Money Laundering and Financial Crimes in Santa Barbara

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Introduction

Readers of this Criminal Justice column who advise banks or other financial institutions are already familiar with SAR's. These are Suspicious Activity Reports which are required to be filed by the institution with regard to any transactions that appear to involve money laundering or other financial crimes. These SAR's are then reviewed by personnel within the United States Treasury Department along with Currency Transaction Reports (CTR's) and other mandatory reports. The purpose is to uncover money laundering, identity theft and other financial crimes.

In this month's column, we will learn that we, in Santa Barbara, are included in a HIFCA, a "High Intensity Financial Crime Area," by an agency within the Treasury Department calling itself, over the last twenty years, FinCEN. We will discuss what this agency is and what triggered this HICFA assessment. We will also explore what this means in terms of law enforcement and the prosecution of individuals and organizations. Finally, we will discuss what lawyers should know about advising their clients in order to avoid involvement in a criminal investigation or indictment.

What is FinCEN?

Despite the efforts of the current Administration and the United States Congress to consolidate the efforts of the federal regulatory agencies pertaining to financial institutions, the United States Treasury maintains a separate unit for detection of financial crimes. It was established in 1990 and is denominated the Financial Crimes Enforcement Network (FinCEN). The FinCEN's mission is "to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems."

Despite this rather general mission, FinCEN spends most of its resources trying to uncover money laundering, identity theft and, given the recent economy, mortgage fraud. FinCEN's primary tool is the Suspicious Activity Report (SAR) which is required to be filed by banks and financial institutions if suspicious activity is detected relating to a transaction of $5,000 or more. FinCEN then responds to some of these SAR's and can take civil enforcement action or refer matters for criminal prosecution. FinCen employs about three hundred financial analysts who review the SAR's and other documents. FinCEN does not have its own squad of Special Agents with badges, guns and power of arrest although that suggestion has been made.

If a FinCEN analyst comes upon a SAR or other document that suggests criminal activity, she or he will refer the matter to Internal Revenue Service Criminal Investigation (IRS-CI), U.S. Customs and Border Protection or Federal Bureau of Investigation (FBI) or other federal law enforcement agencies for further criminal investigation. The jurisdictions of these agencies are overlapping but IRS-CI generally will look at money laundering as regards tax evasion, Customs from the standpoint of international transportation of currency and the FBI from the perspective of organized crime, bank fraud, identity theft and other fraudulent schemes. Customs, the FBI and other agencies are particularly alert ot evidence of international terrorist movement of money.

What is a HIFCA and Why is Santa Barbara within One?

There are seven High Intensity Financial Crime Areas (HIFCA's) that have been identified throughout the country and its possessions by FinCEN. Santa Barbara is within one of those HIFCA's. The Southern California Region is comprised of Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

(Figure 1)

Region Area	***Jurisdiction by Counties***
California Northern District	**Monterey, Humboldt, Mendocino, Lake, Sonoma, Napa, Marin, Contra Costa, San Francisco, San Mateo, Alameda, Santa Cruz, San Benito, Monterey, Del Norte**
California Southern District	**Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, Ventura**
Southwest Border	**Arizona - All Counties, Texas - Counties Bordering, and adjacent to those bordering, the US and Mexico Boundary**

Region Area	*Jurisdiction by Counties*
Chicago	**Cook, McHenry, Dupage, Lake, Will, Kane**
New York	**New York - All Counties**
New Jersey	**New Jersey - All Counties**
Puerto Rico	**Puerto Rico - All Areas**
U.S. Virgin Isles	**Virgin Isles - All Areas**
South Florida	**Broward, Miami-Dade, Indian River, Martin, Monroe, Okeechobee, Palm Beach and St Lucie**

HIFCA's take their model from the concept of High Intensity Drug Trafficking Areas (HIDTA) were set up in Los Angeles, Miami and New York. These earlier drug HIDTA's were complemented by the Joint Drug Intelligence Group (JDIG) which operated nationwide. The JDIG and HIDTA was essentially a co-located task force made up of local, state and federal agencies under the FBI's direction to enhance joint cooperation and investigations.

Based on this model, the HIFCA takes a similar approach, however, the lead agency is FinCEN under the Department of Treasury. FinCEN's makes its determination as to what areas qualify to be characterized as a HIFCA based on the evaluation of the SAR's and related documents being generated across the nation. As depicted in Figure 1 above, we are in one of only five HIFCA's in the continental United States and one of seven total, including Puerto Rico and the Virgin Islands.

We are within one of these HIFCA's because of the high incidence in our area of money laundering, identity theft, currency transaction violations and other financial crimes. This is not surprising in light of the demographics of our County as well as the financial sophistication and international connections of our business community.

Law Enforcement and Prosecution of Financial Crimes

When a possible criminal violation of federal law comes to the attention of FinCEN analysts through the SAR's or related documents, the analysts will refer the matter to the IRS-CI, Customs, the FBI or some other federal agency. If that agency sees merit in the report, it will commence a traditional financial crimes investigation. That means that they will review all documents, interview witnesses and, if appropriate, obtain subpoenas from a federal grand jury to obtain testimony or other documents.

Ultimately, if the suspicion appears to be substantiated, the agency, with the assistance of the United States Attorneys Office, will prepare the case for presentment to the grand jury for Indictment.

The federal agents will determine who is the target in the course of their investigation. As we have emphasized often in the column, it is important for the lawyer advising an organization or individual to be alert to any warning signs that a federal criminal investigation has commenced. Counsel should immediately try to identify the agents and the Assistant United States Attorney (AUSA) handling the matter. It is critical that counsel get involved as early as possible in order to make arrangements to avoid an indictment.

If there is an indictment, the case will proceed through the federal court criminal process as would any other case. There is an opportunity to obtain an agreement from the AUSA to have the client report to court rather than be arrested. This also gives you the opportunity to contact Pre-Trial Services in advance to arrange for release.

It is also possible that a referral from FinCen could result in an investigation by local law enforcement or a joint task force. If there are also potential violations of state laws or if the financial loss of the crime is not that significant, the federal government can defer to local prosecution. In addition, in the course of the investigation into suspicious financial crimes, unrelated criminal investigations might emerge. We had one case recently, in another county, where the Sheriffs came along on the execution of a federal warrant which was based on a SAR report, however, the Sheriffs branched out into their own investigation of an unrelated unsolved murder.

The lesson here, of course, is to react quickly to any hint of an investigation and take it seriously. Much can be done to avoid indictment for a client or to defend a case if there is action taken at the earliest stages.

What Transactional Lawyers Should be Aware of to Avoid Criminal Investigations

Better yet, is to avoid investigation altogether.

If the transactional lawyer is representing a bank or financial institution, she or he is undoubtedly quite familiar with the multitude of other requirements to comply with governmental regulations. An ounce of prevention is worth a pound of cure. Also, with banks and financial institutions, just like any other organizations, if there is any hint of wrongdoing, an immediate internal investigation should be commenced. The difference here is that banking and financial institution regulations require immediate reporting of irregularities, including timely filing of a number of reports, including SAR's and CTR's.

However, transactional lawyers who do not regularly represent banks or other financial institutions are often involved in advising individual clients or businesses who are customers of these institutions. In this regard, it is critical to advise such clients about the importance of not only following the law but the existence of the SAR process and the comprehensiveness of the financial institution reporting process. This is especially important since we are within a HIFCA and subject to additional scrutiny and additional enforcement procedures.

Lawyers not representing banks or financial institutions should make themselves aware, at least in general, of the major events by which their clients can trigger filings that may lead to further investigation. We mentioned SAR's which, under the Bank Secrecy Act of 1970 as amended by the Money Laundering Control Act of 1986, are to be filed where a financial institution employee suspects that

transactions or attempted transactions involving at least $5,000 may be derived from illegal activities. There is also the Currency Transaction Report (CTR or CTRC for casinos) required to be filed for cash transactions in excess of $10,000 and the Suspicious Activity Report by the Securities & Futures Industries to be filed by a broker-dealer who suspects that a transaction involves aggregate funds or other assets of at least $5,000 and involves funds derived from or designed to hide illegal activities. Banks, other financial institutions, casinos and broker- dealers are required to file anything that looks like a structured transaction by way of a SAR as well.

Individuals are also subject to the requirement that they, themselves, file certain documents. These include Report of Foreign Bank and Financial Accounts (FBAR) to report a financial interest in or signatory authority over one or more accounts in foreign countries, if the aggregate value of these accounts exceeds $10,000 at any time during the calendar year and Reports of Cash Payments Over $10,000 Received in a Trade or Business to be filed by persons engaged in a trade or business who, in the course of that trade or business, receive more than $10,000 in cash in one transaction or two or more related transactions within a twelve month period.

The bottom line for transactional lawyers, in this area as well as others, is to advise not only propriety but the appearance of propriety. Of course, clients do not have to follow our advice and sometimes do not. But, propriety and the appearance of propriety should be the watchwords in dealing with banks and other financial institutions. The criminal sanctions associated with violations of these laws are quite serious and, while the defense may be successful, the entire experience is one to be avoided.

Conclusion

Santa Barbara County is in a HIFCA. That means that the resources of the Treasury Department, through FinCEN as well as IRS-I, Customs, the FBI and other law enforcement agencies may be even more likely to react to suspicious transactions than elsewhere in the country. As lawyers in Santa Barbara, whether dealing with transactional or criminal implications of this, we have to be more vigilant regarding these issues as well.