

Regulators Sharpen Focus on Anti-Money Laundering Expectations for Crypto Industry

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U.S. regulators are signaling heightened expectations for anti-money laundering compliance within the crypto industry. Although FinCEN issued guidance in 2013 interpreting virtual currency “administrators” and “exchanges” as money services businesses (“MSBs”) subject to Bank Secrecy Act (“BSA”) requirements, both the crypto industry and U.S. regulators have evolved significantly in the past 10 years. While some crypto industry players have implemented bank-style anti-money laundering programs requiring customers to disclose their identity and source of wealth, other players have created projects specifically designed to bolster anonymity. In recent weeks, U.S. regulators and legislators have taken several actions to push the crypto industry toward a broader and more fulsome adoption of anti-money laundering controls.

On December 14, 2022, Senators Elizabeth Warren (D-MA) and Roger Marshall (R-KS) introduced the [Digital Asset Anti-Money Laundering Act](#), which, if enacted, would do four key things. First, the Act would require FinCEN to issue a rule classifying digital asset wallet providers, miners, validators and other network participants as MSBs subject to the BSA. Second, the Act would require FinCEN to finalize a 2020 proposed rule imposing additional recordkeeping requirements for transactions involving unhosted digital asset wallets. Third, the Act would require Treasury to prohibit financial institutions from dealing with digital asset mixers, privacy coins, and other anonymity-enhancing technologies. And fourth, the Act would require the federal functional regulators, including the SEC and the CFTC, to assess “the adequacy” of the anti-money laundering program and reporting obligations under the BSA.

On January 3, 2023, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency issued a [Joint Statement on Crypto-Asset Risks to Banking Organizations](#). Citing “the significant risks highlighted by recent failures of several large crypto-asset companies,” the joint statement states, “it is important that risks related to the crypto-asset sector that cannot be mitigated or controlled do not migrate to the banking system.” The joint statement shows that regulators are questioning whether and how crypto-asset-related activities by banks, including interactions with decentralized networks lacking governance mechanisms, can comply with applicable law, including anti-money laundering statutes and rules.

On January 4, the New York Department of Financial Services (“NYDFS”) announced a \$100 million [settlement](#) with Coinbase, Inc. over alleged shortcomings in the company’s anti-money

laundering program. In its consent order with Coinbase, NYDFS states that the company's anti-money laundering compliance system "failed to keep up with the dramatic and unexpected growth of Coinbase's business." Indeed, Coinbase has held a New York BitLicense since 2017 and expanded in the years since to provide services to more than 100 million cryptocurrency users worldwide. A compliance program's failure to scale to a swiftly growing business is a common refrain in anti-money laundering enforcement actions against banks; one way to read NYDFS's enforcement action is as a signal that anti-money laundering expectations are equally stringent for the crypto industry as for the banking industry.

On January 18, FinCEN issued a [notice](#) identifying virtual currency exchange Bitzlato Limited as a financial institution of "primary money laundering concern." Issued under the Combating Russian Money Laundering Act, the notice describes Bitzlato as an overseas "money transmitter" that has "minimal Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) protocols." The notice also states: "Bitzlato has significant ties to Russia and facilitates a significant number of money laundering transactions involving Russia-related ransomware and Russia-related darknet market proceeds." Exercising powerful and rarely used authority under Section 311 of the USA PATRIOT Act, FinCEN has prohibited U.S. financial institutions from transmitting funds to Bitzlato or any account or wallet that Bitzlato administers.

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