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Top 12 Developments in Anti-Money Laundering Enforcement in 2023

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An analysis of important trends and developments in AML regulation and enforcement, including key priorities emphasized by enforcers, notable enforcement actions and prosecutions, significant judicial opinions, and an important legislative development. U.S. enforcers increasingly rely on the anti-money laundering ("AML") statutes to police a wide variety of conduct. Broadly speaking, there are two types of AML statutes: (1) statutes that prohibit certain conduct (for example, knowingly engaging in a financial transaction with the intent to conceal unlawful activity), or (2) statutes that impose affirmative obligations on certain types of businesses to engage in identification and reporting of suspicious financial activity (for example, the Bank Secrecy Act ("BSA")). In this alert, we analyze the most important trends and developments in AML regulation and enforcement by recapping significant developments during the preceding year. In this inaugural edition, we recap 12 of the most important developments of 2023, including key priorities emphasized by enforcers, notable enforcement actions and prosecutions, significant judicial opinions, and an important legislative development. **Agency Priorities** We begin with a look at some of the U.S. government's most significant priorities in the AML space: national security and the Corporate Transparency Act.

1. **The Biden Administration Continues to Focus on National Security and AML**

In 2023, the Biden administration prioritized investigations and prosecutions in the national security arena, particularly those implicating AML and sanctions. Department of Justice ("DOJ") officials have repeatedly described sanctions as "the new FCPA"—relevant to an expanding number of industries, the focus of an increasingly multilateral enforcement regime, and subject to voluntary self-disclosure incentives.[1] Even businesses far removed from the defense sector such as tobacco, cement, and shipping faced enforcement actions for allegedly paying insufficient attention to the national security risks posed by certain actors, regions, and activities.[2] Further, money laundering-related cases now routinely intersect with international sanctions and export control violations.[3] The U.S. government has backed its enforcement priorities with substantial resourcing. DOJ's National Security Division designated its first Chief Counsel for Corporate Enforcement, Ian Richardson, and announced the hiring of 25 new prosecutors to investigate national security-related economic crimes.[4] Moreover, the Criminal Division's Bank Integrity Unit likewise added six prosecutors—a 40 percent increase—to target national security-related financial misconduct.[5] DOJ, along with the Departments of Treasury and Commerce, has embraced a "whole of government" approach to national security and illicit finance. One example is its growing use of inter-agency task forces. In 2023, DOJ's Task Force Kleptocapture hit its stride with asset seizures (using *inter alia* money-laundering seizure theories) totaling more than $500 million of criminal assets with ties to the Russian regime.[6] Building on the success of Kleptocapture, the Departments of Justice and Commerce also launched the Disruptive Technology Strike Force,[7] a multi-agency task force that works to prevent U.S. adversaries from illicitly acquiring sensitive U.S. technology. The Disruptive Technology Strike Force already has brought money laundering prosecutions against those who allegedly evaded U.S. trade restrictions.[8] DOJ and Treasury—along with U.S. allies—have likewise continued to convene the Russian Elites, Proxies, and Oligarchs (REPO) Task Force.[9] This task force works to investigate and counter Russian sanctions evasion, including cryptocurrency and money laundering, and has blocked or frozen more than $58 billion of

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sanctioned Russian assets.[10] U.S. enforcers have also released a number of alerts emphasizing the interplay between money laundering and national security issues. Treasury's Financial Crimes Enforcement Network ("FinCEN") is the U.S. government's leading anti-money laundering regulator. In 2023, FinCEN issued three AML alerts to help detect potentially suspicious activity relating to Hamas's financing and Russian export control violations.[11] FinCEN also issued supplemental AML alerts with Commerce's Bureau of Industry and Security ("BIS") that highlighted export evasion typologies.[12] In a similar vein, DOJ's National Security Division began issuing joint advisories with Commerce and Treasury that provide the private sector with information about enforcement actions against those who use money laundering to support violations of U.S. sanctions and export controls.[13]

2. **The Corporate Transparency Act's Reporting Requirements to Assist AML Investigations**

In January of 2021, the Anti-Money Laundering Act of 2020 became law.[14] One of the provisions in the bill was the Corporate Transparency Act ("CTA"), which established a new regime in the United States requiring many corporate entities to file a form with FinCEN disclosing their beneficial owners.[15] To implement the CTA, FinCEN has currently issued two rules (with a third in progress). The first rule, the "Reporting Rule," sets forth which entities need to disclose their beneficial ownership information ("BOI") to FinCEN and by when. Entities subject to these reporting requirements include both "domestic reporting companies" and "foreign reporting companies." Domestic reporting companies are defined as corporations, limited liability companies, or any other entity created by the filing of a document with a secretary of state or tribal nation.[16] Foreign reporting companies are corporations, LLCs, or other entities formed under the laws of a foreign country and registered to do business within any U.S. state.[17] Domestic and foreign reporting companies must file BOI data with FinCEN unless an exemption applies. The CTA affords 23 exemptions for various entities—including public companies, money services businesses, select banks and credit unions, and large operating companies, defined as having more than 20 full time employees, an office space, and $5 million in gross receipts or sales in the United States the prior tax year.[18] There is also an exemption for investment advisers and investment funds, as detailed further in a prior Gibson Dunn client alert.[19] Additionally, *subsidiaries* of certain *exempt entities* need not report BOI information in particular circumstances as well.[20] However, pursuant to recent guidance from FinCEN, that exception *only* applies to subsidiaries that are "fully, 100 percent owned or controlled by an exempt entity."[21] If no exemption applies, then select domestic and foreign entities must disclose relevant BOI information. In general, these BOI reports must identify two categories of individuals: (1) the beneficial owners of the entity (defined as those natural persons who own at least 25% of the entity or who exercise "substantial control" over it); and (2) the company applicants of the entity (meaning those directly involved in or responsible for the filing that creates the company).[22] Companies formed *before* January 1, 2024, however, need only submit the names of their beneficial owners *and not* the identities of company applicants.[23] FinCEN's Reporting Rule became operative as of January 1, 2024, with the regulation specifying varying deadlines for submission of BOI data.[24] The effects of the CTA will continue to unfold in the coming months and years, but it has created significant work for companies as they sort through which of their corporate entities have any reporting obligations. **Notable Corporate AML Resolutions** 2023 saw a number of notable AML resolutions. We discuss those which broke new ground below.

3. **MindGeek: A Novel Application of The Spending Statute, 18 U.S.C. § 1957**

In a prototypical case, U.S. prosecutors must prove three things to establish a violation of the general money laundering statute (18 U.S.C. § 1956): (1) the commission of an underlying felony (a "Specified Unlawful Activity" or "SUA"); (2) knowingly engaging in a financial transaction; and (3) specific intent to conceal or further the SUA through the financial transaction.[25] U.S. enforcers, however, have a second powerful tool at their disposal—the money laundering "spending statute" (18 U.S.C. § 1957). In a case involving

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the spending statute, prosecutors are relieved of the burden to prove specific intent to conceal or commit a further crime. Rather, the spending statute requires only (1) the commission of an SUA; and (2) knowingly engaging in a financial transaction involving $10,000 or more of proceeds from the SUA.[26] On December 21, 2023, DOJ entered into a Deferred Prosecution Agreement with Aylo Holdings S.A.R.L. and its subsidiaries (collectively known as "MindGeek") involving a novel and aggressive theory using the money laundering spending statute. MindGeek is the parent company of Pornhub and similar websites.[27] DOJ charged MindGeek with violating the spending statute for knowingly engaging in monetary transactions related to sex trafficking activity. DOJ's theory centered on MindGeek's relationship with two of its content partners, GirlsDoPorn.com ("GDP") and GirlsDoToys.com ("GDT") and the operators of those sites (referred to in the DPA as "the GDP Operators").[28] According to the resolution documents, both GDP and GDT had specialized channels on MindGeek's platforms, including Pornhub. Between mid-2017 and mid-2019, MindGeek allegedly received over $100,000 in payments from the GDP Operators.[29] DOJ also alleged that MindGeek "received payments from advertisers attributable to GDP and GDT content" totaling approximately $763,000.[30] In order to establish that MindGeek had knowledge that the proceeds were from illicit origins, DOJ relied on a mosaic of sources to purportedly establish knowledge, including civil and criminal legal filings, news stories about these cases, takedown requests, and a business records subpoena.[31] Specifically, DOJ alleged that MindGeek's knowledge derived from:

- MindGeek's receipt of a subpoena for production of business records from plaintiffs' counsel in a lawsuit filed against GDP in 2016. The complaint in that lawsuit alleged that the GDP Operators had tricked the plaintiffs into appearing in pornographic videos posted to GDP by promising them that their videos would not be posted online;[32]
- MindGeek's receipt of content removal requests from plaintiffs in the lawsuit,[33] plaintiffs' counsel, and other individuals;[34]
- Publicly available criminal filings announcing the sex trafficking charges against GDP operators;[35] and
- MindGeek executives' receipt and internal discussion of news articles about the stages of the civil and criminal proceedings against GDP operators.[36]

On the basis of these allegations, MindGeek entered into a DPA asserting a violation of 18 U.S.C. § 1957.[37] MindGeek agreed to submit to a monitorship for three years[38] and pay a total fine of $974,692.06.[39] Notably, MindGeek agreed to compensate victims in the "full amount of [their] losses" caused by publication of their images on MindGeek's websites, not including losses for pain and suffering, including a *minimum* of $3,000 per victim who can demonstrate harm.[40] Also, the DPA contained a stipulation that MindGeek "did not commit, conspire to commit, or aid and abet the commission of sex trafficking."[41] This is a novel and aggressive use of § 1957 because DOJ relied on sources such as the public allegations of wrongdoing and a business records subpoena to establish knowledge. Although the resolution may be explained in part by the nature of the industry involved, the resolution nevertheless suggests that public allegations of wrongdoing, the receipt of a business records subpoena, take down requests, and receipt and discussion of news articles about allegations can serve as ways that DOJ may try to establish knowledge under § 1957 against companies.

4. **U.S. Enforcers Extend Reach of BSA and Sanctions to Non-U.S. Crypto Company**

Binance is the world's largest crypto currency exchange by trading volume and it is an overseas, non-U.S. company. On November 21, 2023, Binance reached a settlement to resolve a multi-year investigation with DOJ, the Commodity Futures Trading Commission ("CFTC"), the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), and FinCEN.[42] Gibson Dunn represented Binance in this resolution. Although Binance

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is a non-U.S. company, the enforcers alleged that it historically had U.S. users on its platform. As a result, the enforcers alleged that Binance needed to register as a foreign-located money services business and maintain an adequate AML program under U.S. law because it did business "wholly or in substantial part" within the United States.[43] Prior to the Binance resolution, sanctions resolutions with cryptocurrency exchanges generally involved U.S. exchanges, which are prohibited from providing financial services to persons in jurisdictions subject to sanctions regulated by OFAC.[44] As a non-U.S. person, Binance could do business in sanctioned jurisdictions.[45] However, because Binance's platform historically had both U.S. users and users from sanctioned jurisdictions, enforcers alleged that Binance used a "matching engine [. . .] that matched customer bids and offers to execute cryptocurrency trades."[46] The failure to have sufficient controls on the matching engine, which operated randomly in matching users for trades, meant that it would "necessarily cause" transactions between U.S. users and users targeted by U.S. sanctions.[47] Enforcers took the position that these transactions violated U.S. civil and criminal sanctions law because the International Emergency Economic Powers Act ("IEEPA") prohibits, among other things, "causing" a violation of sanctions by another party.[48] In other words, by randomly pairing trades between a historical U.S. user and person from a sanctioned jurisdiction, Binance was causing the U.S. person to violate their sanctions obligations. This resolution illustrates the breadth of U.S. jurisdiction to police sanctions offenses, even against non-U.S. companies. Criminally, Binance pled guilty to (1) conspiracy to conduct an unlicensed money transmitting business, in violation of 18 U.S.C. § 1960 and 31 U.S.C. § 5330 for failure to register,[49] (2) failure to maintain an effective anti-money laundering program, in violation of 31 U.S.C. §§ 5318(h), 5322,[50] and (3) violating IEEPA, 50 U.S.C. § 1701 *et seq*.[51] Binance also entered into parallel civil settlements with FinCEN (failure to register, AML program) and OFAC (sanctions).[52] Further, Binance also entered into a settlement with the CFTC for violating various sections of the Commodities Exchange Act and related provisions.[53] As part of the resolution, Binance agreed to pay $4.3 billion to the U.S. government over an approximately 18-month period.[54] Binance also agreed to continue with certain compliance enhancements and agreed to a three-year DOJ monitorship.[55]

5. **FinCEN Designates Bitzlato as a "Primary Money-Laundering Concern" Pursuant to New Powers Designed to Target Russian Money Laundering**

On January 18, 2023, FinCEN issued an order identifying Bitzlato Limited, a Hong Kong based cryptocurrency exchange, as a "primary money laundering concern."[56] It issued this designation because Bitzlato was allegedly "repeatedly facilitating transactions for Russian-affiliated ransomware groups, including Conti, a Ransomware-as-a-Service group that has links to the Russian government and to Russian-connected darknet markets."[57] The Bitzlato order is the first order issued pursuant to FinCEN's powers under the Combatting Russian Money Laundering Act.[58] In 2021, Congress passed the Combatting Russian Money Laundering Act ("Section 9714(a)"), which expanded the actions that FinCEN can take whenever it designates an entity as a "primary money laundering concern."[59] Previously, whenever the Treasury Secretary had "reasonable grounds" for concluding that an entity is of "primary money laundering concern,"[60] then the Treasury Secretary could impose special measures that would limit the entity's access to the global financial system.[61] Section 9714(a) provides additional powers to FinCEN to "prohibit, or impose conditions upon, certain transmittals of funds (to be defined by the Secretary) by any domestic financial institution or domestic financial agency." Under the terms of the Bitzlato order, FinCEN prohibits financial institutions (as defined in 31 C.F.R. § 1010.100(t)) from engaging in the transmittal of funds from or to Bitzlato. In remarks addressing the order, Deputy Secretary Adeyemo remarked that designating Bitzlato as a primary money laundering concern was a "unique step" that has only been taken a handful of times.[62] DOJ also brought a parallel criminal proceeding against Bitzlato co-founder and Russian national Anatoly Legkodymov, who pleaded guilty to operating an unlicensed money transmitter and agreed to dissolve Bitzlato.[63] Looking ahead, FinCEN will likely continue to be aggressive in using its authorities in the digital assets space. On October 19, 2023, for instance, FinCEN issued a Notice of Proposed Rulemaking which proposed to designate cryptocurrency mixers as a primary money laundering concern

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under Section 311 of the Patriot Act.[64] This is FinCEN's first proposed Section 311 action involving a class of transactions.

6. **FinCEN Imposes Civil Penalty on Shinhan, Reflecting Increased Scrutiny of Customer Due Diligence and Transaction Monitoring Systems**

On September 29, 2023, FinCEN imposed a $15 million civil penalty on Shinhan Bank America for willful violation of the BSA.[65] The Consent Order reflects FinCEN's growing scrutiny of—and increasingly granular expectations for—customer due diligence and transaction monitoring systems. Notably, FinCEN criticized Shinhan's overly "rigid" methodology for calculating customer risk rating scores and emphasized that banks should maintain formal customer risk rating procedures.[66] Risk ratings should not be solely based on customer type (*e.g.*, individual vs. corporate entity) or the type of product (*e.g.*, home mortgage vs. letter of credit). Rather, they should be individually assessed—both at onboarding and throughout the customer relationship—and be based on the customer's activity and any new information learned about the customer.[67] The Shinhan Order also makes clear that customers' risk ratings should inform financial institutions' monitoring of transactions. The Order notes that Shinhan's transaction monitoring system did not cluster accounts belonging to the same customer relationship or aggregate transaction activity across different transaction types, undermining its ability to identify suspicious activity. It also includes examples of scenarios that banks should consider incorporating into their transaction monitoring systems, including:

- wire transfers sent to several beneficiaries from a single originator, or sent from several originators to a single beneficiary;
- transactions passing through a large number of jurisdictions; and
- transactions conducted using Remote Deposit Capture.

Moreover, the Order states that these systems should be regularly and comprehensively tested to ensure all scenarios alert as intended, all relevant data properly feeds into the system, scenarios are sufficient and tailored for each product, and scenarios are appropriately applied to ingested data.[68]

7. **FinCEN Issues First Action Against Trust Company**

On April 26, 2023, FinCEN assessed a $1.5 million civil penalty against South Dakota-chartered Kingdom Trust Company for willful violation of the BSA.[69] This was FinCEN's first action against a trust company. FinCEN assessed a penalty against Kingdom Trust after the company opened accounts and provided services for Latin America-based trading companies and financial institutions with virtually no controls to identify or assess suspicious transactions.[70] A consultant referred clients based in Uruguay, Argentina, Panama, and other locations to the Trust.[71] Kingdom Trust then held cash and securities for these customers and initiated a high volume of suspicious transactions worth approximately $4 billion that went unchecked and unreported.[72] Despite providing services to customers who were the subject of prior media reports related to money laundering and securities fraud, the Trust's AML compliance program consisted of a single individual responsible for manually reviewing daily transactions.[73] FinCEN's action against Kingdom Trust reflects the agency's growing focus on entities beyond traditional financial institutions, including those not historically subject to the BSA, such as real estate businesses and investment advisors.[74] FinCEN's action against Kingdom Trust reflects the agency's unwillingness to "tolerate trust companies with weak compliance programs that fail to identify and report suspicious activities, particularly with respect to high-risk customers whose businesses pose an elevated risk of money laundering."[75]

8. **FinCEN Issues First Action Under Gap Rule Against Bancrédito for Failing to Report Suspicious Transactions**

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On September 15, 2023, FinCEN levied a $15 million civil monetary penalty against Bancrédito International Bank and Trust Corporation (Bancrédito).[76] Bancrédito (which held U.S. dollar-denominated accounts on behalf of numerous Central American and Caribbean financial institutions) allegedly failed to both report suspicious transactions ("SARs") involving movement of U.S. dollars and never established or maintained an AML program, as required by the recently enacted "Gap Rule" (31 C.F.R. § 1020.210).[77] The enforcement action against Bancrédito is notable in multiple respects. It is the first time that FinCEN took action against a Puerto Rican International Banking Entity ("IBE"). The U.S. Department of the Treasury's 2022 National Money Laundering Risk Assessment alleged that IBEs pose an elevated risk of money laundering.[78] It is also the first enforcement action under FinCEN's recently enacted "Gap Rule." Previously, banks lacking federal functional regulators (such as private banks, non-federally insured credit unions, and certain trust companies) were exempt from select AML program obligations, namely (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) facilitating an ongoing employee training program; and (4) requiring an independent audit function to test programs.[79] However, the "Gap Rule," effective beginning in 2021, functionally filled that "gap" by requiring the newly covered entities to meet those specific AML requirements (along with also complying with pre-existing BSA obligations such as reporting SARs).[80] **Individual Prosecutions** 2023 also featured a number of notable prosecutions of individuals under U.S. money laundering statutes, including in connection with sanctions evasion and in the digital assets industry.

9. **Money Laundering and Sanctions Evasion**

In 2023, federal prosecutors on DOJ's Task Force KleptoCapture brought several prosecutions against the associates of sanctioned oligarch Viktor Vekselberg. OFAC designated Vekselberg as a Specially Designated National ("SDN") in March 2018.[81] In 2023, DOJ brought a number of prosecutions which reflect the growing intersection between money laundering and sanctions evasion.[82] On January, 20, 2023, DOJ announced the indictment of Vladislav Osipov and Richard Masters for facilitating a sanctions evasion and money laundering scheme related to a 255-foot luxury yacht owned by Vekselberg.[83] Osipov and Masters used U.S. companies to manage the operation of the vessel and to obfuscate Vekselberg's involvement, including using payments through third parties and non-U.S. currencies to do business with U.S. companies.[84] DOJ also targeted Vekselberg's property portfolio in the United States and those who helped him manage it. On February 7, 2023, federal prosecutors announced the indictment of Vladimir Voronchenko, an associate of Vekselberg's, for making more than $4 million in payments to maintain four U.S. properties owned by Vekselberg and for his attempt to sell two of those properties.[85] A few weeks later, on February 24, prosecutors brought a civil forfeiture complaint against six of Vekselberg's properties in New York City, Southampton, New York, and Fisher Island, Florida, alleging that they were the proceeds of sanctions violations and involved in international money laundering.[86] Vekselberg's U.S. associates also faced prosecution for their role in money laundering and evading U.S. sanctions. On April 25, 2023, New York attorney Robert Wise pled guilty to conspiracy to commit international money laundering for unlawfully transferring Russian funds into the United States in violations of U.S. sanctions.[87] Voronchenko had retained Wise to assist him in managing Vekselberg's U.S. properties.[88] Immediately after Vekselberg's designation as an SDN, Wise's IOLTA Account began to receive wires from new sources, a Russian bank account, and a bank account in the Bahamas held in the name of a shell company controlled by Voronchenko.[89] Despite being aware of Vekselberg's designation as an SDN, Wise received 25 wire transfers totaling nearly $3.8 million in his IOLTA account between June 2018 and March 2022 and used these funds to maintain and service Vekselberg's properties in defiance of U.S. sanctions.[90] Collectively, these actions demonstrate the increasing interplay between violations of U.S. sanctions and money laundering laws.

10. **Money Laundering Prosecutions of Cryptocurrency Executives for Fraud**

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2023 also included a number of money laundering prosecutions against executives in the digital assets industry. The most significant of 2023's individual prosecutions sounded in fraud and subsequent laundering of the fraud proceeds. On November 2, 2023, a New York jury convicted FTX founder Sam Bankman-Fried of stealing billions of dollars' worth of FTX customer deposits, capping one of the highest-profile criminal fraud trials in recent history.[91] One of the charges against Bankman-Fried was violating 18 U.S.C. § 1956(a)(1)(B)(i), on the basis that he knowingly engaged in a transaction involving proceeds of illegal activity in order hide the illegal origins of the funds; and Section 1957(a), on the basis that he engaged in a transaction involving criminally derived property exceeding $10,000.[92] These charges related to the transfer of customer funds from Bankman-Fried's centralized exchange, FTX, to FTX's sister organization, the hedge fund Alameda Research.[93] Bankman-Fried was convicted on all seven counts, including the money laundering charges.[94] Bankman-Fried's sentencing hearing is scheduled for March 2024.[95] Earlier in 2023, Nate Chastain, the former Head of Product at NFT Trading Platform OpenSea, was convicted by a jury of wire fraud and money laundering in what is considered the first insider-trading case involving digital assets. Chastain was accused of purchasing NFTs before they were featured on OpenSea's homepage, where they subsequently rose in price. Perhaps because the question of whether NFTs are subject to securities laws remains open,[96] DOJ prosecuted Chastain under wire fraud and money laundering statutes.[97] DOJ alleged money laundering because, by engaging in insider trading of NFTs, Chastain knowingly conducted a financial transaction involving the proceeds of an unlawful activity (*i.e.*, wire fraud), in violation of 18 U.S.C. § 1956(a)(1)(B)(i).[98] Another notable fraud-based cryptocurrency executive prosecution of 2023 involved the former SafeMoon executives, who were accused of making a series of fraudulent misrepresentations about the cryptocurrency that they managed and marketed.[99] DOJ charged a violation of 18 U.S.C. § 1956(a)(1)(B)(i) on the theory that the executives knowingly engaged in and covered up transactions involving the proceeds of securities fraud and wire fraud.[100] **Judicial Opinions**

11. **The Implications of Narrowing the Honest Services Wire Fraud Statute**

Two judicial decisions in 2023 could affect how prosecutors pursue future money laundering prosecutions. These opinions involve the now highly-publicized FIFA corruption and Varsity Blues scandals—occasions where individuals allegedly made illicit payments to secure lucrative FIFA contracts and favorable college admission decisions, respectively. In both *United States v. Full Play Grp., S.A.*, 2023 WL 5672268 (E.D.N.Y. Sept. 1, 2023) (involving the FIFA corruption matter) and *United States United States v. Abdelaziz*, 68 F.4th 1 (1st Cir. 2023) (a decision relating to Varsity Blues), federal courts held that certain transactions failed to qualify as unlawful instances of honest services wire fraud—a predicate offense that prosecutors frequently rely on when charging money laundering.[101] In *Full Play*, several individuals and companies in the entertainment industry sought to earn media and other related contracts with various sports organizations (including soccer's FIFA).[102] In an effort to secure these contracts, the media representatives were alleged to have paid FIFA officials significant sums in side payments.[103] Though various individuals were charged with honest services wire fraud for their actions, the district court found that such payments (*i.e.,* those made to private employees of a *foreign* corporation and labeled as foreign commercial bribery) did not qualify as actionable instances of honest services fraud under 18 U.S.C. §§ 1343 and 1346.[104] In reaching that conclusion, the district court applied two Supreme Court opinions issued last term: *Percoco v. United States*, 598 U.S. 319 (2023) and *Ciminelli v. United States*, 598 U.S. 306 (2023). Citing specifically to the *Percoco* decision, the district court found that honest services fraud "must be defined with the clarity typical of criminal statutes and should not be held to reach an ill-defined category of circumstances simply because of a smattering" of earlier precedents.[105] Applying that standard, the district court vacated the convictions because no applicable precedents precisely addressed (and thus criminalized) comparable instances of foreign commercial bribery.[106] *Full Play* is currently the subject of an appeal in the Second Circuit.[107] Similarly, albeit before *Percoco* and *Ciminelli* were decided, the *Abdelaziz* court removed another type of transaction from the range of prosecutable offenses under the honest services fraud

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provision. In that case, a parent was convicted of making illicit side payments to college admissions personnel—intending that the payments would secure preferential admissions decisions for his child.[108] On appeal, the *Abdelaziz* court overturned the conviction—finding that such conduct did not amount to honest services wire fraud. In reaching that result, the court specified that the transaction at issue—one where the alleged briber (the convicted parent) actually compensated the alleged victim (the university)—did not fit the conventional understanding of "bribe" or "kickback" under 18 U.S.C. §§ 1343 and 1346.[109] Because no prior decision had specifically barred payments that so clearly benefitted an alleged victim, it could not be considered a criminal deprivation of honest services. As the courts continue to narrow the scope of the honest services wire fraud statute, prosecutors will be forced to craft different theories of honest services wire fraud and/or rely on different predicate offenses when identifying an SUA required for charging money laundering. **Legislation** 2023 also saw an important legislative change in the bribery space, which will also impact money laundering prosecutions.

12. **The Impact of FEPA for Money Laundering Prosecutions**

On December 22, 2023, federal lawmakers passed the Foreign Extortion Prevention Act ("FEPA"). FEPA criminalizes what is colloquially referred to as "demand side" bribery—instances in which foreign officials demand, solicit, seek, or receive bribes from a domestic person or U.S.-located company.[110] Before FEPA's passage, no particular provision under federal law penalized this particular scheme—with the Foreign Corrupt Practices Act ("FCPA") focusing instead on the supply side of offering or paying bribes to foreign persons.[111] FEPA arms prosecutors with a new tool to root out alleged instances of foreign bribery or extortion that is focused on foreign public officials. More than just an anti-corruption mechanism, FEPA will also equip prosecutors with an additional tool to pursue money laundering prosecutions as well. By its terms, any contemplated or actual violation of FEPA would qualify as an SUA under the money laundering statutes.[112] Passage of this law will allow prosecutors to rely on U.S. law (*i.e.*, FEPA) when charging foreign officials with money laundering, as opposed to having to allege that the conduct constituted bribery under the foreign laws of another country, which is also an SUA. **Conclusion** 2023 was a notable year in the AML enforcement space. We anticipate that 2024 will also be active, as the impacts of FinCEN's AML whistleblower program begin to be felt, and the additional prosecutors come online in the Criminal Division's Bank Integrity Unit and the National Security Division's Counterintelligence and Export Control Section. Moreover, there are yet-to-be issued rules expected both for regulation of the real estate industry and for registered investment advisors. _____ [1] *See, e.g.*, Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global ("It is for all of these reasons that the DAG [Deputy Attorney General] has warned that from a compliance standpoint 'sanctions are the new FCPA.'"). [2] *See* Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global ("Even business operations and lines far removed from the defense sector – like cigarettes, cement, and shipping – can pose dire national security risks if companies are not highly sensitive to high-risk actors, high-risk regions, and high-risk activities."). [3] Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Ethics and Compliance Initiative IMPACT Conference (May 3, 2023), https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-ethics-and ("From money laundering and cyber- and crypto-enabled crime to sanctions and export control evasion and even funneled payments to terrorist groups, corporate crime increasingly — now almost routinely — intersects with national security concerns."). [4] Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global. [5] Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime (Mar. 2,

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(2d Cir. 2009) ("To demonstrate a § 1957 violation, the government must prove, inter alia, that the money Wright used to lease the car exceeded $10,000 and was 'derived from specified unlawful activity.'"). [27] Deferred Prosecution Agreement at 1, *United States v. Aylo Holdings S.A.R.L.*, No. 1:23-cr-00463 (E.D.N.Y. Dec. 21, 2023), https://www.justice.gov/d9/2023-12/2023.12.21_dpa_final_court_exhibit_version_0.pdf (hereinafter "DPA"). [28] Attachment B to Deferred Prosecution Agreement, *United States v. Aylo Holdings S.A.R.L.*, No. 1:23-cr-00463 (E.D.N.Y. Dec. 21, 2023) (hereinafter "MindGeek Information"), https://www.justice.gov/d9/2023-12/2023.12.21_dpa_final_court_exhibit_version_0.pdf, ¶ 8. [29] *Id.* ¶ 10. [30] *Id.* [31] *Id.* [32] *Id.* ¶ 16. [33] *Id.* ¶ 17. [34] *Id.* ¶¶ 20, 27. [35] *Id.* ¶ 23. [36] *Id.* ¶¶ 18, 22, 29, 30. [37] *See* DPA at 1. [38] *Id.* at 2. [39] *Id.* at 2–3. [40] *Id.* at 9–10. [41] *Id.* at 5. 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Who Must Comply with OFAC Regulations?*, https://ofac.treasury.gov/faqs/11 ("U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply."). [46] Attachment A, "Statement of Facts," to the Plea Agreement in *United States v. Binance Holdings Ltd.*, No. 23-178RAJ (Nov. 21, 2023), https://www.justice.gov/opa/media/1326901/dl?inline (hereinafter "Binance SOF") at 7, ¶ 22. [47] *Id.* [48] 50 U.S.C. § 1705(a) ("It shall be unlawful for a person to violate, attempt to violate, conspire to violate or cause a violation of any license, order, regulation, or prohibition issued [pursuant to IEEPA]."). 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Dolmestch and Bob Van Voris, *First NFT Insider-Trading Trial Leads to Criminal Conviction*, Wall St. J. (May 3, 2023), https://www.bloomberg.com/news/articles/2023-05-03/first-nft-insider-trading-trial-leads-to-criminal-conviction. [98] *See* Jody Godoy, *Ex-OpenSea manager sentenced to 3 months in prison for NFT insider trading* (Aug. 22, 2023), https://www.reuters.com/legal/ex-opensea-manager-sentenced-3-months-prison-nft-insider-trading-2023-08-22/. [99] Press Release, U.S. Dep't of Just., Founders and Executives of Digital-Asset Company Charged in Multi-Million Dollar International Fraud Scheme (Nov. 1, 2023), https://www.justice.gov/usao-edny/pr/founders-and-executives-digital-asset-company-charged-multi-million-dollar. [100] *United States v. Karony*, No. CR-23-433 (E.D.N.Y Oct. 31, 2023), https://www.justice.gov/media/1334306/dl. [101] *See* 18 U.S.C. § 1956(c)(7). [102] *United States v. Full Play Grp., S.A.*, No. 15-CR-252S3PKC, 2023 WL 5672268, at *1-9 (E.D.N.Y. Sept. 1, 2023). [103] *Id.* [104] *Id.* at *23. [105] *Id.* at *20 (internal quotation omitted). [106] *Id.* at *23 n.26. [107] *U.S. v. Webb*, No. 23-7183 (2d. Cir. 2024). [108] *Abdelaziz*, 68 F.4th at 13. [109] *Id.* at 29. [110] National Defense Authorization Act for Fiscal Year 2024, S. 2226, 118th Cong. § 5101(2), codified at 18 U.S.C. § 201(f). [111] *See generally* 15 U.S.C. § 78dd-1. [112] Defining specified unlawful activities to include violations of 18 U.S.C. § 201—the subsection of the federal code wherein FEPA will be codified.

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