and may also seek civil penalties (i) of up to $25,000 a day against any financial institution with which the foreign bank maintains a correspondent relationship that fails to terminate that relationship within 10 business days of receipt of notice from the Secretary of the Treasury or the Attorney General and (ii) of up to $50,000 a day against the foreign bank. The government could seize the funds held in the foreign bank's correspondent account to satisfy any civil penalty imposed against it.

It is unclear, however, whether AMLA 2020 will result in a tangible increase in subpoenas targeting foreign bank records. First, the prior subpoena authority under 31 U.S.C. § 5318(k) has been read broadly by the DOJ and at least one Court of Appeals.[11] Second, internal DOJ procedures currently require prosecutors to seek written approval from the Office of International Affairs ("OIA") prior to issuing a subpoena for bank records located overseas.[12] OIA may require that, instead of issuing subpoenas pursuant to AMLA 2020, in the interest of international cooperation requests be made via Mutual Legal Assistance Treaties ("MLAT"), which is a lengthy process that can be stymied by objections from foreign governments. AMLA 2020 does not prevent DOJ from maintaining that internal requirement or continuing to rely on the MLAT process.

Whistleblower Program

Whistleblowers who tip off Treasury and/or the DOJ to BSA violations are expected to be compensated at a higher rate under AMLA 2020. Previously, the BSA allowed for a reward of either $150,000 or 25 percent

[9] See 31 U.S.C. § 5318(k)(3).
[10] However, summonses would no longer be available.
[11] See In re Sealed Case, 932 F.3d 915, 930 (D.C. Cir. 2019) ("records 'related to' a U.S. correspondent account include records of transactions that do not themselves pass through a correspondent account when those transactions are in service of an enterprise entirely dedicated to obtaining access to U.S. currency and markets using a U.S. correspondent account").
[12] See DOJ, Justice Manual § 9-13.525.

of the related penalties, whichever was less. Under AMLA 2020, whistleblowers are eligible for up to 30 percent of the related penalties in cases where tips lead to successful Treasury and/or DOJ enforcement actions with penalties exceeding $1 million. The amount would be determined on a discretionary basis by Treasury with reference to the significance of information provided, the degree of assistance from the whistleblower, and Treasury's programmatic interest. AMLA 2020 also protects whistleblowers against retaliation from employers, including demotion, suspension, industry blacklisting, harassment, and any other form of discrimination. AMLA 2020 specifies that the rights and remedies provided to whistleblowers may not be waived by any agreements or conditions of employment, including predispute arbitration agreements.

The revised BSA whistleblower program is substantially similar to that implemented by the SEC under the Dodd-Frank Act,[13] although BSA whistleblowers would not receive a minimum amount of 10 percent of the related penalties. Another important difference is that BSA whistleblowers may be eligible to receive an award for providing actionable information to their employers, including as part of their job duties.

If the BSA whistleblower program proves as impactful as the SEC's, expect to see significant whistleblower awards and related enforcement actions. Whistleblower tips to the SEC under Dodd-Frank have increased from 334 in 2011 to 6,900 in 2020, and the SEC has awarded a total of more than $500 million to whistleblowers. Over the same time period, the SEC has collected more than $2.7 billion in total monetary sanctions as a result of those whistleblower tips.[14]

The increased incentives under the BSA whistleblower program highlight the importance of designing and maintaining an effective internal whistleblower reporting system. An effective internal reporting system, as part of an AML compliance program, can help to detect and remediate BSA violations, thereby mitigating the risk of lawsuits, regulatory investigations, and fines that can impact a financial institution's bottom line.

Additional Penalties for BSA Violations

AMLA 2020 prescribes additional penalties for certain BSA violations.

— Repeat BSA violators are subject to discretionary penalties up to the greater of (i) three times the profit (or loss avoided) from the violation or (ii) two times the maximum penalty with respect to the violation.

— Criminal BSA violators will be fined the profit from the violation and, if affiliated with a financial institution, must also repay any bonus paid in the calendar year of the violation or the following calendar year.

— Individuals found to "egregiously violate" the BSA may not serve on the board of directors of U.S. financial institutions for 10 years after the date of the conviction or judgment. An "egregious violation" means a felony criminal conviction, or a willful civil violation that facilitated money laundering or the financing of terrorism.

Criminal Liability for Concealment of SFPFs and "Special Measures" Entities in Transactions

Concealment of the involvement of designated entities of money laundering concern and senior foreign political figures in transactions may interfere with the ability of financial institutions to comply with their due diligence requirements under the BSA and result in such financial institutions unwittingly facilitating money laundering. Prosecutors have long viewed the inability to charge this offense as a gap to be closed, and AMLA 2020 finally enables the government to prosecute it.[15]

[13] See Dodd-Frank Act § 922.
[14] See SEC Office of the Whistleblower, Annual Report to Congress (2020).
[15] See, e.g., Senators Chuck Grassley and Dianne Feinstein, Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2017: Section-by-Section Summary at 8 (May 24, 2017)

AMLA 2020 provides for criminal liability for persons that knowingly conceal, falsify, or misrepresent, or attempt to conceal, falsify, or misrepresent, from or to a financial institution, a material fact concerning the ownership or control of assets involved in a monetary transaction if:

— (1) The person or entity who owns or controls the assets is a senior foreign political figure, or any immediate family member or close associate thereof and (2) the aggregate value of the assets involved is not less than $1 million; or

— (1) It involves an entity identified as a primary money laundering concern by FinCEN and (2) it violates the prohibitions on, or conditions placed on, opening or maintaining correspondent accounts or payable-through accounts under 31 U.S.C. § 5318A(b)(5).

IV. Strengthening and Modernization of FinCEN and AML Regulation

Virtual Currency and Antiquities

Virtual Currency

AMLA 2020 bolsters FinCEN's statutory authority to regulate virtual currency and virtual currency exchanges by including in the definition of "financial institutions" (potentially subject to the BSA's AML requirements):

— Businesses "engaged in the exchange of currency, funds, or value that substitutes for currency or funds"; and

— Persons who "engage[] as a business in the transmission of currency, funds, or value that substitutes for currency."

AMLA 2020 also makes several parallel changes to 31 U.S.C. § 5330 (concerning registration of money transmitter businesses) and potentially allows Treasury to issue regulations adding virtual currency to the BSA's definition of "monetary instrument."

Virtual currency is not specifically mentioned in AMLA 2020, but the sponsors of the ILLICIT CASH Act,[16] from which the provisions were taken, have indicated that the intent is to "include digital currency" in relevant statutory definitions.[17]

Antiquities

AMLA 2020 adds antiquities traders to the list of financial institutions covered by the BSA and requires FinCEN to issue related regulations.

Sharing SARs with Foreign Affiliates

AMLA 2020 requires FinCEN to issue regulations implementing a three-year pilot program (with a two-year extension at Treasury's discretion) under which financial institutions may share SARs with foreign branches, subsidiaries and affiliates. Under current FinCEN guidance, financial institutions may only share SARs outside of the United States with parent companies.[18]

In connection with implementation of the pilot program, EU "obliged entities" may wish to revisit any analysis performed under Commission Delegated Regulation 2019/758 with respect to whether their U.S. subsidiaries or branches are prohibited or restricted from sharing suspicious transaction reports with other entities in their group.

Strengthening FinCEN and Collaboration on AML Compliance

AMLA 2020 generally strengthens FinCEN as an agency and establishes mechanisms to improve domestic and international collaboration on AML compliance. For example, AMLA 2020:

[16] S. 2563, 116th Cong. (2020).

[17] See, e.g., Mark Warner, "Warner, Rounds, Jones Applaud Inclusion of Bipartisan Anti-Money Laundering Legislation in NDAA," (Dec. 3, 2020), available at https://www.warner.senate.gov/public/index.cfm/2020/12/warner-rounds-jones-applaud-inclusion-of-bipartisan-anti-money-laundering-legislation-in-ndaa.

[18] FinCEN, Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies (Jan. 20, 2006).

— Provides FinCEN with special hiring authority, which will better enable it to compete in hiring and retaining staff.

— Provides for FinCEN "domestic liaisons" to coordinate with other federal regulators and perform outreach to BSA officers at financial institutions.

— Provides for Treasury attachés and FinCEN Foreign Financial Intelligence Unit liaisons located outside the United States to perform AML outreach to foreign counterparts.

— Increases funding for technical assistance to foreign countries and financial institutions in foreign countries.

— Codifies the already-existing FinCEN Exchange, a voluntary public-private partnership to share information among FinCEN, law enforcement, and financial institutions.

Review of Existing Regulations and Potential Changes

AMLA 2020 provides for numerous assessments, reviews, and studies related to updating BSA regulation, including with respect to the effectiveness and costs of certain requirements, including:

— An assessment of whether to establish a process for the issuance of AML-related no-action letters by FinCEN.

— A review on possible changes to SAR and currency transaction report filing, including whether (i) to make changes to "unnecessarily burdensome" requirements and/or (ii) to adjust the dollar thresholds for required reporting.

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