

CLIENT ALERT

Mexican Banks Targeted by FinCEN

June 26, 2025

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Yesterday, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") identified three Mexican banks as being of "primary money laundering concern" and issued orders imposing a ban on U.S. regulated financial institutions engaging in transmittals of funds involving these banks.¹ The targeted banks are:

1. **CIBanco S.A., Institucion de Banca Multiple**, a commercial bank headquartered in Mexico City with over 200 branches in Mexico, that provides U.S. dollar correspondent banking services through at least two U.S. financial institutions.
2. **Intercam Banco S.A., Institución de Banca Multiple**, a commercial bank headquartered in Mexico City with over 70 branches in Mexico, that provides U.S. dollar correspondent banking services through at least two U.S. financial institutions.
3. **Vector Casa de Bolsa, S.A. de C.V.**, a brokerage firm headquartered in San Pedro Garza Garcia, Mexico, that provides U.S. dollar correspondent banking services through at least one U.S. financial institution.

¹ <https://www.fincen.gov/news/news-releases/treasury-issues-unprecedented-orders-under-powerful-new-authority-counter>.

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In making this finding, FinCEN determined that these banks “facilitate[d] illicit opioid trafficking by Mexico-based drug trafficking organizations”² through the provision of financial services and, as a result, imposed the ban on transmittals of funds involving these entities to go into effect 21 days from the publication of the corresponding orders in the Federal Register.

Background on Section 2313a

The orders against the three Mexican banks were made pursuant to Section 2313a of the FEND Off Fentanyl Act, enacted in April 24, 2024. Section 2313a grants the Secretary of the Treasury the authority (delegated to FinCEN) to require domestic financial institutions and domestic financial agencies to take certain “special measures” to defend the United States financial system from money laundering, upon a finding of money laundering concern against financial institutions operating outside the United States (among others) in connection with illicit opioid trafficking.³

This is the first time that FinCEN has made any findings under Section 2313a, which specifically focuses on money laundering in connection with illicit opioid trafficking (as opposed to money laundering more generally). This authority is very similar, however, to FinCEN’s authority to impose special measures under Section 311 of the USA PATRIOT Act, which FinCEN has exercised periodically over the last few decades. Both authorities authorize the Treasury to impose special measures against financial institutions, classes or transactions, or types of accounts found to be of primary money laundering concern upon certain findings related to money laundering concerns. Under Section 2313a, FinCEN may impose one or more of six special measures, five of which are the same special measures provided for in Section 311.⁴ The sixth special measure authorized by Section 2313a—which authorized the prohibition of certain transmittals of funds—is the one FinCEN chose to exercise against the three Mexican banks.

Consequences of Section 2313a Orders

As noted above, covered U.S. financial institutions regulated under the Bank Secrecy Act (“BSA”) and implementing regulations administered by FinCEN⁵ are prohibited from engaging in any transmittal of funds—which means the sending and receiving of funds, including convertible virtual currency—to or from the targeted banks. Importantly, no restrictions apply to transactions that occur prior to the effective date, but U.S. financial institutions will likely start the process of exiting relationships with these three banks immediately and may de-risk beyond the scope of the specific prohibitions imposed by FinCEN. Additionally, these orders do not require U.S. financial institutions to block

² <https://www.fincen.gov/sites/default/files/shared/Section-2313a-order-CIBanco-508.pdf>; <https://www.fincen.gov/sites/default/files/shared/Section-2313a-order-InterCam-Banco-508.pdf>; and <https://www.fincen.gov/sites/default/files/shared/2313a-Vector-508C.pdf>.

³ See 21 U.S.C. 2313a.

⁴ See 21 U.S.C. 2313a(a)(1). 21 U.S.C. 2313a(a)(1) explicitly references “the special measures provided for in section 9714(a)(1) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 31 U.S.C. 5318A note)” (section 9714). Section 9714, in turn, references the five special measures set out in 31 U.S.C. 5318A(b)(1)–(5).

⁵ See 31 CFR 1010.100(t).

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or “freeze” any assets of the three banks, nor do they impose any restrictions on U.S. persons more generally (i.e., those who are not financial institutions regulated by FinCEN).

Covered financial institutions should prepare to: (1) cease any and all transmittals of funds, from the targeted banks, as defined in the orders, which may require screening and other controls to identify the extent to which these banks may be involved in a transmittal of funds, and (2) consider the finding of primary money laundering concern regarding these banks in connection with their BSA compliance programs more generally.

Now more than ever, financial institutions and multinational companies need to ensure they have a compliance program that recognizes and adapts to the latest changes in law and regulation. Willkie is available to advise on the full range of issues related to compliance with and enforcement under the BSA and implementing regulations administered by FinCEN, as well as other national security-related issues.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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