



FedFin Client Report

Thursday, March 17, 2022

Targeted Digital-Asset Standards Possible in Senate

Client Report: SANCTION17

Executive Summary

The Senate Banking Committee's hearing today on illicit finance focused as expected on cryptocurrency and suggests that targeted legislation addressing specific jurisdiction or compliance issues might advance on a bipartisan basis. Sen. Warren (D-MA) is, though, seeking a much broader bill. Joined by other panel Democrats but not Chairman Brown (D-OH), the bill would expand the reach of current sanctions to certain foreign firms, increase the President's sanction power in this sector, and -- most controversially -- demand public reports on troublesome firms and individuals. Ranking Member Toomey (R-PA) made it clear that he is not prepared to go this far, reiterating longstanding views that digital assets enhance innovation and should be more widely used in the U.S. to ensure global leadership in a fast-growing sector. Senators explored these issues without resolving many of them in particularly thorny areas such as the ambiguity in regulatory jurisdiction between the SEC and CFTC.

Analysis

Opening Statements

Chairman Brown focused on cryptocurrency's many uses for illicit finance, strongly rebutting testimony today arguing that fiat currency is far more likely to facilitate crime and sanctions evasion. Ranking Member Toomey countered that, while crypto has problematic aspects, its use in Ukraine and other innovative applications also argues for only targeted regulation.

Testimony

Jonathan Levin of Chainalysis emphasized the ability of law enforcement to crack criminal crypto networks, calling for regulatory clarification to enhance compliance efforts. Michael Mosier, former acting Digital Innovation officer at FinCEN, asked Congress to provide greater funding for FinCEN, expand whistleblower programs, and reduce regulatory arbitrage before starting on a new regulatory regime. Michael Chobanian of Ukraine described the immediate

Federal Financial Analytics, Inc.
2101 L Street, NW – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

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use to which his nation has put crypto assets as part of its resistance. Finally, Shane Stansbury of Duke's law school was strongly critical of cryptocurrency's illicit applications, arguing for more forceful recognition of crypto's illegal uses and the consistent adoption of comprehensive compliance among cryptocurrency exchanges.

Q&A

- **Sanctions:** Sens. Warner (D-VA) and Toomey demanded still more sanctions against Russia, while many senators asked about the extent to which cryptoassets allow sanctions evasion. Witnesses generally said that sanctions evasion is not possible for state actors and oligarchs, but Sens. Warren and Tester (D-MT) remained skeptical. Questions also focused on the extent to which crypto mining facilitates sanctions evasion, with witnesses also rejecting that this is possible due to limited liquidity and a lack of demand for rubles as well as possible sanctions.
- **Law Enforcement:** Sens. Hagerty (R-TN) and Cortez-Masto (D-NV) asked about the ability to catch illicit activity and what tools would enhance law enforcement. Witnesses described numerous new techniques and argued that law enforcement needs more resources to get its arms around emerging technologies.
- **Regulatory Clarity:** Sen. Smith (D-MN) argued for a new regulatory framework, pointing to ambiguity over the extent to which the CFTC and SEC can now govern cryptoassets. Sen. Toomey argued that a lack of regulatory clarity around cryptocurrencies is undermining American innovation.
- **Illicit Finance:** Democratic Senators focused on ransomware, calling for crackdowns on ransomware distributors and inquiring as to how Congress can best protect victims and unveil criminals. Sen. Van Hollen (D. MD) voiced concern over the vulnerability of crypto exchanges to hacking, identifying this area as one in which consumers face significant risks and which should constitute a regulatory priority.
- **Ukraine Conflict:** Republicans used this to highlight cryptocurrency's unique political advantage for rapid emergency financing.