

FinCEN Director Addresses Virtual Currency and Touts Regulatory Leadership and Value of SAR Filings

(Post from Ballard Spahr's [Money Laundering Watch](#))

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[Kenneth Blanco](#), the Director of the Financial Crimes Enforcement Network (FinCEN), discussed last week several issues involving virtual currency during an [address](#) before the “2018 Chicago-Kent Block (Legal) Tech Conference” at the Chicago-Kent College of Law at Illinois Institute of Technology. Although some of his comments retread familiar ground, Blanco did offer some new insights, including the fact that FinCEN now receives over 1,500 Suspicious Activity Reports (SARs) a month relating to virtual currency.

The address was straightforward in many respects, and noted the following relatively predictable points:

- In the eyes of FinCEN, virtual currency presents an opportunity for both innovation (“Major money services business are looking at how to incorporate blockchain payments to expedite remittances to locations around the world”) and financial crime and the promotion of terrorism and rogue states (“There are already too many victims out there who may never be made whole again, and harm can be done with devastatingly increasing speed, breadth, and obscurity in the digital world”).
- FinCEN has been a leader in the regulation of virtual currency, and since 2013 has issued administrative guidance on the application of FinCEN’s anti-money laundering (AML) regulations regarding money services businesses (MSB) to persons administering, exchanging, or using virtual currencies (about which we have blogged repeatedly, [here](#), [here](#) and [here](#)).
- In regards to such AML regulation, Blanco stressed that (i) FinCEN is working closely with the Securities and Exchange Commission and the Commodity Futures Trade Commission “for [coordinated policy development and regulatory approaches](#)[,]” including perceived risks surrounding [Initial Coin Offerings](#), or ICOs; (ii) businesses providing anonymizing services, such as mixers or tumblers, are still covered by the Bank Secrecy Act (BSA) if they accept and transmit convertible virtual currency; and (iii) the BSA applies to any foreign-located virtual currency money transmitter/MSB so long as “it does business in whole or substantial part within the United States.”
- FinCEN has been working closely with the IRS, the agency tasked with examining MSBs for AML compliance, and reportedly the government has examined over 30 percent of all registered virtual currency exchangers and administrators since 2014. According to Blanco, “there is no question we have noticed some compliance shortcomings.”
- Blanco stressed with pride the [recent enforcement action against BTC-e](#), the first civil action by FinCEN against a foreign-located MSB, and in which the Department of Justice (DOJ) filed criminal charges.

However, Blanco also referenced several relatively new developments, including the following:

- FinCEN now is receiving over 1,500 SARs a month regarding virtual currency, from both MSBs in the virtual currency industry and other financial institutions. Blanco described this as a “substantial increase” over the last few years. Perhaps in part to counter the critiques of a growing reform movement which [questions the investigatory utility and mounting costs to industry of the current SAR reporting regime](#), Blanco stressed the value of SAR filings to law enforcement, such as their role in producing the enforcement action against BTC-e, noted above, and providing investigative leads against illegal opioid vendors and assisting “[Operation Disarray](#),” a Joint Counter Opioid Darknet Enforcement effort led by the DOJ which is targeting darknet drug traffickers.
- FinCEN is working towards developing information sharing programs to help the financial services sector “defend itself” against threats relating to virtual currency, and is “in the process of setting up a virtual currency-focused FinCEN Exchange program with the private sector and law enforcement,” similar to the already-existing [FinCEN Exchange](#).
- FinCEN is sharing its experience with cryptocurrency with foreign governments through the [Egmont Group of Financial Intelligence Units](#) and other international forums.