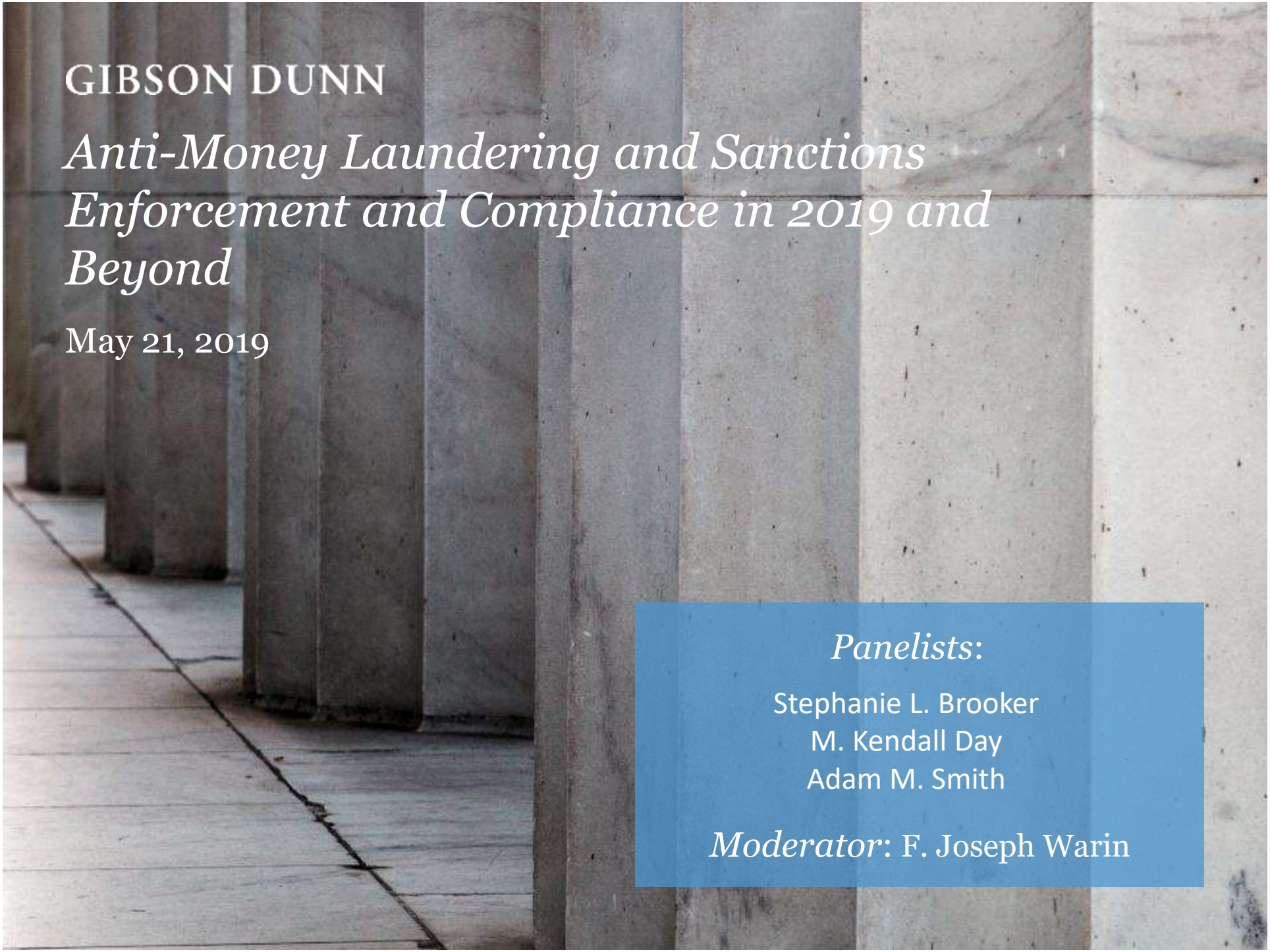

GIBSON DUNN
Anti-Money Laundering and Sanctions Enforcement and Compliance in 2019 and Beyond
May 21, 2019
Panelists:
Stephanie L. Brooker
M. Kendall Day
Adam M. Smith
Moderator: F. Joseph Warin

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 BSA/AML Enforcement and Compliance
   - Key Developments in Core Sanctions Programs
4. **Up Next . . .**
   - Potential BSA/AML Legislative Changes
   - Sanctions Legislative Developments

GIBSON DUNN

Introduction

U.S. Enforcement Agencies and Regulators

Enforcement Responsibilities

DOJ (Civil, Criminal, and Forfeiture)

SEC (Civil)

FinCEN (Civil)

CFTC (Civil)

OFAC (Civil)

FINRA (SRO)

Banking Regulators and Enforcers

OCC

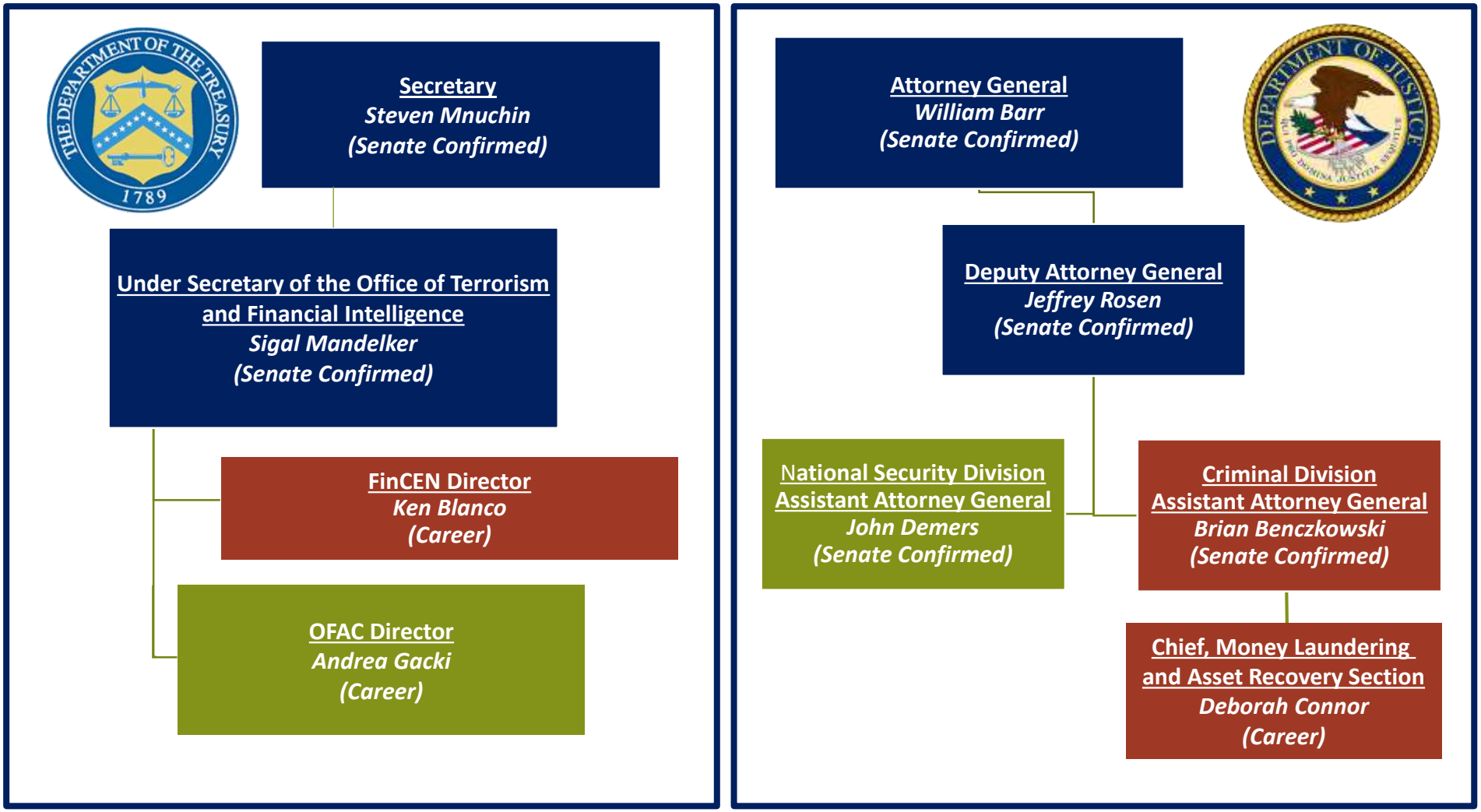
Fed

FDIC

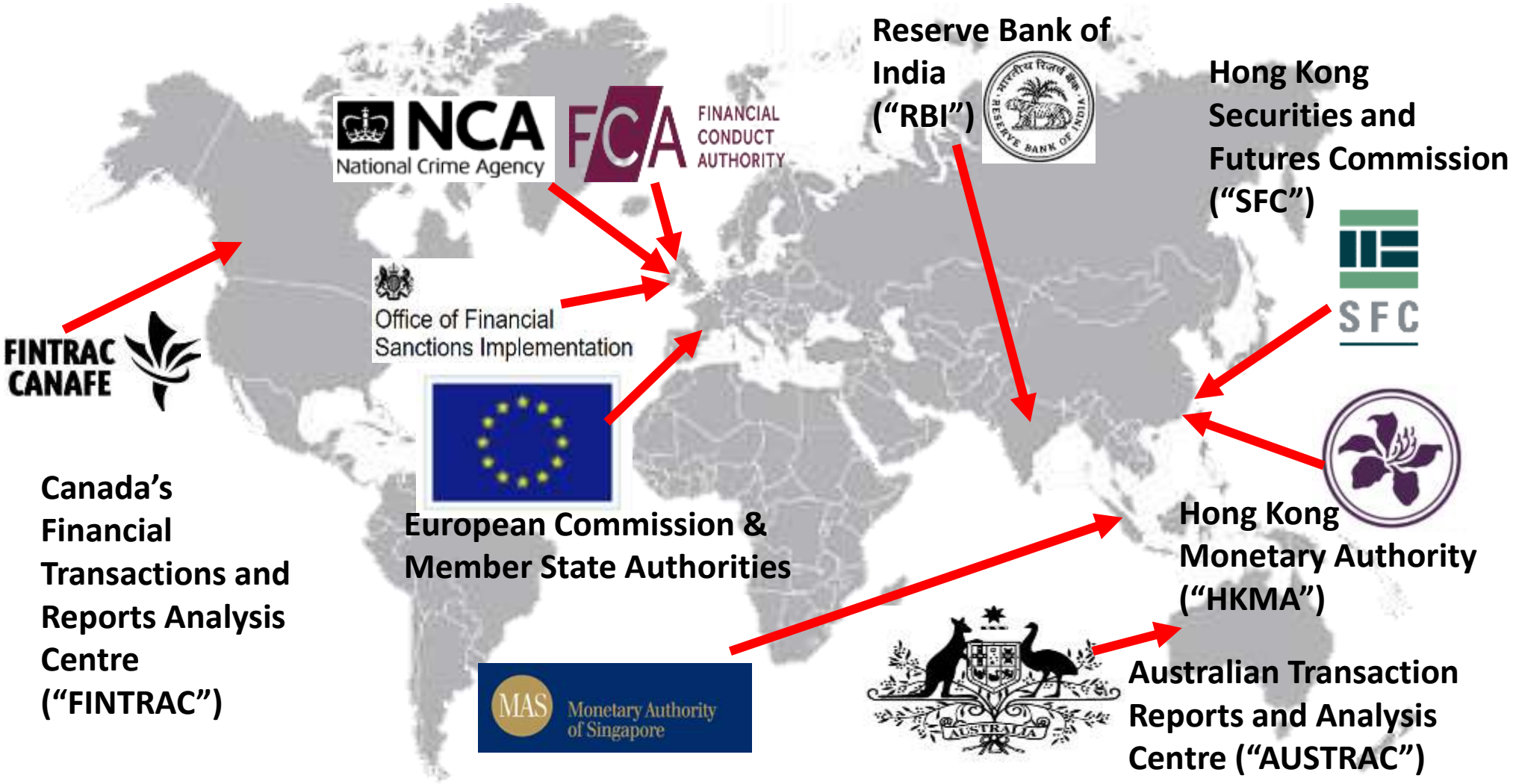
NCUA

DFS

U.S. Enforcement Agencies



International Enforcement Agencies and Regulators



Types of U.S. Enforcement Actions

Criminal:

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

Resolutions May Include:

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

Regulatory:

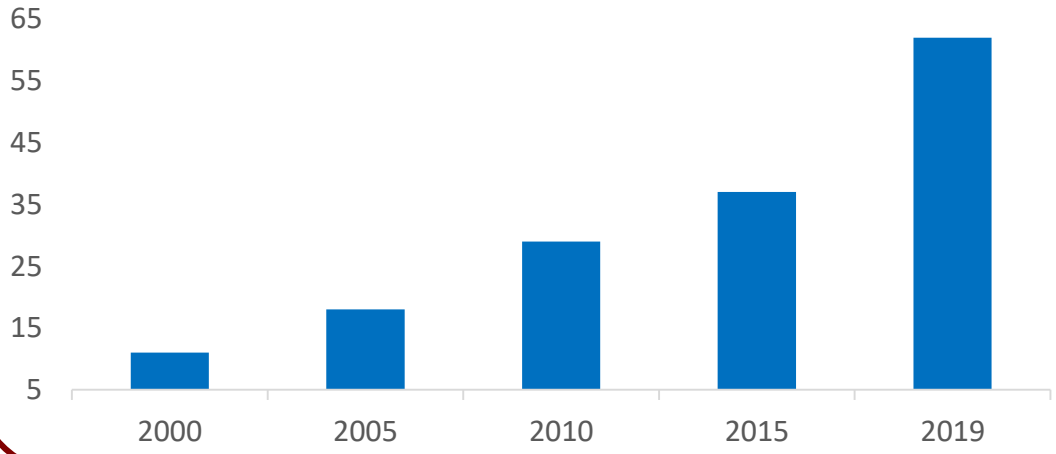
- **Informal Enforcement Actions**
- **Public Enforcement Actions**
  - Consent Orders, C&D Orders, Formal Agreements
- **Civil Enforcement Measures**
  - Civil Money Penalties
  - Remedial Measures, including SAR and CDD Lookbacks
  - Independent Monitors and Consultants
  - Extensive Regulatory Reporting and Oversight
  - Limitation of Business Lines and Growth

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, blacklisted entities have been added and removed at an unprecedented pace, and the number and severity of enforcement actions – at both the federal and state levels – have increased remarkably.

Active OFAC Sanctions Programs



56%

Since 2009, the increase in the number of individuals and entities on the SDN blacklist.

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"

Risks U.S. sanctions the imposition of U.S. sanctions against non-U.S. persons for engaging in transactions with targeted entities

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

How Primary Sanctions Work

***Primary Sanctions* eliminate access to:**

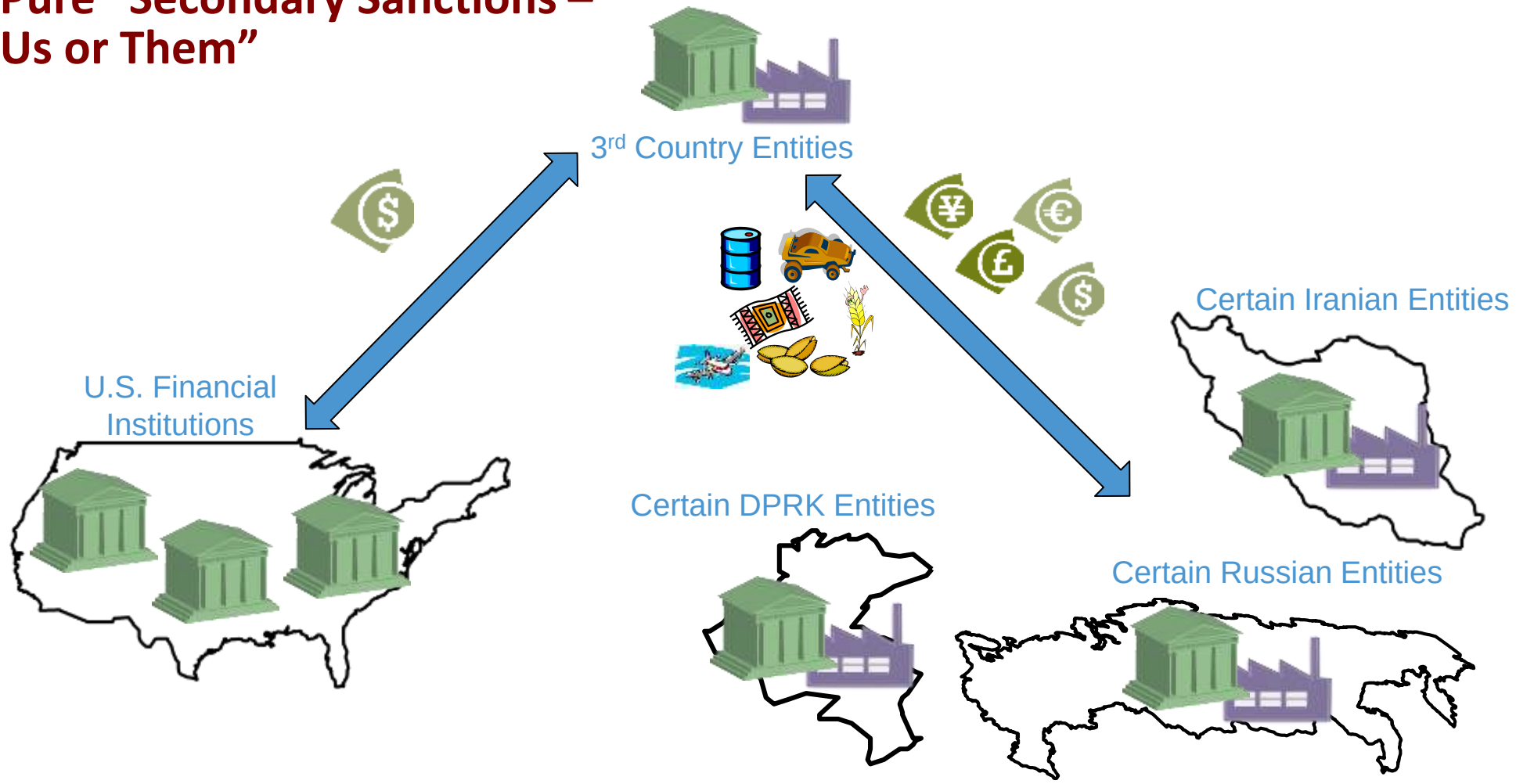
- All property and assets held in the United States
- U.S. financial, commercial, and consumer markets
- Use of U.S. banks for clearing U.S. dollars

The U.S. Government has assessed penalties on companies involved in completely non-U.S.-trade because they sent transactions via the U.S. financial system and "caused" U.S. banks to violate sanctions.

CSE Global Limited / CSE TransTel Pte. Ltd. OFAC Settlement, July 27, 2017

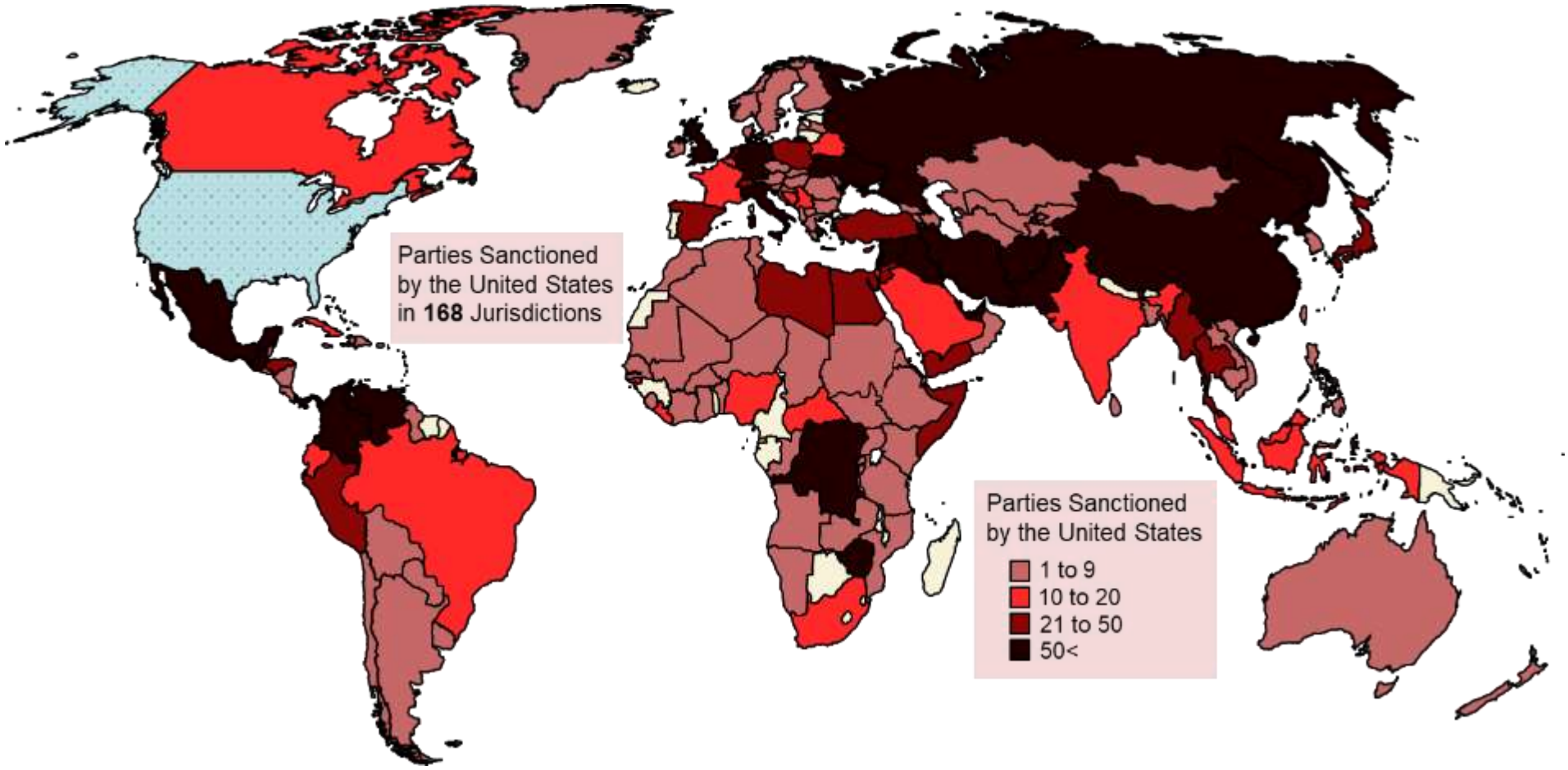
How Secondary Sanctions Work

"Pure" Secondary Sanctions – "Us or Them"



Designations

Distribution of parties designated as SDNs by the United States



Three Principal 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

U.S. AML Enforcement: Overview

Regulatory and Enforcement Trends

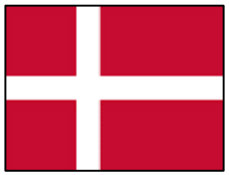
Recent media: Increase in BSA/AML enforcement

- "Federal enforcement of [BSA/AML] rules jumped nearly 30 percent in 2018 after hitting record lows" in 2016 and 2017.
- "Nearly half of the 71 total enforcement actions issued last year by [FinCEN, the OCC, Fed, or FDIC] targeted institutions and individuals that violated AML rules."
- Of those, "roughly half . . . came with monetary penalties."

Source: ACAMS MoneyLaundering.com, *US AML Enforcement Returned in 2018* (Apr. 5, 2019)

Increased International Enforcement

Regulatory and Enforcement Trends



- **Denmark:** In **November 2018**, Danish prosecutors charged **Danske Bank** for AML controls violations at its Estonian branch. Danish regulators, among others, reportedly continue to investigate for alleged AML violations.
  - In **May 2019**, Danish authorities charged former **Danske Bank CEO** with failing to prevent certain transactions linked to the flow of EUR 200 billion in suspicious funds.

- **The Netherlands:** Dutch bank **ING Groep N.V.** settled with Dutch authorities in **September 2018**, agreeing to pay EUR 775 million for failing to detect money laundering activity.

- **Singapore:** Between **July 2017** and **December 2018**, the Monetary Authority of Singapore ("MAS") assessed S$16.8 million in financial penalties against **42 financial institutions**, and initiated prosecutions against multiple individual bankers and banks, all in connection with 1MDB. There are reportedly additional ongoing investigations into other financial institutions and individuals potentially involved (as of March 2019).

Recent BSA Enforcement Actions

Regulatory and Enforcement Trends

In 2019, Regulators continue to focus on:

Priority
(1) Risks from traditional money laundering schemes.
(2) Risk assessment processes, policies and procedures.
(3) Risk-appropriate controls, sufficient customer due diligence and suspicious activity identification and monitoring.
(4) Aspects of bank BSA/AML strategies that may lead to de-risking.
(5) Evolving vulnerabilities resulting from the rapid pace of technological change.
(6) MSBs and other higher-risk account profiles.
(7) Emerging payment solutions and terrorist financing.
(8) Implementation of FinCEN's CDD Rule.

Recent Enforcement Actions

Regulatory and Enforcement Trends

Recent Enforcement Cases (2018-2019)

- ***In re Eric Powers (2019)***: FinCEN issued its first civil monetary penalty against a peer-to-peer virtual currency exchanger after finding Powers failed to register as a money service business and conduct due diligence on his anonymous client base.
- ***Standard Chartered Bank (2019)***: Multi-agency, cross-border resolution for primarily processing financial transactions through U.S. financial institutions in alleged violation of sanctions against Iran, and alleged weaknesses in AML controls. Standard Chartered agreed to a ~$1.1 billion fine and compliance commitments, including annual certifications.
- ***UniCredit Bank (2019)***: Multi-agency resolution for alleged violations of sanctions laws. UniCredit agreed to a ~$1.3 billion fine and compliance commitments, including annual certifications.
- ***Central States Capital Markets, LLC (2018)*****:** Criminal charges consisting of violations of the BSA, based on CSCM's alleged willful failure to file a SAR regarding the illegal activities of its customer. Represented the first criminal BSA charge ever brought against a United States broker-dealer.
- ***UBS (2018)***: FinCEN, SEC, and FINRA fined UBS for alleged BSA/AML program deficiencies.
- ***MoneyGram (2018)***: MoneyGram's DPA was extended, and an additional $125 million forfeited, for alleged "significant weaknesses in [its] anti-fraud and anti-money laundering (AML) program."

Recent Enforcement Actions

Regulatory and Enforcement Trends

Recent Enforcement Cases (2018)

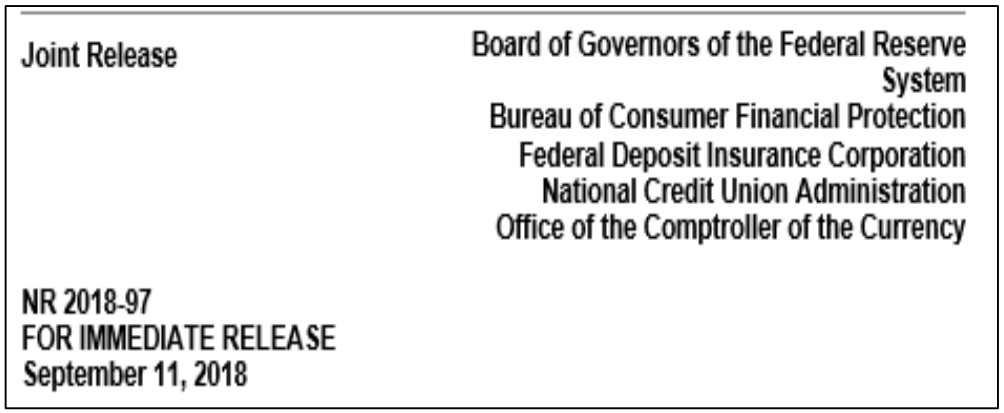
- ***Société Générale S.A.***: DOJ alleged conspiring to violate the Trading with the Enemy Act for the bank's role in processing U.S. dollar transactions in connection with credit facilities involving Cuba; the resolution included a $1.34 billion fine.
- ***Capital One, N.A. and Capital One Bank, N.A.***: OCC issued a consent order with a $100 million civil money penalty for alleged BSA/AML deficiencies.
- ***LPL Financial, LLC***: FINRA fined LPL Financial a $2.75 million fine after it found, among other things, it failed to file SARs on cyber events.
- ***COR Clearing, LLC***: SEC found COR Clearing failed to report suspicious sales of penny stock shares as required by the BSA. As part of the settlement, COR agreed not to sell penny stocks deposited at COR with certain narrow exceptions.
- ***Charles Schwab & Co., Inc.***: SEC found Charles Schwab failed to appropriately file SARs after terminating certain independent investment advisers; the resolution included a $2.8 million civil money penalty.

Supervisory Guidance

Regulatory and Enforcement Trends

Interagency Statement Clarifying the Role of Supervisory Guidance

In September 2018, five federal agencies issued a joint statement confirming that supervisory guidance does not have the force and effect of law. Thus, **agencies cannot take enforcement actions based on supervisory guidance**.



Joint Release

Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency

NR 2018-97
FOR IMMEDIATE RELEASE
September 11, 2018

This joint release appears to be contrary to a March 2018 Ninth Circuit decision in *California Pacific Bank v. FDIC*. In that case, the court determined that, in a BSA enforcement action, the FDIC had properly relied on the FFIEC Manual to find fault with the Bank's BSA/AML program.

Focus on Innovation and Modernization

Regulatory and Enforcement Trends

Authorities have focused on promoting a "***strong, current, and efficient AML/CFT framework***" to target and track increasingly sophisticated criminals. This is also an area of focus for Congress (H.R. 2514).

"We must . . . continuously upgrade and modernize our system—a statutory and regulatory construct originally adopted in the 1970s (when we were still using rotary phones!)**—and make sure that we have the right framework in place to take us into the 2030s and beyond. . . .**

This is one of my top priorities. But Treasury cannot do this alone. It must be a partnership with the private sector, law enforcement, and of course, our regulatory colleagues.

That is why Treasury and the [Federal Banking Agencies] have convened a working group to identify ways to improve the effectiveness and efficiency of the Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regime."

– Remarks by Sigal Mandelker
Undersecretary, Terrorism and Financial Intelligence
U.S. Department of the Treasury
December 3, 2018

BSA Working Group

Regulatory and Enforcement Trends

- Created by Treasury's Office of Terrorism and Financial Intelligence
- Includes FinCEN and the Federal Banking Agencies
- To date, the group's work has resulted in two joint statements:
  - **October 2018**: allowing community-focused banks and credit unions to share certain AML resources
  - **December 2018**: encouraging banks to take innovative approaches to their AML efforts

"The group is also actively working on other important efforts to improve the BSA/AML regime, including:

Reviewing other ways in which financial institutions can take innovative and proactive approaches to identify, detect, and report financial crime and meet BSA/AML regulatory obligations;

Reviewing the risk-based approach to the examination process; and

Reviewing the agencies' approach to BSA/AML supervision and enforcement."

– Sigal Mandelker
March 12, 2019

OCC Supervisory Priorities

Regulatory and Enforcement Trends

2019 Supervision Priorities Include:

- Completing implementation of the Economic Growth Act to reduce regulatory burden for small institutions
- Improving efficiency and effectiveness of BSA/AML regulations
- Supporting law enforcement to protect the financial system
- Reduce burden of BSA/AML compliance
- Implement incentive compensation provisions of the Dodd-Frank Act

OCC has highlighted ways it believes implementing AML/BSA laws and regulations can be improved including:

- "Allowing regulators to schedule and scope BSA/AML examinations on a risk-basis and identifying ways to conduct associated examinations in a more efficient manner.
- Considering changes to the threshold requiring mandatory reporting of Suspicious Activity Reports (SARs) and currency transaction reports and simplifying reporting forms and requirements.
- Working with law enforcement to provide feedback to banks so that they understand how SARs and other BSA report filings are used and can provide the most useful information.
- Exploring the use of technologies to reduce reporting burden and provide more effective access and information to law enforcement and national security personnel."

– Testimony of Joseph Otting
Comptroller of the Currency
Before the House Committee on Financial Services
June 13, 2018

Federal Reserve Supervisory Priorities

Regulatory and Enforcement Trends

Board of Governors of the Federal Reserve *Supervision and Regulatory Reports*

In November 2018, the FRB issued its first inaugural Supervision and Regulatory Report focusing on trends in the FRB's supervisory and regulatory activities dating back to the financial crisis.

- Report found that for large banks, over half of the supervisory findings issued in the past five years were related to governance and control issues, including weaknesses in BSA/AML programs.

On May 10, 2019, the FRB issued its second Report. The May 2019 Report focused on tailoring FRB supervision to the size and risk profile of regulated institutions.

Both Reports list **supervisory priorities** by category of financial institution. BSA / AML supervision priorities for 2019 include:

"The Federal Reserve's supervisory work is tailored, with the most rigorous standards applied to the most systemically important financial institutions."

- "Use of **artificial intelligence for fraud and BSA/AML detection**" as a supervision priority for large and foreign banking organizations; and
- **"Bank Secrecy Act/anti-money laundering**" as priorities for community and regional banking organizations.

Federal Reserve Enforcement

Regulatory and Enforcement Trends

Recent FRB enforcement actions include:

- ***Adam Koontz*** (2019): The FRB banned the BSA/AML officer and former CFO from the banking industry for his role in the collapse of Fayette County Bank.
- ***Sumitomo Mitsui Banking Corporation*** and its ***New York branch*** (2019) agreed to submit written plans to the FRB to "enhance oversight . . . of the Branch's compliance with the BSA/AML Requirements and the OFAC Regulations" and to enhance its OFAC and BSA/AML compliance programs.
- ***Tim Leissner*** and ***Roger Ng*** (2019): The FRB banned Leissner and Ng from the banking industry for their roles in 1MDB. Leissner also was fined $1.42 million.
- ***United Bank Limited*** and its ***New York branch*** (2018) agreed to hire a third party consultant to conduct a BSA/AML Compliance Review of the branch and submit written plans to the FRB to cure AML/BSA compliance and suspicious activity monitoring and reporting deficiencies.

SEC Priorities and Enforcement

Regulatory and Enforcement Trends

- In its 2019 Examination Priorities, the Office of Compliance Inspections and Examinations included BSA/AML compliance as a priority.
  - Emphasis on customer due diligence, filing timely and adequate SARs, and determining whether entities are conducting adequate independent testing.

- Peter Driscoll, OCIE Director, in a May 2019 speech explained:
  - "Suspicious activity includes more than just activity associated with money movements and traditional money laundering. It also includes activity associated with potential securities fraud, insider trading, and a wide variety of manipulative trading schemes."

  - "OCIE is not here to second guess decisions firms have made regarding implementation of their AML compliance programs or whether to file . . . SARs[], provided those decisions appear reasonable under existing regulatory guidance as well as the firms' own business activities and risk-based policies and procedures."

  - "OCIE examiners continue to identify firms that are not conducting independent tests, are not conducting tests on a timely basis, or conduct ineffective tests that cannot identify failures."

SEC Priorities and Enforcement

Regulatory and Enforcement Trends

SEC BSA/AML actions against broker-dealers in 2018:

- $750,000 penalty against broker-dealer Aegis Capital Corporation for allegedly failing to file SARs on transactions that had red flags of market manipulation; settlement required the Company to retain a compliance expert.

- Chardan Capital Markets LLC was ordered to pay a $1 million penalty for allegedly failing to file SARs related to suspicious sales of billions of penny stock shares. Its Chief Compliance Officer also agreed to pay a $15,000 penalty.

- Industrial and Commercial Bank of China Financial Services LLC agreed to a $860,000 penalty for conduct similar to Chardan's.

SEC Priorities and Enforcement

Regulatory and Enforcement Trends

- In *SEC v. Alpine Sec. Corp.*, 354 F. Supp. 3d 396, 417 (S.D.N.Y. 2018), Judge Cote rejected a challenge to the SEC's authority to enforce BSA/AML violations, concluding that even though FinCEN has not delegated BSA enforcement authority to the SEC, the SEC has its own enforcement authority over broker-dealer reporting obligations. The decision was not appealed.

- In 2019, all 52 actions the SEC has filed against public companies and their subsidiaries to date have been filed as administrative proceedings instead of federal court actions.

Source: Law360 "SEC Relies On In-House Proceedings in 1st Half of 2019" (May 15, 2019)

FINRA Exam Priorities & Guidance

Regulatory and Enforcement Trends

2019 Risk Monitoring and Examination Priorities Include:

- Supervision of digital assets business, including compliance with BSA/AML rules and regulations.
- Compliance with FinCEN's CDD rule (effective May 2018).
- Meeting AML requirements in connection with online distribution platforms.

Regulatory Notice 19-18

- On May 6, 2019, FINRA issued a notice providing **97 red flags** in six different categories:
  - Customer due diligence and interactions
  - Deposits of securities
  - Securities trading
  - Money movements
  - Insurance products
  - Other
- The notice is the first significant FINRA guidance on red flags since Notice 02-21 in 2002.
- The new guidance incorporates and adds to the red flags previously identified in Notice 02-21.
- The notice reminds firms to be "aware of emerging areas of risk, such as risks associated with **activity in digital assets**. Regardless of whether such assets are securities, BSA/AML requirements, including SAR filing requirements apply."

FINRA Exam Priorities & Enforcement

Regulatory and Enforcement Trends

Recent FINRA Enforcement Actions

TriPoint Global Equities, LLC (2019) – FINRA found that TriPoint failed to develop and implement an AML program to identify potentially suspicious activity in customers' deposits and liquidation of penny stocks. In addition, TriPoint allegedly failed to investigate the red flags for penny stock transactions identified in its own AML plan. TriPoint was censured, fined $100,000, and ordered to pay disgorgement of commissions.

Morgan Stanley (2018) – FINRA found that Morgan Stanley's automated AML surveillance system did not receive critical data from several systems, undermining its surveillance of wire and foreign currency transfers, including transfers involving countries with high money-laundering risk. The firm allegedly did not devote sufficient resources to review alerts generated by its system. The firm settled the FINRA action for $10 million.

Tradition Securities and Derivatives Inc. (2018) – FINRA found that Tradition Securities' customers traded Venezuelan and Argentinian bonds through delivery-versus-payment accounts. The firm did not appreciate the AML risks associated with foreign bonds and was not knowledgeable about the currency control restrictions in place in Venezuela and Argentina, nor did it tailor its AML compliance program to fit its foreign bond business. It also allegedly failed to conduct due diligence on FFI accounts. Tradition Securities was censured and fined $100,000.

Role of DFS in AML Enforcement

Regulatory and Enforcement Trends

New York State Department of Financial Services ("DFS")—which oversees state-chartered banks, foreign bank branches and representative offices, insurance companies, and money transmitters, among other financial institutions—remains a significant actor in the AML space, and continues to aggressively pursue AML enforcement.

- Recent enforcement actions demonstrate that DFS is willing to act either in conjunction with, or independently from, federal regulators. DFS civil penalties are sometimes greater than federal regulatory penalties or imposed where there is no federal penalty.

November 2018: As part of a broader resolution, Société Générale agreed to pay **$95 million** to DFS, specifically in connection with alleged AML compliance program failures at Société Générale's New York branch. In 2017, the Federal Reserve Board issued a C&D against the bank for the same conduct with no CMP.

October 2018: UAE-based private bank Mashreqbank PSC admitted to violations of New York laws and agreed to pay a **$40 million fine**, hire a third-party compliance consultant, and develop revised AML/BSA and OFAC compliance programs in connection with numerous BSA/AML deficiencies identified during DFS and FRBNY examinations in 2016-2017. To date, there has been no action from the Federal Reserve.

State Enforcement Trends

Regulatory and Enforcement Trends

DFS Leadership Changes

Linda Lacewell, Acting Superintendent

- Acting Superintendent Lacewell was nominated in January 2019; she replaced now-former Superintendent Maria T. Vullo on February 1, 2019.
  - Lacewell's appointment must be confirmed by the State Senate.
- Lacewell is a former Chief of Staff to Governor Cuomo and served as New York's first Chief Risk Officer.
  - As Chief Risk Officer, Lacewell helped create and implement the state's first system for ethics, risk and compliance in state agencies and authorities.
- Lacewell is a former EDNY prosecutor and worked on the Enron Task Force.

On April 29, 2019, Lacewell appointed **Katherine Lemire** as the **Executive Deputy Superintendent** of a newly created **Consumer and Protection & Enforcement** Division.

On May 15, 2019, Lacewell appointed six new Executive Staff members, including three attorneys:

- **Chief of Staff Wendy Erdly** (former Special Counsel for Ethics, Risk, and Compliance for the New York State Liquor Authority)
- **Special Counsel Sumit Sud** (former Deputy Chief Special Counsel for Ethics, Risk and Compliance)
- **Special Counsel for Ethics, Risk, and Compliance Shaunik R. Panse** (formerly from private practice)

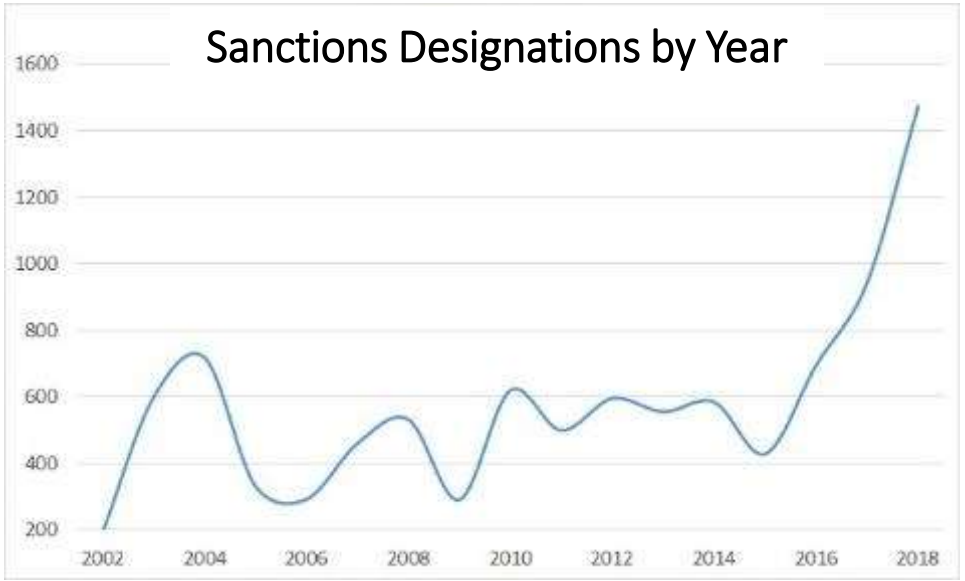
Sanctions Under This Administration: Executive Power

Regulatory and Enforcement Trends

Two-decade trend of increasing reliance on sanctions by the U.S. government

Sanctions Employed at Highest-Ever Rate During 2017 and 2018

- Total number of persons designated in 2018 was approximately 1,500 — 50 percent more than has ever been added to the SDN List in any single year;
- More than one sanctions action per week in 2017 and 2018;
- Billions of dollars of fines by OFAC, Department of Commerce, and state authorities (like NYDFS); and
- Several new sanctions programs, including targeting Global Human Rights & Corruption, Venezuela, Nicaragua and enhanced penalties against DPRK, Russia, and Iran.



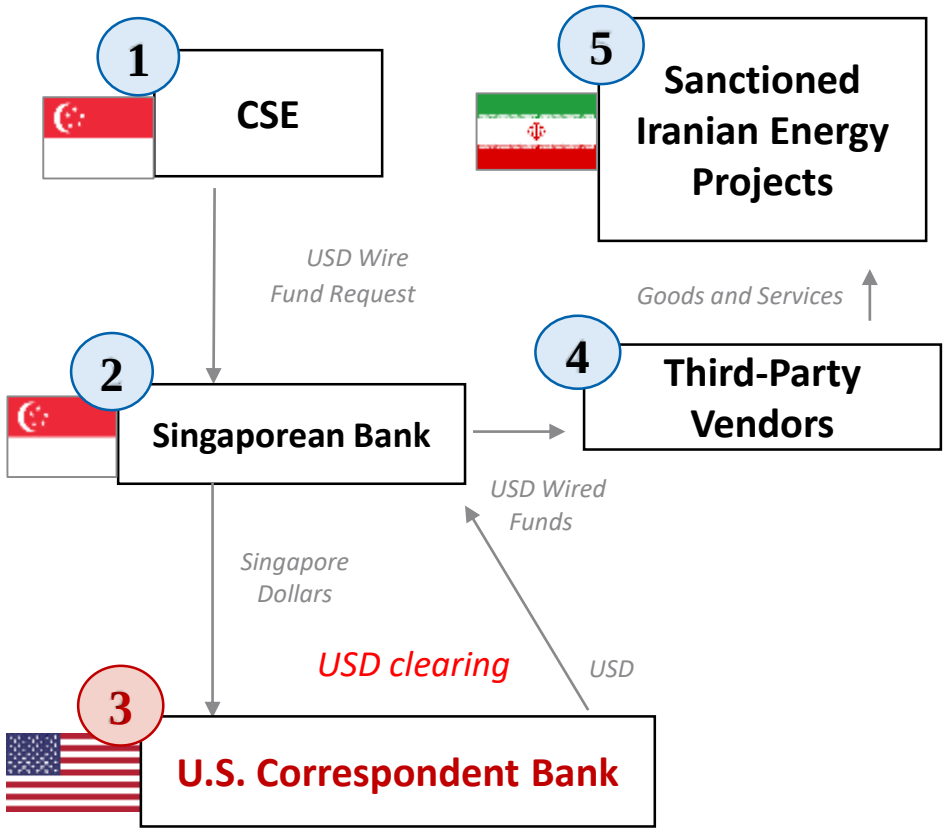
This includes explicit and implicit targeting of some of the largest firms in the world – including major corporations and publicly traded firms with substantial floats on major exchanges.

Sanctions Enforcement Trends

Regulatory and Enforcement Trends

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

- 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

Regulatory and Enforcement Trends

(2) Severe Penalties for Serious Violations & Compliance Failures

- 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, as part of a larger $1.19 billion settlement with DOJ, OFAC, and the Department of Commerce for sanctions and export-control violations.
- In January 2018, in the largest sanctions evasion case in recent history, a Manhattan jury convicted a banker at Halkbank, a major Turkish financial institution, of conspiring to evade U.S. sanctions against Iran. The banker was sentenced to 32 months in prison in April 2018.
- OFAC penalties in two April 2019 enforcement actions against non-U.S. financial institutions (UniCredit Bank and Standard Chartered) exceeded $600 million each.
- Three enforcement cases in early 2019 (against Stanley Black & Decker, AppliChem, and Kollmorgen) resulted in relatively low penalty amounts but clearly indicate OFAC's expectations with respect to sanctions compliance (including for post-acquisition conduct).

Bottom Line

- **Since 2009, OFAC has issued 201 penalties; each penalty has averaged over $25 million.**
- **In 2018, the maximum OFAC penalty was increased to the greater of over $290,000 per violation or twice the value of the underlying violative transaction.**
- **Recent enforcement actions have focused on compliance violations by non-U.S. entities acquired by U.S. companies.**

Sanctions Enforcement Trends

Regulatory and Enforcement Trends

(3) New York – U.S. Sanctions Impact Banking Relationships

- Since the mid-2000s, the New York Department of Financial Services ("DFS") has sought to impose large penalties against New York branches of foreign banks that violate federal sanctions laws.
- Technically speaking, as in the BSA area, DFS is merely enforcing New York Banking Law requirements for recordkeeping and compliance with OFAC regulations.
- Nevertheless, DFS has grown into a major enforcement agency for violations of federal sanctions laws by financial institutions—since 2012, DFS has imposed well over $4 billion in enforcement actions involving violations of federal sanctions laws.

Sanctions Enforcement Trends

Regulatory and Enforcement Trends

(4) Enhanced Expectations for Risk-Based Compliance Systems

- Guidance published by OFAC on May 2, 2019, sets out the agency's views on the essential components of an effective sanctions compliance program, including:
  - **Management commitment**
  - **Risk assessment**
  - **Internal controls**
  - **Testing and auditing**
  - **Training**
- Now that OFAC is on record regarding sanctions compliance best practices, companies should treat this new guidance as setting baseline expectations for sanctions compliance policies and procedures.
- In recent settlements—for example, with Stanley Black & Decker—OFAC has begun requiring companies to annually certify that they have implemented an extensive set of sanctions compliance commitments.
- Whether all of the components above are present in a company's compliance program will bear heavily on both the monetary penalty and the compliance commitments imposed by OFAC.

Export Controls

Regulatory and Enforcement Trends

On **Wednesday, May 15**, the Trump Administration took two separate but related actions to secure the information and communications technology and services ("ICT") infrastructure of the United States.

1. **ICT EO**: The Administration issued an Executive Order declaring a national emergency with respect to the ICT supply chain and allowing the imposition of further restrictions on ICT trade and transactions.
   - The EO gives the Secretary of Commerce broad authority to create an entirely new regulatory framework that could impose new import, export, use, and other transaction-based restrictions.
   - New regulations are expected by October 12 and could include import bans for certain ICT and a prohibition on U.S.-person involvement in certain ICT projects outside the United States.

2. **Huawei Entity List Designation**: The Bureau of Industry and Security ("BIS") added Huawei and 68 of its affiliates to the Entity List, imposing stringent restrictions on exports and transfers of U.S.-origin items to the company.
   - As a result of the designation, any person (not just U.S. persons) who seeks to provide U.S.-origin or U.S.-controlled materials to Huawei or its listed affiliates will need to get a license, but BIS will presumptively deny applications for those licenses—making them largely unavailable.
   - These new restrictions will severely hamper Huawei's supply chain. Huawei may still apply for licenses, use license exceptions, and enter into negotiations regarding export controlled items.
   - A general license issued on May 20 effectively stays the imposition of these new restrictions for several types of exports to Huawei until August 19, 2019.

OFAC Leadership Changes

Regulatory and Enforcement Trends

OFAC and OCC Leadership Changes

Charles Steele, OFAC Chief Counsel

- Charles Steele became OFAC's Chief Counsel in January 2019.
- Steele was OCC Deputy Chief Counsel prior to joining OFAC, from October 2016.
- Steele previously served as an OFAC Associate Director for Enforcement, FinCEN Deputy Director, Chief of Staff to the first two Assistant Attorneys General for National Security, and an AUSA (DC and AZ).

GIBSON DUNN

Key Developments

Global AML & Sanctions Developments

Key Developments

Brazil unleashes AML agency with broad new powers

By Lucas Zanoni | Monday, March 4, 2019 at 9:28AM

By Adrian Zmudzinski APR 07, 2019

G20 to Establish Crypto AML and Counter-Terrorism Financing Regulations in June: Report

BUSINESS

Finland follows suit after France to adopt New Cryptocurrency Regulations starting from May 1

April 29, 2019 Nandini Roy Choudhury 2 Min Read

U.S. Exposes Bitcoin Addresses of Sanctioned Iranians

By Alastair Marsh
November 28, 2018, 1:10 PM EST

NEWS / HEZBOLLAH

US issues new Hezbollah-related sanctions

US targets two men, three firms accused of helping Hezbollah avoid sanctions, Treasury Department says.

24 Apr 2019

Canada admits it has a money laundering problem. Now it's pledging to fix it

'Snow washing' has had a major impact on B.C. and housing affordability; federal budget provides $190 million to fight it

March 28, 2019

UK vulnerable to money laundering on a massive scale, find MPs

March 7, 2019

'Fragmented' system inadequate to prevent influx of dirty money, says Treasury committee

AML Features Prominently in Major National Criminal Cases

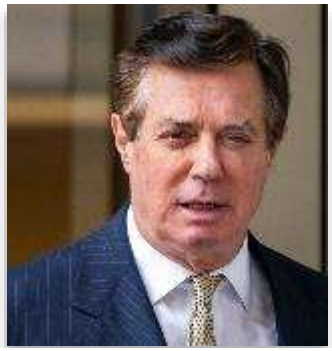
Key Developments

Lori Loughlin and Husband Face New Money Laundering Charge in College Admissions Cheating Scandal

The U. S. Attorney's Office in Massachusetts is charging the Lori Loughlin and husband J. Mossimo Giannulli with money laundering for allegedly funneling money through a fake charity

By KC Baker | April 09, 2019 03:00 PM

Ring plundered $1.2 billion of Venezuelan oil money, laundered it in South Florida, feds charge



How a Federal Inquiry Says Paul Manafort Laundered $18 Million, and How He Spent It

By WILSON ANDREWS and ALICIA PARLAPIANO OCT. 31, 2017

Rapper, financier charged with laundering money for Obama campaign

Published May 11, 2016 12:24 p.m. ET

HOME > POLITICS > POLITICS NEWS FEBRUARY 7, 2020 4:46PM EST

Maria Butina's Boyfriend Indicted on Money Laundering Charges

Paul Erickson has pleaded not guilty to a two-decade scheme to "defraud" investors

PDVSA-Related Money Laundering Prosecutions

Key Developments

Ring plundered $1.2 billion of Venezuelan oil money, laundered it in South Florida, feds charge

BY JAY WEAVER AND ANTONIO MARIA DELGADO

JULY 25, 2018 02:33 PM, UPDATED JULY 26, 2018 08:37 AM

Banker in middle of $1.2 billion Venezuelan money-laundering ring sentenced to 10 years

BY JAY WEAVER AND ANTONIO MARIA DELGADO

OCTOBER 29, 2018 12:06 PM, UPDATED OCTOBER 29, 2018 02:20 PM

In July 2018, DOJ filed a complaint in ***US v. Convit Guruceaga*** in the Southern District of Florida against eight defendants—an alleged network of corrupt officials and professional money launderers—accusing them of embezzling over $1.2 billion from PDVSA through currency arbitrage and false loan schemes.

- Defendant **Matthias Krull**, a former banker for Julius Baer, pleaded guilty to conspiracy to commit money laundering and was sentenced to 10 years' imprisonment.
- Defendant **Abraham Ortega**, former PDVSA Executive Director of Finance, pleaded guilty to conspiracy to commit money laundering. Ortega admitted to accepting millions of dollars of bribes for his role in the embezzlement scheme.

In separate proceedings in the Southern District of Florida, former Venezuelan National Treasurer **Alejandro Andrade Cedeno** pleaded guilty to money laundering, was sentenced to 10 years' imprisonment, and agreed to forfeit **$1 billion in cash and assets** that he allegedly received as bribes in exchange for granting access to the preferential government exchange rate. Co-defendant **Gabriel Arturo Jimenez Aray** also pleaded guilty to money laundering. Defendant **Raul Gorrin Belisario** is currently considered a fugitive.

DOJ Issues Guidance on Corporate Compliance Programs

Key Developments

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE — Tuesday, April 30, 2019

Criminal Division Announces Publication of Guidance on Evaluating Corporate Compliance Programs

- On **April 30, 2019**, DOJ released updated guidance to prosecutors on how to assess corporate compliance programs when conducting an investigation, in making charging decisions, and in negotiating resolutions.
- Per DOJ press release, "seeks to better harmonize . . . with other [DOJ] guidance" and "provid[e] additional context to the multifactor analysis of a company's compliance program."
- **Focuses on three questions**: (1) Is the corporation's compliance program **well-designed**? (2) Is it being applied earnestly and in good faith—i.e., is it being **implemented effectively**? (3) Does the corporation's compliance program **work in practice**?
- **Key Takeaways**:
  - Starting with risk assessment and building on "lessons learned"
  - Importance of compliance personnel
  - Responsibility for third parties
  - Cascading tone from the top

For additional information: https://www.gibsondunn.com/updated-doj-criminal-division-guidance-on-evaluation-of-corporate-compliance-programs/

BSA/AML Penalties for Gatekeepers

Key Developments

- **April 2018:** OCC filed Notice of Charges against Rabobank's **former Chief Compliance Officer**.
  - The Notice alleged that the former CCO failed to comply with OCC examiners' requests and concealed information relating to Rabobank's BSA/AML program. The OCC sought a **$50,000 civil money penalty** and an **Order of Prohibition**.

- **March 2019: Former U.S. General Counsel** for Rabobank may face a **bar from the U.S. banking industry**.
  - OCC issued a Notice of Charges assessing a **$50,000 civil money penalty** and requesting an **Order of Prohibition** (prohibiting the former executive from participating in the banking industry).
  - OCC alleged that the former GC "knowingly and willfully participated in the making of materially false statements" to federal bank examiners and concealed information regarding Rabobank's money-laundering vulnerabilities.

- **April 2019:** The OCC is reportedly also pursuing a case against Rabobank's **former CEO.**

Media reported that DOJ declined to bring criminal charges against the individuals.

Focus on FinTech

Key Developments

Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing

On December 3, 2018, the FDIC, Federal Reserve Board of Governors, NCUA, OCC, and FinCEN issued a joint statement emphasizing the importance of innovative efforts to combat money laundering and terrorist financing. The statement noted that:

- Even unsuccessful pilot programs undertaken by banks should not subject banks to supervisory criticism;
- Pilot programs that exposed gaps in a BSA/AML compliance program would not necessarily result in supervisory action with respect to that program; and
- The Agencies are open to engaging with bank management to discuss innovative BSA/AML programs, and exploring additional methods to encourage innovation.

Notably, the joint statement indicated that the Agencies would not penalize or criticize banks that maintained effective BSA/AML compliance programs but chose not to pursue innovative approaches.

Focus on FinTech

Key Developments

Regulators Encourage AML Technological Innovation

- FinCEN Director Kenneth A. Blanco further stated at the SIFMA Anti-Money Laundering & Financial Crimes Conference in February 2019: "To assist financial institutions in developing and implementing innovative AML/CFT technologies and approaches, **FinCEN is committed to engaging with the private sector** and providing regulatory clarity, as needed."

- Other agencies have also demonstrated a focus on the positive aspects of FinTech—for example, FINRA's 2019 risk monitoring and examination priorities include understanding how firms are using regulatory technology or "RegTech."

- The SEC launched **FinHub** in October 2018 to facilitate "the SEC's active engagement with innovators, developers, and entrepreneurs" and connections between other domestic and international regulators working to address "emerging technologies in financial, regulatory, and supervisory systems."

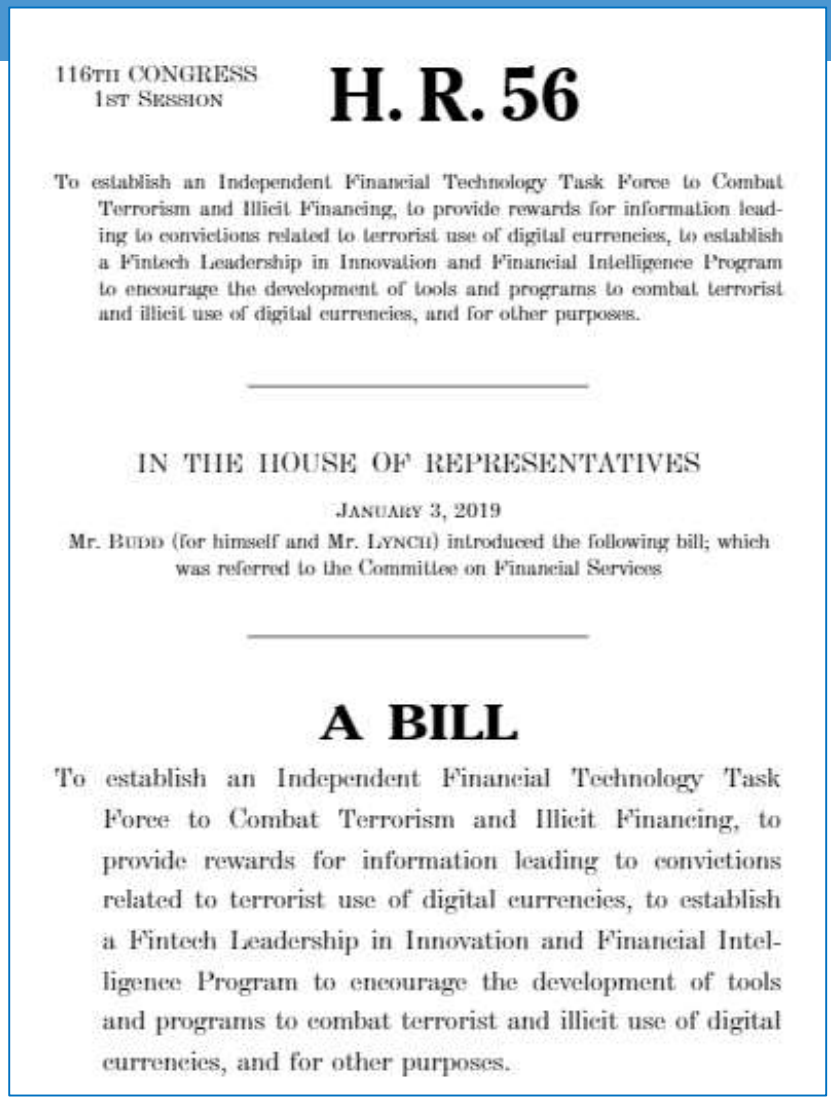
- The FCA, in cooperation with six financial institutions and the Bank of England, is pilot testing Digital Regulatory Reporting. In 2018, the FCA developed a prototype that would standardize firms' data, create machine executable-code versions of regulatory instructions, and automate the creation of regulatory reports. In 2019, the FCA and its partner financial institutions are studying the feasibility of this digital reporting.

Focus on FinTech

Key Developments

- On January 28, 2019, the House of Representatives passed the **Financial Technology Protection Act** (H.R. 56) — although not law, the bill demonstrates the level of focus and energy on FinTech.
- The bill would establish an Independent Financial Technology Task Force to combat the use of FinTech (such as digital currencies) to fund terrorism and illicit financing and to issue annual reports regarding illicit use of new financial technologies.
- Also would establish the Fintech Leadership in Innovation and Financial Intelligence Program to support the development of technologies to detect and deter illicit use of digital currencies.
- The bill had bipartisan support in the House and is under review in the Senate Committee on Banking, Housing, and Urban Affairs.

In early May 2019, the House Financial Services Committee also established a task force on financial technology, to be chaired by Rep. Stephen Lynch (D-MA).



116TH CONGRESS
1ST SESSION

H. R. 56

To establish an Independent Financial Technology Task Force to Combat Terrorism and Illicit Financing, to provide rewards for information leading to convictions related to terrorist use of digital currencies, to establish a Fintech Leadership in Innovation and Financial Intelligence Program to encourage the development of tools and programs to combat terrorist and illicit use of digital currencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2019

Mr. BUDD (for himself and Mr. LYNCH) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish an Independent Financial Technology Task Force to Combat Terrorism and Illicit Financing, to provide rewards for information leading to convictions related to terrorist use of digital currencies, to establish a Fintech Leadership in Innovation and Financial Intelligence Program to encourage the development of tools and programs to combat terrorist and illicit use of digital currencies, and for other purposes.

Focus on FinTech

Key Developments

NY DFS and the Conference of State Bank Supervisors Challenge OCC FinTech Charter Plan

The **OCC** began accepting special purpose national bank (SPNB) charter applications from FinTech companies—financial technology companies involved in the business of banking but that **do not take deposits**—on July 31, 2018.

DFS and the **Conference of State Bank Supervisors** sued the OCC, challenging its authority to issue SPNB charters to FinTech companies. The OCC's statutory power is limited to chartering national banking associations for "carrying on the business of banking." Nondepository institutions, they argue, are not in the business of banking—and are therefore outside the OCC's regulatory reach.

- On May 2, Judge Marrero (SDNY) denied the OCC's motion to dismiss DFS's complaint, finding that the National Banking Act "unambiguously requires" that "only depository institutions are eligible to receive national bank charters from OCC."

The matter remains pending in the U.S. District Court for the Southern District of New York. The OCC's deadline to answer DFS's complaint is May 30, 2019.

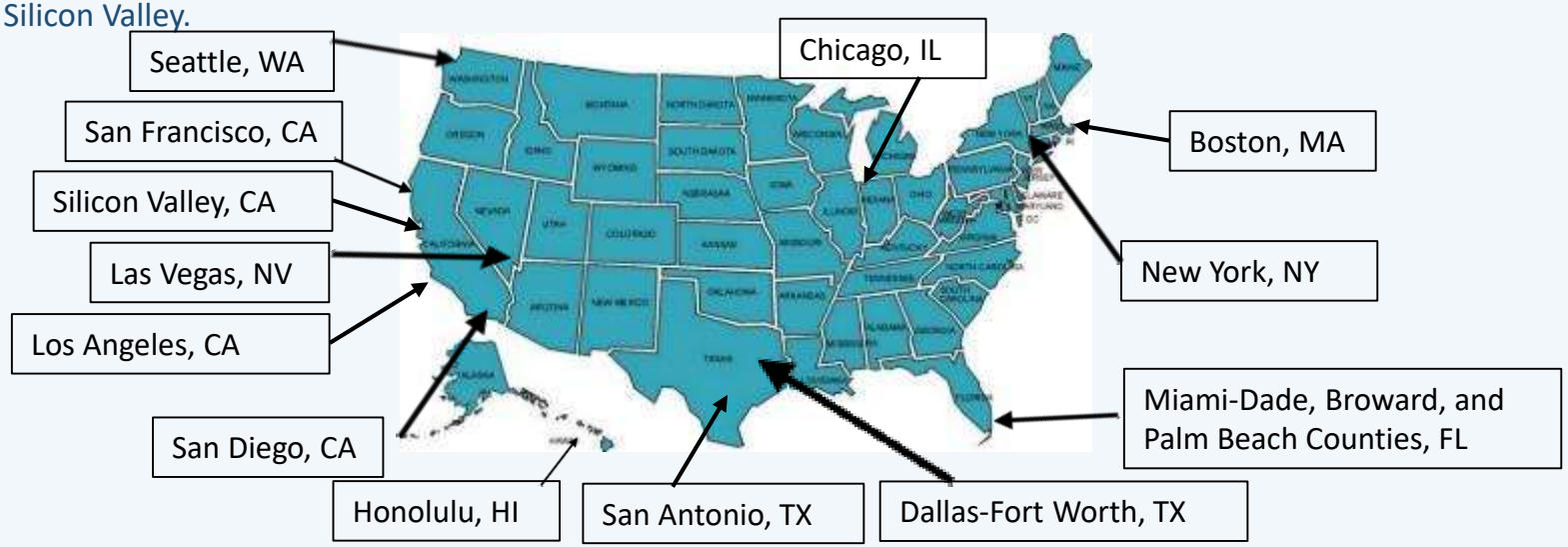
To date, no FinTech firm has applied for a SPNB charter.

AML Obligations in the Real Estate Sector

Key Developments

In May 2019, the U.S. Treasury reissued the GTOs issued to title insurance companies to cover both a wider geographic region and a larger number of transactions.* These GTOs reaffirmed some notable changes which were first introduced in November 2018, including:

- Lowering the threshold for triggering an obligation for a title insurance company to file reports on an all-cash (non-financed) transaction through an LLC to $300,000 or more of residential property.
  - The threshold previously varied by location. Payments by cash, monetary instruments, wires, and cyber currency are included.
- Expanding the locations subject to the GTO. Covered locations now include: Boston, Chicago, Dallas-Fort Worth, Honolulu, Las Vegas, Los Angeles, Miami,-Dade County, New York, San Antonio, San Diego, San Francisco, Seattle, and Silicon Valley.



**The GTOs are subject to renewal every 6 months. May 2019 was the most recent renewal*

Marijuana-Related Businesses

Key Developments

Skye Gould/Business Insider

- Marijuana is legal for recreational and medical use in **10 states**, the District of Columbia, and Guam.
- Legalization of marijuana at the federal level is supported by an estimated 66% of Americans, and has been endorsed by members of Congress and 2020 Democratic presidential candidates.
- Marijuana-related businesses are growing. Legal marijuana sales totaled approximately $6.5 billion as of March 2018.

Marijuana-Related Businesses

Key Developments

Obstacles to Banking Marijuana-Related Businesses

- The **Controlled Substances Act** ("CSA"), 21 U.S.C. § 801 *et seq.,* criminalizes the manufacture, distribution, and dispensing of marijuana, even in states that have passed laws permitting it.
- **Money laundering statutes**, 18 U.S.C. §§ 1956 and 1957, generally prohibit engaging in a financial transaction with knowledge that the funds are the proceeds of illegal activity—including violations of the CSA.
- **The BSA** imposes customer due diligence and SAR filing requirements that make it difficult to bank marijuana-related businesses.

Marijuana-Related Businesses

Key Developments

New York's DFS issued guidance in July 2018:

- **"encourag[ing]"** New York-chartered banks and credit unions to **"consider establishing banking relationships"** for marijuana-related businesses ("MRBs") that comply with state law, and
- **providing that it will not take regulatory action** against financial institutions solely for establishing a banking relationship with a MRB so long as the institutions follow FinCEN's 2014 Marijuana Guidance.

FinCEN SAR Filing Obligation

Financial institutions must file SARs on MRBs.

- "**Marijuana Limited SAR**": MRB operates in compliance with state law.
- "**Marijuana Priority SAR**": MRB is out-of-compliance or violates DOJ priorities.
- "**Marijuana Termination SAR**": Bank ends relationship to maintain effective AML program.

FinCEN MRB-Specific Risk Assessment

- Financial institutions must apply MRB-specific risk criteria, including whether the MRB violates the DOJ's **8 law enforcement priorities** set forth in the Cole Memo.
- DOJ **rescinded the Cole Memo in January 2018**. However, FinCEN's Marijuana Guidance remains in effect.

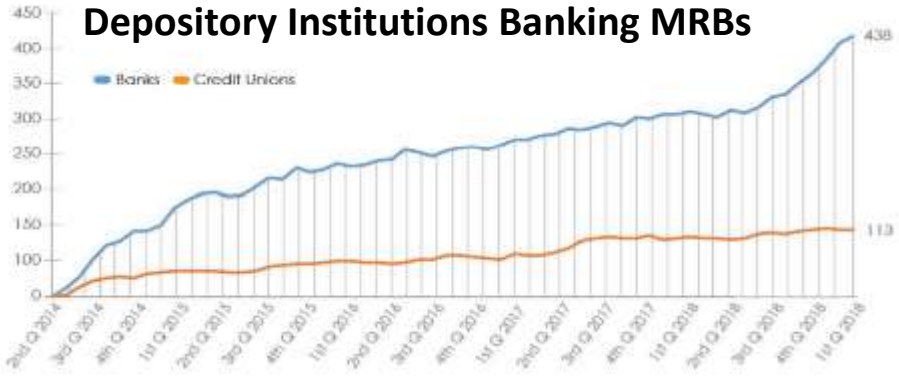
Marijuana-Related Businesses

Key Developments

Approaches to Banking MRBs Vary in Other States

- **Utah:** The Commissioner of Utah's Department of Financial Institutions ("DFI") announced in August 2018 that the DFI will cite all evidence of banking MRBs as an apparent violation of federal law. Utah legalized medical marijuana use in 2018. Utah passed a concurrent resolution urging the Federal government to resolve the MRB banking problem in March 2019.
- **California:** California considered—and rejected—a possible public bank for MRBs. A December 2018 feasibility study issued by the Treasurer found a public bank not feasible.

Depository Institutions Banking MRBs



Bottom Line

- Despite uncertainty, increasing numbers of smaller banks and credit unions are banking MRBs.
- Expect continued developments at the state and federal levels. The House Financial Services Committee ordered the Secure and Fair Enforcement Banking Act of 2019 ("**SAFE Banking Act**") **reported to the House** in March 2019 – this is the first time a MRB bill has been reported out of committee.

Sports Betting

Key Developments

***Murphy v. National Collegiate Athletic Association* (2018),** argued by Gibson Dunn at the Supreme Court, effectively legalized sports betting under federal law.

- Eight states have legal sports betting; in 6 states and the District of Columbia, sports betting is authorized but not yet operational; and 27 states introduced 2019 bills to legalize sports betting. *See* American Gaming Association, *Map: Sports Betting in the United States* (May 13, 2019).
- Sports betting conducted through casinos is subject to the BSA program, reporting, and record-keeping requirements.
- Sports betting conducted under state licenses that are not casino licenses most likely will be subject to the requirement, although FinCEN has not given guidance on this point.

BSA/AML focus on casinos, with at least 10 enforcement actions since 2013, suggests potential scrutiny of sports betting companies, as well.

Sports Betting

Key Developments

Companies that take advantage of the new opportunity under ***Murphy v. National Collegiate Athletic Association*** **(2018)** will need to give careful attention to BSA/AML requirements.

- Sports betting companies need strong programs for Know-Your-Customer due diligence and identification of suspicious activity, including:
  - Customers whose source of funds may be illegal.
  - Customers placing paired bets for the purpose of laundering funds.
  - Customers who may be runners for illegal sports book operations.

Know Your Customer ("KYC")

- Use public source information and commercial sources to confirm that the largest customers (at a certain wagering threshold) appear to have a legitimate source of funds and that there is no material negative news that suggests otherwise.
- Conduct KYC reviews on customers with certain risk characteristics, e.g., a criminal subpoena received or an inquiry from state gaming authorities.
- Where entity betting is allowed, conduct KYC reviews at certain wagering thresholds.

Investment Advisors

Key Developments

- In 2015, FinCEN proposed a rule that would require registered investment advisers to maintain an anti-money laundering program and file SARs. The minimum requirements of such an AML program include:
  - –Establishing and implementing risk-based and reasonable written policies, procedures, and internal controls;
  - –Providing for periodic independent testing of the Program;
  - –Designating a person to monitor the operations and internal controls of the program; and
  - –Providing ongoing training for appropriate personnel.
- Although implementation of the final rule stalled, we understand that there is new impetus to finalize the rule in this administration.
- This rule would have enormous implications for many registered investment advisors. In 2018, there were 12,578 federally registered investment advisers that each would have to establish their own AML program and SAR filing process under a final rule.
- Many investment advisors have implemented programs because of bank or broker-dealer affiliations, or to protect against criminal liability and reputation risk, but many do not fully comply with all elements of the BSA.

Cryptocurrency

Key Developments

FinCEN May 2019 Guidance and Advisory on Convertible Virtual Currencies

FinCEN GUIDANCE

FinCEN's **May 9, 2019 Guidance** on the application of Money Services Businesses ("MSB") regulations to Convertible Virtual Currencies ("CVCs") "does not establish any new regulatory expectations or requirements."

- **Consolidates existing guidance** and explains the application of the BSA and FinCEN regulations to **common virtual currency business models**.
- Provides examples of how certain business models are subject to MSB regulations, including P2P exchangers, CVC wallets, and kiosks.
- Outlines when CVC trading platforms and ICOs are and are not subject to BSA/AML requirements.

FinCEN ADVISORY

FinCEN's **May 9, 2019 Advisory** on Illicit Activity Involving CVCs highlights **typologies and red flags** associated with illicit activities involving CVCs and reminds financial institutions of their SAR filing obligations.

- FinCEN believes that some CVCs "**appear to be designed with the express purpose of circumventing" AML and CFT controls.**
- The Advisory lists red flags indicating abuse or criminal use of CVCs, including signs of **operation as an unregistered or illicit P2P currency exchange**, **CVC kiosk**, and **business involving darknet marketplaces**.
- The Advisory provides **SAR filing guidance** for financial institutions, and asks that FIs include "CVC FIN-2019-A003" in the SAR narrative to indicate a connection to possible illicit activity involving CVC.

Cryptocurrency

Key Developments

In re Powers: On April 18, 2019, FinCEN issued its **first civil monetary penalty** against a peer-to-peer virtual currency exchanger.

- FinCEN found Powers operated a Bitcoin exchange, and conducted over 1,700 transactions as a money transmitter, without registering as a MSB.
- FinCEN found also that Powers conducted numerous "suspicious transactions without ever filing a SAR," including business related to the Silk Road. According to FINCEN, Powers took no steps to determine his customers' identities or sources of funds.

Bittrex: New York's DFS began licensing virtual currency businesses in June 2015 and has issued 19 licenses as of May 2019. DFS denied a license to **Bittrex** in April 2019 because, according to DFS, it failed to maintain an adequate BSA/AML/OFAC program.

- Bittrex allegedly performed inadequate due diligence on clients operating under aliases, and DFS found that several Bittrex client transactions involved customers from OFAC-sanctioned countries.

SEC Framework: In April 2019, the SEC published a Framework for analyzing whether a digital asset is offered and sold as an investment contract—and, therefore, regulated as a security.

In a May 2019 speech, SEC Commissioner Hester Peirce stated her concern that the Framework "**could raise more questions and concerns than it answers**." "The SEC has yet to provide guidance to the public or FINRA on any of the core questions" governing virtual currencies and this "silence may ultimately be deadly" to virtual assets markets.

Cryptocurrency

Key Developments

OFAC: In November 2018, OFAC for the first time included **digital currency addresses** for two sanctioned individuals as part of an SDN listing. The sanctioned parties facilitated Bitcoin ransom payments for the leaders of the SamSam ransomware scheme.

- "As Iran becomes increasingly isolated and desperate for access to U.S. dollars, it is vital that virtual currency exchanges, peer-to-peer exchangers, and other providers of digital currency services harden their networks against these illicit schemes."

EU: In July 2018, the European Commission promulgated Anti-Money Laundering Directive 5 ("AMLD5"), which will require certain virtual currency services to abide by member state AML regulations. Member states must implement AMLD5 by January 2020.

Financial Action Task Force: An Interpretive Note to Recommendation 15, relating to the money laundering and terrorist financing risks associated with virtual asset activities, will be formally adopted as part of the FATF standards in June 2019. The Note recommends:

- Virtual asset service providers ("VASPs") should be licensed and adequately supervised, and
- VASPs should conduct CDD where carrying out occasional transactions above EUR 1,000.

Bottom Line

Regulatory scrutiny of virtual currencies and exchangers is on the rise. Expect new regulations in the United States.

5th EU Anti-Money Laundering Directive

Key Developments

Legislative Instrument: EU Directive. As opposed to an EU Regulation, which is directly applicable to the laws of the Member States, an EU Directive generally requires each Member State to enact national law transposing the Directive into national law. Member States are free to exceed the stipulations of the EU Directive when enacting their respective national law, but may not implement lesser standards than those in the EU Directive.

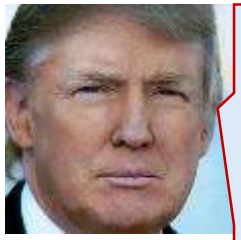
Background: AML Directive. Very shortly after the ratification of the 4th EU AML Directive, the Commission, in response to the so-called "Panama Papers" and terrorism financing in connection with the acts of terrorism committed in Paris and Brussels, presented a draft of the 5th EU AML Directive. The general idea behind the 5th installment of the EU AML Directive was, mainly, to capture newly emerged technologies which had not been considered in the 4th installment. The 5th EU AML Directive was ratified on April 19, 2018 and has to be implemented by the Member States by January 10, 2020 at the latest. It is expected that the UK will implement the 5th EU AML Directive notwithstanding Brexit.

Key Changes in EU AML Regulation: What's New in the 5th Installment? The 5th EU AML Directive is much broader in scope and application than earlier versions of the Directive and also introduces several brand-new public registers and instruments to combat money laundering and terrorism financing. The most significant changes include:

- **New technologies** will now be covered by EU AML regulation, e.g., cryptocurrencies, crypto exchanges, and virtual crypto wallets; also, prepaid cards will be in scope starting from a monthly value of EUR 150.
- The so-called "**transparency register**" will be publicly accessible, allowing anyone to access data regarding corporate structures (25% stake threshold); any new establishment of business relationships will now legally require a check against the transparency register; recipients of payments from **high-risk countries** will be required to obtain comprehensive information about the funds and the business partners; centralized "**Financial Intelligence Units**" will be established, allowing swift **identification of any bank accounts** of any person.

Iran Sanctions Program

Key Developments



"The Iran deal is defective at its core …Therefore, I am announcing today that the United States will withdraw from the Iran nuclear deal … We will be instituting the highest level of economic sanction."

– President Trump (May 8, 2018)

Withdrawal and Wind Down: On May 8, 2018, President Trump announced his decision to withdraw the U.S. from the 2015 Iran nuclear deal (the "JCPOA") and to re-impose all U.S. nuclear-related sanctions, staggering re-implementation over six months.

- **June 27, 2018**: U.S. placed into wind-down remaining sanctions relief related to commercial aviation and foreign subsidiaries of U.S. companies.
- **August 7, 2018**: First batch of secondary sanctions re-imposed targets transactions involving gold, graphite, certain metals, coal, and the Iranian auto sector.
- **November 5, 2018**: Full re-imposition of U.S. nuclear-related secondary sanctions, as well as the addition of over 700 individuals, entities, aircraft and vessels to the SDN List.

New Secondary Sanctions: On May 8, 2019 President Trump authorized the imposition of new sanctions on non-U.S. persons doing business with the iron, steel, aluminum, and copper sectors of the Iranian economy.

Bottom Line

U.S. persons were and remain broadly prohibited from engaging in Iran-related transactions. As a result of the U.S. withdrawal from the JCPOA, **non-U.S. persons may now face sanctions** for engaging in transactions in or with Iran, including transactions involving gold, precious metals, coal, graphite, aluminum, steel, iron, copper, certain software, Iranian sovereign debt, petroleum and petrochemical products, and Iran's automobile, energy, shipping, and shipbuilding sectors.

Iran Sanctions Program

Key Developments

What Activity Is NOT Sanctioned?

- Non-U.S. persons may continue shipping certain cargo to Iran and engaging with port operators for routine transactions related to loading or unloading cargo there.
- Several Iranian banks were not secondarily sanctioned—leaving open payment channels for non-U.S. persons engaged in Iran.
- Transactions involving export to Iran of humanitarian and consumer goods are not secondarily sanctioned.
- The United States temporarily waived sanctions on oil imports for eight countries: China, India, South Korea, Japan, Italy, Greece, Taiwan, and Turkey.
- These waivers also supported payment and financing for exports of humanitarian and consumer goods.
- These waivers expired on May 2 and there are no current plans for their renewal.

Bottom Line

- The U.S. has withdrawn from the JCPOA and **re-imposed all nuclear-related sanctions** on Iran. As a result:
  - **non-U.S. subsidiaries of U.S. persons** are again prohibited from engaging in Iran-related transactions;
  - **non-U.S. entities** engaged in Iran may be sanctioned for certain Iran-related business; and
  - over **700 Iranian entities** are designated or re-designated to the SDN List.
- The Trump Administration continues **designating new targets** and **enforcing re-imposed sanctions** as a part of its "maximum pressure economic campaign" against Iran, including by designating the IRGC as a Foreign Terrorist Organization.

EU Iran Sanctions

Key Developments

Historical Development

- Before the JCPOA, strict EU sanctions against Iran were in place which were broadly aligned with the respective U.S. sanctions.

- With the sanctions relief provided by the JCPOA, the EU, conditional on Iran's adherence to its JCPOA commitments, suspended most of its sanctions. The regulations regarding such suspension were and are directly applicable in all EU Member States without the need for transposition.

Current Situation

Accordingly, from an EU perspective, sanctions on Iran are now – **generally** – considered to be suspended. However, the suspension did not relieve Iran of all EU sanctions, and on April 8, 2019 the EU extended any sanctions not suspended until April 13, 2020.

EU Sanctions Currently In Place:

- The ban and/or authorization requirement for the exports of arms, missile technology, certain software and rare metals related to nuclear proliferation;
- Certain sanctions relating to human rights violations and the support of terrorism, each targeting listed persons; and
- A ban on the export of equipment to Iran which might be used for internal repression or for the monitoring of telecommunication.

In case of significant **non-performance regarding Iran's JCPOA commitments, a snap-back** to the strict pre-JCPOA EU Iran sanctions regime will take place.

EU Blocking Statute

Key Developments

EU Blocking Statute

- Shortly after the United States decided to withdraw from the JCPOA, the EU and senior leaders in several major EU Member States announced their intention to **remain compliant with the JCPOA and to "block" U.S. sanctions**. In August 2018, the EU enacted Commission Delegated Regulation (EU) 2018/1100 (the "Re-imposed Iran Sanctions Blocking Regulation"), which amends the original EU Blocking Statute, Council Regulation (EC) No. 2271/96 (as amended, the "EU Blocking Statute"). The main effect of the EU Blocking Statute is to prohibit compliance by so-called "EU Operators" (including EU companies with U.S. parents) with U.S. sanctions on Cuba, Iran, and Libya.

- The EU Blocking Statute **provides a certain amount of flexibility** to provide multinational institutions a potential path to navigate between the disparate regulations. For example, the EU Blocking Statute **does not compel EU persons** to continue engaging with those countries if doing so could **negatively impact their business**. Guidance set forth by the European Commission provides that EU operators are still free to conduct their business as they see fit—including deciding "whether to engage or not in an economic sector on the basis of their assessment of the economic situation"—which leaves room to decide that certain countries are, due to economical reasons, not a good place in which to conduct business.

EU SPV for Non-U.S. Dollar Trade with Iran - Instrument in Support of Trade Exchanges

- In early 2019, Britain, France and Germany established a European special purpose vehicle to facilitate non-U.S. dollar trade with Iran, circumventing many risks that EU entities face in complying with U.S. sanctions.
- The new measure, called the Instrument in Support of Trade Exchanges ("**Instex**"), will allow trade between the EU and Iran without relying on direct financial transactions.

Venezuela Sanctions Program

Key Developments

Over the past year, the Trump administration has continued to slowly increase sanctions pressure on the Maduro government, adding to sanctions on debt financing and cryptocurrencies to cut off the regime's sources of funding.

- On May 21, 2018, in response to Maduro's re-election, the U.S. imposed new sanctions on dealing in debt owed *to* the Government of Venezuela and equity of Venezuelan state-owned entities.
- On November 1, 2018, the Trump administration imposed new sanctions on dealings in Venezuela's gold sector or with the Venezuelan government in deceptive practices or corruption.
- The U.S. has since increased the total number of designated Venezuelan government officials and organizations to over 150 individuals and entities, including the state-owned mining company, Minerven, and a number of state-owned banks, such as BANDES.
- The most consequential of these designations were the inclusion of PdVSA and, most recently, the Central Bank of Venezuela on the SDN List.

We will not stand idly by while the Venezuelan people suffer … America will continue to exert all diplomatic and economic pressure to bring about a peaceful transition to democracy in Venezuela.

– Vice President Mike Pence (April 5, 2018)

Venezuela Sanctions Program

Key Developments

- The designation of PdVSA on January 28, 2019 sent shockwaves through markets given PdVSA's predominance in Venezuela's oil-dependent economy and its close ties to the United States.
- The designation of the Central Bank of Venezuela on April 17, 2019 caused similar disruption given its importance to international engagement with Venezuela's economy.
  - Consistent with OFAC's recent past practice of issuing strong and broad sanctions that are then calibrated through the issuance of general licenses and FAQs, OFAC issued a raft of new general licenses in connection with both the designation of PdVSA and the Central Bank of Venezuela.
  - These licenses permit U.S. persons to wind down current operations and specific types of limited, continued engagement with PdVSA and the Central Bank of Venezuela for specified periods of time.
- The Trump administration has also begun sanctioning international connections to the Venezuelan economy—including ships that carry Venezuelan oil to Cuba and foreign subsidiaries of Venezuelan banks—to further isolate the Maduro regime. Secondary sanctions are also under consideration.

Bottom Line

- The Trump administration has continued to impose new, increasingly restrictive sanctions on Venezuelan government entities—even those with significant ties to the U.S. economy.
- The administration has begun to impose sanctions on international sources of support for the Maduro regime, and is considering secondary sanctions to further isolate the Venezuelan government.

EU Venezuela Sanctions

Key Developments

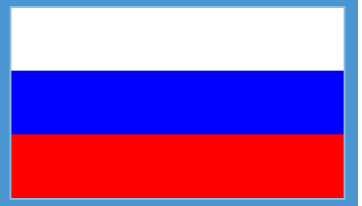
- The EU followed the U.S. lead regarding sanctions on Venezuela in November 2017 ratifying Regulation (EU) 2017/2063, which imposes sanctions on Venezuela (the "EU Venezuela Regulation"). The EU Venezuela Regulation aims **to promote democracy and the rule of law** and is regularly reviewed with the EU reserving the right to relieve or strengthen the sanctions depending on the country's progress in this regard.
- The EU Venezuela Regulation includes an **arms embargo** and a prohibition against selling, supplying, transfering or exporting, directly or indirectly, **equipment which might be used for internal repression**.
- Special attention is paid to equipment, software and technology that can be used to track, and **monitor the use of the Internet** by, members of the opposition, including the use of email, texting and instant messaging. In this regard it is prohibited to provide:
  - technical assistance related to such equipment, technology and software;
  - financing or financial assistance; and
  - any kind of telecommunication or Internet monitoring or interception services to Venezuela's government.
- The EU Venezuela Regulation also introduced a legal framework for **travel bans and asset freezes against individuals** involved in human rights violations and undermining of democracy.
- The EU has published a list of 18 persons (including the Venezuelan President, Vice President and military officials) subject to such targeted sanctions.

It is a topic that we have to discuss in Europe and with our European partners/allies.

– Heiko Maas, German Secretary of State

Russia Sanctions Program

Key Developments



Oligarch Designations

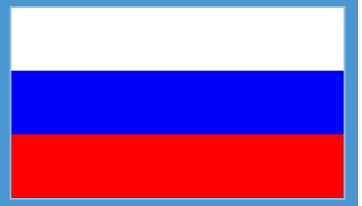
- On April 6, 2018, OFAC designated 38 oligarchs, oligarch-owned businesses, government officials, and state-owned companies. This included major multinational companies, such as Rusal.
- Throughout the following year OFAC continued to renew two time-limited general licenses permitting companies and individuals to undertake certain transactions to "wind down" business dealings related to the designated parties.
- OFAC also entered negotiations with three designated companies—EN+, Rusal, and ESE—and their designated owner, Oleg Deripaska, resulting in the delisting of these companies on January 27, 2019.
- The companies had reduced Deripaska's ownership share, restructured their boards with OFAC-approved directors, and undertaken specific compliance commitments to secure delisting—perhaps serving as a roadmap for other entities seeking to be removed from the SDN List.
- However, the delistings resulted in immediate blowback from members of Congress, with bipartisan support for legislation re-imposing sanctions on these entities. To date, no such legislation has passed.

En+, Rusal, and ESE were designated for sanctions solely because they were majority-owned or controlled by Deripaska. These entities are undergoing significant restructuring and governance changes that sever Deripaska's control … As a result, these entities will no longer be designated for sanctions.

– Treasury Secretary Steven Mnuchin (January 10, 2019)

Russia Sanctions Program

Key Developments



Countering America's Adversaries Through Sanctions Act ("CAATSA") Implementation

- President Trump authorized the Treasury and State Departments to issue sanctions targeting those interacting with the Russian defense or intelligence sectors, Russian energy export pipelines, and the privatization of state-owned entities.
- The administration also added 33 entities to the list of Russian defense or intelligence sector entities that pose secondary sanctions risks and designated two Chinese targets for engaging with such entities.

Chemical & Biological Weapons ("CBW") Act Sanctions

- Responding to Russia's alleged use of a nerve agent in the UK, the Trump administration imposed the first round of sanctions under the CBW Act on August 22, 2018.
- These measures tightened controls on the export of certain U.S.-origin items to Russia.
- A second round of sanctions, which could include broad prohibitions on the export to Russia of all U.S.-origin items, was required to be implemented by November 6, 2018, but is currently under final consideration by the White House.

Bottom Line

- U.S. sanctions pressure on Russia has largely remained steady or increased over the course of the past year.
- Nevertheless, there is continued tension between bipartisan members of Congress and the Trump administration over the imposition of Russian sanctions, related in part to the investigations into Russian interference in the 2016 election.

EU Russia Sanctions

Key Developments

- EU sanctions were adopted in response to the annexation of Crimea and efforts by the Russian Federation to destabilize Ukraine.
- Primarily economic sanctions such as an arms embargo, export ban for dual-use goods, export ban regarding military end users and economic sanctions regarding the whole oil and gas sector are generally in alignment with U.S. sanctions; however, certain significant differences remain (see below regarding permitted maturity of debt).
- However, asset freezes and travel bans are also in place for specific individuals, like Sergey Nikolayewich Stankewich, Head of Border Directorate of the Federal Security Service of the Russian Federation for "Republic of Crimea and City of Sevastapol."
- The EU Russia Economic Sanctions are currently in place until July 31, 2019.
- The EU Council recently extended the EU Crimea Sanctions until June 23, 2019. They are mainly in line with those in place in the U.S.

Bottom Line

- Limited access to EU primary and secondary capital markets for major Russian majority state-owned financial institutions.
- Difference between U.S. and EU regime: The EU allows for a maximum permitted maturity on new debt of 30 days while the U.S. tightened its regime to allow a maximum maturity of only 14 days.

North Korea Sanctions Program

Key Developments

- Although 2018 witnessed brief warming of relations between the United States and North Korea—marked by two summits between President Trump and Supreme Leader Kim Jong-Un—relations between the countries have remained uneasy, and U.S. sanctions pressure has largely remained static.
- Enforcement actions, designations, and compliance advisories have highlighted the sanctions risks of North Korean goods and services incorporated into supply chains—sometimes in unexpected ways (e.g., mink-fur false eyelashes in one case)—and the deceptive practices used to evade U.S. sanctions.
- The U.S. has also taken an unusually direct approach to curtailing North Korea's efforts to evade sanctions, including the May 9, 2019 seizure of a North Korean vessel used to transport coal in violation of sanctions.
- OFAC has also continued to designate third-country entities supporting the North Korean regime, but not without the same fits and starts that have marked diplomatic efforts between the U.S. and North Korea.
- When OFAC announced new sanctions on two Chinese shipping companies accused of violating North Korea Sanctions in March 2019, President Trump tweeted that he had ordered the withdrawal of those sanctions. The companies remain designated.

Bottom Line

- The overall scope and pace of U.S. sanctions targeting North Korea has remained steady over the past year.
- The U.S. Departments of State, Justice, Homeland Security, and the Treasury have remained focused on highlighting efforts by North Korea and its international supporters to evade multilateral sanctions by imposing sanctions and other penalties on those entities that engage in those evasive strategies.
- U.S. companies can face liability if sanctions evaders introduce North Korean goods into their supply chains.

EU North Korea Sanctions

Key Developments

- In the second half of 2018, the EU somewhat eased its financial and economic sanctions on North Korea in reaction to high-level meetings between South and North Korea, lifting some sanctions.
- However, due to the implementation of sanctions imposed by the UN Security Council, the EU Council also subjected 16 persons to asset freezes and travel restrictions.
- Following UN Security Council Resolution 239(2017), the EU expanded the EU North Korea Economic Sanction Regime with Council Regulations 2017/1509 and 2017/1512. The amending regulations **strengthened the export ban on North Korean refined petroleum products and banned imports of North Korean food and agricultural products and all industrial machinery, as well as iron, steel and other metals.**
- By the end of 2018, 59 individuals and nine entities were autonomously designated by EU North Korea Financial Sanctions. In addition, 80 individuals and 75 entities are subject to EU Financial Sanctions due to the implementation of respective UN sanctions.
- Recently, Vladimir Putin during an official meeting with Kim Jong Un called the North Korea sanctions useless and promised to support the easing of North Korea sanctions and to prevent further sanctions being imposed by the UN Security Council.

Cuba, Nicaragua, and Sudan

Key Developments

Cuba Sanctions

- U.S. sanctions on Cuba remained largely unchanged until a recent spate of sanctions activity.
- The Trump administration is implementing an unused, decades-old statutory authority to allow lawsuits against foreign companies trafficking in property seized from U.S. citizens during the Cuban revolution.
- The administration will increase restrictions on travel to Cuba and re-impose a limit on personal remittances to Cuba—reversing actions taken by the Obama administration in both regards.
- U.S. banks will also again be prohibited from processing payments for third-country trade with Cuba—so called U-turn transactions—thus preventing Cuban entities from engaging in U.S. dollar-denominated trade.

Nicaragua Sanctions

- On November 27, 2018, President Trump created a new sanctions program, targeting the regime of President Daniel Ortega—which the Trump administration has condemned for human rights abuses and anti-democratic measures.
- Pursuant to this program, OFAC has designated President Ortega's wife and Vice President, Rosario Murillo, and his son, Laureano Ortega Murillo.

Sudan Sanctions

- OFAC officially removed the Sudanese Sanctions Regulations, completing the rollback of these sanctions.
- However, Sudan remains a State Sponsor of Terror and subject to certain trade restrictions.

The EU's Stance on U.S. Cuba Sanctions

Key Developments

"The EU considers the extra-territorial application of unilateral restrictive measures to be contrary to international law and will draw on all appropriate measures to address the effects of the Helms-Burton Act, including in relation to its WTO rights and through the use of the EU Blocking Statute."
– High Representative of the Union for Foreign Affairs Federica Mogherini (May 2, 2019)

- The European Union reiterated its strong opposition to the extraterritorial application of U.S. unilateral Cuba-related measures, as such are contrary to international law and a breach of U.S. commitments undertaken in the EU-U.S. agreement of 1997/1998.
- The EU Blocking Statute prohibits compliance with and the enforcement of judgments by U.S. courts relating to Title I, III and IV of the Cuban Liberty and Democratic Solidarity Act of 1996 ("Helms-Burton Act") within the EU.

Bottom Line

- The EU will consider all options to protect its interests, including in relation to further expanding the reach of the EU Blocking Statute.
- The EU might take the case before the WTO.

EU Sanctions in the UK Post-Brexit

- At present, the UK is required to implement and enforce sanctions regimes agreed upon by the UN and the EU.
- The vast majority of today's UK sanctions derive from EU sanctions. EU Regulations are directly applicable in English law (as they are in other EU member states), but EU law cannot make domestic criminal law. To create offences for sanctions violations, the UK implements EU sanctions through associated UK domestic legislation.
- The UK's future relationship with the EU, and EU law, will depend on the final terms of the EU-UK Withdrawal Agreement. In the event of a "no-deal Brexit", the UK has indicated that it will look to carry over all EU sanctions at the time of its departure. That will also be the position if a deal is in fact reached before the UK leaves the EU.
- Under the terms of U.K.'s EU (Withdrawal) Act 2018, the law which defines the treatment of EU laws in the UK legal order post-Brexit, any sanctions regulations that have not been the subject of domestic implementing legislation at the date of departure will continue to have effect in the UK as "retained EU law" (although they will need domestic implementing laws if criminal offences are to be created); and post-Brexit, where EU sanctions have been the subject of domestic implementing legislation, those laws will continue in effect as domestic law.
- As to new EU sanctions, following a no-deal Brexit, the UK will not be obliged to adopt future EU sanctions regimes, or amendments to existing EU sanctions regimes.
- The UK will have much broader powers going forward post-Brexit, under the terms of the Sanctions and Anti-Money Laundering Act 2018, to impose its own independent sanctions.
- It is expected that there will be a high degree of parallelism between UK and EU sanctions going forward, and a high degree of cooperation between the UK's Office of Financial Sanctions Implementation and the European Commission. Over time, however, significant differences may well emerge.

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Up Next. . .

Potential BSA/AML Legislative Changes

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

- **Kleptocracy Asset Recovery Rewards Act (passed House) –** would establish a program within the Treasury to provide rewards to those who furnish information leading to recovery of stolen assets.
- **H.R. 1038 & H.R. 1039 –** would require Treasury to take a more prominent role in coordinating AML/CFT policy and examinations among regulators and streamline requirements for currency transaction reports and suspicious activity reports.
- **Financial Technology Protection Act (passed House) –** would create an interagency task force dedicated to combatting the illicit use of cryptocurrency.
- **H.R. 758 (passed House) –** would limit financial institution liability for maintaining customer accounts or transactions at law enforcement's request.
- **FinCEN Improvement Act of 2019 (passed House) –** would amend the duties of FinCEN to work with tribal law enforcement and coordinate internationally on matters involving virtual currency, and would make other changes.
- **Corporate Transparency Act of 2019 –** would require corporations and LLCs to disclose certain information about their beneficial owners.
- **Stop Tax Haven Abuse Act –** would close tax loopholes that encourage U.S. corporations to move jobs, profits and operations offshore.
- **Secure and Fair Enforcement (SAFE) Banking Act of 2019 –** would protect some types of FIs that provide financial services to cannabis businesses.
  - On April 15, 2019, financial regulators from 24 states and Puerto Rico wrote to the Democratic and Republican leaders of the House and Senate to urge passage of safe harbor legislation for financial institutions.
  - Multiple other bills have been introduced to protect financial institutions banking marijuana-related businesses, including the **Responsibly Addressing the Marijuana Policy Gap Act of 2019** (H.R. 1119, S. 421), and the **Marijuana Revenue and Regulation Act** (H.R. 1120, S. 420).

Potential BSA/AML Legislative Changes

Spotlight on the COUNTER Act of 2019 (H.R. 2514)

The **Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019** was passed by the House Financial Services Committee 55-0 in May 2019. If enacted, the Act would:

- Establish a Civil Liberties and Privacy Officer in federal bank regulators and CFPB, and a Civil Liberties and Privacy Council chaired by FinCEN to report to Congress;
- Allow sharing of SARs with foreign branches, affiliates, and subsidiaries;
- Add dealers in art and antiquities to the BSA list of covered financial institutions;
- Revise FinCEN's geographic targeting order to apply to commercial real estate;
- Require Treasury to conduct multiple studies, including a study on the BSA's value;
- Provide whistleblower protections if tips result in FinCEN penalties over $1 million;
- Institute a 10-year bar on serving on the boards of public companies for individuals who are found to have committed "egregious" BSA violations;
- Impose additional civil penalties for repeat violations; and
- Require return of profits and bonuses as an additional BSA criminal sanctions.

Potential BSA/AML Legislative Changes

Spotlight on the Stop Tax Havens Abuse Act (S. 779; H.R. 1712)

The bill would:

- Repeal the "check-the-box" and "CFC look-thru" rules which allow corporations to disregard certain foreign entities for the purposes of determining U.S. tax liability.
- Deem corporations worth $50 million or more that are managed and controlled in the U.S. to be U.S. taxpayers even if they are organized in tax havens such as the Cayman Islands.
- Amend the Exchange Act to require issuers to disclosure the amount of state, federal, and foreign taxes paid.
- Provide Treasury tools to encourage banks without U.S. investments to comply with FATCA by, for instance, prohibiting U.S. banks from dealing with the offending banks.
- Require Treasury to publish a rule mandating investment advisers to file SARs and comply with customer identification program and due diligence requirements.
- Require Treasury to publish a rule mandating persons engaged in the business of forming new corporate entities to establish anti-money laundering programs.
- Make it easier for the IRS to issue "John Doe" summons by presuming that cases involving non-FATCA-compliant foreign banks raise tax compliance issues.

Sanctions Legislative Developments

Venezuela Emergency Relief, Democracy Assistance and Development ("VERDAD") Act

- Introduced by a bipartisan group of senators on April 3, 2019, the VERDAD Act would provide statutory authority for existing sanctions without codifying most current sanctions into law.
- The VERDAD Act would also encourage expanded sanctions against Venezuelan narco-traffickers and provides for removal of government defectors from the blacklist, if not involved in human rights abuses.

Russia Sanctions Legislation

- Congress has continued to push for further sanctions action to be taken against Russia and to ensure that existing sanctions are implemented robustly.
- Lawmakers launched a bipartisan campaign to use authority provided in 2017's Countering America's Adversaries Through Sanctions Act to block the delisting of En+, Rusal, and ESE, but the necessary joint resolution failed to pass the Senate.
- The Defending American Security from Kremlin Aggression ("DASKA") Act, introduced on February 13, 2019, would authorize new sanctions targeting Russian oligarchs, foreign banks supporting Russian malicious cyber activities, and investment in LNG projects outside of Russia.
- Senators also reintroduced a strengthened Defending Elections from Threats by Establishing Redlines ("DETER") Act, which would require severe sanctions against Russian targets if electoral meddling were detected in a mandatory review by the U.S. Intelligence Community.

Upcoming Attractions . . .

- **Continued Emphasis on BSA/AML Enforcement –** International, federal, and state regulators/enforcers remain keenly focused on BSA/AML compliance.
- **Broad Application of AML Requirements –** Actions crypto businesses illustrate the broad view U.S. regulators are taking in mandating adequate AML compliance. Developments in RIA regulations, application of BSA rules to sports betting, further attention on the real estate industry, enactment of pending legislation, and an updated FFIEC manual may bring about further change.
- **FinTech –** Legislators and regulators will continue to try to ensure that financial technology platforms are not used for money laundering.
- **Corporate Governance –** Sanctions and AML regulators are increasingly interested in corporate compliance.
  - Compliance requirements in recent OFAC settlements.
  - MLARS helped develop the new DOJ compliance guidance, which suggests that these principles will have continued prominence in the AML space.

F. Joseph Warin

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306, USA
Tel: +1 202.887.3609
FWarin@gibsondunn.com

F. Joseph Warin is chair of the nearly 200-person Litigation Department of Gibson Dunn's Washington, D.C. office, and he is co-chair of the firm's global White Collar Defense and Investigations Practice Group. Mr. Warin's practice includes representation of corporations in 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 is continually recognized annually in the top-tier by *Chambers USA*, *Chambers Global*, and *Chambers Latin America* for his FCPA, fraud and corporate investigations expertise. *Who's Who Legal* named Mr. Warin to their 2019 "Thought Leaders: Global Elite" list for Business Crime Defense – Corporate and Investigations. In 2019, Mr. Warin was selected by *Chambers USA* as a "Star" in FCPA and White Collar Crime and Government Investigations, a "Leading Lawyer" in the nation in Securities Regulation: Enforcement, and a "Leading Lawyer" in the District of Columbia in Securities Litigation. In 2017, *Chambers USA* honored Mr. Warin with the Outstanding Contribution to the Legal Profession Award, calling him a "true titan of the FCPA and securities enforcement arenas." In 2019, *Latinvex* named Mr. Warin one of Latin America's Top 100 Lawyers in the category of FCPA & Fraud. In 2018, *Washingtonian Magazine* named Mr. Warin as one of Washington's "Top Lawyers" in White Collar Criminal Defense. BTI *Consulting* named Mr. Warin to its 2017 "BTI Client Service All-Stars" List.

Global Investigations Review reported that Mr. Warin has now advised on more FCPA resolutions than any other lawyer since 2008. 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 based on a survey of clients and peers, noting that he was one of the "most highly nominated practitioners," and a "'favourite' of audit and special committees of public companies." *Best Lawyers®* named Mr. Warin 2016 Lawyer of the Year for White Collar Criminal Defense in the District of Columbia, and he was named among the *Lawdragon* 500 Leading Lawyers in America in 2016.

Mr. Warin has handled cases and investigations in more than 40 states and dozens of countries. His clients include corporations, officers, directors and professionals in regulatory, investigative and trials involving 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. His credibility at DOJ and the SEC is unsurpassed among private practitioners – a reputation based in large part on his experience as the only person ever to serve as a compliance monitor or counsel to the compliance monitor in three separate FCPA monitorships, pursuant to settlements with the SEC and DOJ: Statoil ASA (2007-2009); Siemens AG (2009-2012); and Alliance One International (2011-2013). He has been hired by audit committees or special committees of public companies to conduct investigations into allegations of wrongdoing in a wide variety of industries including energy, oil services, financial services, healthcare and telecommunications.

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. He has handled more than 40 class action cases across the United States for investment banking firms, global corporations, Big 4 accounting firms, broker-dealers and hedge funds.

Early in his career, Mr. Warin served as Assistant United States Attorney in Washington, D.C. As a prosecutor, he tried more than 50 jury trials and was awarded a Special Achievement award by the Attorney General. Mr. Warin was awarded the Best FCPA Client Service Award by Main Justice in 2013 and he joined the publication's FCPA Masters list. He was named a Special Prosecutor by the District of Columbia Superior Court in 1988.

Stephanie L. Brooker

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306, USA
Tel: +1 202.887.3502
SBrooker@gibsondunn.com

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 a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. She 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 tried 32 criminal trials, investigated a broad range of white collar and other federal criminal matters, briefed and argued criminal appeals, and served as the Chief of the Asset Forfeiture and Money Laundering Section in the U.S. Attorney's Office for the District of Columbia.

Ms. Brooker's practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling. She handles a wide range of white collar matters, including representing financial institutions, multi-national companies, and individuals in connection with criminal, regulatory, and civil enforcement actions involving sanctions, anti-corruption, anti-money laundering (AML)/Bank Secrecy Act (BSA), securities, tax, wire fraud, and "me-too" matters. Ms. Brooker's practice also includes BSA/AML compliance counseling and due diligence and significant criminal and civil asset forfeiture matters. Ms. Brooker was named a *National Law Journal "*White Collar Trailblazer" and a *Global Investigations Review* "Top 100 Women in Investigations".

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, cryptocurrency 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, Geographic Targeting Orders, and examination and enforcement actions against cryptocurrency companies following FinCEN's 2013 cryptocurrency guidance.

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 for many years as a trial attorney and then 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 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.

Adam M. Smith

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306, USA
Tel: +1 202.887.3547
ASmith@gibsondunn.com

Adam M. Smith is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. He 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, CFIUS, 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.

M. Kendall Day

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306, USA
Tel: +1 202.955.8220
KDay@gibsondunn.com

M. Kendall Day is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. He is a member of the White Collar Defense and Investigations and the Financial Institutions Practice Groups. Mr. Day's practice focuses on internal investigations, regulatory enforcement defense, white-collar criminal defense, and compliance counseling. He represents multi-national companies, financial institutions, and individuals in connection with criminal, regulatory, and civil enforcement actions involving anti-money laundering (AML)/Bank Secrecy Act (BSA), sanctions, FCPA and other anti-corruption, securities, tax, wire and mail fraud, unlicensed money transmitter, and sensitive employee matters. Mr. Day's practice also includes AML/BSA compliance counseling and due diligence, and the defense of forfeiture matters.

Prior to joining Gibson Dunn, Mr. Day spent 15 years as a white collar prosecutor with the Department of Justice (DOJ), rising to the highest career position in the DOJ's Criminal Division as an Acting Deputy Assistant Attorney General (DAAG). As a DAAG, Mr. Day had responsibility for approximately 200 prosecutors and other professionals. Mr. Day also previously served as Chief and Principal Deputy Chief of the Money Laundering and Asset Recovery Section. In these various leadership positions, from 2013 until 2018, Mr. Day supervised investigations and prosecutions of 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 the DOJ's money laundering program, particularly any BSA and money-laundering charges, deferred prosecution agreements and non-prosecution agreements involving financial institutions.

Earlier in his time as a white collar prosecutor, from 2005 until 2013, Mr. Day served as a deputy chief and trial attorney in the Public Integrity Section of the DOJ. During his tenure at the Public Integrity Section, Mr. Day prosecuted and tried some of the Criminal Division's most challenging cases, including the prosecutions of Jack Abramoff, a Member of Congress and several chiefs of staff, a New York state supreme court judge, and other elected local officials. 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.

Mr. Day clerked for Chief United States District Court Judge Benson E. Legg of the District of Maryland. He earned his J.D. from the University of Virginia School of Law, where he graduated in 2002 after winning first place in the Lile Moot Court Competition and being selected to receive the Margaret G. Hyde Graduation Award. He graduated with honors and highest distinction from the University of Kansas in 1999 with a B.A. in Italian Literature and Humanities.

Our Offices

Beijing
Unit 1301, Tower 1
China Central Place
No. 81 Jianguo Road
Chaoyang District
Beijing 100025, P.R.C.
+86 10 6502 8500

Brussels
Avenue Louise 480
1050 Brussels
Belgium
+32 (0)2 554 70 00

Century City
2029 Century Park East
Los Angeles, CA 90067-3026
+1 310.552.8500

Dallas
2100 McKinney Avenue
Dallas, TX 75201-6912
+1 214.698.3100

Denver
1801 California Street
Denver, CO 80202-2642
+1 303.298.5700

Dubai
Building 5, Level 4
Dubai International Finance Centre
P.O. Box 506654
Dubai, United Arab Emirates
+971 (0)4 318 4600

Frankfurt
TaunusTurm
Taunustor 1
60310 Frankfurt
Germany
+49 69 247 411 500

Hong Kong
32/F Gloucester Tower, The Landmark
15 Queen's Road Central
Hong Kong
+852 2214 3700

Houston
811 Main Street
Suite 3000
Houston, TX 77002
+1 346.718.6600

London
Telephone House
2-4 Temple Avenue
London EC4Y 0HB
England
+44 (0) 20 7071 4000

Los Angeles
333 South Grand Avenue
Los Angeles, CA 90071-3197
+1 213.229.7000

Munich
Hofgarten Palais
Marstallstrasse 11
80539 Munich
Germany
+49 89 189 33-0

New York
200 Park Avenue
New York, NY 10166-0193
+1 212.351.4000

Orange County
3161 Michelson Drive
Irvine, CA 92612-4412
+1 949.451.3800

Palo Alto
1881 Page Mill Road
Palo Alto, CA 94304-1125
+1 650.849.5300

Paris
166, rue du faubourg Saint Honoré
75008 Paris
France
+33 (0)1 56 43 13 00

San Francisco
555 Mission Street
San Francisco, CA 94105-0921
+1 415.393.8200

São Paulo
Rua Funchal, 418, 35°andar
Sao Paulo 04551-060
Brazil
+55 (11)3521.7160

Singapore
One Raffles Quay
Level #37-01, North Tower
Singapore 048583
+65.6507.3600

Washington, D.C.
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
+1 202.955.8500