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Financial Crimes Enforcement Network

FinCEN Advisory

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Transactions
Involving
the Cayman
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This Advisory is being issued to inform banks and other financial institutions operating in the United States of serious deficiencies in the counter-money laundering systems of the Cayman Islands. The impact of such deficiencies on the scrutiny that should be given to certain transactions or banking relationships involving the Cayman Islands, in light of the suspicious transaction reporting obligations of financial institutions operating in the United States, is discussed below.

The Cayman Islands, located between Cuba and Honduras in the Caribbean Sea, is a Caribbean dependent territory of the United Kingdom. Its population is approximately 40,000.

Notwithstanding its small land area and population, the Cayman Islands is home to a well-developed offshore financial center. In March 2000, authorities in the Cayman Islands reported that more than 570 banks and trust companies, 2,238 mutual funds, and 499 captive insurance companies were licensed in the Cayman Islands. In addition, approximately 40,000 offshore companies are registered in the Cayman Islands.

The counter-money laundering regime embodied in the legal, supervisory, and regulatory systems of the Cayman Islands suffers from serious systemic problems.

- Most Cayman Islands financial institutions are not required to identify their customers.
- Cayman Islands financial institutions are not required to maintain records of customers' financial transactions or account opening documents.
- Cayman Islands law makes it impossible for the supervisory and regulatory authority to obtain information held by financial institutions regarding their clients' identity absent a court order. Officials have no access to information relating to investment funds held by 15 or fewer persons.



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- Failure of financial institutions in the Cayman Islands to report suspicious transactions is not subject to penalty; instead, a non-reporting institution is unable to invoke a “reporting defense” if the institution is itself accused of money laundering.
 - Despite its significance as an international financial center, Cayman Islands law bars its supervisory and regulatory authority from collecting for, and sharing with, its counterparts records of financial transactions and customer identification (to the extent that such documents are maintained by Cayman Islands financial institutions).

Other weaknesses in the counter-money laundering programs of the Cayman Islands result from the interaction of particular rules in a way that can vitiate formal counter-money laundering requirements.

- The Cayman Islands remains committed to strict bank secrecy, outside of a limited suspicious transaction reporting and international cooperation regime.
- The over 7,000 “exempted” companies registered in the Cayman Islands may issue bearer shares.

These deficiencies, among others, have caused the Cayman Islands to be identified by the Financial Action Task Force on Money Laundering (the “FATF”) as non-cooperative “in the fight against money laundering.” The FATF, created at the 1989 G-7 Economic Summit, is a 29 member international group that works to combat money laundering.

Other aspects of the Cayman Islands’ counter-money laundering system provide some counter-balance to the deficiencies described above. The Cayman Islands has criminalized money laundering for all serious crimes, and its record of cooperation with criminal law enforcement authorities in the United States is excellent. Cayman Islands supervisory authorities have closed several offshore banks, assertedly for supervisory lapses related to money laundering. And Cayman Islands authorities have published a non-binding Code of Practice designed to give its financial institutions guidance about ways to prevent and detect money laundering; the Code of Practice is taken into account for supervisory purposes by the Cayman Islands supervisory and regulatory authority.

Senior Cayman Islands officials have indicated their intention to take a series of steps to address the deficiencies identified above. The United States Treasury welcomes this news and looks forward to a period of rapid improvement in the counter-money laundering regime in the Cayman Islands. Nonetheless, the legal, supervisory and regulatory systems of the Cayman Islands at present increase the possibility that transactions involving the Cayman Islands will be used for illegal purposes.

Thus, banks and other financial institutions operating in the United States should carefully consider, when dealing with transactions originating in or routed to or through the Cayman Islands, or involving entities organized or domiciled, or persons maintaining accounts, in the Cayman Islands, how the deficiencies of the counter-money laundering controls in the Cayman Islands affect the possibility that those transactions are being used for illegal purposes. A financial institution subject to the suspicious transaction reporting rules contained in 31 C.F.R. 103.18 (formerly 31 C.F.R. 103.21) (effective April 1, 1996), and in corresponding rules of the federal financial institution supervisory agencies, should carefully examine the available facts relating to any such transaction to determine if such transaction (of \$5,000 or more, U.S. dollar equivalent) requires reporting in accordance with those rules. Institutions subject to the Bank Secrecy Act but not yet subject to specific suspicious transaction reporting rules should consider such a transaction with relation to their reporting obligations under other applicable law. All institutions are particularly advised to give enhanced scrutiny to transactions or banking relationships that do not involve established, and adequately identified and understood, commercial or investment enterprises.

It should be emphasized that the issuance of this Advisory, and the need for enhanced scrutiny for certain transactions or banking relationships, does not mean that U.S. financial institutions should curtail legitimate business involving the Cayman Islands.

To dispel any doubt about application of the “safe harbor” to transactions within the ambit of this Advisory, the Treasury Department will consider any report relating to a transaction described in this Advisory to constitute a report of a suspicious transaction relevant to a possible violation of law or regulation, for purposes of the prohibitions against disclosure and the protection from liability for reporting of suspicious transactions contained in 31 U.S.C. 5318(g)(2) and (g)(3).

United States officials stand ready to provide appropriate technical assistance to Cayman Islands officials as they work to remedy the deficiencies in Cayman Islands' counter-money laundering systems that are the subject of this Advisory.



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FinCEN Advisory is a product of the Financial Crimes Enforcement Network, U.S. Department of the Treasury, P.O. Box 39 Vienna VA 22183, (703) 905-3773. For more information about FinCEN's programs, visit the FinCEN web site at <http://www.fincen.gov>

Questions or comments regarding the contents of the FinCEN Advisory should be addressed to the Office of Communications, FinCEN.

Information may also be faxed to (703) 905-3885.