

October 24, 2023

# OFAC and FinCEN Take Action Following Recent Hamas Terrorist Attacks in Israel

In October 17, 2023 remarks, Treasury Under Secretary for Terrorism and Financial Intelligence Brian Nelson, signaled that Treasury would build on its “long-standing fight against the funding of Hamas” through “urgent and immediate steps”.<sup>1</sup> Under Secretary Nelson stated that Treasury is closely monitoring Hamas’s fundraising, whether through “surreptitiously accessing the formal financial system” or through the “use [of] virtual assets to raise and move funds” as a means “to circumvent the traditional financing sector.”<sup>2</sup>

Following Under Secretary Nelson’s remarks, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) and Treasury’s Financial Crimes Enforcement Network (“FinCEN”) have taken three principal actions to further counter the financing of terrorism. Specifically, (i) OFAC designated additional Hamas operatives and financial facilitators; (ii) FinCEN issued an alert providing red flags to assist financial institutions in identifying transactions related to Hamas; and (iii) FinCEN issued a proposed rule under Section 311 of the USA PATRIOT Act that would require covered financial institutions to implement recordkeeping and reporting requirements on certain transactions involving “non-U.S. convertible virtual currency mixing.” Below we describe these actions and also the implications for U.S. and non-U.S. financial institutions seeking to mitigate risk.

## Treasury’s Actions in Response to the Hamas Terrorist Attacks

**OFAC Designations:** On October 18, 2023, OFAC designated nine individuals located in Gaza, Sudan, Turkey, Algeria, and Qatar, and one entity, a Gaza-based virtual currency exchange named Buy Cash Money and Money Transfer Company, onto its Specially Designated Nationals and Blocked Persons List (the “SDN List”) in response to the recent Hamas-led terrorist attacks in Israel.<sup>3</sup> As a result of these designations, these targeted individuals and entities are broadly cut off from the U.S. financial system; U.S. persons are prohibited from engaging in any dealings with them, directly or indirectly; and any assets that they have that are located in the United States or held by U.S. persons are blocked (*i.e.*, frozen). This action builds on OFAC’s

<sup>1</sup> U.S. Dep’t of the Treasury, *Remarks by Under Secretary for Terrorism and Financial Intelligence Brian Nelson at Deloitte’s 15<sup>th</sup> Annual Anti-Money Laundering Conference* (Oct. 17, 2023), available [here](#).

<sup>2</sup> *Id.*

<sup>3</sup> OFAC, *Following Terrorist Attack on Israel, Treasury Sanctions Hamas Operatives and Financial Facilitators* (Oct. 18, 2023), available [here](#).

May 2022 designations<sup>4</sup> of individuals and entities involved in managing Hamas' international investment portfolio, as well as dozens of other sanctions designations previously imposed on Hamas and its affiliates since its original designation as foreign terrorist organization in 1997. OFAC may issue additional designations of group or individuals considered to be supportive of Hamas.

**FinCEN 311 Special Measure:** On October 19, 2023, FinCEN proposed a new regulation under its Section 311 authority that would identify “non-U.S. convertible virtual currency mixing” (“CVC mixing”) as a class of transactions of primary money laundering concern. This proposed regulation was issued pursuant to Section 311’s Special Measure One and would “requir[e] covered financial institutions,” including crypto exchanges that qualify as money services businesses, “to implement certain recordkeeping and reporting requirements on transactions that covered financial institutions know, suspect, or have reason to suspect involve CVC mixing within or involving jurisdictions outside the United States.”<sup>5</sup> Deputy Secretary of the Treasury Wally Adeyemo stated that FinCEN was proposing this regulation because of the “exploitation” of CVC mixing by “a broad range of illicit actors, including state-affiliated cyber actors, cyber criminals, and terrorist groups.”<sup>6</sup> FinCEN’s new director, Andrea Gacki, highlighted the novel nature of the proposed regulation, noting that it “is FinCEN’s first ever use of the Section 311 authority to target a class of transactions of primary money laundering concern” and that “Treasury will work to identify and root out the illegal use and abuse of the CVC ecosystem.”<sup>7</sup> While this proposed regulation was spurred in part by the Hamas attacks in Israel, it covers non-U.S. crypto mixing more broadly.

**FinCEN Alert:** On October 20, 2023, FinCEN issued an alert to financial institutions identifying several red flags of potential terrorist financing.<sup>8</sup> The alert encouraged financial institutions to report promptly suspicious transactions with indicia of terrorist financing and provided guidance for the type of information to include in suspicious activity reports for cyber-related transactions. The guidance instructs financial institutions to include any relevant technical cyber indicators in their suspicious activity reports, including, *e.g.*, chat logs, suspicious IP addresses, suspicious email addresses, and suspicious digital asset addresses. FinCEN also encouraged reporting financial institutions to include any external information available to them that may suggest that the activity may be linked to Hamas or other terrorist groups. Specific red flags provided by FinCEN in the alert include: (i) a customer conducting transactions that involve shell entities,

<sup>4</sup> OFAC, *Treasury Targets Covert Hamas Investment Network and Finance Official* (May 24, 2022), available [here](#).

<sup>5</sup> FinCEN, *Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern* (Oct. 23, 2023), available [here](#). The proposed regulation would define CVC mixing to mean, subject to certain exceptions, “the facilitation of CVC transactions in a manner that obfuscates the source, destination, or amount involved in one or more transactions, regardless of the type of protocol or service used, such as: (1) pooling or aggregating CVC from multiple persons, wallets, addresses, or accounts; (2) using programmatic or algorithmic code to coordinate, manage, or manipulate the structure of a transaction; (3) splitting CVC for transmittal and transmitting the CVC through a series of independent transactions; (4) creating and using single-use wallets, addresses, or accounts, and sending CVC through such wallets, addresses, or accounts through a series of independent transactions; (5) exchanging between types of CVC or other digital assets; or (6) facilitating user-initiated delays in transactional activity.”

<sup>6</sup> U.S. Dep’t of the Treasury, *FinCEN Proposes New Regulation to Enhance Transparency in Convertible Virtual Currency Mixing and Combat Terrorist Financing* (Oct. 19, 2023), available [here](#).

<sup>7</sup> *Id.*

<sup>8</sup> U.S. Dep’t of the Treasury, FinCEN, *FinCEN Alert to Financial Institutions to Counter Financing to Hamas and its Terrorist Activities* (Oct. 20, 2023), available [here](#).

“trading companies,” or other holding companies with a nexus to Iran or countries of higher risk for terrorist financing, (ii) a customer that is a charitable organization that receives large donations from an unknown source in a short period of time and then wires on the funds to other charitable organizations or non-governmental organizations, and (iii) a customer that is a charitable organization but which does not appear to provide any charitable services or openly supports Hamas and its operations.

### Implications

These three actions show Treasury’s renewed focus in the wake of the recent attacks to target Hamas’s and other terrorist group’s financing mechanisms. We expect that this will continue to be an area of focus for OFAC, FinCEN, and other U.S. government agencies in the coming months. The implications of these recent actions are discussed below.

U.S. financial institutions, including those in the crypto space, may wish to consider re-assessing their exposure to terrorist financing risks and consider whether any enhancements to existing BSA/AML controls are warranted. They may also wish to consider the guidance in the FinCEN alert and whether and how their current compliance framework is able to identify the red flags of terrorist financing detailed in the alert.

For U.S. financial institutions that are banks, this reassessment could include reviewing their correspondent banking relationships with foreign financial institutions. Treasury’s 2022 Terrorist Financing National Risk Assessment noted that U.S. banks risk “unknowingly moving funds affiliated with terrorism when they provide correspondent banking services to other foreign financial institutions.”<sup>9</sup> Under the BSA, financial institutions are expected to conduct due diligence with respect to their correspondent banking relationships, including each correspondent bank’s geographies, products, customer base, and other risk factors, including exposure to terrorist financing risk.<sup>10</sup>

Non-U.S. financial institutions similarly may wish to reassess their exposure to terrorist financing risk, as involvement in terrorist financing would increase their risk of potential designation under U.S. sanctions or the section 311 authority or risk sanctions violations if a U.S. nexus is involved.

Crypto companies in particular may wish to consider reviewing their compliance programs in light of increased scrutiny. Under Secretary Nelson’s remarks indicate that Treasury will be focused on attempts by Hamas and other terrorist organizations to fundraise or send or launder funds through virtual assets and various cryptocurrency services. Meanwhile, some in the crypto space have pushed back on the focus on crypto, arguing that only a small portion of global terrorism financing is done through cryptocurrency while most is routed through traditional financial transactions and institutions.

---

<sup>9</sup> U.S. Dep’t of the Treasury, *2022 National Terrorist Financing Risk Assessment* (Mar. 1, 2022), available [here](#).

<sup>10</sup> 31 C.F.R. § 1010.610; see Office of the Comptroller of the Currency, *U.S. Department of the Treasury and Federal Banking Agencies Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement* (Aug. 30, 2016), available [here](#).

We will continue to monitor OFAC, FinCEN, and other agencies actions targeting Hamas and terrorist financing and will provide further updates as appropriate.

\* \* \*

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

**H. Christopher Boehning**  
+1-212-373-3061  
[cboehning@paulweiss.com](mailto:cboehning@paulweiss.com)

**Jessica S. Carey**  
+1-212-373-3566  
[jcarey@paulweiss.com](mailto:jcarey@paulweiss.com)

**John P. Carlin**  
+1-202-223-7372  
[jcarlin@paulweiss.com](mailto:jcarlin@paulweiss.com)

**David Fein**  
+44-20-7367-1608  
[dfein@paulweiss.com](mailto:dfein@paulweiss.com)

**Michael E. Gertzman**  
+1-212-373-3281  
[mgertzman@paulweiss.com](mailto:mgertzman@paulweiss.com)

**Roberto J. Gonzalez**  
+1-202-223-7316  
[rgonzalez@paulweiss.com](mailto:rgonzalez@paulweiss.com)

**Brad S. Karp**  
+1-212-373-3316  
[bkarp@paulweiss.com](mailto:bkarp@paulweiss.com)

**Richard S. Elliott**  
+1-202-223-7324  
[relliott@paulweiss.com](mailto:relliott@paulweiss.com)

**David K. Kessler**  
+1-212-373-3614  
[dkessler@paulweiss.com](mailto:dkessler@paulweiss.com)

*Associates Samuel Kleiner and Joshua R. Thompson contributed to this memorandum.*