

Fund Finance Friday



FinCEN Restrictions on Certain Mexican Banks

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New and significant prohibitions against financial transactions between U.S. financial institutions and three Mexican financial institutions are set to go into effect in a little over a month on September 4, 2025. In late June of this year, the Financial Crimes Enforcement Network (“**FinCEN**”) at the U.S. Department of the Treasury designated (1) CIBanco S.A., Institución de Banca Múltiple (“**CIBanco**”), (2) InterCam Banco S.A., Institución de Banca Múltiple (“**InterCam**”) and (3) Vector Casa de Bolsa, S.A. de C.V. (“**Vector**”, and together with CIBanco and InterCam, “**Designated FIs**”) as “primary money laundering concerns.” As a result, beginning September 4, 2025, U.S. financial institutions will be prohibited from transmitting any funds to or from any Designated FIs.

A few weeks ago we published a high-level overview of the new restrictions which can be found [here](#). This week, we take a closer look at the implications for the subscription credit market specifically.

In the fund finance space, lenders, administrative agents, borrowers and investors are evaluating the impact of FinCEN’s orders. There are a couple of significant issues that are created by the orders in terms of fund operations, including:

- If a fund issues a capital call to an investor that is a Designated FI (or an investor for whom a Designated FI is a trustee), the required capital contribution cannot be wired to or deposited in any U.S.-based bank account. Not surprisingly, the vast majority of collateral accounts in subscription credit facilities are held at a U.S. financial institution. Thus this becomes an issue whether the general partner is issuing the capital call in the normal course or a lender is exercising remedies and issuing a capital call to repay indebtedness under a credit facility.
- Further, cash distributions may not be sent from a U.S. bank to any of the Designated FIs. By extension, this also means that distributions paid from the proceeds of borrowings (if such purpose is permitted) would be illegal.

Given the complications caused by the new orders, lenders, funds and their respective counsel should consider taking several steps, including:

- Reviewing banking relationships to determine whether capital calls, distributions, lending, or investment activity involves the transmittal of funds to any of the Designated FIs.
- Evaluating subscription documents to identify investors that have touch points with the Designated FIs. This includes identifying investors that are trusts for which the trustee is a Designated FI.
- Assessing whether and how credit agreements treat the FinCEN orders and the resulting implications.
 - Many credit agreements capture the FinCEN orders and Designated FIs within the definitions of “Sanctions” and “Sanctioned Target.” However, some agreements limit U.S. sanctions-related representations, warranties, and covenants to sanctions implemented by OFAC.

- Depending on the language in each credit agreement (and the parties' interpretation of that language), investors with ties to a Designated FI may face exclusion. Exclusion of one or more investors also requires a reevaluation of the borrowing base to ensure the outstanding borrowings do not exceed capacity.
- In addition, the facility may be subject to a draw stop if there are covenants violated or representations and warranties that can no longer be made.
- In some credit agreements, OFAC's orders may trigger notice obligations, which, overlooked, could cause an event of default.
- Assessing fund organizational documents for available remedies.
 - Many partnership agreements include provisions that permit or require a forced withdrawal of any investor whose ongoing participation in the fund would violate applicable laws or regulations.
 - Fund managers also may consider purchasing the impacted interests or exploring a transfer of such interests to another investor who is not connected to a Designated FI. However, payments involving a Designated FI and a U.S. financial institution will be prohibited beginning September 4, 2025.
 - The pro rata call requirements should be reviewed to ensure the fund may continue normal operations in a situation where one or more investors are unable to fund capital contributions due to the new restrictions.

In light of the above, many fund finance counterparties are considering whether targeted consents or waivers are needed to maintain and continue operating credit facilities while complying with FinCEN's orders.

Ultimately, the documentation for credit facilities and the applicable organizational documents are unique to each facility and each fund. The unique facts of each should be carefully considered to determine appropriate next steps.

The current effective date of the FinCEN orders of September 4, 2025 is fast approaching. While it remains possible that the restrictions will be delayed, we do not think it is prudent to operate on the hope of further delay. It is also worth noting that the Mexican government has initiated efforts to spin off the trust businesses of two of the Designated FI's in an effort to maintain the "operational continuity of the trusts they currently manage." While such a development would be helpful in alleviating some of the issues, the timing remains uncertain; as a result, this potential resolution also cannot be relied upon. Instead, we recommend that U.S. subscription credit lenders and administrative agents work together with borrowers and counsel now to proactively address any issues prior to the effectiveness of the new FinCEN orders.