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Anti-Money Laundering and Sanctions Enforcement and Compliance in 2018 and Beyond

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MCLE Certificate Information

- Most participants should anticipate receiving their certificate of attendance in four weeks following the webcast.
- Virginia Bar Association members should anticipate receiving their certificate of attendance in six weeks following the webcast.
- All questions regarding MCLE Information should be directed to Jeanine McKeown (National Training Administrator) at 213–229-7140 or jmckeown@gibsondunn.com.

Agenda

1. **Introduction**
2. **Regulatory and Enforcement Trends**
   - Trends in BSA/AML Examinations and Enforcement
   - Trends in Sanctions Enforcement
3. **Key Developments**
   - Key Developments in AML Enforcement
   - Key Developments in Core Sanctions Programs
4. **What to Expect in 2018**
   - BSA/AML Developments
   - Sanctions Developments

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Introduction

U.S. Enforcement Agencies and Regulators

- The Department of Justice ("**DOJ**") can bring criminal, civil, and forfeiture actions.
- The Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") is the chief civil enforcement agency with respect to U.S. sanctions.
- The Financial Crimes Enforcement Network ("**FinCEN**"), a bureau of the U.S. Treasury Department, has responsibility for issuing and implementing regulations and for civil enforcement.
- The Securities and Exchange Commission ("**SEC**") has direct regulatory and oversight responsibilities for securities exchanges, securities brokers and dealers, investment advisers and investment companies, as well as self-regulatory organizations ("SROs"), including FINRA.

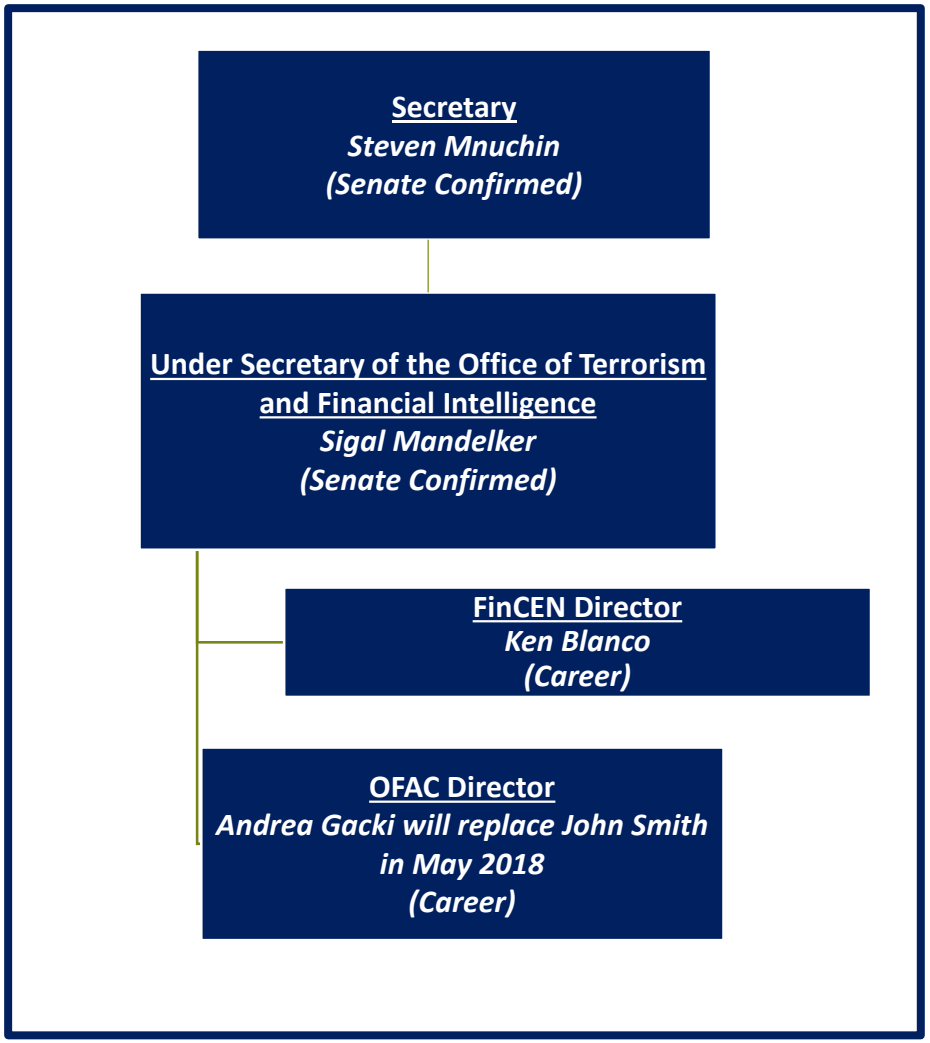
U.S. Enforcement Agencies and Regulators

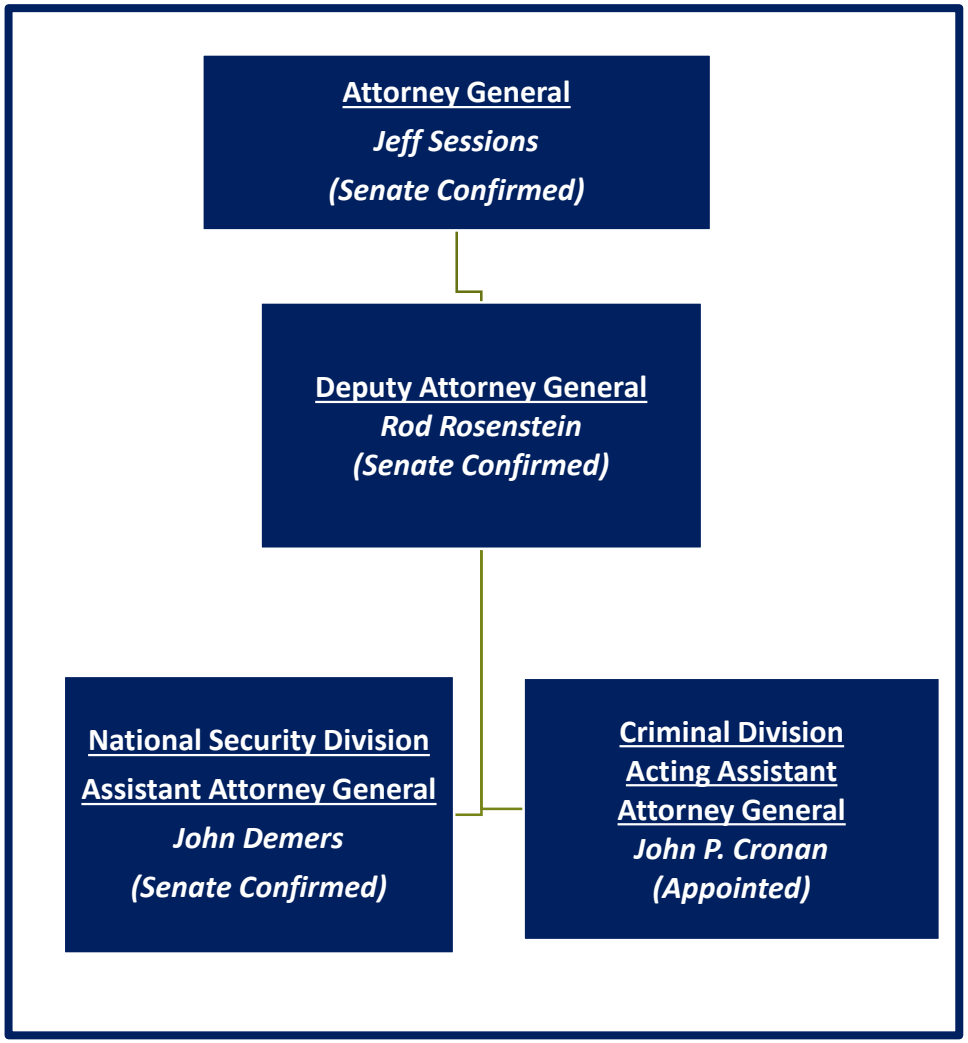
The Commodity Futures Trading Commission (**"CFTC"**) regulates the derivatives market and has civil enforcement responsibilities.

Various state agencies—like the New York Department of Financial Services ("**DFS**")—are involved with regulation and enforcement.

Banking Regulators:

U.S. Enforcement Agencies





International Enforcement Agencies and Regulators

The United Kingdom's Financial Conduct Authority ("**FCA**") is independent of the U.K. government and is funded by the firms it regulates. The FCA has significant investigative powers, can ban financial products, and regulates the marketing of financial instruments.

In the United Kingdom, the HM Treasury's Office of Financial Sanctions Implementation ("**OFSI**") was established March 2016 to "work[] closely with law enforcement [and] help ensure that financial sanctions are properly understood, implemented, and enforced." OFSI has new powers to impose civil penalties for violations, and the Serious Fraud Office and the Crown Prosecution Service have the authority to bring criminal prosecutions.

Some EU member states automatically criminalize breaches of any and all EU sanctions, while others have more specific implementation protocols. The implementation and enforcement of EU Sanctions is the responsibility of each of the individual EU member states.

International Enforcement Agencies and Regulators

In Hong Kong, the Securities and Futures Commission ("**SFC**") and Hong Kong Monetary Authority (**"HKMA"**) are two of the most prominent agencies charged with regulating and enforcing Hong Kong's AML and CFT laws.

Canada's Financial Transactions and Reports Analysis Centre (**"FINTRAC"**) gathers and analyzes financial transaction data, issues regulatory compliance guidance, and provides assistance to other agencies in the enforcement of Canada's AML and CFT laws.

The Australian Transaction Reports and Analysis Centre (**"AUSTRAC"**) analyzes financial transaction data, oversees Australia's AML/CFT compliance regime, and collaborates with law enforcement in AML and CFT enforcement actions.

U.S. Anti-Money Laundering Regulatory Landscape

- Money Laundering: 18 U.S.C. §§1956 and 1957
- The Bank Secrecy Act and BSA Regulations: 31 C.F.R. Chapter X
- Forfeiture: 18 U.S.C. §§ 981 and 982

Types of U.S. BSA/AML Actions

Criminal:

DOJ and U.S. Attorneys

- Declinations
- Non-Prosecution Agreements
- Deferred Prosecution Agreements
- Guilty Pleas
- Trials

Resolutions May Include:

- **Remedial Obligations**
- **Agreement to Forfeit Funds**
- **Criminal Fines**

Regulatory:

FinCEN and Bank Regulators

- **Informal Enforcement Actions**
- **Formal Enforcement Actions**
  - Consent Orders, C&D Orders, Formal Agreements
- **Civil Enforcement Measures**
  - Civil Money Penalties (CMPs)
  - Remedial Measures, including SAR and CDD Lookbacks
  - Independent Monitors and Consultants
  - Extensive Regulatory Reporting and Oversight

Global AML Developments

RISK & COMPLIANCE JOURNAL.

Canada Seeks to Widen AML Compliance Net

By *Mara Lemos Stein*

Apr 25, 2018 3:39 pm ET

Mossack Fonseca law firm to shut down after Panama Papers tax scandal

Firm at the center of controversy over tax evasion cites economic and reputational damage in announcement - *The Guardian (Mar. 14, 2018)*

UK to back more transparency for its overseas tax havens

- *Associated Press (May 1, 2018)*

New obligation for Spanish companies to disclose their ultimate beneficial owners

The Spanish Ministry of Justice issued Ministerial Order 319/2018 which requires Spanish non-listed companies to disclose their ultimate beneficial owners to the Companies Registry and keep said information updated. - *Global Compliance News (Apr. 18, 2018)*

NCA National Crime Agency

- *(Feb. 28, 2018)*

NCA secures first unexplained wealth orders

Brazil publishes new resolution on Politically Exposed Persons

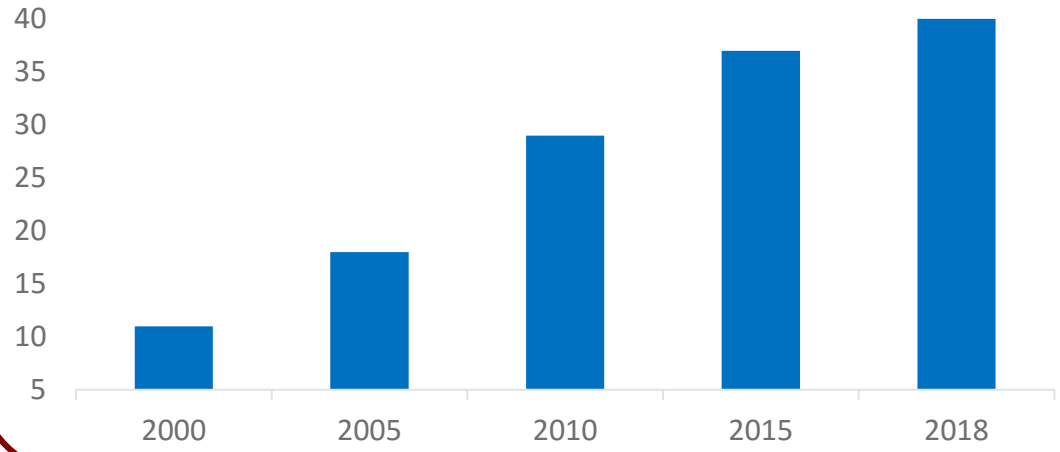
- *Global Compliance News (Dec. 27, 2017)*

Development of U.S. Sanctions Policy

An Ever-Expanding Footprint for U.S. Sanctions

- On a bipartisan basis the United States continues to rely on economic sanctions as a primary tool of diplomacy and national security.
- New programs have been instituted very quickly, black-listed entities have been added and removed at an unprecedented pace, and the number and severity of enforcement actions – at both the federal and state level – have increased remarkably.

Active OFAC Sanctions Programs



40%

Since 2009, the increase in the number of individuals and entities on the SDN black-list.

1000s

Annual changes to the SDN List – listings and de-listings. On an annual basis the average rate of change has almost doubled since 2007.

Types of U.S. Sanctions
Primary v. Secondary

Primary Sanctions

Jurisdiction-Based

Prohibit U.S. Persons from undertaking almost all transactions associated with a listed jurisdiction

Behavior-Based

Prohibit U.S. Persons from undertaking almost all transactions related to entities listed for specific behaviors

Sectoral Sanctions

Prohibit U.S. Persons from undertaking only limited, specific transactions with listed entities

Secondary Sanctions

"With Us or Against Us"

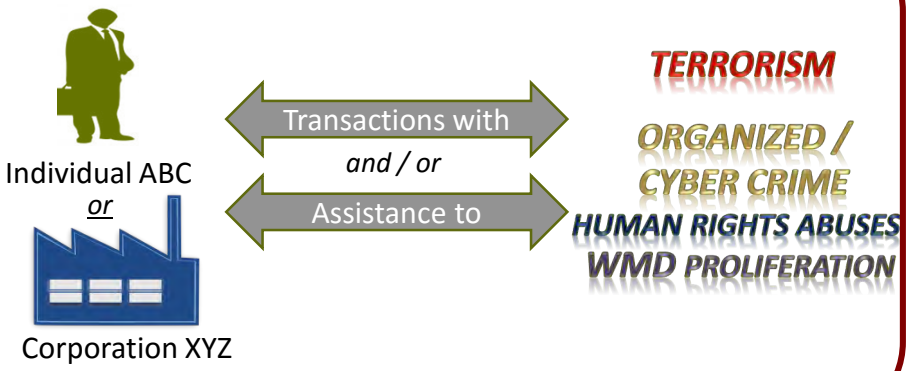
Threatens U.S. sanctions against non-U.S. persons for engaging in transactions with targeted entities

In reality, *all* U.S. sanctions have become extra-territorial – some are just more extra-territorial than others…

How Primary and Secondary Sanctions Work

Designations – The SDN List Process

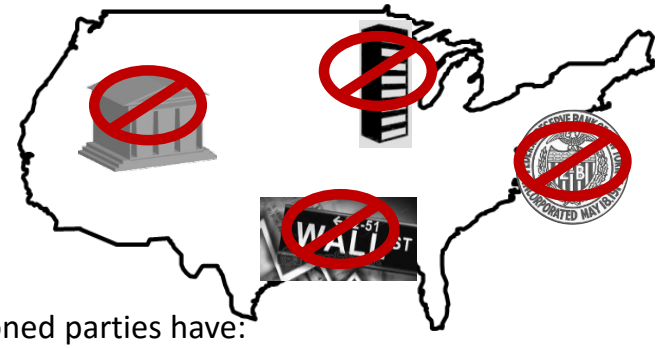
If a Government agency determines that:



Some black-listed individuals have called the impact of these consequences: "Muerte Civil" **("Civil Death")**

Consequences

The Government can "black-list" the company or the individual:



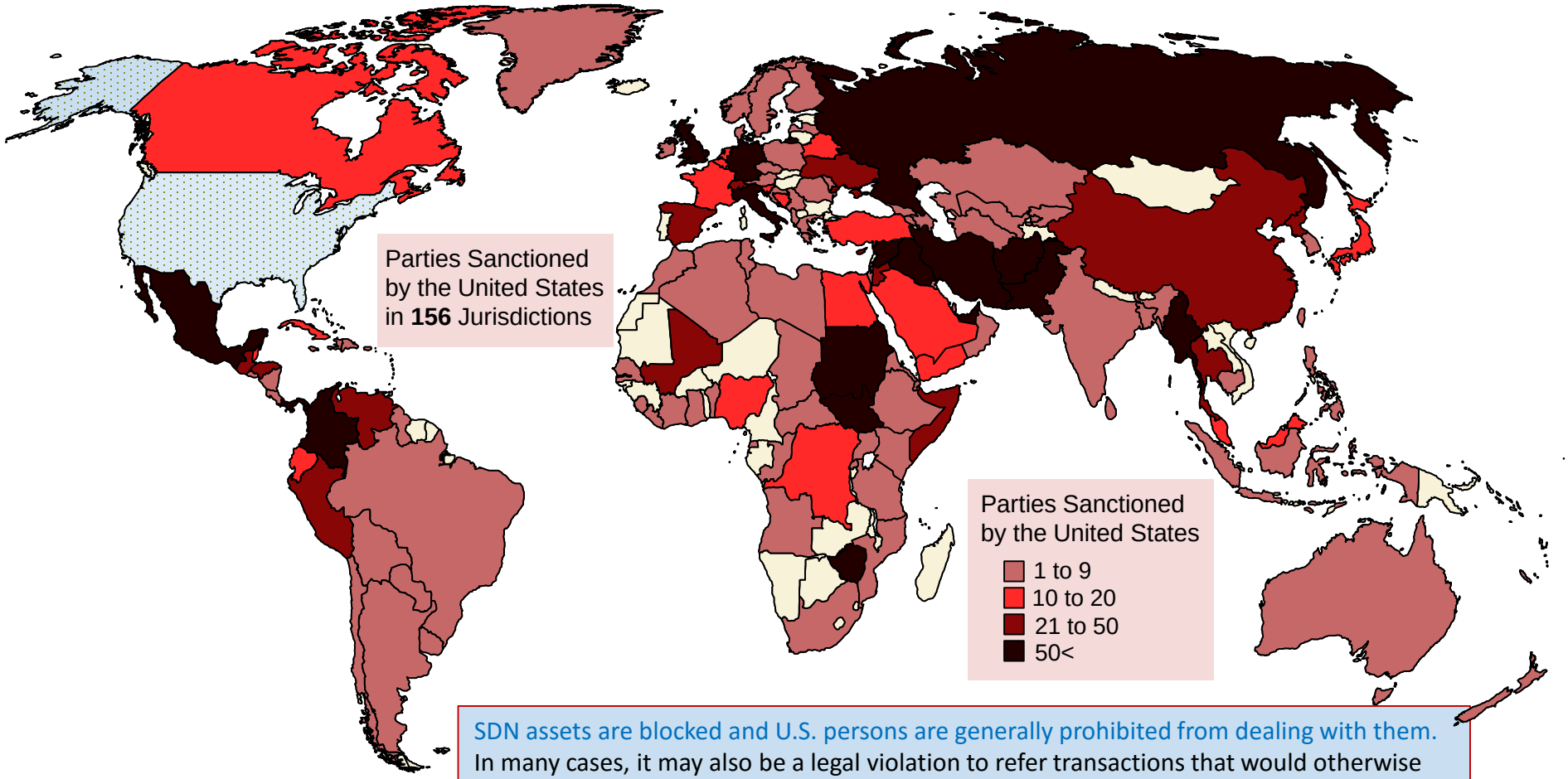
Sanctioned parties have:

- all property currently in the listing jurisdiction is frozen* – e.g. securities, buildings, bank accounts
- all property that subsequently enters the listing jurisdiction becomes frozen – e.g. even transactions only "clearing" in the jurisdiction can become frozen
- almost all financial dealings are prohibited – including insurance, foreign exchange, and securities issuances

* "Frozen" = parties are unable to access or use their property

Designations

Distribution of parties designated by the United States



SDN assets are blocked and U.S. persons are generally prohibited from dealing with them. In many cases, it may also be a legal violation to refer transactions that would otherwise prohibited to foreign persons or entities for the purposes of evading legal restrictions, or to otherwise facilitate transactions involving countries or persons subject to U.S. sanctions.

Three Primary Sanctions Risks

Best-Practice Compliance Needs to Simultaneously Cover Each Risk

The growth of sanctions programs adds to the number and type of sanctionable conduct and increases the potential of being listed.

The large number of enforcement agencies involved and the ever-growing number of black-listed entities increases the likelihood of engaging with sanctioned parties.

The rising risks of being black-listed and of being penalized—combined with reputational harm—means that no firms are "too big to be de-risked."

Black-Listing

Governments can list a bank or a company for engaging in sanctioned conduct and **bar them from access to their jurisdiction**. The consequences of being listed are severe: assets are frozen and access to markets—retail, investment, insurance, bonds, reinsurance, and correspondent banking—restricted or prohibited.

1

Penalties

A company that even accidentally engages with black-listed parties can face **reputational, civil, and criminal liability—for itself and its officers and directors**. Authorities have assessed billions of dollars of fines, required divestment of state funds from companies, mandated post-settlement monitoring, and suspended operating licenses.

2

De-Risking

A bank or a company can face sanctions-related consequences if its business partners are concerned that its **compliance is unsatisfactory**. Dozens of major firms have "de-risked"—cutting off customers, licensees, bankers, investors, and even whole lines of business due to perceived direct or indirect sanctions risks.

3

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Regulatory and Enforcement Trends

BSA Supervisory Priorities and Examination Trends

In 2018, Regulators are focusing on:

- Risks from traditional money laundering schemes
- Evolving vulnerabilities resulting from the rapid pace of technological change
- Emerging payment solutions and terrorist financing
- Risk assessment processes, policies and procedures
- Risk-appropriate controls, sufficient customer due diligence and suspicious activity identification and monitoring
- Aspects of bank BSA/AML strategies that may lead to de-risking
- Money services businesses ("MSBs") and other accounts with higher risk profiles
- Implementation of FinCEN's new Customer Due Diligence (CDD) Rule

Promoting a Culture of BSA/AML Compliance

Regulators have characterized corporate culture as "critical" to a company's BSA/AML compliance efforts.

Key components include:

1. "Tone at the Top" – Management and the Board should be actively engaged in compliance issues and lead by example

2. Refusing to compromise compliance for the sake of revenue

3. Adequate authority and independence for the BSA/AML function

(continued)

Source: FinCEN, *Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance* (August 11, 2014)

Promoting a Culture of BSA/AML Compliance

4. The organization must devote adequate capital and human resources, including technology resources, to its compliance function relative to its risk profile

5. Compliance program is regularly tested and evaluated by independent third parties

6. Leadership and staff understand the purpose of BSA/AML reporting and how the information they report is used

7. Effective information sharing that keeps compliance staff informed about risks and processes throughout the organization

8. Compliance as an element of compensation and performance

Source: FinCEN, *Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance* (August 11, 2014)

BSA Supervisory Priorities and Examination Trends

2018 Supervision Priorities include:

- Cybersecurity and operational resiliency
- BSA/AML compliance management
- Commercial and retail credit loan underwriting
- Business model sustainability
- Adapting to new regulatory requirements

"The laws and regulations around the BSA and anti-money laundering are intended to protect our financial system from being misused for illegal purposes. But rather than serving that goal, our system has evolved into a series of "gotchas" and other unhelpful activities. **We need a fresh approach**. The OCC is just one agency in the mix. It acts like an umpire in baseball, but the rules are written by other agencies. **To fix the system, we will need a collective effort that involves lawmakers, the Treasury Department, the Financial Crimes Enforcement Network (FinCEN) and other regulators.** Congress has begun to reexamine the BSA to determine what can be improved, and I am optimistic that we can make the system work better and improve how we protect our financial system."

– Remarks by Joseph Otting
Comptroller of the Currency
April 2, 2018

BSA Supervisory Priorities and Examination Trends

"[W]e must continue to increase the transparency and accountability in the financial system, which underpins much of our economic statecraft. **A strong and effective AML/CFT framework keeps illicit actors out of the financial system, and allows us to track and target those who nonetheless slip through.** This framework must address the evolving forms of illicit finance threats that we face. . . . In particular, we must make sure that financial institutions are devoting their resources towards high value activities and are encouraged to innovate with new technologies and approaches. In recent years, for example, financial institutions have become more proactive in their AML/CFT approach, in some cases building sophisticated internal financial intelligence units devoted to identifying strategic and cross-cutting financial threats."

-Congressional Testimony by Sigal Mandelker
Undersecretary, Terrorism and Financial Intelligence
U.S. Department of the Treasury
January 17, 2018

BSA Supervisory Priorities and Examination Trends

2018 Regulatory and Examination Priorities Include:

- Fraud, particularly in the microcap sector
- Identifying and regulating high-risk firms and brokers
- Operational and financial risks (including technology governance and cybersecurity)
- Risky sales practices (including suitability analysis and margin loans)
- ICOs and cryptocurrencies
- Market manipulation
- Protection of senior investors

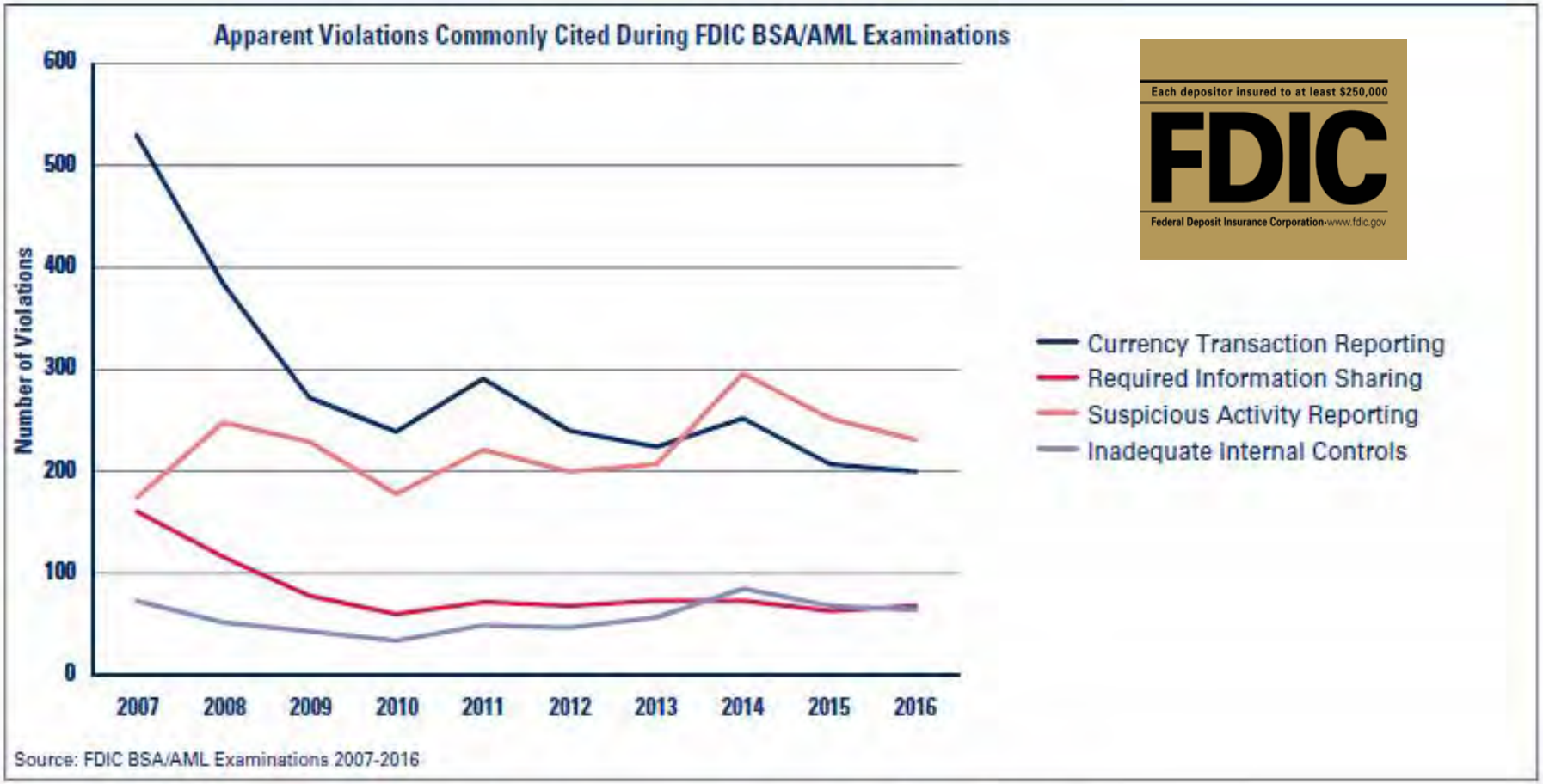
"[W]e decided to merge together FINRA's two previously distinct enforcement teams . . . This was driven in part by what we were hearing: that there was a perceived inconsistency in approach at times between the two enforcement teams. That perception is troubling. **If firms don't know what to expect from their regulator, they don't know how to shape their behavior in order to comply with the rules** . . .

We want any compliance professional to be able to look at any FINRA enforcement action and say to themselves, 'Ah, yes, this case makes sense. This enforcement action and sanction are what I would expect based on the facts and circumstances of this action. I can use this case to convey to the business the importance of compliance.' To accomplish that, we need to be transparent about Enforcement actions, including identifying the factors we weigh and discuss internally, and the objectives we seek to meet when we bring a case."

-Remarks by Susan Schroeder
Executive Vice President, Enforcement, FINRA
February 12, 2018

FDIC Examination Trends

Apparent Violations Commonly Cited During FDIC BSA/AML Examinations



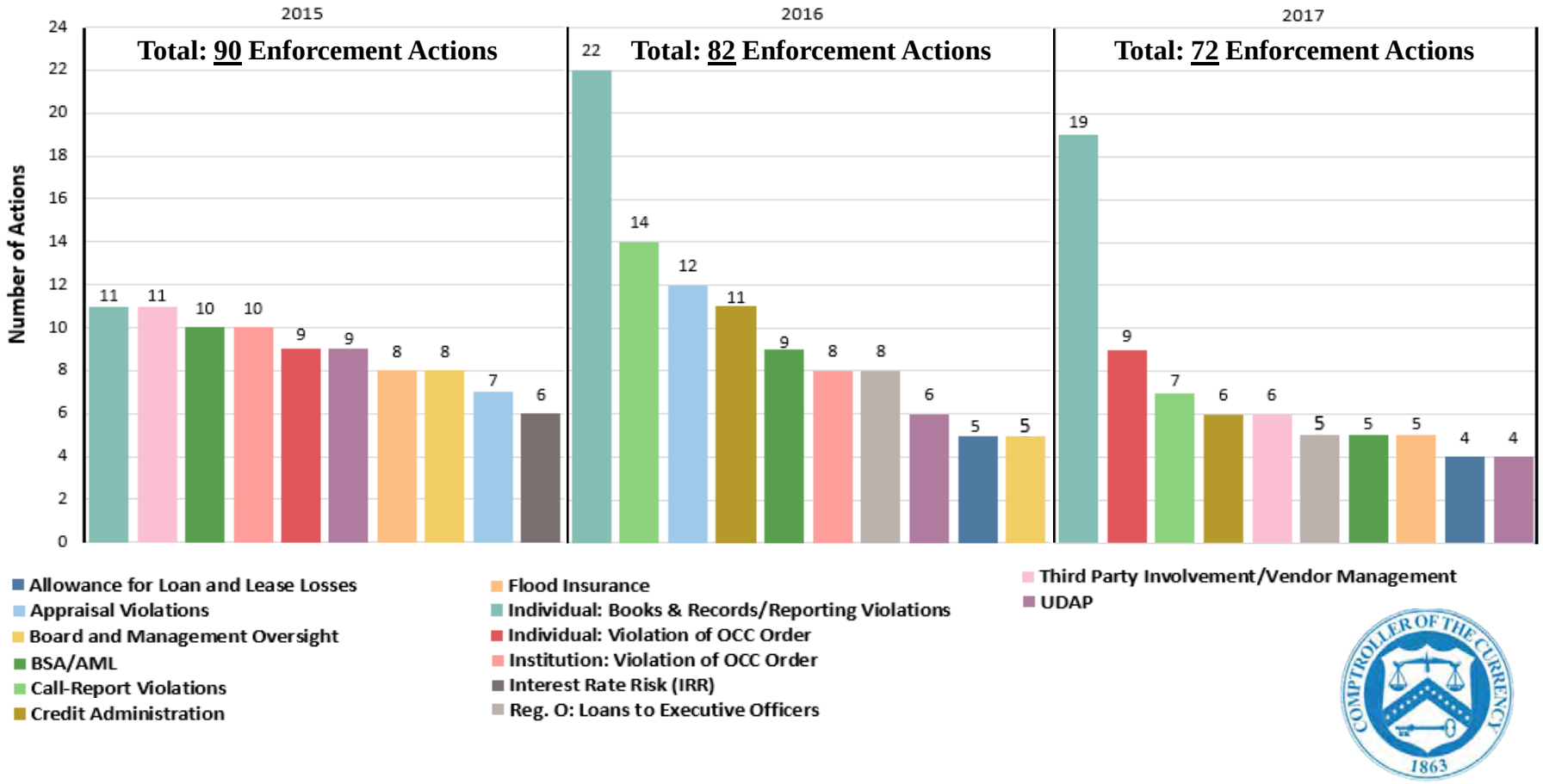
[11] Financial Institution Letter FIL 71-2007 and the *Federal Financial Institutions Examination Council BSA/AML Examination Manual*, Appendix R.

Source: FDIC, *Supervisory Insights*, The Bank Secrecy Act: A Supervisory Update (Summer 2017)

OCC Enforcement Trends

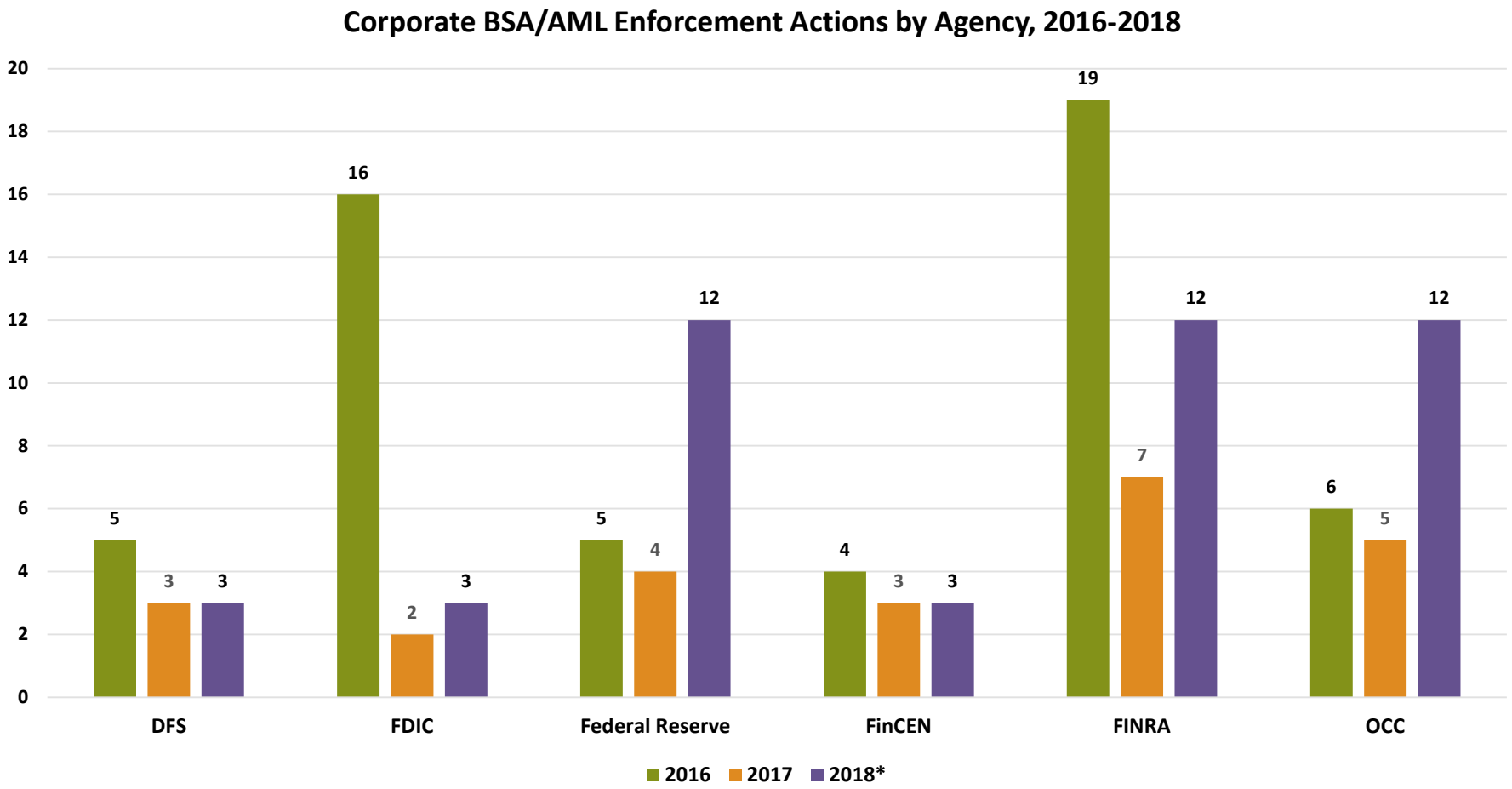
Issues Commonly Cited as the Basis for Recent OCC Enforcement Actions

Top 10 Issues by Year



Source: Bloomberg Law, *Downward Trend in OCC Enforcement Actions Continues in 2017* (Jan. 23, 2018)

Recent BSA/AML Regulator Enforcement Actions



*Note: 2018 figures annualized as of 5/3/2018.

Sanctions Under This Administration: Executive Power

The Rise of the Executive Order – Sanctions and Beyond

IEEPA Provides the President Significant, Largely Unchecked Power to:

- *List*
  - "U.S. Hits Iran with Sanctions, Drawing Threat from Tehran" — *Wall Street Journal, Feb. 3, 2017*
- *De-list*
  - "The Frustrating Struggle to Come off U.S. Sanctions List" — *Wall Street Journal, June 21, 2016*
- *Interpret*
  - "U.S. Loosens Iran Sanctions to Smooth Dollar Transactions" — *Bloomberg, Oct. 8, 2016*
- *License*
  - "Licenses Granted to U.S. Companies Run the Gamut" — *New York Times, Dec. 24, 2010*
- *Enforce*
  - "OFAC has broadened both the scope of its potential targets and its theories of liability" — *Law 360, Jan. 8, 2018*

The president can build on existing sanctions programs or create brand new programs.

Sanctions Under This Administration: Executive Power

The Rise of the Executive Order – Sanctions and Beyond

Executive Orders (EOs) are legally binding orders given by the President, acting as the head of the Executive Branch, to Federal Administrative Agencies. Executive Orders are generally used to direct federal agencies and officials in their execution of Congressionally established laws or policies.

Constitution

Laws

Executive Orders

Regulations

International Emergency Economic Powers Act (IEEPA)
December 28, 1977

Primary legal authority for most sanctions, must be triggered by an Executive Order

Signed 68 EOs as of 4/18

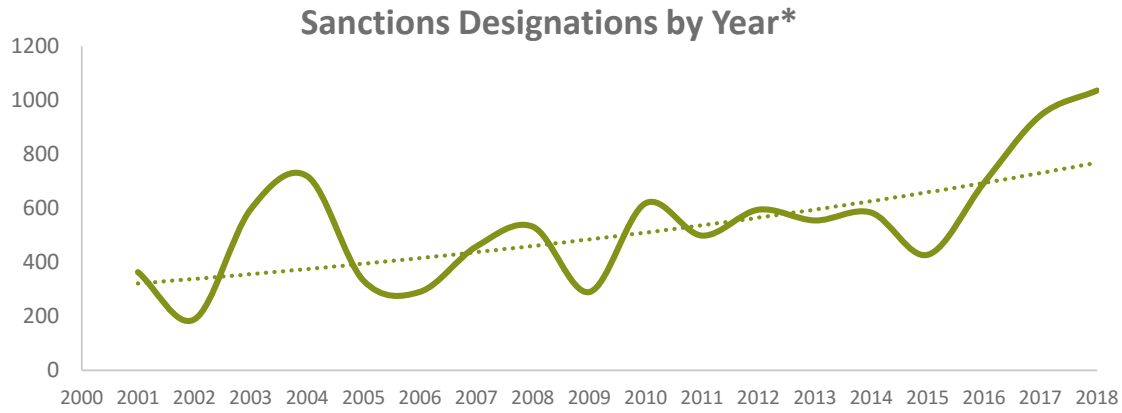
- 2x Obama's rate
- More than nearly any other president in modern history

Sanctions Under This Administration: Executive Power

The Trump Administration has continued a nearly two-decade trend of increasing reliance on sanctions by the U.S. government.

Sanctions Employed at Highest Ever Rate During 2017 and 2018 (To Date):

- Nearly 1000 new designations listings in 2017 (≈5700 persons on SDN List), 349 to date in 2018;
- More than one sanctions action per week in 2017 and 2018 to date;
- Billions of dollars of fines by OFAC, Department of Commerce, and state authorities (like DFS); and
- Several new sanctions programs including targeting Global Human Rights & Corruption and Venezuela and enhanced penalties against DPRK, Russia, and Iran.



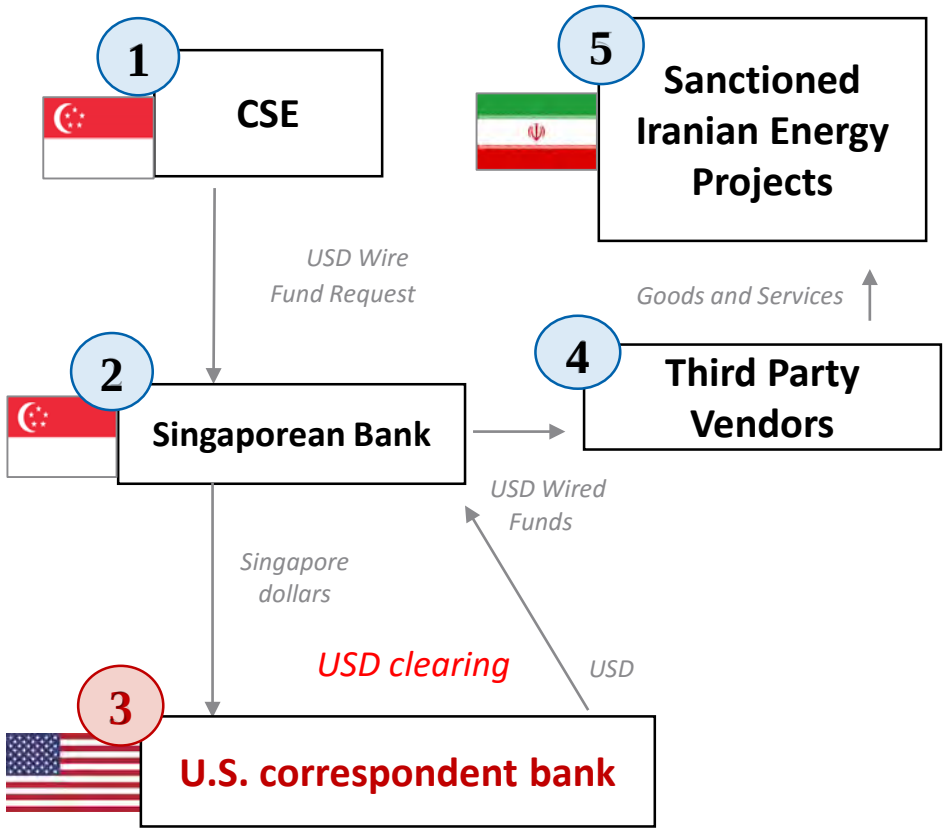
2018 Data Annualized

- There have been 349 designations to date in 2018, on track for 1036 by the end of the year.

Sanctions Enforcement Trends

(1) Increased Focus on U.S. Dollar as Jurisdictional Hook

- Recently, OFAC has targeted transactions conducted in U.S. dollars even if the underlying transaction involves only non-U.S. entities. The "dollar clearing" process allows OFAC to claim U.S. jurisdiction.



In July 2017, CSE, a Singaporean telecom company, paid a $12 million penalty for "causing" U.S. financial institutions to violate U.S. sanctions against Iran.

1. CSE agreed to provide goods and services to sanctioned Iranian energy projects.
2. CSE initiated 104 wire transfers in U.S. dollars from its Singaporean bank to third-party vendors providing goods and services on CSE's behalf for the sanctioned Iranian energy projects.
3. These wire transfers were "cleared" (i.e., converted) into U.S. dollars by the U.S.-based correspondent bank of the Singaporean bank.

Because the wire transfers were in support of sanctioned Iranian projects, providing the dollar clearing service violated U.S. sanctions. Because CSE "caused" the U.S. correspondent bank to violate U.S. sanctions, CSE also violated U.S. sanctions.

Sanctions Enforcement Trends

(2) Severe Penalties for Serious Violations

- OFAC and other export-control agencies have increasingly demonstrated willingness to impose severe penalties for serious sanctions violations.
- In March 2017, the Chinese technology firm ZTE settled with OFAC for $101 million for alleged sanctions violations. The statutory maximum penalty was $106 million.
  - The settlement with OFAC was part of a larger $1.19 billion settlement with DOJ, OFAC, and the Department of Commerce for sanctions and export-control violations.
  - The Chinese firm was required to submit audit reports as part of the settlement. In April 2018, the Department of Commerce issued a denial order against the Chinese technology firm for making false statements in the audit reports. The denial order effectively cuts off the Chinese firm from the use of U.S. technologies and components.
- In January 2018, in the largest sanctions evasion case in recent history, a Manhattan jury convicted a banker at a major Turkish financial institution of conspiring to evade U.S. sanctions against Iran.

Bottom Line

- Since 2009, OFAC has issued **181 penalties**; each penalty has averaged over **$20 million**.
- In 2017, the maximum OFAC penalty was increased to the greater of nearly **$290,000 or twice the value of the underlying violative transaction**.
- Penalties are computed on a per-transaction basis.

Sanctions Enforcement Trends

(3) New York, New York

- Since the mid-2000s, the **New York Department of Financial Services ("NYDFS")** has sought to impose large penalties against New York branches of foreign banks that violate federal sanctions laws.
- Technically speaking, NYDFS is merely enforcing **New York Banking Law requirements** for recordkeeping and compliance with OFAC regulations.
- Nevertheless, NYDFS has grown into a major enforcement agency for violations of federal sanctions laws by financial **institutions—since 2012, NYDFS has imposed well over $4 billion in enforcement actions** involving violations of federal sanctions laws.
- As a recent example, in August 2017, Pakistan's **Habib Bank** agreed to pay **$225 million** and close its New York branch to settle an enforcement action brought against it by the New York State Department of Financial Services for infringing BSA/AML and sanctions rules and laws.

Sanctions Enforcement Trends

(4) Enhanced Expectations for Risk-Based Compliance Systems

- OFAC has continued to push companies, even those not involved in what are traditionally considered high-risk business areas (such as shipping, finance, and insurance), to implement risk-based compliance systems.
- OFAC encourages companies to develop compliance systems taking into account factors such as "products and services, frequency and volume of international transactions and shipments, client base, and size and geographic locations."

In September 2017, OFAC fined a luxury goods retailer $334,800 for shipping jewelry purchased at its stores to a person on the SDN list.

- "This enforcement action highlights the risks for companies with retail operations that engage in international transactions, specifically including businesses that ship their products directly to customers located outside of the United States. OFAC encourages companies to develop, implement, and maintain a risk-based approach to sanctions compliance, and to implement processes and procedures to identify and mitigate areas of risks."

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Key Developments

Federal BSA/AML Criminal Enforcement Actions

Since 2002, DOJ has assessed ~$6.4 billion in BSA/AML corporate criminal penalties. 7 of the 10 largest federal criminal AML resolutions involve large banks.

Community/Mid-Size Banks
Number of Federal Resolutions: **14**
Penalty Range: **$400,000 to $102 million**
Average Penalty: **$16.1 million**

Money Services Businesses
Number of Federal Resolutions: **4**
Penalty Range: **$700,000 to $586 million**
Average Penalty: **$175.4 million**

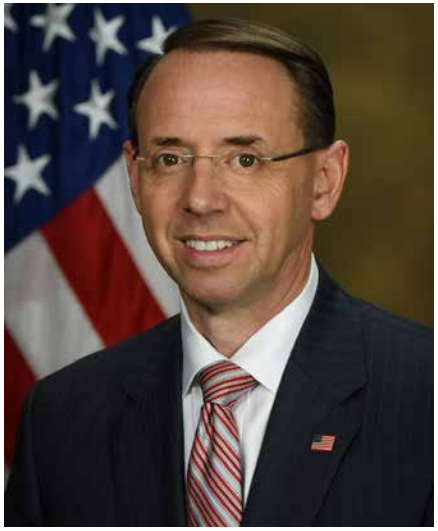
Large Banks
Number of Federal Resolutions: **11**
Penalty Range: **$38 million to $1.7 billion**
Average Penalty: **$487.9 million**

Gaming/Casino
Number of Federal Resolutions: **4**
Penalty Range: **$2.3 million to $47.4 million**
Average Penalty: **$15.4 million**

Other Industries
Number of Federal Resolutions: **2**
Penalty Range: **$5.9 million to $15 million**
Average Penalty: **$10.5 million**

Key Developments in AML Criminal Enforcement

Rod J. Rosenstein, Deputy Attorney General



(Nov. 8, 2017) - "*Today, when we prosecute a criminal enterprise, prosecutors and agents ask how the conspirators were able to move illegal proceeds through the financial system. Were the criminals just lucky, or did a financial institution fail to implement an effective anti-money laundering program? . . . .* ***In our investigations, we often look at which companies processed the payments, which banks held the relevant accounts, and whether any automated alerts or Suspicious Activity Reports were filed in connection with the movement of funds. We also ask who served as the financial advisors, the tax preparers, and the accountants.*** *Most institutions are committed to fulfilling their legal obligations to avoid doing business with criminals. But* ***when we find institutions that fail to live up to their responsibilities, the Department will take appropriate action****.*"

(Mar. 2, 2018) - "*In February 2018, the Money Laundering and Asset Recovery Section's Bank Integrity Unit, along with Assistant U.S. Attorneys here in Southern California, secured a guilty plea in a major banking investigation. The bank ignored evidence that customer transactions were related to international narcotics and money laundering activities.* ***In those cases and others, the Department scrutinizes not only people who buy, sell, and use illegal drugs, but also the flow of money and resources. We ask: which people or companies provided the necessary goods and services? Then, we seek to hold them accountable for any criminal conduct****.*"

Trend: Dealing with Multiple Regulators in BSA/AML Actions

Complex BSA/AML actions require engaging with multiple enforcement agencies and different regulatory authorities at the state, federal, and international levels.

A few recent examples include:

- **Four Agencies - DOJ (SDNY), FinCEN, Federal Reserve, OCC** (Feb. 15, 2018): U.S. Bancorp entered into a DPA for two felony violations of the BSA by its subsidiary, U.S. Bank, for willfully failing to have an adequate AML program and willfully failing to file SARs. According to DOJ, these failures allowed a longtime customer to use U.S. Bank to launder proceeds of a fraudulent scheme. The DPA and accompanying regulatory enforcement actions included total penalties of **$613 million**.
- **DOJ (MLARS) and OCC** (Feb. 7, 2018): Rabobank N. A., a subsidiary of a Netherlands bank, pleaded guilty to a felony conspiracy charge for impairing, impeding and obstructing the OCC and its examination by concealing deficiencies in its AML program. The OCC imposed a $50 million CMP which was credited toward the satisfaction of the over **$360 million DOJ forfeiture**. A former Rabobank vice president and compliance officer entered into a DPA in December 2017 for his role in aiding and abetting the Bank's failure to maintain an adequate AML program, agreeing to cooperate with DOJ's continuing investigation.
- **FinCEN and DOJ (N.D. Cal.)** (July 26, 2017): Virtual currency exchange BTC-e and one of its operators, a Russian national, were indicted for operating an unlicensed MSB, conspiracy to commit money laundering, and other related crimes. FinCEN also assessed a **$110 million CMP** against BTC-e and a $12 million CMP against the operator.

Trend: Dealing with Multiple Regulators (con't)

- **Three Regulators - DFS, Federal Reserve, the U.K.'s Financial Conduct Authority** (Jan. 30, 2017): Deutsche Bank was found by regulators to have inadequate AML policies and procedures that permitted the transfer of approximately $10 billion from Russia to offshore bank accounts as part of a "mirror-trading" scheme. The UK FCA imposed a **£163 million fine** and DFS imposed a **$425 million fine** and an independent monitor. The Federal Reserve assessed a **$41 million CMP** and required the Bank to revise compliance programs and procedures.
- **Multiple State and Federal Regulators - FinCEN, Federal Trade Commission, DOJ (MLARS and U.S. Attorneys of M.D. Pennsylvania, C.D. California, E.D. Pennsylvania, S.D. Florida)** (Jan. 19, 2017): Western Union agreed to forfeit **$586 million** in agreements with the referenced agencies and entered into a DPA with DOJ, admitting to violations of the BSA and anti-fraud statutes in connection with the processing of hundreds of thousands of transactions for agents and others involved in a consumer fraud scheme. The violations took place between 2004 and 2012.

BSA/AML Investigations: Government Coordination

Deputy Attorney General Rosenstein in November 2017 announced DOJ's efforts to "consider[] proposals to improve coordination" and "help avoid duplicative and unwarranted payments." A few recent cases seem to have addressed these concerns:

February 2018: Rabobank, a U.S. subsidiary of a Netherlands bank pleaded guilty to a felony conspiracy charge for impairing, impeding and obstructing the OCC and its examination by concealing deficiencies in its AML program. Multiple regulators investigated the bank. Ultimately Rabobank resolved with DOJ and the OCC; FinCEN has not sought penalties or other measures. The OCC imposed a $50 million CMP which **was credited toward the satisfaction** of the more than $360 million DOJ forfeiture.

February 2018: U.S. Bank (via U.S. Bancorp) entered into a DPA with DOJ relating to BSA violations and agreed to a combined resolution totaling over $600 million. **The four settling agencies acknowledged fines imposed by other regulators**. DOJ imposed a $528 million penalty through civil forfeiture and **credited a $75 million CMP assessed by the OCC**. The $185 million CMP assessed by FinCEN was **partially satisfied by DOJ's penalty**. The Fed also imposed a $15 million penalty.

DPAs and NPAs: Meeting Remedial Obligations

DPAs and NPAs can impose significant ongoing obligations. The content and duration of these obligations varies, however, and these are critical terms for negotiations. Failure to comply with DPA/NPA obligations can result in extension of the agreement, and, potentially, additional penalties.

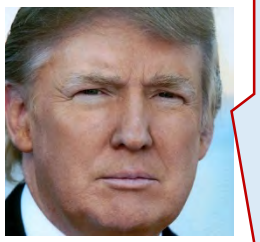
March 2018: MoneyGram disclosed extension of five-year DPA with DOJ to "discuss the company's compliance with the DPA." In the DPA, MoneyGram had agreed to enhanced remedial efforts, including the retention of an independent monitor for five years; the creation of an independent board of directors compliance and ethics committee; and adoption of (1) world-wide anti-fraud and anti-money laundering standards, (2) a bonus system rating executives on compliance obligations, and (3) enhanced due diligence of agents in high risk areas.

December 2017: HSBC was ultimately released from obligations imposed under a 2012 5-year DPA with DOJ, which included the imposition of an independent monitor. Court filings suggest that the monitor had issued a series of (non-public) reports and raised concerns over the course of its five-year monitorship, which possibly threatened the ability of the financial institution to complete its DPA obligations within the anticipated timeline.

November 2017: In 2012, Standard Chartered Bank ("SCB") entered into a 2-year DPA and agreed to forfeit $227 million for violating U.S. sanctions. In that DPA, SCB agreed to make specified improvements in its sanctions compliance program. In 2014, SCB paid $300 million to the NYDFS and the DPA was extended for a three-year term because, according to DOJ, SCB's "U.S. economic sanctions compliance program [had] not yet reached the standard required by the DPA….". In November 2017, the DPA was extended for another 7 months.

Iran Sanctions Program

Key Developments



"I am [today] waiving the application of certain...sanctions, but only…to secure our European allies' agreement to fix the terrible flaws of the Iran nuclear deal. This is a last chance."

– President Trump
(January 12, 2018)

Decertification: On October 13, 2017, President Trump refused to certify that the 2015 Iran nuclear deal (the "JCPOA") was in the national security interests of the United States.

- The statement was made pursuant to the Iran Nuclear Agreement Review Act ("INARA") which governs U.S. participation in the JCPOA.
- The President does not claim that Iran is non-compliant with the JCPOA, just that sanctions relief is not in the United States' national security interests (which is the standard provided in INARA).

The United States remains party to the JCPOA, and the Trump Administration has—at least in the past—indicated that it would like to see some nuclear-related sanctions relief remain in force.

- All relief and all licenses issued under or before the JCPOA are valid.
- Congressional leaders have begun to draft legislation amending the INARA by removing sunset provisions and requiring automatic re-imposition of sanctions in the event of certain nuclear and non-nuclear related circumstances coming to pass.

Iran Sanctions Program

Key Developments

Mitigating Snapback Risk

- Ensure that contracts with Iranian counterparties are written and clearly define performance and payment obligations.
- Include early termination provisions that facilitate rapid wind down.

Bottom Line

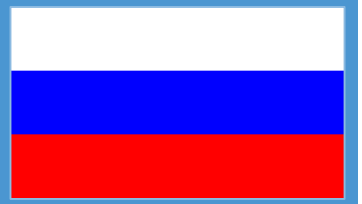
- Likely significant increase in IRGC-related sanctions and potential sanctions on major Iranian banks, companies, and government ministries.
- Uncertainty how snapback and wind-down provisions agreed in the Obama Administration will be treated if the President follows through on his threat.

Threatened Date-Certain Withdrawal: On January 12, 2018, President Trump threatened to pull the United States from the Nuclear Deal if European allies do not agree with the United States to improve the deal within 120 days (May 12, 2018).

- Nonbinding Obama Administration guidance indicates that if snapback occurs, OFAC will authorize a wind-down period similar to past practices:
  - Sanctions would not be imposed retroactively, but existing contracts would not be grandfathered for the future.
  - Non-U.S. persons would have 180 days to wind down operations, and would be permitted to receive payments from Iranian counterparties for goods or services fully delivered prior to snapback pursuant to a written contract.
  - U.S. persons (and U.S.-owned or –controlled foreign entities) conducting business under general or specific licenses that are removed would have 180 days to wind down operations, including receipt of payment pursuant to written contracts for goods or services fully delivered prior to snapback.

Russia Sanctions Program

Key Developments



Countering America's Adversaries Through Sanctions Act ("CAATSA") (H.R. 3364)

- CAATSA codified and expanded Obama-era sanctions on Russia; the sanctions are extensive but there is flexibility in the language that could allow the President to enforce the new measures less robustly than lawmakers intended.
  - **Sectoral Sanctions**: Added sectors for potential future sectoral sanctions including the metals and mining, engineering, and "defense and related materiel" sectors.
  - **Secondary Sanctions**: On a discretionary basis, sanctions can be imposed on non-U.S. persons engaging in transactions with Russia's energy, defense, and/or intelligence sectors.

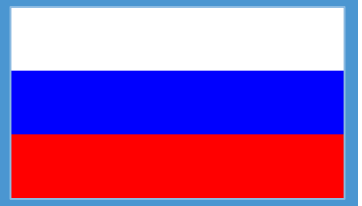
"President Trump must be clear-eyed about the Russian threat, take action to strengthen our government's response…and…mobilize our country…to counter the threat and assert our values."

– Ben Cardin, Senator (D-MD) (January 10, 2018)

- CAATSA—in an unprecedented manner—limits the President's discretion to waive or terminate the sanctions or issue licenses that would "significantly" alter foreign policy with regard to Russia.
- Both the OFAC and the State Department guidance devote significant attention not just to how they will implement the law, but also to the President's substantial discretion to not implement—or to weakly implement—large portions of the new law.

Russia Sanctions Program

Key Developments



On April 6, 2018, citing "a range of malign activity around the globe," OFAC announced 38 new designations pursuant to existing sanctions programs:

- **6** oligarchs
- **12** oligarch-owned or -controlled businesses, including major publicly traded companies (e.g. EN+ and RUSAL)
- **17** senior Russian government officials
- **2** Russian state-owned companies (the primary weapons trading company and its subsidiary, a bank)

Bottom Line

- Likely additional Congressional action unless the Administration is seen to be robustly implementing CAATSA.
- New designations likely to have substantial effect on U.S. companies.
- Continued focus on Magnitksy Human Rights sanctions.
- Possible launch of Russian "CryptoRuble" in order to subvert U.S.-dollar-based sanctions.
- Uncertain implications of Mueller probe.

Effects of the April 6, 2018 Designations

- Dramatic fall in Russian stocks.
- The ruble fell nearly 5% against the dollar.
- RUSAL's share price on the Hong Kong stock exchange fell 50% the day after the sanctions were announced.
- OFAC issued three general licenses to permit wind-down activities

RTS Index

North Korea Sanctions Program

Key Developments

- CAATSA included North Korean sanctions
- On September 20, 2017, President Trump issued a new Executive Order imposing additional sanctions on the Democratic People's Republic of Korea.
  - –Most notably, the new measures borrow from the Obama Administration's sanctions playbook by imposing sanctions on specific sectors and threatening to cut off access to the U.S. banking system for any person involved in North Korean trade.
  - –The sanctions could have a profound impact on China and Russia.
  - –Secondary sanctions also could implicate unwitting counterparties involved in North Korean trade.
- In December 2017, the UN Security Council unanimously adopted another U.S.-drafted sanctions resolution targeting North Korea.
- Increasing pressure from the United Nations and European Union, and increasing interagency enforcement in the United States.

Satellite evidence released by OFAC in December 2017 allegedly showing illegal sales of oil to the DPRK

Bottom Line

- Likely increasing accusations and evidence of sanctions evasion—followed by enforcement.
- U.S. Department of Justice likely will continue its enforcement activities (adding to the $11 million August 2017 money laundering and forfeiture actions for alleged financial facilitators of North Korea).

Venezuela Sanctions Program

Key Developments

On August 24, 2017, President Trump issued an Executive Order prohibiting certain transactions involving debt and equity of the Government—including Venezuela's oil company, Petróleos de Venezuela, S.A. (PDVSA).

- Modeled in part on the Russian sanctions, these new measures impose substantial restrictions on U.S. persons, but do not require U.S. persons to block Venezuelan government or PDVSA assets.
- The new measures were implemented alongside existing sanctions that authorize the President to formally blacklist entities and individuals.
- Given the economic ties between the United States and Venezuela, the sanctions have affected companies and investors in significant ways:
  1. Materially limited transactions relating to PDVSA particularly with respect to funding and payments for services rendered.
  2. In the wake of Venezuela's "technical default" in November 2017, created significant difficulty in renegotiating debt due to Maduro's selection of sanctioned persons to lead the negotiations.
  3. Required enhanced compliance practices with respect to Venezuelan dealings, including due diligence on long-standing counterparties.

"The United States reiterates our call that Venezuela restore democracy, hold free and fair elections, release all political prisoners immediately and unconditionally, and end the repression of the Venezuelan people."

– President Trump
(August 25, 2017)

Venezuela Sanctions Program

Key Developments

- On March 19, 2018, President Trump issued an Executive Order prohibiting U.S. persons from dealings in or related to any digital currency sponsored by the Venezuelan government.
  - –Earlier this year, the Venezuelan government launched a cryptocurrency (the "petro") and announced a second cryptocurrency (the "petro gold"), seen as efforts to skirt U.S. sanctions and provide an alternative currency in the face of hyperinflation of the Bolivar.
  - –The Treasury Department had already publicly taken the position that investment by U.S. persons in Venezuelan cryptocurrency could be considered a prohibited investment in Venezuelan debt.
- OFAC has also continued to expand its Venezuela-related SDN designations, adding four current and former Venezuelan officials in parallel with the March 19, 2018 Executive Order.

Sanctions will not be lifted "under any circumstances" unless there are free and fair elections in Venezuela.

– Marco Rubio, Senator (R-FL) (January 10, 2018)

Bottom Line

- Likelihood of more U.S. (and EU) sanctions.
- Increasing enforcement, including on Maduro's "cryptocurrency."

Cuba Sanctions Program

Key Developments

- On June 16, 2017, President Trump announced a new policy toward Cuba, including reimposition of some sanctions that had been lifted under President Obama.
- Changes have included:
  - Tighter travel restrictions, especially for individuals traveling under the educational or people-to-people exceptions.
  - Implementation of a "Cuba Restricted List" (maintained by the Department of State) of entities with which U.S. persons may not transact business.
  - Changes to Commerce Department licensing policies, including a simplification of the Support for the Cuban People License Exception for exports to end users in the Cuban private sector.
- In addition to government ministries and entities in the defense sector, the State Department's Cuba Restricted List includes over 80 hotels, further limiting travel by U.S. persons.

"The previous administration's easing of restrictions on travel and trade does not help the Cuban people — they only enrich the Cuban regime . . . I am canceling the last administration's completely one-sided deal with Cuba."

– President Trump
(June 16, 2017)

Bottom Line

- Recent policy changes have not been sweeping, though they do tighten restrictions substantially in certain areas.
- Unclear whether these changes mark the start of a larger pivot on Cuba policy.

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What to Expect in 2018 . . .

What to Expect in 2018 …

A number of bills have been proposed to reform the BSA/AML regulatory landscape

House of Representatives:

- **Counter Terrorism & Illicit Finance Act** (draft bill put before Committee 11/2017)
- **Anti-Money Laundering & Counter-Terrorism Financing Modernization Act** (introduced 11/2017)
- **Financial Institution Security Act** (introduced 6/2016, reintroduced 7/2017)
- **Corporate Transparency Act of 2017** (proposed 6/2017)
- **Stop Tax Haven Abuse Act** (proposed 4/2017)

Senate:

- **Combating Money Laundering, Terrorist Financing, & Counterfeiting Act of 2017** (first introduced 2011, reintroduced 2017)
- **Corporate Transparency Act of 2017** (proposed 6/2017 and 8/2017)
- **Stop Tax Haven Abuse Act** (proposed 4/2017)

Potential BSA/AML Legislative Changes

Proposed BSA/AML legislative reforms include the following:

- Establish a FinCEN corporate registry with current beneficial ownership information
- Increase CTR threshold to $30,000
- Increase SAR threshold to $10,000
- Create FinCEN "no action letter" process
- Establish fines for violations of currency smuggling laws
- Apply international money laundering statute to tax evasion
- Augment authority of Treasury or DOJ to issue a subpoena to any foreign bank that maintains a correspondent account in the United States
- Permit FinCEN to provide written rulings in response to specific BSA inquiries
- Impose civil and criminal penalties for providing false beneficial ownership information
- Consider formation agents as financial institutions under the BSA
- Expand information sharing under section 314(b)
- Provide for SAR sharing with foreign affiliates and branches

What to Expect in 2018 . . .

Background on FinCEN's 2016 Customer Due Diligence ("CDD") Final Rule

- On May 6, 2016, FinCEN released its final CDD rule as part of a larger White House announcement of legislation and regulations aimed at strengthening the legal framework for anti-money laundering and anti-corruption compliance.
  - The Final Rule applies to financial institutions, including banks, broker and dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities.
  - Covered financial institutions were given two years—until May 11, 2018—to implement new policies and procedures in response to the Rule.
- The Final Rule amended the BSA regulations to make it explicit that CDD is a regulatory requirement.
  - Specifically, it strengthened CDD procedures by adding a new requirement to obtain and verify the identity of beneficial owners of customers that are legal entities, and imposed an express requirement to conduct CDD as part of a financial institution's existing AML program.

What to Expect in 2018 . . .

FinCEN Issues FAQs on CDD*

- On April 3, 2018, FinCEN issued its long-awaited *Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions*. The timing of this guidance was controversial, as it was issued five weeks before the new CDD regulation goes into effect.
  - Many financial institutions had already drafted policies, procedures, and internal controls, and made IT systems changes, to comply with the new regulations.
- The guidance is set forth in 37 questions.
  - Some FAQs should allay industry concerns about the new regulation, while others raise additional questions and potential compliance burdens for covered financial institutions.
  - The need for such extensive guidance on so many issues in the regulation illustrates the complexity of compliance, and suggests that FinCEN should consider whether clarifications and technical corrections to the regulation should be made.

* For more information, please see Gibson Dunn's April 23, 2018 client alert, *FinCEN Issues FAQs on Customer Due Diligence Regulation.*

What to Expect in 2018 . . .

FinCEN CDD FAQs – Potential Compliance Burdens:

- **FAQs 1-2**: Financial institutions can "choose" to collect beneficial ownership information at a lower threshold than 25% → Possible tension between regulatory threshold and regulatory expectations.
- **FAQ 10**: No grace period for obtaining customer certification that beneficial ownership information is accurate and current when opening new accounts → Many institutions anticipated a grace period when drafting procedures to comply with the new regulation.
- **FAQ 12**: CD rollovers and loan renewals are considered openings of new accounts under the new CDD regulation → Inconsistent with industry practice and burdensome to administer.

Key Takeaway: In this flurry of activity to address regulatory risk, it is essential for financial institutions to continue to consider the money laundering risk of legal entity clients, and to ensure CDD does not become simply mechanical.

- Ask: *Does the ownership structure makes sense for the business, or is it overly complex for the business type? Should this kind of entity be seeking a relationship with my institution?*

What to Expect in 2018 . . .

A New President of the NY Federal Reserve: John Williams

- PhD in economics from Stanford; joined Central Bank in 1994.
- Former president of the San Francisco Federal Reserve, which has recommended aggressive structural changes to at least one large financial institution.
- Emphasized "the importance of the soft side of supervision, which is really about management, governance and culture."

- Mr. Williams has significant experience in the Federal Reserve System; we expect consistency in approach.

"What worries me the most is all these anti-money-laundering and [Bank Secrecy Act] failures at the biggest banks in the world. They pay huge fees, they clearly have not had adequate control over this, and when you read the stories, it sounds like [the bankers think], 'Well, this sounds like a profitable business, so let's not ask questions.' That's what worries me, is the kind of culture that doesn't worry as much about reputation, about the long-term health of the organization."

– John Williams (2016)

What to Expect in 2018 . . .

Voluntary Self-Disclosure

- A company's timely and voluntary disclosure of misconduct is an important factor DOJ will consider when assessing penalties.
- In November 2017, DOJ announced its **FCPA Corporate Enforcement Policy** (formalizing aspects of a 2016 pilot program), which provides for, absent "aggravating circumstances," a presumption of a declination for a company that voluntarily disclosed misconduct, fully cooperates, timely and appropriately remediates, and disgorges profits. How that policy influences DOJ credit for voluntary self disclosure in other contexts is unclear.
- In October 2016, DOJ provided guidance regarding voluntary self-disclosures in **export control and sanctions violations**. To be deemed voluntary, a company must disclose conduct "prior to an imminent threat of disclosure or government investigation," "within a reasonably prompt time after becoming aware of the offense," and with all relevant facts.

"When a company discovers corporate misconduct and quickly raises its hand and tells us about it, that says something. It shows the company is taking misconduct seriously and not willing to tolerate it. And we are rewarding those good decisions."

– John Cronan, Acting Head of DOJ Criminal Division (March 1, 2018)

What to Expect in 2018 . . .

Individual Accountability: Various enforcement actions suggest that regulators will continue to focus on individual accountability. Furthermore, DFS 504 Rule requires certification of compliance with AML transaction monitoring and filtering program requirements.

"We aim to set the right tone about white-collar crime throughout the Department. The cases can be challenging and time-consuming. We are fostering a culture that supports and promotes the investigation and prosecution of individual perpetrators of corporate fraud. . . . By effectively combating corporate misconduct and prosecuting individuals when appropriate, we can protect Americans from fraud . . ."

– Rod Rosenstein, Deputy Attorney General (October 6, 2017)

"Compliance professionals occupy unique positions of trust in our financial system. When that trust is broken, it is important that we take action so that the reputations of thousands of talented compliance officers are not diminished by any one individual's outlying egregious actions."

– Jamal El-Hindi, Deputy Director, FinCEN (May 4, 2017)

What to Expect in 2018 . . .

BSA/AML Convergence with Cybersecurity:

- Historically, financial institutions have maintained different personnel and reporting lines for cybersecurity and BSA/AML compliance.
- Increasingly, U.S. regulators expect financial institutions to incorporate cyber threat information into SARs.
- In 2016, FinCEN issued an advisory regarding cyber threats, outlining expectations regarding:
  - Reporting cyber-enabled crime and cyber events through SARs, including significant unsuccessful attempts.
  - Including relevant cyber-related information in SARs when available (*e.g.*, IP addresses, time stamps, virtual-wallet information, etc.).
  - Collaboration between BSA/AML units and in-house cybersecurity units to identify suspicious activity.

What to Expect in 2018 . . .

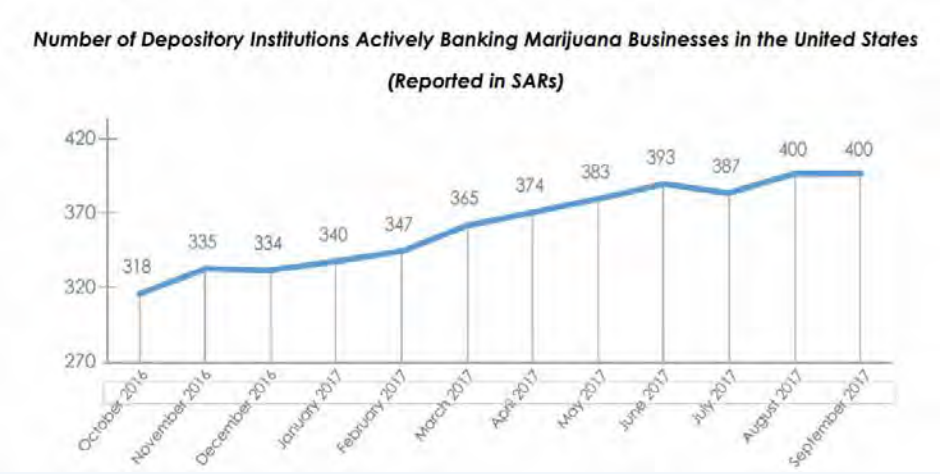
NYDFS Part 504

- On June 30, 2016, NYDFS published Final Rule 504, which established regulations requiring covered financial institutions to enhance their BSA/AML/sanctions compliance programs.
- The regulations codified in Part 504 required covered institutions to maintain:
  - A transaction monitoring program reasonably designed to monitor executed transactions for potential BSA/AML violations; and
  - A filtering program reasonably designed to identify and intercept transactions prohibited by OFAC sanctions.
- Part 504, which took effect on January 1, 2017, required covered institutions to issue a "compliance finding" to DFS by **April 15, 2018** certifying that the institution's transaction monitoring and filtering programs comply with the Final Rule.

What to Expect in 2018 . . .

Marijuana Banking Before This Administration

- Financial institutions continue to struggle with conflict between state and federal law regarding marijuana use.
- In 2013, James Cole (DAG) issued a memorandum generally recommending DOJ refrain from prosecuting many marijuana-related crimes in states that had legalized marijuana.
- Similarly, FinCEN issued guidance in 2014 regarding the BSA and marijuana-related business. The guidance encourages banks to refer to the Cole Memorandum.
  - Financial institutions are still generally required to file SARs under a three-tiered system: (1) Marijuana Limited SARs, (2) Marijuana Priority SARs, (3) Marijuana Termination SARs
  - Set very difficult standards re customer due diligence.



Source: FinCEN, *Marijuana Banking Update* (through 9/20/17)

What to Expect in 2018 . . .

Marijuana Under This Administration

- Attorney General Jeff Sessions rescinded the Cole Memorandum in January 2018, stating that marijuana-related crimes "may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes . . . and the Bank Secrecy Act."
- FinCEN has not formally rescinded its guidance, but its dependency on the Cole Memorandum makes reliance risky. FinCEN has also indicated it is reviewing the current guidance.
- Proposed bipartisan Senate legislation would prevent federal officials from punishing a financial service provider "solely because the depository institution provides or has provided financial services to a cannabis-related legitimate business."

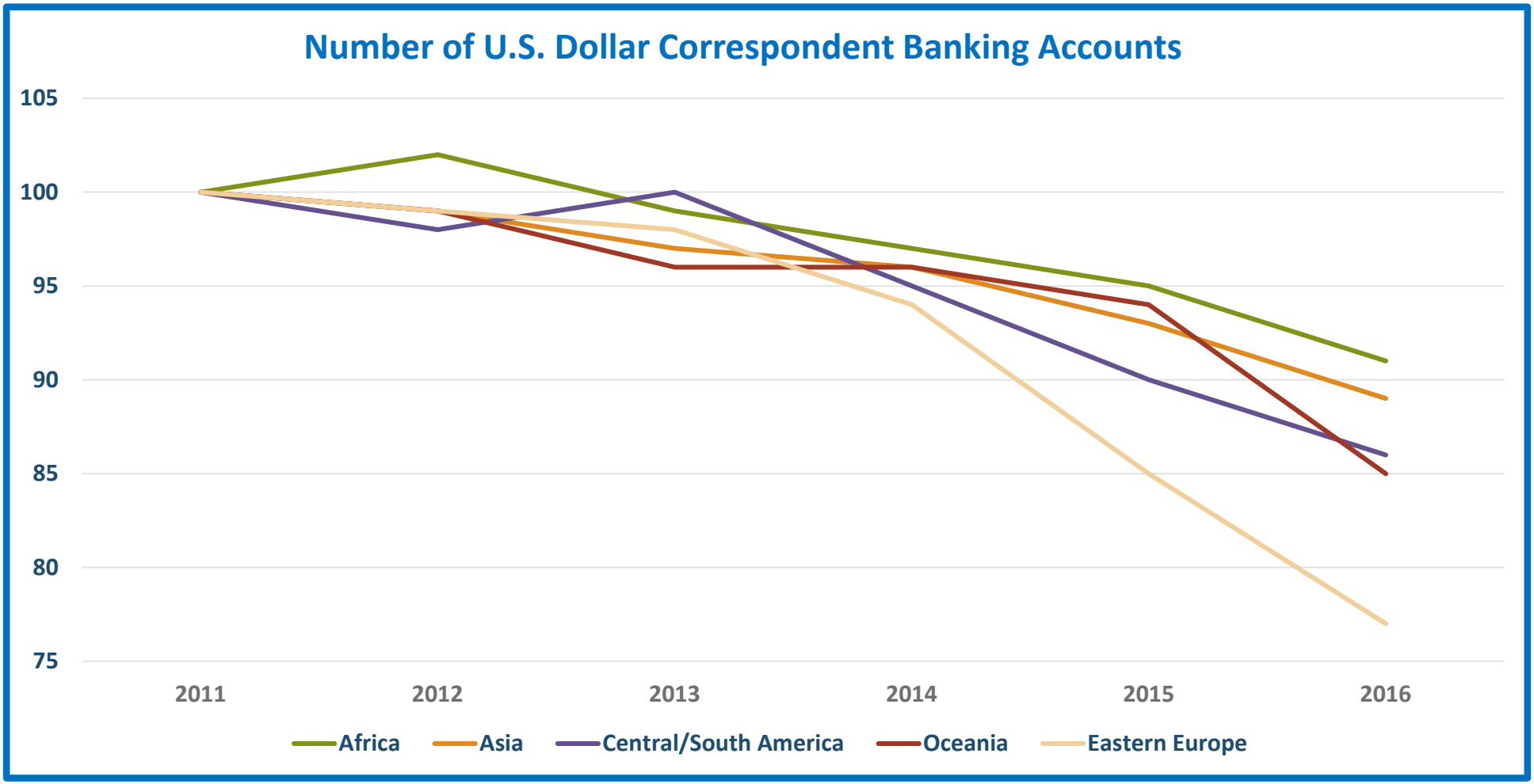
"...My view is that we don't need to be legalizing marijuana…States, they can pass the laws they choose. I would just say, it does remain a violation of federal law to distribute marijuana throughout any place in the United States, whether a state legalizes it or not."

– Jeff Sessions (2017)

Marijuana banking reform "is a very important issue. If confirmed, I will work with Congress and the President to determine which provisions of the current tax code should be [changed] . . . to ensure that all individuals and businesses compete on a level playing field."

– Steve Mnuchin (2017)

What to Expect in 2018 . . . Focus on "De-Risking"



Source: *The Economist* (July 8, 2017)

The Future of Sanctions: New Avenues for Sanctions, Implementation, and Enforcement
Innovation

- Until recently, sanctions were fairly simple and consisted either of blacklisting entire countries or blacklisting individuals or companies for engaging in troubling activities.

- Since 2010 there has been significant innovation in the practice of sanctions, including:
  - Secondary sanctions – against Iran and North Korea
  - Sectoral sanctions – against Russia and Venezuela
  - "Naming and Shaming" – against Russian oligarchs (naming with no sanctions consequences)
  - Congressionally mandated sanctions – proposed in several programs

- More innovation is in store – different types of measures, different consequences – the IEEPA is very flexible.

The Future of Sanctions: New Avenues for Sanctions, Implementation, and Enforcement
New Types of Targets

- In the past few months, Treasury has begun enforcing against new targets including those involved in human rights violations and corruption.

"Today, the United States is taking a strong stand against human rights abuse and corruption …Treasury will continue to take decisive and impactful actions to hold accountable those who abuse human rights, perpetrate corruption, and undermine American ideals."

– Steven T. Mnuchin, Secretary of the Treasury (January 17, 2018)

The Future of Sanctions: New Avenues for Sanctions, Implementation, and Enforcement
Cybercurrencies

- The agency also notified the financial community that the use of Bitcoin and cybercurrencies will not protect the targets of sanctions from enforcement actions.
  - On January 19, 2018, OFAC warned, in response to Venezuelan President Maduro's plan to launch a digital currency to thwart U.S. sanctions, that "U.S. persons that deal in the prospective Venezuelan digital currency may be exposed to U.S. sanctions risks."
  - The Trump Administration has since issued an Executive Order that directly prohibits U.S. persons from transacting in Venezuela's digital currency.

"Instead of correcting course to avoid further catastrophe, the Maduro regime is attempting to circumvent sanctions through the Petro digital currency – a ploy that Venezuela's democratically-elected National Assembly has denounced and Treasury has cautioned U.S. persons to avoid."

– Steven T. Mnuchin, Secretary of the Treasury (March 19, 2018)

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Questions?

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F. Joseph (Joe) Warin is co-chair of the firm's White Collar Defense and Investigations Practice Group and chair of the Washington, D.C. Office's Litigation Department, which consists of over 150 attorneys. He served as Assistant United States Attorney in Washington, D.C. In that capacity, Mr. Warin was awarded a Special Achievement award by the Attorney General. As a prosecutor, he tried more than 50 jury trials.

Mr. Warin's areas of expertise include complex civil litigation, white collar crime, and regulatory and securities enforcement – including Foreign Corrupt Practices Act investigations, False Claims Act cases, special committee representations, compliance counseling and class action civil litigation. Mr. Warin has handled cases and investigations in more than 40 states and dozens of countries. His clients have included corporations, officers, directors and professionals in regulatory, investigative and trial matters. These representations have involved federal regulatory inquiries, criminal investigations and cross-border inquiries by dozens of international enforcers, including UK's SFO and FCA, and government regulators in Germany, Switzerland, Hong Kong, and the Middle East.

Mr. Warin's civil practice includes representation of clients in complex litigation in federal courts and international arbitrations. He has tried 10b-5 securities and RICO claim lawsuits, hostile takeovers and commercial disputes. Mr. Warin has handled more than 40 class action cases across the United States. These representations include investment banking firms, global corporations, Big 4 accounting firms, broker-dealers and hedge funds.

For many years, Mr. Warin has been hired by audit committees or special committees of public companies to conduct investigations into allegations of wrongdoing. These investigations have been in a wide variety of industries including energy, oil services, financial services, healthcare and telecommunications.

Mr. Warin is an honored recipient of numerous professional awards and accolades. In 2017, *Chambers* honored Mr. Warin with the Outstanding Contribution to the Legal Profession Award. *Chambers Global 2017* ranked Mr. Warin a "Star" in USA – FCPA "with exceptional expertise across all aspects of anti-corruption law". From 2015-2018, he has been selected by *Chambers Latin America* as a top-tier lawyer in Latin America-wide, Fraud & Corporate Investigations. Mr. Warin is one of only ten lawyers currently ranked in *Chambers USA* in five categories: in 2016, *Chambers USA* selected him as a Leading Lawyer in the nation in the areas of Securities Regulation Enforcement, Securities, and Litigation: FCPA; he also was ranked as a Leading Lawyer in the areas of Securities Litigation and White Collar Crime and Government Investigations in the District of Columbia. In 2017, Mr. Warin was named to *Securities Docket's* "Enforcement 40". *Benchmark Litigation* has recognized him as a U.S. White Collar Crime Litigator Star for seven consecutive years (2011-2017). In 2018, W*ho's Who Legal Investigations* guide recognized Mr. Warin as a "Thought Leader", and in 2016, *Who's Who Legal* and *Global Investigations Review* named Mr. Warin to their list of World's Ten-Most Highly Regarded Investigations Lawyers. Winners are the "most widely recognized for their achievements by the global legal market" as determined by private practitioners and in-house counsel. He has been listed in *The Best Lawyers in America®* every year from 2006 – 2018 for White Collar Criminal Defense. *Best Lawyers®* also named Mr. Warin 2016 Lawyer of the Year for White Collar Criminal Defense in the District of Columbia. In 2016, he was named among the *Lawdragon* 500 Leading Lawyers in America.

Mr. Warin previously served as president of the Assistant United States Attorneys Association. He is a member of the Board of the International Association of Independent Corporate Monitors.

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Stephanie L. Brooker, former Director of the Enforcement Division at the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and a former federal prosecutor, is co-chair of the Financial Institutions Practice Group and a member of White Collar Defense and Investigations Practice Group. As a prosecutor, Ms. Brooker served as the Chief of the Asset Forfeiture and Money Laundering Section in the U.S. Attorney's Office for the District of Columbia, tried 32 criminal trials, and briefed and argued criminal appeals. Ms. Brooker's practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling. She represents financial institutions, multi-national companies, and individuals in connection with criminal, regulatory, and civil enforcement actions involving BSA/AML, sanctions, anti-corruption, securities, tax, wire fraud, and sensitive employee matters. Ms. Brooker's practice also includes BSA/AML compliance counseling and due diligence and significant criminal and civil asset forfeiture matters. She was recently honored by *The National Law Journal* as a Trailblazer in White Collar.

Before joining Gibson Dunn in April 2016, Ms. Brooker served as the first Director of FinCEN's Enforcement Division, which is the lead federal regulator with responsibility for enforcing the U.S. AML laws and regulations. In this role, she oversaw all of FinCEN's domestic and foreign enforcement and compliance under the BSA, such as civil money penalty actions and injunctions against a wide range of financial institutions, including banks, credit unions, money services businesses, virtual currency entities, casinos, broker-dealers, futures, insurance, and dealers in precious metals, stones and jewels. She also oversaw rulemaking actions under Section 311 of the PATRIOT Act against foreign institutions and jurisdictions and Geographic Targeting Orders.

As Enforcement Director, Ms. Brooker also oversaw for the agency litigation of contested enforcement actions, including several cases of first impression in federal court handled by the Department of Justice (DOJ) on behalf of the agency. She also oversaw examinations of regulated financial institutions and development of compliance strategies. Ms. Brooker worked closely with a wide range of state and federal partners, including DOJ/Asset Forfeiture and Money Laundering Section, U.S. Attorneys' offices, State Department, Securities and Exchange Commission, Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Consumer Financial Protection Bureau, Financial Industry Regulatory Authority, and the Conference of State Bank Supervisors. Prior to serving as Enforcement Director, Ms. Brooker served as Chief of Staff and Senior Advisor to the Director of FinCEN.

Ms. Brooker served from 2005 to 2012 as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Columbia, where she served as the first Chief of the new Asset Forfeiture and Money Laundering Section from 2010 to 2012. This Section was responsible for all asset forfeiture and money laundering issues in Criminal Division cases and for litigation of civil forfeiture cases. In this role, she investigated and prosecuted complex civil and criminal forfeiture cases involving high-priority enforcement areas, such as national security, sanctions violations, and major financial fraud. She established the USAO's first DC Financial Crimes Task Force and supervised the investigation and prosecution of BSA and money laundering cases. In 2012, she received the U.S. Attorney's Award for Creativity and Innovation in Management. She was awarded three Special Achievement Awards for Superior Performance and the Office's Criminal Division Award. Ms. Brooker clerked for Judge Diana Gribbon Motz of the U.S. Court of Appeals for the Fourth Circuit and for Judge James Robertson of the U.S. District Court for the District of Columbia. She also worked in private practice as an appellate litigation associate at an international law firm. She graduated magna cum laude in 2001 from Georgetown University Law Center, where she served as Managing Editor of Georgetown Law Journal and was elected to the Order of the Coif. She graduated with highest distinction from Northwestern University with a B.S. in Journalism in 1996. She was also selected as a Harry S. Truman Scholar. Ms. Brooker serves as Treasurer of the Board of Directors of the Robert A. Shuker Scholarship Fund. Ms. Brooker is admitted to practice in the District of Columbia.

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Adam M. Smith is an experienced international lawyer with a focus on international trade compliance and white collar investigations, including with respect to federal and state economic sanctions enforcement, the Foreign Corrupt Practices Act, embargoes, and export controls.

From 2010-2015 Mr. Smith served in the Obama Administration as the Senior Advisor to the Director of the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and as the Director for Multilateral Affairs on the National Security Council. At OFAC he played a primary role in all aspects of the agency's work, including briefing Congressional and private sector leadership on sanctions matters, shaping new Executive Orders, regulations, and policy guidance for both strengthening sanctions (Russia and Syria) and easing measures (Burma and Cuba), and advising on enforcement actions following sanctions violations.

Mr. Smith travelled extensively in Europe, the Middle East, Asia, Africa, and the Americas conducting outreach with governments and private sector actors on sanctions, risk, and compliance. This outreach included meetings with senior leadership in several sectors including finance, logistics, insurance and reinsurance, energy, mining, technology, and private equity.

Mr. Smith frequently chaired the Treasury delegation to EU/G7 consultations regarding Russia sanctions and negotiated with EU institutions and member states to implement coordinated measures. Additionally, Mr. Smith managed the development and implementation of the U.S. government's international outreach program on Congressionally-mandated Iran sanctions and helped develop proposed sanctions relief strategies as a part of the Iranian nuclear negotiations.

During Mr. Smith's tenure on the White House's National Security Council he advised the President on his multilateral agenda including with respect to international sanctions, coordinated inter-agency efforts to relieve U.S. economic restrictions on Burma, and developed strategies to counter corruption and illicit flows and to promote stolen asset recovery.

Mr. Smith frequently advises compliance officers of Fortune 500 companies regarding deal compliance, regulatory interpretation, licensure requests from relevant agencies, building compliance programs, and defending in both federal and state fora allegations of noncompliance.

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M. Kendall Day, a former Acting Deputy Assistant Attorney General of the U.S. Department of Justice (DOJ) Criminal Division, is a partner in the Washington, D.C. office and a member of the firm's White Collar Defense and Investigations and Financial Institutions Practice Groups. His practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling for financial institutions, multi-national companies, and individuals.

Prior to joining Gibson Dunn in May 2018, Mr. Day spent 15 years as a white collar prosecutor with the U.S. Department of Justice (DOJ), serving most recently as an Acting Deputy Assistant Attorney General of the DOJ's Criminal Division, the highest level of career official in the Criminal Division. In this role, Mr. Day supervised more than 200 Criminal Division prosecutors and professionals tasked with investigating and prosecuting many of the country's most significant and high-profile cases involving allegations of corporate and financial misconduct. He also exercised nationwide supervisory authority over Bank Secrecy Act and money-laundering charges, deferred prosecution agreements and non-prosecution agreements involving financial institutions.

Mr. Day previously served as Chief of the Money Laundering and Asset Recovery Section of the DOJ's Criminal Division from 2014 to 2017 and as Principal Deputy Chief from 2013 to 2014. During his tenure, he supervised 90 lawyers and managed investigations involving global financial institutions and enforcement of anti-money laundering and sanctions laws. He also directed the Kleptocracy Initiative, an international corruption unit focused on safeguarding the U.S. financial system from foreign bribe and corruption proceeds.

From 2005 through 2013, Mr. Day served as a deputy chief and trial attorney in the Public Integrity Section of the DOJ. From 2003 to 2005, he served as an Honors Program Trial Attorney in the DOJ's Tax Division. Mr. Day also served overseas as the Justice Department's Anti-Corruption Resident Legal Advisor in Serbia.

Mr. Day received a number of awards while at the DOJ, including the Attorney General's Award for Distinguished Service, the second highest award for employee performance; the Assistant Attorney General's Award for Exceptional Service; and the Assistant Attorney General's Award for Ensuring the Integrity of Government.

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