Illegal Money Transmitting Business – Section 1960 / Failure to Maintain an AML/KYC Program / IEEPA / Cryptocurrency

Binance pleads guilty to conducting an illegal money transmitting business, failing to maintain an effective AML/KYC program, and knowingly allowing its customers to violate IEEPA by sending money to Iran.

As part of its plea, the company agrees to forfeit $2.5 billion in criminal proceeds.

United States v. Binance Holdings Limited, 23-Cr-178-RAJ (W.D. Wash. Nov. 14, 2023).

W.D. Wash. * Binance.com, one of the world's largest cryptocurrency exchanges, pled guilty to a three-count criminal information charging it with failing to register as a money service business in violation of 18 U.S.C. § 1960, failing to maintain an effective Anti-Money Laundering / Know Your Customer (AML/KYC) program in violation of 31 U.S.C. § 5318(h), and conducting financial transactions between U.S. persons and sanctioned countries in violation of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1705.

As part of the plea agreement, the company agreed to pay a $1.8 billion criminal fine and to forfeit $2.5 billion in connection with the Section 1960 and IEEPA offenses.

The Government alleged that Binance.com, as a foreign-based money service business, was required to register with FinCEN because a substantial part of its customer base was in the United States. The company attempted to circumvent the registration requirement by creating a U.S.-based subsidiary, Binance.US, that did register with FinCEN, and by shifting its low volume customers to that platform, but it retained its high-volume U.S. customers on Binance.com, and encouraged them to disguise their U.S. connection by changing their KYC information to foreign-based entities with foreign IP addresses. This subterfuge was discovered and led to the Section 1960 conviction.

The Government also alleged that Binance's motive for avoiding the registration requirement was to prevent U.S. regulators from discovering that Binance was not maintaining an AML/KYC program and was, consequently, allowing its exchange to be used by a variety of "illicit actors," including: "mixing services" that laundered criminally derived cryptocurrency; persons moving the proceeds of ransomware; and persons moving the proceeds of "darknet market transactions."

For example, Binance facilitated $273 million in deposits and withdrawals from BestMixer, “one of the largest cryptocurrency mixers in the world,” and $106 million in bitcoin transfers from Hydra, a “popular Russian darknet marketplace frequently utilized by criminals.”

While facilitating thousands of such transactions, Binance never filed a single Suspicious Activity Report (SAR) with FinCEN. The failure to maintain an AML/KYC program and to file SARs was the basis for the Section 5318(h) conviction.

Finally, the Government alleged that Binance violated IEEPA by knowingly allowing its U.S.-based customers to use its platform to conduct transactions with persons and entities in sanctioned countries, including over $898 million in transactions with Iran.

Binance admitted to all of these allegations in its Plea Agreement, and its owner, Chengpeng Zhao, pled guilty to similar charges in a separate case. Sentencing is set for January 2024. *SDC*

Contact:

Comment: This is obviously a major win for the Justice Department in its effort to crack down on those who facilitate money laundering through the cryptocurrency industry. Foreign-based cryptocurrency exchanges that have a significant customer base in the United States must register with FinCEN, and they must maintain effective AML/KYC programs. Binance did neither and is paying a heavy price.

A large part of that price is the $2.5 billion forfeiture money judgment. (As is all too typical, the mainstream press has referred to this as a “fine,” reserving the term “forfeiture” for the kinds of cases the press likes to criticize; but that is an issue for another day.)

The legal basis for the forfeiture, however, is rather odd. The Information sets forth three grounds. First, it says that Binance must forfeit the “proceeds” of the Section 1960 offense pursuant to 18 U.S.C. § 981(a)(1)(C). Section 1960 is an SUA, so the forfeiture of the proceeds of the offense – presumably the fees earned by the company – would be authorized by the statute; but for whatever reason, the Plea Agreement does not base any part of the forfeiture on that ground.

Second, the Information says that Binance must forfeit all property involved in the Section 1960 violation pursuant to Section 981(a)(1)(A). Forfeiture under that statute for an offense committed by a money transmitting business includes a sum of money equal to the total of all transactions conducted by the business. *See United States v. Elfgeeh,* 515 F.3d 100, 139 (2d Cir. 2008), and other cases cited in Section III.B of the Money Laundering Forfeiture Case Outline

Thus, the Government could have sought to have Binance forfeit an amount of money equal to the billions of dollars in transactions it had conducted in the six-year period in which it operated illegally. But instead, it opted to limit the forfeiture under Section 981(a)(1)(A) to the $1.6 billion in fees that it earned from conducting those transactions – or in other words, to the "proceeds" that it could have forfeited under § 981(a)(1)(C) but did not.

Finally, the forfeiture amount included the $898 million transferred to Iran on the ground it was forfeitable under Section 981(a)(1)(C) as the "proceeds" of the IEEPA offenses. In seeking to forfeit that amount from Binance, which obviously did not retain any of the money other than its fee, the Department seems to have set aside its view that the Supreme Court's decision in *Honeycutt* applies to Section 981(a)(1)(C), and that accordingly forfeitures under that statute are limited to property that the defendant personally obtained.

The courts have split on that question, but the Government has conceded that forfeitures under Section 981(a)(1)(C) are limited in that regard in several cases. *Compare United States v. Sexton,* 894 F.3d 787, 798-99 (6th Cir. 2018) (the "linchpin" of the *Honeycutt* decision was the phrase "proceeds the person obtained;" because § 981(a)(1)(C) contains no such limitation, *Honeycutt* does not apply) *with United States v. McIntosh,* 2023 WL 382945 (2nd Cir. Jan. 25, 2023) (unpub.) (Government concedes that *Honeycutt* applies to forfeitures under § 981(a)(1)(C) and that Defendant therefore cannot be jointly and severally liable for proceeds of Hobbs Act robbery). For whatever reason, in this case the Government took a different view.