

Campaign for Accountability Comment on Financial Crimes Enforcement Network (Fincen)
Notice of Proposed Rulemaking

The Department of Treasury Financial Crimes Enforcement Network’s unprecedented proposal to use its Section 311 authority to restrict cryptocurrency “mixing”¹ is worthwhile but may soon be obsolete unless the scope of the regulation is broadened to include newer methods criminal groups have adopted using virtual currencies. As recently documented by specialists in cryptocurrency forensics, suspected terrorists and other criminal actors are now using a new technique called “chain hopping” to obscure the sources and destinations of cryptocurrency transactions.

Section 311 of the USA PATRIOT Act allows the Treasury Department to identify a specific financial institution, a jurisdiction, a type of account, or a class of transactions as a “primary money laundering concern.”² Once so designated, the Treasury Department has a menu of options set out in statute for how to address the “primary money laundering concern,” ranging from recordkeeping and reporting requirements, to a prohibition on the maintenance of correspondent accounts.³ Treasury’s 311 authority has been used fewer than 30 times in the two decades since it was adopted,⁴ and in all of these cases has been used to target jurisdictions or specific financial institutions.⁵

Last week the Treasury Department used its 311 authority to target a “class of transactions” for the first time, publishing a proposed rule that would impose recordkeeping and reporting requirements on cryptocurrency exchanges that engage in transactions with so-called “mixers”.⁶ In essence, however, this proposal is fighting the last battle as the Department of Justice already prosecutes such conduct. In August 2023, the Department of Justice indicted the founders of Tornado Cash for sanctions violations and money-laundering in connection with over \$1 billion in transactions in which prosecutors allege funds were deliberately pooled and commingled to hide criminal activity.⁷

¹ Department of the Treasury, Financial Crimes Enforcement Network Press Release, FinCEN Proposes New Regulation to Enhance Transparency in Convertible Virtual Currency Mixing and Combat Terrorist Financing, October 19, 2023, available at <https://www.fincen.gov/news/news-releases/fincen-proposes-new-regulation-enhance-transparency-convertible-virtual-currency>.

² Department of the Treasury, Fact Sheet: Overview of Section 311 of the USA PATRIOT Act, February 10, 2011, available at <https://home.treasury.gov/news/press-releases/tg1056>.

³ *Id.*

⁴ Financial Crimes Enforcement Network, Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concerns, available at <https://www.fincen.gov/resources/statutes-and-regulations/311-and-9714-special-measures>.

⁵ *Id.*

⁶ Ian Talley and Mengqi Sun, U.S. Targets Crypto Mixers Over Money Laundering Risks, *Wall Street Journal*, October 19, 2023, available at <https://www.wsj.com/articles/u-s-targets-crypto-mixers-over-money-laundering-risks-e431def>.

⁷ U.S. Attorney’s Office for the Southern District of New York, Press Release: Tornado Cash Founders Charged With Money Laundering and Sanctions Violations, August 23, 2023, available at <https://www.justice.gov/usao-sdny/pr/tornado-cash-founders-charged-money-laundering-and-sanctions-violations>.

According to a recent report by the forensics firm Elliptic, “existing preferred laundering methods – such as using the now-sanctioned crypto mixer Tornado Cash – have been rendered ineffective by enforcement actions.”⁸ Unfortunately, the ongoing crackdown has already spurred sanctions violators and other criminals to adopt a new method known as “cross-chain crime” or “chain-hopping.”

“Chain hopping” in the cryptocurrency world is a tactic used to obfuscate the origin and destination of digital assets (cryptocurrencies) by transferring them between different digital ledgers (blockchains) or cryptocurrency networks.⁹ Blockchains are transaction histories that reside on the open internet and are publicly accessible. Chain-hopping obscures the digital trail by shifting funds and currencies among multiple chains. This strategy is employed to make it more difficult for law enforcement to track illicit financial transactions.¹⁰

In its recent report, “The State of Cross-Chain Crime 2023,” Elliptic estimates that some \$7 billion has now been laundered through cross-chain crime.¹¹ “Enforcement actions – such as sanctions and seizures – are increasingly targeting traditional frontiers of crypto crime, including mixers and non-compliant exchanges,” the firm reports. “This is leading to a “crime displacement” effect where criminals are resorting to cross-chain crime as an alternative.”¹²

One system identified by Elliptic as “the medium where terrorist organizations obtain the necessary [digital currency]” is SunSwap.¹³ SunSwap is a platform for exchanging digital currencies controlled by TRON,¹⁴ an Asia-based cryptocurrency system controlled by a Chinese national named Sun Yuchen, aka Justin Sun, who is currently the subject of a civil fraud and market manipulation complaint by the SEC.¹⁵ Sun is reported to have direct ties to the Communist Party of China.¹⁶

⁸ Elliptic Blog, [\\$7 Billion in Crypto Laundered Through Cross-Chain Services](https://www.elliptic.co/blog/7-billion-in-crypto-laundered-through-cross-chain-services), October 5, 2023, available at <https://www.elliptic.co/blog/7-billion-in-crypto-laundered-through-cross-chain-services>.

⁹ Merkle Science, [Glossary: Your Guide to Blockchain Terminologies](https://www.merklescience.com/glossary#C-name-section), available at <https://www.merklescience.com/glossary#C-name-section>.

¹⁰ Elliptic Blog, Oct. 5, 2023.

¹¹ *Id.*

¹² Elliptic, [Report on the State of Cross-Chain Crime](https://www.elliptic.co/resources/state-of-cross-chain-crime-2023#:~:text=The%20State%20of%20Cross%2Dchain%20Crime%202023&text=As%20criminals%20and%20hackers%20shift,chain%20and%20cross%2Dasset%20methods), p. 6, (October 2023), available at <https://www.elliptic.co/resources/state-of-cross-chain-crime-2023#:~:text=The%20State%20of%20Cross%2Dchain%20Crime%202023&text=As%20criminals%20and%20hackers%20shift,chain%20and%20cross%2Dasset%20methods> (“Elliptic 2023 Report”).

¹³ *Id.* at 6.

¹⁴ *Id.* at 19.

¹⁵ U.S. Securities and Exchange Commission, Press Release, [SEC Charges Crypto Entrepreneur Justin Sun and His Companies for Fraud and Other Securities Law Violations](https://www.sec.gov/news/press-release/2023-59), March 22, 2023, available at <https://www.sec.gov/news/press-release/2023-59>.

¹⁶ Eliza Gkristi, [Justin Sun Joins Research Project at Communist Party School](https://www.coindesk.com/markets/2021/07/27/justin-sun-joins-research-project-at-communist-party-school/?outputType=amp), *CoinDesk*, July 27, 2021, available at <https://www.coindesk.com/markets/2021/07/27/justin-sun-joins-research-project-at-communist-party-school/?outputType=amp>.

Two of the most widely used dollar-denominated cryptocurrencies, Tether's USDT and Circle's USDC, are traded on SunSwap.¹⁷ In April of this year, Circle, a US based issuer of dollar-denominated cryptocurrency that has no primary prudential regulator, announced the launch of a new "cross-chain protocol" to facilitate chain hopping between blockchains.¹⁸ Given that Circle's USDC "stablecoin" was one of the digital currencies publicly identified by the Israeli government in July 2023 as linked to funding terrorism¹⁹ and there is currently \$400 million of USDC on the TRON blockchain,²⁰ these monies are at risk of being employed in "chain hopping" transactions between the 15 blockchains in which they currently operate with unclear Anti-Money Laundering (AML) standards.

The Treasury Department should consider the use of 311 authority with respect to protocols that enable unregulated "chain hopping" on blockchains controlled by Chinese nationals that work directly with the CCP, such as TRON, and any stablecoins listed on those blockchains as a "primary money laundering concern".

¹⁷ Circle Blog, Where to Get Tron USDC: A Guide for USDC TRC20 Via Exchanges, April 7, 2023, available at <https://www.circle.com/blog/where-to-get-tron-usdc>; SunSwap, "SunSwap 2.0 Interface Documentation," V 1.0.4 at 3, available at https://www.sunswap.com/docs/sunswapV2-interfaces_en.pdf; CoinMarket Cap, "SunSwap V2", available at <https://coinmarketcap.com/exchanges/justswap/> (last visited November 7, 2023).

¹⁸ Circle Website, Cross-Chain Transfer Protocol: United the Ecosystem, <https://www.circle.com/en/cross-chain-transfer-protocol> (last visited November 8, 2023).

¹⁹ Arda Akartuna, Israel Orders Seizure of Crypto Wallets Worth \$94 Million Linked to Palestinian Islamic Jihad, *Elliptic Blog*, July 6, 2023, available at <https://www.elliptic.co/blog/analysis/israel-orders-seizure-of-crypto-wallets-worth-94-million-linked-to-palestinian-islamic-jihad>; Israel Ministry of Justice, Money Laundering and Terror Financing Prohibition Authority, Press Release, Terrorism Financing Public Alert: FIU-Israel Calls All Global Regulated Entities for Increased Vigilance Towards Terrorism Financing Campaigns in Response to the Ongoing War and State of Emergency, July 11, 2023, Update August 11, 2023, available at https://www.gov.il/en/departments/news/new_07_11_23.

²⁰ Circle Website, Experience the Power of TRON USDC, available at <https://www.circle.com/en/usdc-multichain/tron> (last visited November 8, 2023).