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Financial Crimes Enforcement Network

FinCEN Advisory

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Transactions Involving the Marshall Islands

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Banks and other financial institutions operating in the United States are advised to give enhanced scrutiny to all financial transactions originating into or routed to or through the Republic of the Marshall Islands or involving entities organized or domiciled, or persons maintaining accounts, in the Marshall Islands. The need for such enhanced scrutiny is discussed in the remainder of this Advisory.

The Marshall Islands is a group of atolls and reefs in the North Pacific Ocean with a population of approximately 65,000.

The Marshall Islands has been developing an offshore financial sector, which includes approximately 3,000 "non-resident companies". The Trust Company of the Marshall Islands and its parent company, located in the eastern United States, manage the offshore sector, administer the corporate law of the Marshall Islands under contract, and act as registered agent for Marshall Islands non-resident companies.

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

- Money laundering is not a criminal offense in the Marshall Islands.
- The Marshall Islands does not require financial institutions to identify their customers or maintain customer identification records or transaction records.
- Financial institutions are not required to report suspicious transactions.
- The Marshall Islands maintains strong bank secrecy laws that can only be lifted by an order of a Marshall Islands court and only to assist in an inquiry that does not conflict with the laws of the Marshall Islands.

- Offshore entities in the Marshall Islands are not required to disclose the names of officers, directors and shareholders or beneficial owners.

- Marshall Islands offshore entities are effectively unsupervised.

These deficiencies, among others, have caused the Marshall 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.

The Marshall Islands has indicated an awareness of the impact of the deficiencies in its counter-money laundering systems noted above. It is currently drafting counter-money laundering legislation that would, among other things, criminalize money laundering and create both a counter-money laundering authority and a financial intelligence unit. In addition, the Marshall Islands has cooperated with judicial inquiries into non-resident companies in the past and intends to continue this cooperation.

Nonetheless, the legal, supervisory, and regulatory systems of the Marshall Islands at present create significant opportunities and tools for the laundering and protection of the proceeds of crime, and allow criminals who make use of those systems to increase significantly their chances to evade effective investigation or punishment. The Marshall Islands' commitment to bank secrecy and the absence of any supervisory or enforcement mechanisms aimed at preventing and detecting money laundering in the Marshall Islands increases the possibility that transactions involving Marshall Islands offshore entities and accounts will be used for illegal purposes.

Thus, banks and other financial institutions operating in the United States should give enhanced scrutiny to any transaction originating in or routed to or through the Marshall Islands, or involving entities organized or domiciled, or persons maintaining accounts, in the Marshall Islands. 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.

It should be emphasized that the issuance of this Advisory and the need for enhanced scrutiny does not mean that U.S. financial institutions should curtail legitimate business with the Marshall 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 Marshall Islands officials as they work to remedy the deficiencies in the Marshall Islands' counter-money laundering systems that are the subject of this Advisory.

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Director

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