



GIBSON DUNN

*Anti-Money Laundering and Sanctions
Enforcement and Compliance in 2020 and
Beyond*

June 24, 2020

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MCLE Certificate Information

- Most participants should anticipate receiving their certificate of attendance within four weeks following the webcast.
- Virginia Bar Association members should anticipate receiving their certificate of attendance within six weeks following the webcast.
- All questions regarding MCLE Information should be directed to Victoria Chan (Attorney Training Administrator) at 650-849-5378 or vchan@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

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Introduction

U.S. Enforcement Agencies and Regulators

Enforcement Responsibilities



DOJ (Civil, Criminal, and Forfeiture)



SEC (Civil)



FinCEN (Civil)



CFTC (Civil)



OFAC (Civil)



FINRA (SRO)

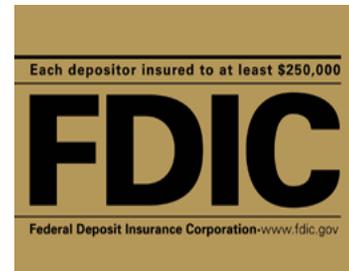
Banking Regulators and Enforcers



OCC



Fed



FDIC

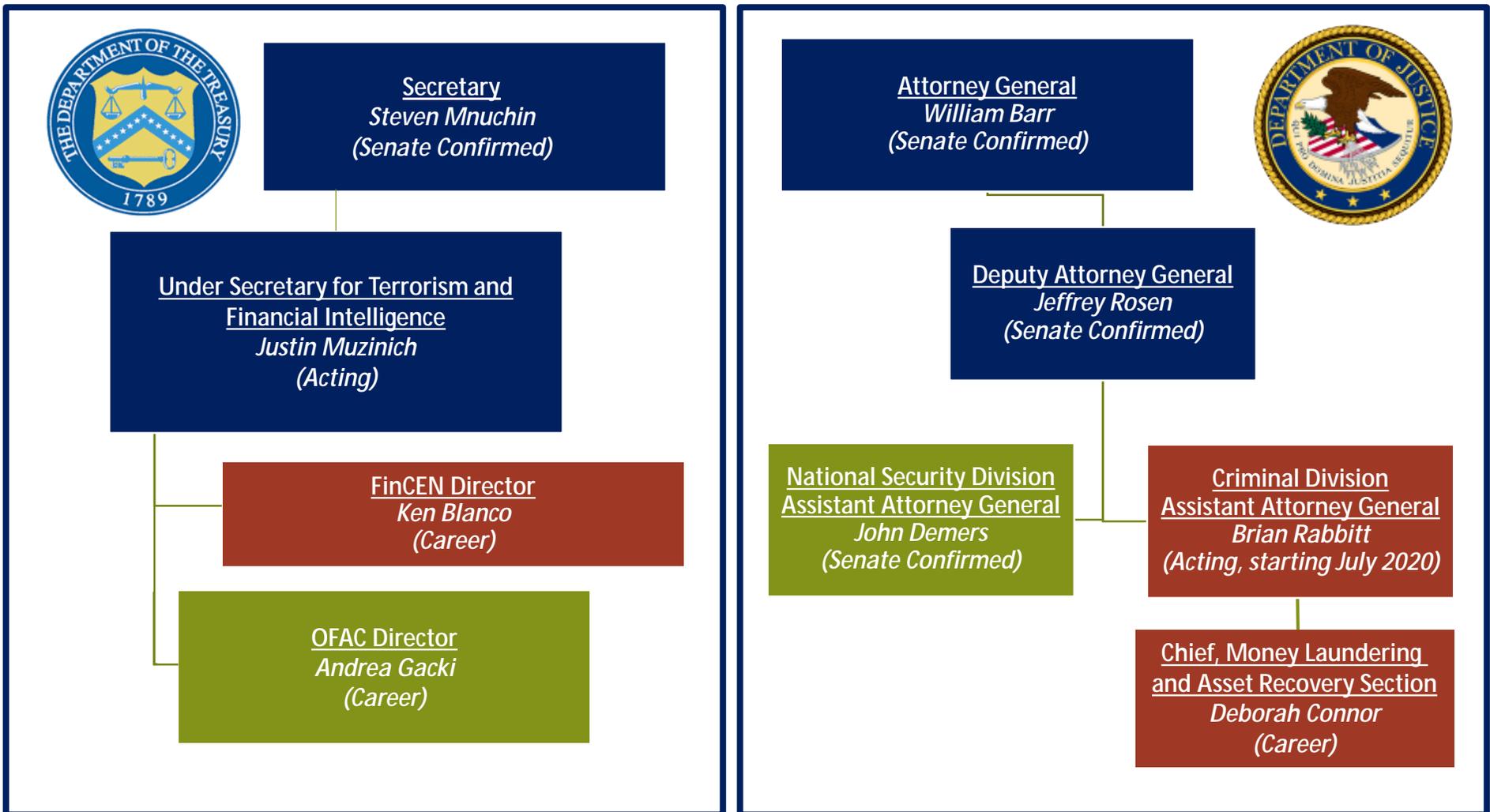


NCUA

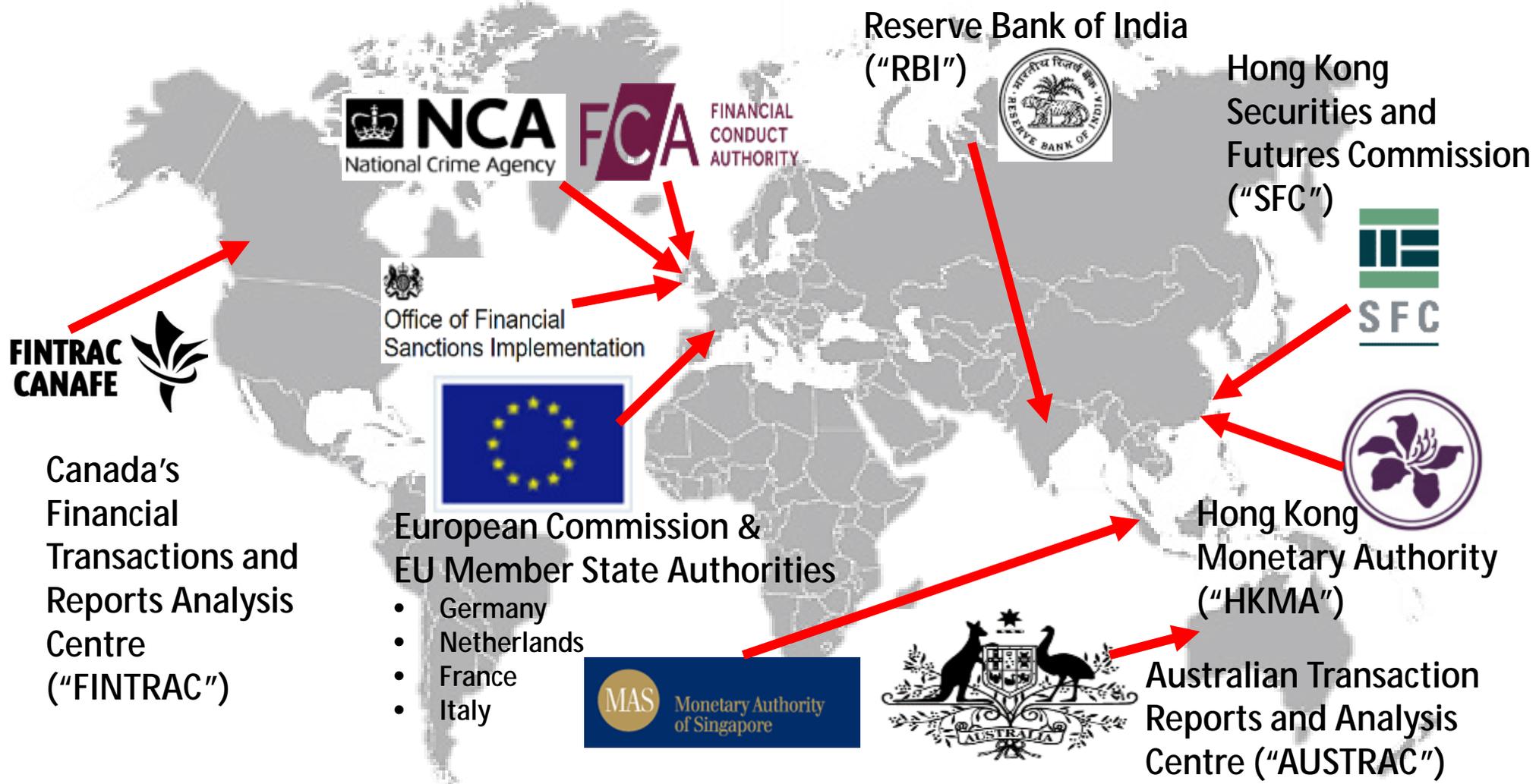


DFS

U.S. Enforcement Agencies



International Enforcement Agencies and Regulators



EU Blocking Statute

Key Developments



- Adopted in 1996, the main effect of the EU Blocking Statute is currently to **prohibit compliance** by so-called “EU operators” (including EU companies with U.S. parents) with **U.S. sanctions on Cuba and Iran**.
- Incorporated into the domestic law of some, but not all, EU Member States.
- Approaches to enforcement differ from one EU Member State to another, ranging from minimal administrative penalties to severe criminal penalties.
- For the first two decades in which the EU Blocking Statute has been in effect, there has been very little **enforcement action by national authorities**. That has started to change.
- The EU Blocking Statute **allows a certain amount of flexibility** to provide multinational enterprises a potential path to navigate between the disparate U.S. and EU regulations.
- 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 broad latitude to decide that certain countries are, for economic reasons, not a good place in which to do business.

Types of U.S. Enforcement Actions

Criminal:

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

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

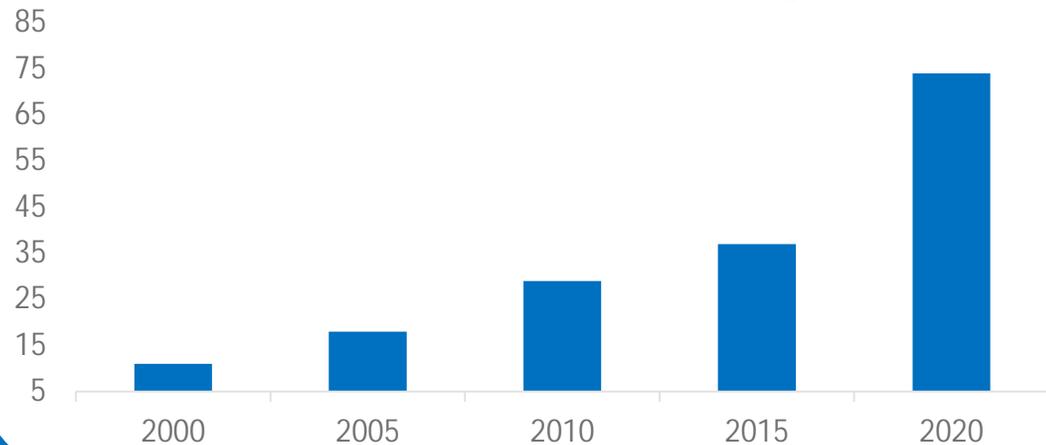
Development of U.S. Sanctions Policy

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



60%

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

1000s

Annual additions to the SDN List. On an annual basis, the average rate of change has almost doubled since 2007.

Sanctions

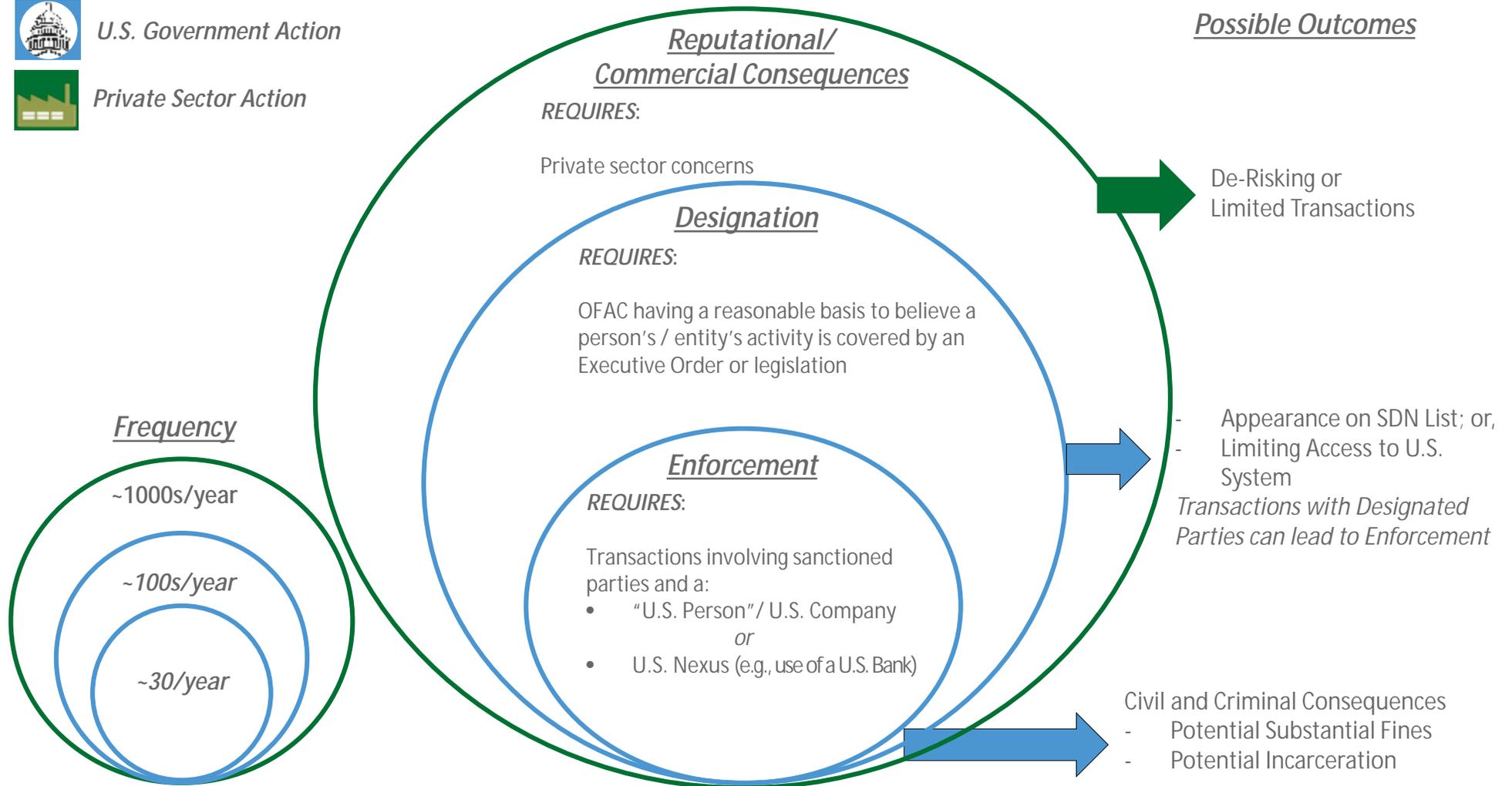
Refresher on Sanctions Risks



U.S. Government Action



Private Sector Action



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Regulatory and Enforcement Trends

COVID-19: Financial Institution Response

Regulatory and Enforcement Trends

1. **Develop or refine business continuity and crisis management plans.**
2. **Ensure the effective administration of the PPP loan program.**
3. **Monitor for financial scams.**
4. **Note COVID-19-related suspicious activity on SAR forms.**
 - FinCEN asks financial institutions to enter “COVID19” in Field 2 of the SAR template for certain types of suspicious activity linked to COVID-19. If the suspicious activity is related to medical scams (e.g., marketing fraudulent products or non-delivery scams), financial institutions should enter “COVID19 FIN2020-A002” and select SAR field 34(z).
5. **Law enforcement will expect proactive cooperation in identifying COVID-related fraud.**
6. **Communicate with your regulator if your institution anticipates reporting delays.**
 - The OCC and FinCEN announced that they will agree to “reasonable delays” due to COVID-19 but ask regulated institutions to communicate any anticipated delays.
7. **Maintain BSA/AML program strength, staffing, and systems going forward.**
 - During the 2008 financial crisis, AML departments experienced cost cutting due to the economic downturn. A wave of enforcement actions followed a few years later. Expect future scrutiny of a bank’s overall response to the COVID-19 crisis.

COVID-19: OFAC Response

Regulatory and Enforcement Trends

- Despite the coronavirus pandemic, **OFAC remains operational** and continues to designate new sanctions targets, publish guidance, issue licenses, and work on enforcement matters.
- The agency has been inundated with—and is attempting to prioritize—COVID-19-related requests.
- On April 16, 2020, OFAC published a fact sheet that compiles all currently available guidance, authorizations, and exemptions relating to the provision of **humanitarian assistance** to Iran, Venezuela, North Korea, Syria, Cuba, and the Crimea region of Ukraine.
- On April 20, 2020, OFAC issued guidance indicating that the agency understands that, consistent with a **risk-based approach to sanctions compliance**, companies may need to reallocate compliance personnel to other urgent tasks and the agency will take this reality into account should apparent violations occur.
- These announcements together suggest that OFAC is not looking to hinder the response to COVID-19, and the agency also views its existing authorizations as sufficient to meet the emergency without the need to further relax U.S. sanctions measures.

U.S. BSA/AML Enforcement: Overview

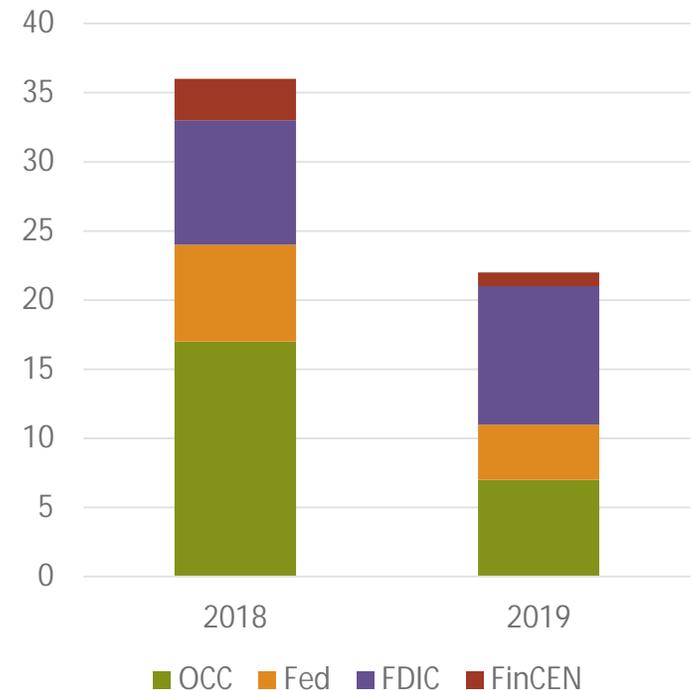
Regulatory and Enforcement Trends

- FinCEN, the OCC, the Federal Reserve, and the FDIC concluded **22 AML enforcement actions in 2019**, compared to **36 in 2018**, according to ACAMS.
 - FinCEN has announced one enforcement action in 2020 and one in 2019.
 - The OCC issued 7 BSA-related actions in 2019, compared to 17 in 2018.

“There is a downward trend right now in the number of outstanding enforcement actions in the BSA/AML space . . . It is a reflection of the significant improvements and the great job that the industry is doing to really appreciate and understand, and put policies and procedures in place to manage the BSA/AML risk and really focus on terrorist financing.”



February 6, 2020 Remarks of OCC Senior Deputy Comptroller of Bank Supervision Policy Grovetta Gardineer



Increased International Enforcement

Regulatory and Enforcement Trends

BSA/AML- and sanctions-related penalties are up worldwide compared to 2018:

- Regulators hit banks with a near-record \$10 billion in fines in a 15-month period through 2019, as calculated by Fenergo. 60.5% of these fines stemmed from AML violations. By contrast, from 2008 to 2018, total fines were approximately \$26 billion for the 10-year period.



- **Australia:** Australia-based financial institution Westpac said in its latest H1 2020 earnings report that it has set aside AUS \$900 million for a potential fine by Australian enforcement authorities stemming from a money-laundering investigation that included allegations of facilitating child exploitation in the Philippines and SE Asia.



- **Sweden:** On March 19, 2020, Sweden's financial supervisory authority issued Swedbank AB a U.S. ~\$397 million administrative fine for serious deficiencies in its management of the risk of money laundering in its Baltic operations.



- **Denmark:** On June 12, 2019, Denmark's state prosecutor searched Nordea Bank's headquarters in Copenhagen. Nordea Bank allegedly handled \$790 million in suspicious transactions between 2005 and 2017. In April 2019, Nordea Bank took a €95 million accounting provision for a possible fine for its alleged role in the money laundering.

BSA/AML Enforcement Priorities

Regulatory and Enforcement Trends

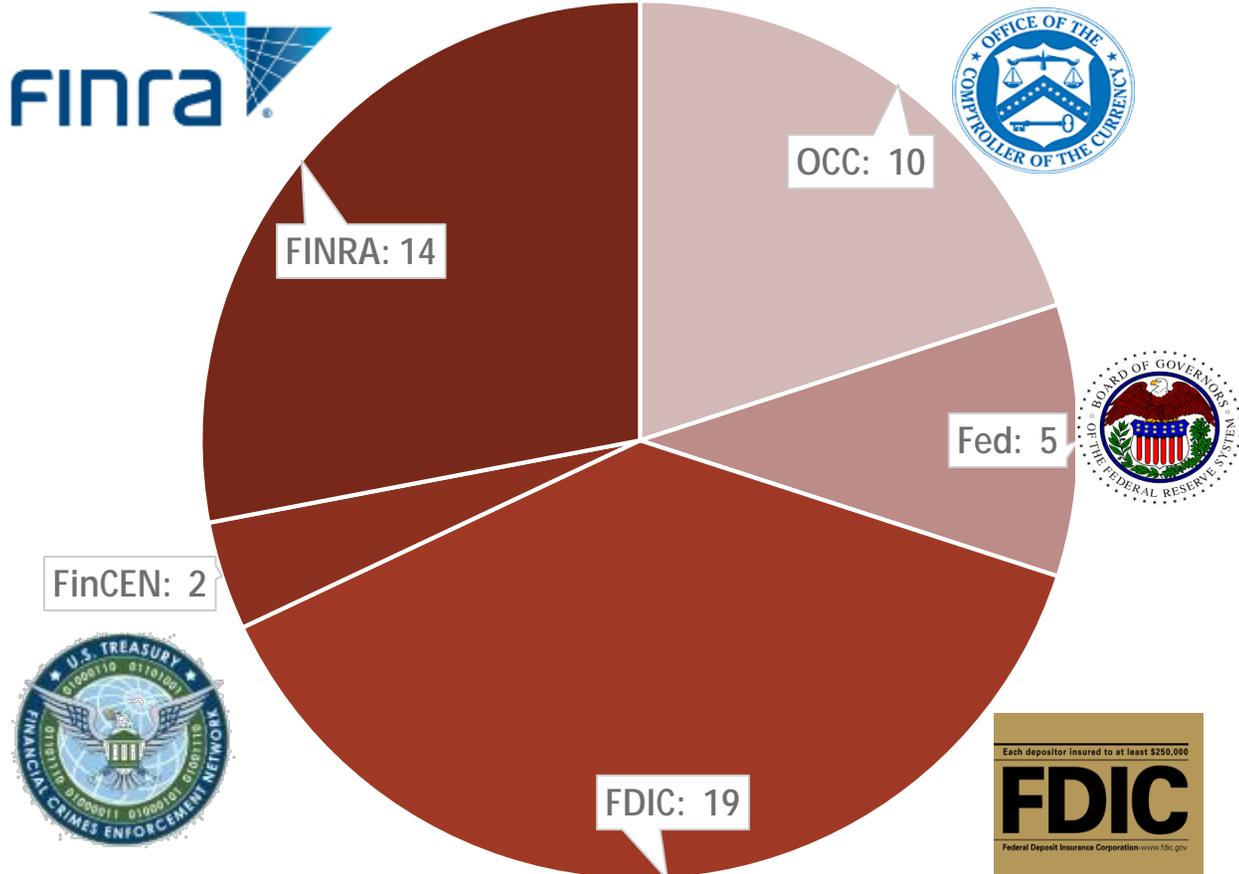
In 2020, Regulators will continue to focus on:

- 1) Impact of COVID-19 on the execution of BSA/AML programs, including COVID-related fraud and suspicious activity monitoring and related SAR filing obligations.
- 2) Customer due diligence compliance.
- 3) Risks from traditional money-laundering schemes, including through correspondent banking.
- 4) Risk assessment processes, policies, and procedures.
- 5) Risk-appropriate controls, sufficient customer due diligence, and suspicious activity identification and monitoring.
- 6) Evolving vulnerabilities resulting from the rapid pace of technological change.
- 7) Emerging payment solutions and terrorist financing.
- 8) Overlapping issues of money laundering, fraud, consumer protection, and cyber vulnerabilities.
- 9) Cryptocurrencies and other alternative currencies.
- 10) Trade-based money laundering.

Recent Enforcement Actions

Regulatory and Enforcement Trends

BSA/AML Enforcement Cases (January 1, 2019 – June 22, 2020)



12
 Financial institutions with announced DOJ resolutions from January 1, 2019 to June 22, 2020.

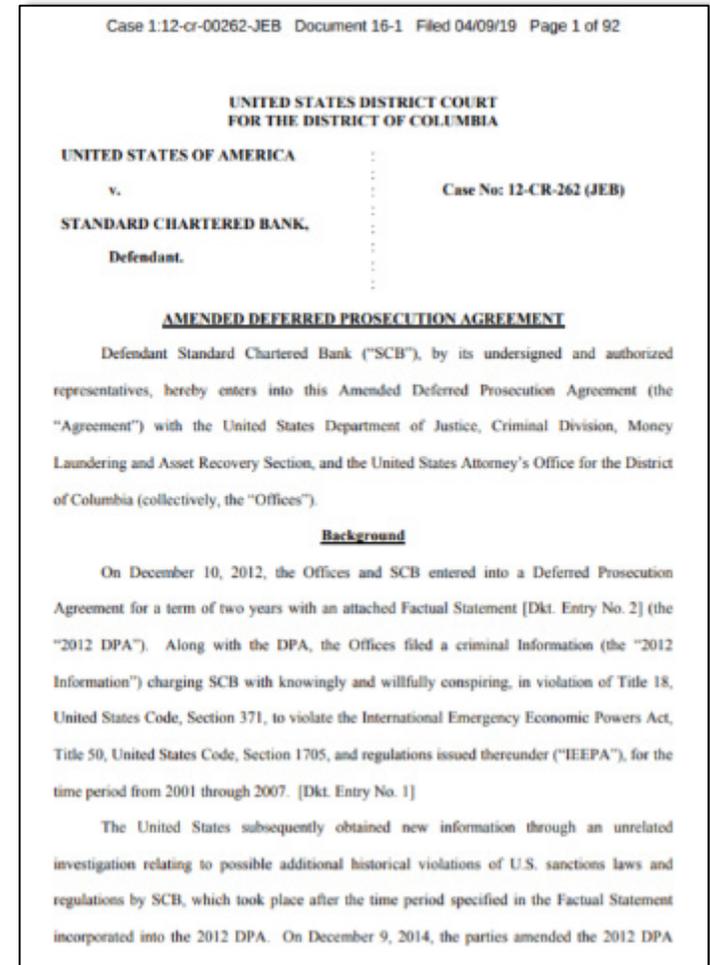


Recent Enforcement Actions

Regulatory and Enforcement Trends

Recent Enforcement Cases

- ***Industrial Bank of Korea (2020)***: IBK agreed to enter into a two-year DPA and agreed to pay \$51 million to DOJ for repeated BSA/AML failures. IBK also agreed to a consent order and separate \$35 million penalty issued by NYDFS.
- ***Bank Hapoalim (2020)***: The Bank entered into an NPA with BSA undertakings and agreed to pay over \$30 million to resolve allegations that it helped launder bribes as part of the FIFA scandal.
- ***Standard Chartered Bank (2019)***: Multi-agency, cross-border resolution primarily for 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.



Recent Enforcement Action: *U.S. v. Man et al.*

Regulatory and Enforcement Trends



On May 28, 2020, DOJ unsealed an indictment charging 28 North Korean and 5 Chinese bankers with a multi-year scheme to facilitate USD payments for Pyongyang's nuclear weapons and missile program in violation of U.S. sanctions and AML and bank fraud laws.

- The indictment alleges that the 33 defendants facilitated prohibited USD transactions on behalf of the Foreign Trade Bank ("FTB") of the Democratic People's Republic of Korea, North Korea's primary foreign exchange bank.
- FTB was designated to the Specially Designated Nationals and Blocked Persons ("SDN") List in 2013.
- This scheme allegedly routed at least \$2.5 billion in illegal payments through U.S. correspondent banks and more than 250 front companies since 2013.

North Korea is designated as a "jurisdiction of primary money laundering concern" under Section 311 of the USA PATRIOT Act.



Kim Jong Un (AP News, April 27, 2020)



Visitors watch a photo showing North Korea's missile launch at the Unification Observation Post in Paju, South Korea, in 2019. (Ahn Young-Joon/AP) (Washington Post, May 28, 2020)

Recent Enforcement Actions

Regulatory and Enforcement Trends



- On July 30, 2019, the D.C. Circuit affirmed civil contempt orders against three Chinese banks for their failure to produce documents in response to subpoenas relating to a DOJ investigation of North Korea's financing of its nuclear weapons program.
 - DOJ served two of the banks with *Bank of Nova Scotia* subpoenas, which allow DOJ to obtain bank records located abroad by serving subpoenas on U.S. branches, even where production would violate the foreign country's secrecy laws.
 - The third subpoena was made pursuant to 31 U.S.C. § 5318(k)(3)(A), a USA PATRIOT Act provision that allows the U.S. government to obtain certain foreign bank records if the bank maintains a correspondent account in the United States.
- The banks refused to comply because the subpoenas sought bank records located abroad and compliance with the subpoenas would violate Chinese bank secrecy law.
 - The D.C. Circuit concluded that there was personal jurisdiction over all three banks because two of the banks consented to jurisdiction when they opened branches in the U.S., and the third bank chose to maintain correspondent accounts in the U.S.
- The decision likely will embolden DOJ's use of its subpoena power to seek bank records located abroad.

Focus on Individual Liability

Regulatory and Enforcement Trends



Recent Individual Enforcement Cases (2020)

- **Michael LaFontaine (2020):** FinCEN assessed a **\$450,000 civil monetary penalty** against U.S. Bank's former Chief Operational Risk Officer "for his failure to prevent violations of the [BSA] during his tenure." The Bank allegedly capped the number of alerts generated by its automated transaction monitoring system and employed only 30 AML investigators. FinCEN found LaFontaine failed to adequately resource the Bank's BSA function, even after he was warned about the alert caps and insufficient staffing.
- **Stumpf, Hardison, and Loughlin (2020):** The OCC assessed a **\$17.5 million** civil penalty against John Stumpf, the former head of Wells Fargo, in connection with his role in alleged retail sales practices misconduct. Stumpf allegedly failed to adequately supervise the Head of the Community Bank or investigate red flags. Stumpf is **prohibited** from working for financial services providers. The OCC fined the Bank's former Human Resources Director and former Chief Risk Officer **\$2.25 million** and **\$1.25 million**, respectively, for their alleged roles.
 - **Tolstedt, Anderson, Strother, Julian, and McLinko (2020):** The OCC also announced charges against Wells Fargo's former Head of the Community Bank, Community Bank Group Risk Officer, General Counsel, Chief Auditor, and Executive Audit Director in connection with their roles in the same misconduct. The OCC seeks (1) **prohibition or cease-and-desist orders** and (2) between **\$500,000 and \$25 million in civil monetary penalties** from each defendant.

Focus on Individual Liability

Regulatory and Enforcement Trends



Recent Individual Enforcement Cases (2019 – 2020)

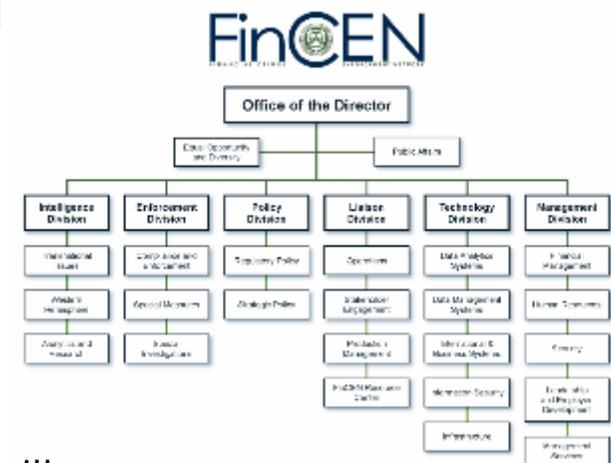
- ***Daniel Weiss (2019)***: The OCC alleged that, as General Counsel of Rabobank, Weiss “knowingly and willfully participated in the making of materially false statements” to federal bank examiners and concealed information regarding Rabobank’s money-laundering vulnerabilities. The OCC’s consent order **prohibits Weiss from participating in the affairs of any federally insured depository institution** and assesses a **\$50,000 civil money penalty**.
- ***Dep’t of Enforcement v. David Oakes (2020)***: In March 2020, FINRA filed a complaint against Oakes, a former Bank employee, for structuring cash deposits and withdrawals from his personal checking account to evade federal reporting requirements.
- ***Donna Flemming (2019)***: Flemming was CEO, CCO, and AMLCO for brokerage firm Spencer Edwards, Inc. (“SEI”). FINRA found that Flemming failed to implement an AML compliance program reasonably designed to detect and cause the reporting of suspicious activity in SEI’s primary business—accepting and liquidating customers’ deposits of microcap securities. Flemming was barred from the securities industry.
- ***James Snow (2019)***: FINRA fined Snow, former President, CCO, and AMLCO of Wilson-Davis & Company \$77,000 and suspended his supervisory capacities for one year after finding Snow failed to implement an AML program adequately tailored to the firm’s business.

FinCEN Organizational Changes

Regulatory and Enforcement Trends



- 1) On February 21, 2020, **Michael Mosier** returned to FinCEN as its **Deputy Director and first Digital Innovation Officer**.
 - Mosier’s return, coupled with FinCEN’s request for additional funds for its virtual currency and cyber threat program, indicates that FinCEN will increase its focus on crypto- and cyber-related efforts in 2021.
- 2) FinCEN created the **Global Investigations Division** (“GID”) on August 28, 2019.
 - GID is the successor to FinCEN’s Office of Special Measures within the Enforcement Division. FinCEN’s use of Section 311 and other information collection authorities, including the Geographic Targeting Order and foreign financial agency regulation authorities, has expanded in recent years. FinCEN will now have one dedicated division focused on utilizing these authorities.
- 3) FinCEN’s Liaison Division became the **Strategic Operations Division** on November 25, 2019.



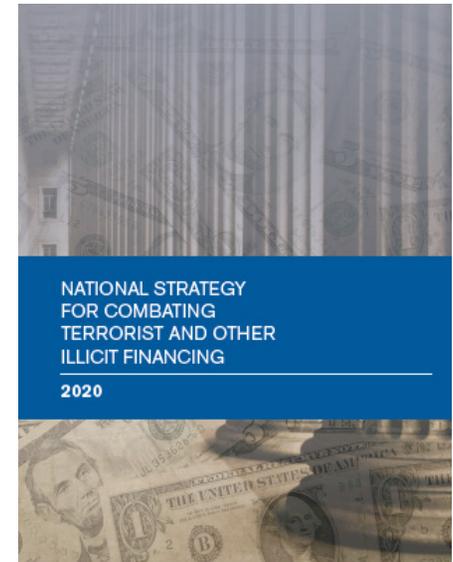
National Strategy for Combating Illicit Financing

Regulatory and Enforcement Trends



The Department of the Treasury released the *National Strategy for Combating Terrorist and Other Illicit Financing* on February 6, 2020.

- The Strategy lays out three **strategic priorities**:
 - Increase transparency and close gaps in the AML/CFT legal framework.
 - Continue to improve the efficiency and effectiveness of the regulatory framework for financial institutions.
 - Enhance the current AML/CFT operational framework.
- To **enhance the current AML/CFT operational framework**, the Strategy calls for:
 - Improving the communication of priority illicit finance threats, vulnerabilities, and risks;
 - Expanding the use of artificial intelligence and data analysis;
 - Deploying targeted measures to disrupt illicit finance activity;
 - Enhancing the use of public-private partnerships and other information sharing; and
 - Supporting global AML/CFT implementations.





OCC Priorities and Leadership Changes

Regulatory and Enforcement Trends

2020 Supervision Priorities for BSA/AML Include:

- Customer due diligence and beneficial ownership.
 - Whether BSA/AML risk management systems match the complexity of business models and products offered.
 - Evaluating technological solutions to perform or enhance BSA/AML oversight.
 - Adequacy of suspicious activity monitoring and reporting systems and processes.
- On May 29, 2020, Joseph Otting stepped down as Comptroller of the Currency. Otting was halfway through his five-year term and did not give a specific reason for his departure.
 - Brian P. Brooks was appointed First Deputy Comptroller by Treasury Secretary Mnuchin and became Acting Comptroller and Chief Operating Officer upon Otting's resignation. Brooks recently joined the OCC in April 2020 as Senior Deputy Comptroller and Chief Operating Officer.
 - On May 29, 2020, Brooks issued a statement describing four priority areas of focus for the OCC. These include FinTech: building on "responsible innovation to help the banking system keep up with changes in the way American consumers and businesses manage their finances."



Federal Reserve Supervisory Priorities

Regulatory and Enforcement Trends



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

On May 20, 2020, the FRB issued its fourth *Supervision and Regulatory Report*. It does not list BSA/AML as an enforcement priority, but instead focuses on COVID-19-related issues.

The FRB's third report, issued November 26, 2019, focused on ensuring that the regulatory and supervisory environment is efficient, transparent, and simple, and that expectations for individual institutions are appropriately tailored to risks for different banks.

The report listed **supervisory priorities** by category of financial institution. BSA/AML supervision priorities for 2020, as noted in the third report, include:

"The largest, most systemically important banking organizations are subject to the most stringent regulation and supervision."

- "**BSA/AML programs and OFAC compliance**" 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.

SEC Enforcement Priorities

Regulatory and Enforcement Trends



Press Release

SEC Office of Compliance Inspections
and Examinations Announces 2020
Examination Priorities

FOR IMMEDIATE RELEASE
2020-4

BSA/AML compliance are among the SEC's 2020 Examination Priorities.

- The 2020 priorities emphasize customer due diligence and identification, filing timely and adequate SARs, and determining whether entities are conducting adequate independent testing.



May 2019 remarks of Peter Driscoll, Director, SEC Office of Compliance Inspections and Examinations

"Suspicious activity includes more than just . . . traditional money laundering. It also includes activity associated with potential securities fraud, insider trading, and a wide variety of manipulative trading schemes.

[The Office of Compliance Inspections and Examinations ("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 in the firm's AML program."

FINRA Examination Priorities

Regulatory and Enforcement Trends



FINRA 2020 Risk Monitoring and Examination Priorities Include:

- Evaluation of risk management programs related to digital assets.
 - Reviewing firm policies related to cybersecurity and technology governance.
 - FINRA also will continue to assess firms' compliance with FINRA Rule 3310 (AML Compliance).
- Notably, FINRA did not spotlight BSA/AML in its 2020 list of priorities. While not designated as a priority, FINRA noted that it will continue to assess firms' AML compliance under Rule 3310 in 2020.
 - FINRA highlighted BSA compliance in its 2019 Report on FINRA Examination Findings and Observations.
 - In the 2019 Report, FINRA listed **deficiencies in AML transaction monitoring systems** and an **overreliance on clearing firms** as noteworthy examination findings.
 - FINRA continues to issue a number of BSA enforcement actions, most recently in March and April 2020, against firms and individuals.

FDIC Enforcement Manual

Regulatory and Enforcement Trends



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-76-2019
December 2, 2019

FDIC Releases its Formal and Informal Enforcement Actions Manual

- In December of 2019, the FDIC publicly released its *Formal and Informal Actions Manual*, developed to provide guidance to FDIC enforcement staff, “to provide greater transparency regarding the FDIC’s enforcement program.” The manual includes, among other topics:
 - Instructions on using the FDIC BSA/AML Civil Monetary Penalty matrix to determine whether a CMP will be imposed and the assessment amount; and
 - The circumstances in which the FDIC will pursue a formal enforcement action or informal action, including bank board resolutions and memoranda of understanding.
- The Manual does not establish supervisory requirements or industry guidance.



On April 15, 2020, FFIEC announced an update to the first section of the *BSA/AML Examination Manual* used by examiners in assessing the adequacy of financial institutions' BSA/AML compliance programs.

- These revisions, produced by the Interagency BSA/AML Working Group, represent phase one of the Working Group's project to revise the Manual. There has not been a comprehensive revision since 2014.
- The revisions do not establish new requirements for banks but provide guidance to examiners in applying a risk-based approach to the BSA/AML examination process.
- The revised Manual emphasizes that examiners should consider the adequacy of a bank's BSA/AML compliance program based on its specific risk profile with respect to money laundering, terrorist financing, and other illicit financial transactions.
- While the pillars of the program always will be reviewed, in scoping examinations, examiners should leverage a bank's risk assessment and independent testing.

International Focus on AML: Swedbank

Regulatory and Enforcement Trends

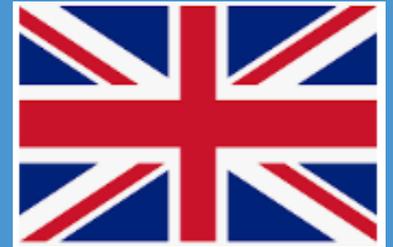


- In March 2020, Sweden's financial authority fined Swedbank \$397 million as a result of serious deficiencies in its management of the risk of money laundering in its Baltic operations.
 - Specifically, it found that despite internal and external reports warning about deficiencies in Baltic subsidiaries and the risk of money laundering, the Bank did not take proper and sufficient action.
 - Also, the Bank had deficiencies in its risk classification of customers and transaction monitoring.
 - Not only that, but the Baltic operations were also lacking adequate resources to combat money laundering.
 - And during the investigation, the Bank withheld documents and information revealing the seriousness of the situation.
- The regulator ordered the Bank to take comprehensive measures to mitigate the risks it faces and revise its organizational framework to manage risk more effectively, including developing a better understanding of its clients' activities and reviewing suspicious transaction reporting.
- On March 11, 2020, Swedbank reportedly notified OFAC of potential sanctions violations regarding \$4.8 million in transactions following an internal probe.



International Focus on AML: United Kingdom

Regulatory and Enforcement Trends



In the United Kingdom, as a result of legislation passed in 2017, prosecutors can seek an “**unexplained wealth order**” (“UWO”) to require the targets to reveal their source(s) of wealth.

- On February 5, 2020, Zamira Hajiyeva – the first UWO recipient and wife of jailed International Bank of Azerbaijan chairman Jahangir Hajiyev – lost her appeal against two UWOs issued in 2018.
- If Ms. Hajiyeva cannot explain the source of her wealth, the NCA will seize her assets, including a London home purchased for £11.5 million and a Berkshire golf course purchased for £10.5 million.
- In April 2020, the High Court threw out three UWOs against Nurali Aliyev, the grandson of Kazakhstan’s former leader, for failing to provide “reasonable grounds” that the assets were proceeds of serious crime.



- In June 2020, the **FCA** announced a **£37.8 million** fine against Commerzbank for alleged AML program failures, including not performing periodic due diligence on clients or addressing a known weakness in its suspicious activity monitoring software.
- In November 2019, the NCA reported that it had received a record number of SARs (478,437) and a 52.72% increase in requests for a Defence Against Money Laundering in 2018 to 2019.

International Focus on AML

Regulatory and Enforcement Trends

Many other countries in Europe remain active on the AML front. Examples include:

- **Turkey:** In April 2020, Turkey's Financial Crimes Investigation Board introduced new measures requiring banks to report all non-commercial payments to offshore entities between 100,000 Turkish lira (\$14,500) and 1 million lira (\$144,000). All such payments above 1 million lira must be reported the day before they occur.
- **France:** In March 2020, the Prudential Supervision and Resolution Authority released a detailed set of AML guidelines for companies headquartered in France.
- **Switzerland:** In February 2020, FINMA concluded that there had been "significant AML failures" at Julius Baer in connection with investigations related to PDVSA and FIFA and appointed a monitor to oversee reforms.
- **Finland:** In December 2019, the Finnish Financial Supervisory Authority fined Finland's biggest bank, S-Bank, nearly €1 million for failure to obtain adequate customer information.
- **Latvia:** In December 2019, Latvia's financial regulator fined Baltic International Bank €1.5 million for various AML failures.

International Focus on AML: AUSTRAC

Regulatory and Enforcement Trends



"We've been flooded by disclosures," and "we're going to have a very busy 12 months because there will be actions that come out of it. . . . We're encouraging them to keep doing it [disclosing problems to AUSTRAC], I'll take that into consideration when we look at penalties, because again, we want them to be doing it for us. You know, CBA has 50,000 staff. If they can be looking at money laundering for us, that's an incredible resource."



August 2019 Remarks of
AUSTRAC CEO Nicole Rose

- In November 2019, AUSTRAC sought a civil penalty order against Westpac alleging inadequacies in the financial institution's AML/CTF program, including a failure to carry out due diligence on correspondent banks, report international funds transfers, and adequately review transactions with known financial indicators of potential child exploitation. In an April 2020 financial statement, Westpac disclosed that it set aside **AUS \$900 million** for a potential penalty.
 - In June 2020, Westpac announced that it reported further suspicious transactions identified in a lookback to AUSTRAC, and the regulator may bring additional charges.
- In September 2019, AUSTRAC ordered PayPal Australia to engage an external auditor to examine "ongoing concerns" relating to PayPal's compliance with International Funds Transfer Instructions reporting obligations.

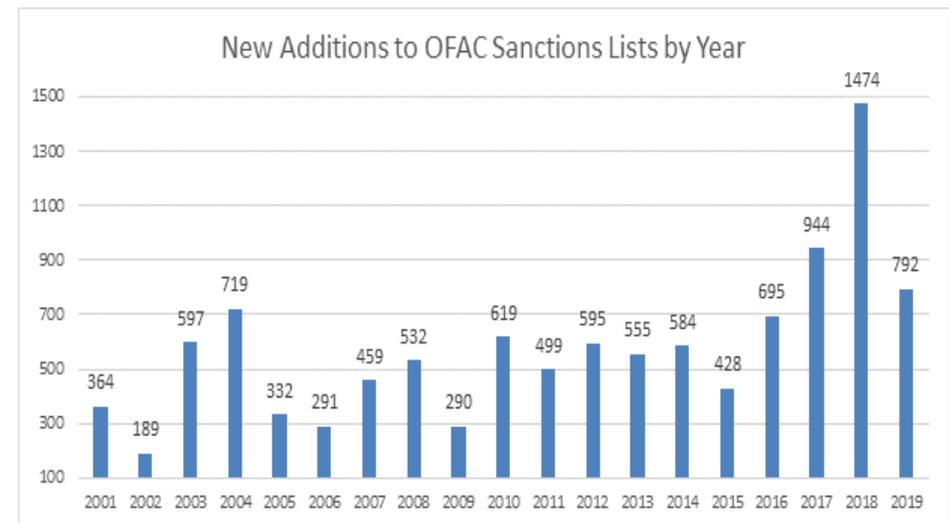
Sanctions Under This Administration: Executive Power

Regulatory and Enforcement Trends

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

Sanctions Employed at a High Rate

- Total number of persons designated in 2019 was approximately 800 — about half the number from 2018, but still a major increase from previous administrations;
- More than one sanctions action per week in 2018 and 2019;
- Almost \$1.3 billion of fines by OFAC; and
- Several new sanctions programs, including those targeting Turkey, Mali, foreign interference in U.S. elections, and the International Criminal Court.



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) Targeting Non-Banks

- While OFAC was once known principally for its enforcement against the financial sector, in recent years the agency's **non-bank enforcement** has become equally aggressive.
- Recent sanctions activity has targeted the connective tissue of the global economy, including:
 - Shipping
 - Aviation
- In May 2020, the State Department, OFAC, and the U.S. Coast Guard published a **global maritime sanctions advisory** identifying common deceptive shipping practices and providing detailed guidance to industry participants including ship owners, port operators, flag registries, and insurance companies.
- OFAC also has sanctioned Iran's shipping sector and designated **vessels and shipping companies** involved in transporting Venezuelan-origin oil.
- In July 2019, OFAC published an advisory spotlighting deceptive practices with respect to Iran's **civil aviation** industry and has designated numerous **airlines and general sales agents**, including Iran's Mahan Air and Venezuela's flag carrier Conviasa.

Sanctions Enforcement Trends

Regulatory and Enforcement Trends



(2) Severe Penalties for Serious Violations & Compliance Failures

- In 2019, OFAC set a new record for total civil monetary penalties imposed of almost **\$1.3 billion**. OFAC also published its first public **Framework for Compliance Commitments**, setting a new compliance baseline.
- OFAC penalties in two April 2019 enforcement actions against non-U.S. financial institutions (UniCredit Bank and Standard Chartered) **exceeded \$600 million each**.
- OFAC imposed a civil monetary penalty for violations by a U.S. company's Turkish affiliate, which continued to do business in Iran contrary to company policy. Notably, a Turkish national employee was also **designated as a foreign sanctions evader**—the first time OFAC has taken such a step in a civil enforcement action.
- In a September 2019 enforcement action against a UK financial institution (British Arab Commercial Bank), OFAC continued to use even an indirect and somewhat attenuated **reliance on the U.S. dollar** to bring an entire body of transactions under OFAC jurisdiction.
- Through multiple enforcement actions (including against AppliChem), OFAC demonstrated its continued interest in **Cuba enforcement**, including violations by foreign subsidiaries in Canada and Europe.

Bottom Line

- Since 2009, OFAC has issued **217 penalties**; each penalty has **averaged over \$26 million**.
- In April 2020, the maximum OFAC penalty was increased to the **greater of \$308,000 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) *Exxon Mobil Corp. v. Mnuchin*

- In December 2019, in an **unprecedented** judicial action, the U.S. District Court for the Northern District of Texas **overturned an OFAC enforcement action** against Exxon Mobil.
- The court found that OFAC had **failed to provide fair notice** that Exxon's entry into contracts signed by an SDN would violate sanctions rules.
 - Rosneft CEO Igor Sechin was added to the SDN List in April 2014.
 - A month later, Exxon entered into a series of contracts with its existing business partner, Rosneft, which were signed by Sechin acting in his representative capacity as CEO of Rosneft.
 - In 2017, OFAC issued a final penalty notice to Exxon and imposed a \$2 million fine.
- The court concluded that a regulated party "acting in good faith" would not have known with "ascertainable certainty" that an **SDN's signature** on the contract would constitute a prohibited receipt of a service from an SDN.
- Persons subject to U.S. jurisdiction are now effectively on notice that entering into a contract signed by an SDN could give rise to U.S. sanctions exposure.

Sanctions Enforcement Trends

Regulatory and Enforcement Trends



(4) Enhanced Expectations for Risk-Based Compliance Systems

- Guidance published by OFAC in May 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, **OFAC has begun requiring companies to annually certify** that they have implemented an extensive set of sanctions compliance commitments.
- A November 2019 settlement with a leading technology company emphasizes the importance of **anticipating potential vulnerabilities in compliance technology**—such as sanctions screening tools.
- 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



(5) Deploying Non-Sanctions Tools to Pressure Beijing

Huawei Entity List Designation: The Bureau of Industry and Security (“BIS”) added Huawei and 68 of its affiliates to the Entity List in May 2019, imposing stringent restrictions on exports and transfers of U.S.-origin items.

- BIS followed that initial action with a second round of Huawei designations, adding 46 more Huawei affiliates to the Entity List in August 2019.
- BIS has also maintained a temporary general license permitting certain exports to Huawei since Huawei’s initial designation, extending the license on four separate occasions.

Information and Communications Technology and Services (“ICTS”) Supply Chain Restrictions

- The Commerce Department published a proposed rule giving the Secretary of Commerce authority to impose restrictions on ICTS trade and transactions.
- The proposed rule would give the Secretary broad discretion to review, mitigate, prohibit, or unwind certain transactions involving ICTS designed, developed, manufactured, or supplied by a “foreign adversary,” and the rule specifies procedures for identifying and reviewing such transactions.

Controls on “Emerging and Foundational Technologies”

- The Commerce Department has yet to publish new rules on “emerging and foundational technologies”—although new controls on up to six categories of “emerging technology” are said to be pending.

Entity List Designations for Humanitarian Reasons:

- In October 2019, BIS added 28 Chinese entities to the Entity List for their support of China’s actions against Muslim minorities—a new use for Entity List designations.

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Key Developments

PDVSA-Related Money Laundering Prosecutions

Key Developments

- In March 2020, DOJ announced charges against top Venezuelan leadership, including **President Nicolás Maduro** and other high-level government officials, alleging a large-scale drug trafficking, corruption, and money-laundering conspiracy directed at the United States.
- The March 2020 announcements included money-laundering conspiracy charges against **Maikel Jose Moreno Perez**, the current Chief Justice of the Venezuelan Supreme Court. Moreno Perez allegedly accepted “tens of millions of dollars and bribes to illegally fix dozens of civil and criminal cases in Venezuela.” The bribes allegedly included a house received from an individual charged in a multibillion-dollar PDVSA fraud scheme in the United States after Moreno secured the dismissal of fraud charges against that individual in Venezuela.
- In separate Southern District of Florida criminal proceedings filed against former PDVSA Executive Director of Financial Planning **Abraham Ortega**, PDVSA filed a motion in April 2020 for restitution and to be recognized as a victim of Ortega’s alleged scheme to embezzle PDVSA funds. The U.S. argues that PDVSA was complicit in the scheme. The motion remains pending.



DOJ Guidance on Corporate Compliance Programs

Key Developments



In **June 2020**, DOJ issued updated guidance to prosecutors on how to assess corporate compliance programs when conducting an investigation, in making charging decisions, and in negotiating resolutions. The guidance applies to Criminal Division investigations and enforcement.

- DOJ's approach is guided by three "**fundamental questions**":
 - 1) Is the corporation's compliance program **well designed**?
 - 2) Is it being applied earnestly and in good faith—i.e., is the program **adequately resourced and empowered to function effectively**?
 - 3) Does the corporation's compliance program **work in practice**?
- Key changes to the guidance (previously updated in April 2019) include:
 - 1) Calls for DOJ to make a "reasonable individualized determination" about a company's program, considering factors including the company's "size, industry, geographic footprint, regulatory landscape," and other factors "internal and external to the company's operations."
 - 2) Increased focus on whether compliance programs are **adequately resourced** to function effectively and have **access to relevant data** in order to conduct monitoring and auditing.
 - 3) Focus on whether a compliance program evolves to incorporate **lessons learned** from its own and similarly situated companies' misconduct.
 - 4) Continued emphasis on **third-party relationships** as a key risk area and calls on companies to manage third parties "throughout the lifespan of the relationship."

Money Laundering Case Law: Proof of a Foreign SUA

Key Developments

Two recent circuit court decisions have provided further guidance regarding the use of foreign predicate offenses in money-laundering prosecutions as “specified unlawful activities” (“SUAs”) under 18 U.S.C. § 1956.

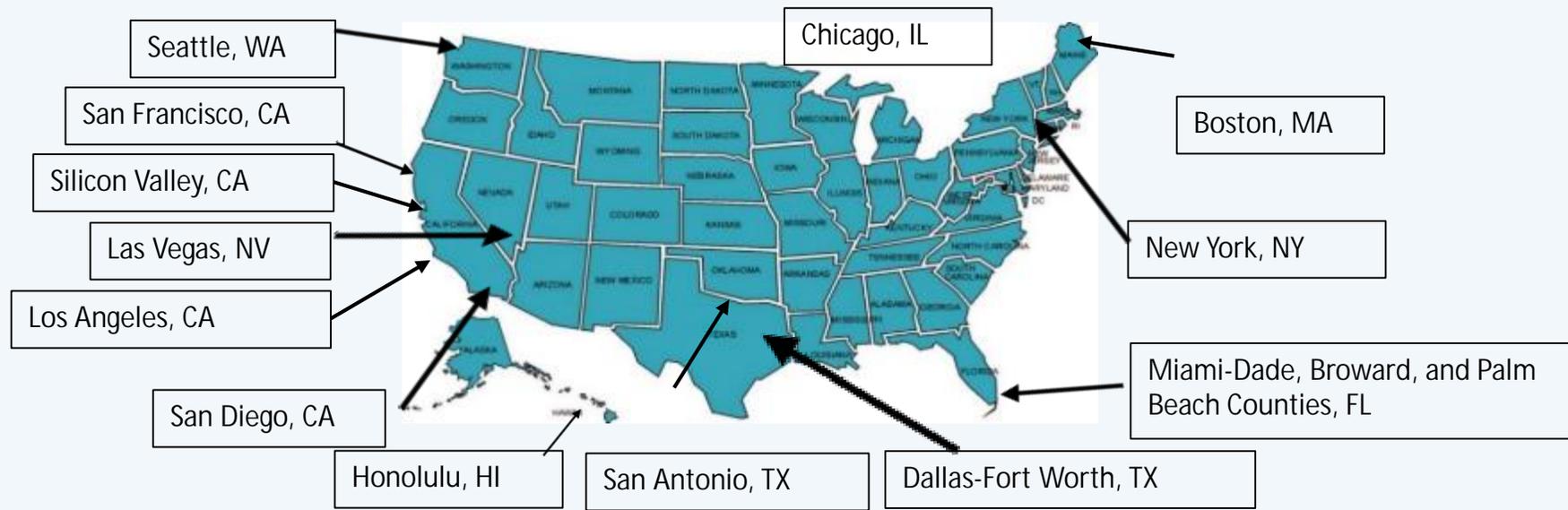
- In *United States v. Chi*, 936 F.3d 888 (9th Cir. 2019), the court upheld the conviction of a former South Korean government seismologist for laundering over \$1 million in bribes in the United States.
 - The court rejected Chi’s argument that his alleged violations of a South Korean bribery statute had to satisfy the elements of 18 U.S.C. § 201 to qualify as an “offense against a foreign nation” predicate under 18 U.S.C. § 1956.
- Similarly, in *United States v. Thiam*, 934 F.3d 89 (2d Cir. 2019), the court held that to charge money laundering based on a foreign predicate offense, the prosecution must show only that each element of the foreign statute was satisfied under the standard applied in the foreign court.
 - Therefore, where the SUA was bribery under Guinean law, the prosecution did not have to instruct the jury regarding the definition of “official act” adopted by the Supreme Court in *McDonnell*, which was not applicable to the Guinean offense.

AML Obligations in the Real Estate Sector

Key Developments

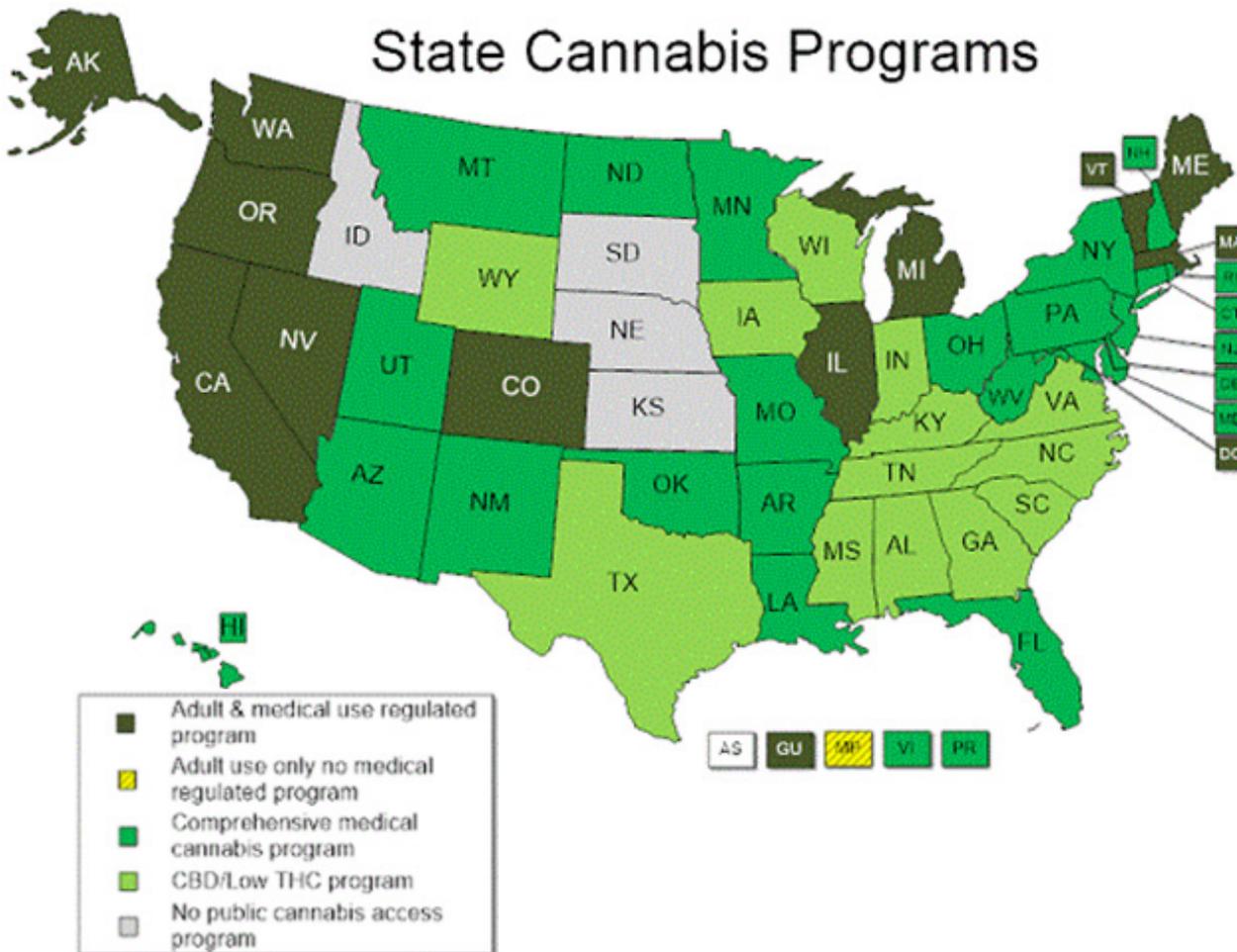
In May 2020, FinCEN renewed a Geographic Targeting Order (“GTO”) requiring title insurance companies to collect and report beneficial ownership information for certain real estate purchases. The Order is effective from May 10, 2020 – November 5, 2020.

- The reissued GTO is identical to the November 2019 GTO. The November 2019 GTO altered the prior May 2019 GTO to provide that title insurance companies no longer are required to report purchases made by U.S. publicly traded companies.
- The GTO applies when: (1) a legal entity purchases real estate in a covered area; and (2) the real estate sells for **at least \$300,000** in a non-financed transaction. Payments by cash, monetary instruments, wires, and cyber currency are covered by the GTO.



Marijuana-Related Businesses

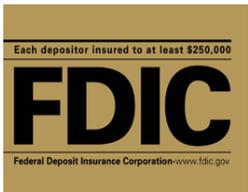
Key Developments



- Marijuana is legal for recreational and medical use in **11 states**, the District of Columbia, Guam, and the Northern Mariana Islands. More states are expected to follow suit.
- Legal marijuana sales totaled approximately **\$11 billion** in 2019.
- A number of legislative solutions—from limited measures to full federal legalization—have been introduced in this Congress to address the conflict and promote the marijuana industry.

Marijuana-Related Businesses

Key Developments



Guidance: Providing Financial Services to Customers Engaged in Hemp-Related Businesses

On December 3, 2019, FinCEN, the FDIC, the Fed, the OCC, and the CSBS issued a statement to clarify the legal status of commercial growth and production of hemp and the relevant requirements for banks under the BSA.

- The Agriculture Improvement Act of 2018 removed hemp as a Schedule I controlled substance under the CSA. The USDA issued final interim rules regulating hemp production.
- Hemp may be grown only with a valid USDA-issued license or under a USDA-approved state or tribal plan.
- Financial institutions are **not required to file SARs** on customers solely because they are engaged in hemp production in accordance with applicable laws and regulations.

Sports Betting and Online Gambling

Key Developments

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

- Eighteen states and the District of Columbia have legal sports betting; in an additional 4 states, sports betting is authorized but not yet operational; and 16 states have active bills or ballot initiatives to legalize sports betting. See American Gaming Association, *Interactive Map: Sports Betting in the U.S.* (May 28, 2020).
- Sports betting conducted through casinos is subject to the BSA program, reporting, and record-keeping requirements.
- Based on a speech by the Director in August 2019, FinCEN most likely will consider sports betting conducted under state licenses that are not casino licenses subject to the requirement. FinCEN has not given guidance on this point.

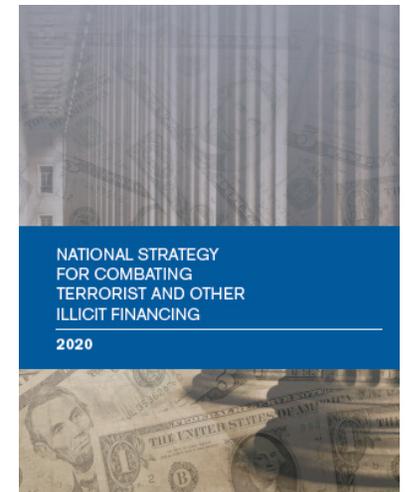
BSA/AML focus on casinos, with at least 10 enforcement actions since 2013, suggests potential scrutiny of sports betting companies, as well.

Cryptocurrency

Key Developments



- In February 2020 testimony before the Senate Finance Committee, Treasury Secretary Steven Mnuchin indicated that the Treasury Department would issue “**some significant new requirements**” related to cryptocurrency, given the Trump administration’s concern over the use of cryptocurrencies to potentially evade U.S. sanctions.
 - The Treasury’s 2020 National Strategy for Combatting Terrorist and Other Illicit Financing describes “digital assets” as a key vulnerability and calls for a clarified or updated regulatory framework to expand coverage of digital assets.
- In May 2020 remarks, FinCEN director Kenneth Blanco emphasized the importance of **Travel Rule compliance** for virtual currency transactions, noting that “recordkeeping violations are the most commonly cited violation by our delegated [IRS] examiners against [MSBs] engaged in virtual currency transmission.”
 - On October 11, 2019, CFTC, FinCEN, and the SEC issued a joint statement to “remind persons engaged in activities involving digital assets of their [AML] and [CFT] obligations under the BSA.”



Sixth EU Anti-Money Laundering Directive

Key Developments



- The EU's **Sixth Anti-Money Laundering Directive (“AMLD6”)** will come into effect for EU Member States on December 3, 2020.
- Financial institutions must implement relevant regulations by June 3, 2021.
- AMLD6 will **harmonize the definition of money laundering** across EU Member States, with the aim of closing loopholes in the AML legislation of some EU Member States.
 - Following AMLD6, the money-laundering offenses will “extend to property derived from conduct in another EU country or a non-EU country, where it would constitute a criminal activity if it had occurred domestically.” Previously, money laundering was not uniformly criminalized where the funds were derived from conduct that was not criminalized where the conduct occurred.
 - AMLD6 will **require EU Member States to criminalize certain predicate offenses**, even if they were not previously criminalized, including certain tax and environmental crimes.
- AMLD6 also adds **aiding and abetting**, **inciting**, **attempting**, and **self-laundering** to the list of money-laundering offenses.

Iran Sanctions Program

Key Developments



"We will continue to apply maximum pressure on the Iranian regime until its leaders change their destructive behavior, respect the rights of the Iranian people, and return to the negotiating table."
Sec. Mike Pompeo
(April 22, 2019)

Since the re-imposition of nuclear sanctions, the Trump administration has pursued a "**maximum pressure**" campaign against Iran, including:

Expanding Existing Restrictions:

- Designated the Islamic Revolutionary Guard Corps as a **foreign terrorist organization**.
- Allowed **waivers** to expire that had permitted China, India, South Korea, Japan, Italy, Greece, Taiwan, and Turkey to continue **importing Iranian oil** without sanctions risk.
- Imposed **additional counter-terrorism sanctions** on the Central Bank of Iran ("CBI"), further restricting permissible engagement with the bank.

Penalizing Iran's International Support:

- Sanctioned **Chinese** and **Emirati** sales agents for Mahan Air; **Turkish** and Emirati exchange houses and trading companies; two subsidiaries of COSCO, a major Chinese shipping company; a Chinese state-owned oil trading company; and several Chinese and **Seychellois** companies involved in the purchase of Iranian metals.

Targeting New Iranian Industries:

- In May 2019, President Trump authorized the imposition of new sanctions on non-U.S. persons doing business with the **iron, steel, aluminum, or copper** sectors of the Iranian economy.
- In January 2020, President Trump also authorized the imposition of sanctions on non-U.S. persons operating in Iran's **construction, mining, manufacturing, or textile** sectors or **any other sector** determined by the Secretary of the Treasury.

EU Iran Sanctions

Key Developments



EU Sanctions and the Joint Comprehensive Plan of Action (“JCPOA”)

- 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**, which continue to include:
 - A ban on and/or authorization requirement for exports of arms, missile technology, certain software and rare metals related to nuclear proliferation;
 - Certain sanctions relating to human rights violations and support of terrorism, each targeting listed persons; and
 - A ban on exports of equipment which might be used for internal repression or monitoring telecommunications.
- In April 2020, the EU renewed those restrictive measures until April 13, 2021.
- In January 2020, the UK, France, and Germany triggered the **JCPOA dispute resolution process**—that could ultimately lead to the snap-back of UN and EU nuclear-related Iran sanctions and the collapse of the 2015 nuclear deal.

EU Special Purpose Vehicle for Non-U.S. Dollar Trade with Iran

- 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.
- On March 31, 2020, it was confirmed that INSTEX had successfully concluded its first transaction by facilitating the export of medical goods from Europe to Iran.

Venezuela Sanctions Program

Key Developments



Over the past year, the Trump administration has continued to escalate sanctions pressure on the Maduro regime:

- Building on the earlier designations of the state-owned oil company **PDVSA** and the **Central Bank of Venezuela**, the United States in August 2019 sanctioned the entirety of the **Government of Venezuela**.
- U.S. and non-U.S. persons risk being designated for operating in the **gold, oil, financial**, and **defense and security** sectors of Venezuela's economy.
- OFAC has repeatedly targeted the Maduro regime's perceived enablers abroad, including companies and vessels involved in the **Venezuela-Cuba oil trade**, plus two subsidiaries of the Russian state-run oil giant **Rosneft** for dealing in Venezuelan crude.
- OFAC has also continued to designate **senior Venezuelan officials**.



Our sanctions have been tightly focused on closing down every avenue by which Maduro sustains his criminal and totalitarian rule.

– President Donald Trump
(September 25, 2019)

On March 15, 2020, the U.S. Department of Justice announced the **indictment of President Nicolás Maduro** and 14 other high-ranking officials, including Venezuela's Defense Minister and Chief Justice.

On March 31, 2020, the Trump administration unveiled a framework under which sanctions would be lifted if Maduro were to step down in favor of a **transitional government** and allow free and fair presidential elections.

EU Venezuela Sanctions

Key Developments



- The EU followed the U.S.'s lead regarding sanctions on Venezuela in November 2017 by ratifying Regulation (EU) 2017/2063, which imposes sanctions on Venezuela (the “EU Venezuela Regulation”) designed to **promote democracy and the rule of law**.
 - The EU Venezuela Regulation includes an **arms embargo** and a prohibition against selling, supplying, transferring, 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 use of the internet** by members of the opposition, including use of email, texting and instant messaging.
 - The EU Venezuela Regulation also introduced a legal framework for **travel bans and asset freezes against individuals** involved in human rights violations and undermining democracy. The EU has published a list of 18 persons—including the Venezuelan President, Vice President, and military officials—subject to such targeted sanctions.
- On November 11, 2019, the **EU extended the restrictive measures against Venezuela** until November 14, 2020, in light of the ongoing political, economic, social, and humanitarian crisis.
- On April 3, 2020, the EU indicated that the **Democratic Transition Framework** on Venezuela proposed by the United States appears to be in the EU line of seeking a peaceful way out of the country’s political crisis through a negotiated path to a democratic government.

Russia Sanctions Program

Key Developments



Designations and Other Measures

- In September 2019, OFAC took its first action under Executive Order 13848 authorizing sanctions against foreign persons who interfere in U.S. elections, targeting Russia's **Internet Research Agency** ("IRA") and financier Yevgeniy Prigozhin, as well as associated persons and assets.
- In December 2019, the Senate Foreign Relations Committee voted to approve the **Defending American Security from Kremlin Aggression Act** ("**DASKA**"), which aims to impose new sanctions on Russia's financial, energy, and cyber sectors.
- The National Defense Authorization Act for FY 2020 included sanctions on **two Russian gas export pipelines**, Nord Stream 2 and Turkstream.
- Two Swiss **subsidiaries of Rosneft** were added to the SDN List in February and March 2020 for operating in Venezuela's oil sector—prompting Rosneft to transfer its Venezuelan assets to a newly formed company wholly owned by the Kremlin.
- In April 2020, OFAC designated a **Russia-based white supremacist group** as a Specially Designated Global Terrorist.



Free and fair elections are the cornerstone of American democracy, and we will use our authorities against anyone seeking to undermine our processes and subversively influence voters.

– Treasury Secretary Steven Mnuchin
(September 30, 2019)

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.
- EU measures targeting Russia—including an arms embargo, an export ban for dual-use goods, an export ban on military end users, and economic sanctions on Russia’s **oil and gas sector**—are generally in alignment with U.S. sanctions; however, differences remain, such as the permitted maturity of debt.
- Additionally, the EU has imposed **asset freezes and travel bans** on specific individuals, including Russian officials involved in attacks on Ukrainian naval vessels.
- The EU Russia economic sanctions are currently in place until July 31, 2020. Asset freezes related to the misappropriation of Ukrainian state funds were also recently extended until March 6, 2021.
- The sanctions related to actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine were extended until June 23, 2021.

Bottom Line

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

North Korea Sanctions Program

Key Developments



- Amid the **stalled nuclear negotiations** between President Trump and North Korean leader Kim Jong Un, the U.S. over the past year continued to target the illicit movement of goods in and out of North Korea.
- In March 2019, OFAC published an advisory describing North Korea's **illicit shipping practices**, including disabling vessels' location-tracking system, falsifying documents, and engaging in ship-to-ship transfers.
- The U.S. has taken an unusually direct approach to curtailing North Korea's efforts to evade sanctions, including the May 2019 **seizure of a North Korean vessel** used to transport coal in violation of sanctions.
- OFAC continues to designate North Korea's supporters abroad, including several Taiwanese and Hong Kong individuals and entities for enabling Pyongyang's import of refined petroleum products.
- In April 2020, the U.S. Government published a further advisory warning of the threat of **North Korean state-directed cyber attacks**, and OFAC has also designated individual hackers.

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.

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 response to high-level meetings between Seoul and Pyongyang.
- 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 sanctions 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 2019, 57 individuals and 9 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 UN sanctions.

Cuba Sanctions

Key Developments



- In April 2019, President Trump lifted a two-decade-long suspension on **Title III of the Helms-Burton Act**, which authorizes U.S. citizens and companies whose property was confiscated by the Cuban government to sue those that “traffic” in that confiscated property.
 - There have been around **25 cases** filed under Title III, primarily in the Southern District of Florida.
 - Many of these cases were brought against defendants in the **tourism industry**, including airlines, cruise lines, hotels, and travel technology companies, with a number related to other industries such as oil refining, banking, and farming.
- In June 2019, OFAC announced it would **end “people-to-people” educational group travel**, which allowed organizations subject to U.S. jurisdiction to sponsor exchanges that promoted contact with Cuban locals.
- In September 2019, OFAC announced changes to the general license allowing **remittances to Cuba**, including a \$1,000 per quarter cap on individual Cuban nationals and the elimination of “donative” remittances.
- 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.

Bottom Line

- The Trump administration has continued to reverse the Obama administration’s easing of measures on Cuba, and has steadily increased pressure on Havana across economic sectors.

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 EU for Foreign Affairs Federica Mogherini
(May 2, 2019)



- The European Union reiterated its **strong opposition to the extra-territorial application of U.S. sanctions** targeting Cuba as being 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, the Helms-Burton Act and certain other U.S. measures within the EU.
- The EU will consider all available options to protect its interests, including a potential further expansion of the EU Blocking Statute and/or bringing the case before the WTO.
- EU individuals and entities will be blocked by courts and competent authorities of EU Member States.

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Up Next. . .

Potential BSA/AML Legislative Changes



Corporate Transparency Act (H.R. 2513)

If enacted, the Corporate Transparency Act would:

- Require certain new and existing corporations and LLCs to disclose information about their beneficial owners to FinCEN on an annual basis that FinCEN must maintain for five years after entity termination;
 - Excludes any business concern that (1) employs more than 20 employees on a full-time basis in the U.S., (2) files U.S. income tax returns demonstrating more than \$5,000 in gross receipts, and (3) has an operating presence at a physical office in the United States.
 - Excludes several types of entities such as public companies, depository institutions, credit unions, bank holding companies, entities registered with the CFTC, and public accounting firms.
- Amend the BSA's definition of "financial institution" to include "a person trading or acting as an intermediary in the trade of antiquities, including an advisor, consultant or any other person who engages as a business in the solicitation of the sale of antiquities";
- Allow for increases to the CTR threshold;
- Extend the application of Geographic Targeting Orders to commercial real estate;
- Establish a Treasury-based rewards program for those who volunteer original information leading to a FinCEN judicial or administrative action that results in monetary sanctions exceeding \$1 million; and
- Provide enhanced penalties for BSA violations, and impose a civil penalty and authorize criminal penalties for providing false or fraudulent beneficial ownership information.

Sanctions Legislative Developments: A Focus on China

Hong Kong Human Rights and Democracy (“HK”) Act

- In November 2019, President Trump signed the HK Act into law, empowering the President to impose sanctions on persons deemed responsible for human rights violations in Hong Kong.
- Notably, the statute requires an **annual certification** by the Secretary of State to the U.S. Congress that Hong Kong retains sufficient autonomy to merit its special trade and investment status.

Impact of China’s Proposed Hong Kong National Security Law

- In May 2020, following Beijing’s announcement of plans to impose a new **national security law** on Hong Kong, the Trump administration certified that Hong Kong is no longer autonomous from mainland China.
- The determination triggers **few immediate practical consequences**.
- Once the national security law is imposed, as expected in late 2020, consequences could include visa restrictions, more stringent U.S. exports controls, and increased tariffs on Hong Kong.
- A Senate-introduced bill, the Hong Kong Autonomy Act, would impose mandatory sanctions on persons that enforce the national security law, as well mandatory **secondary sanctions on banks** that do business with such individuals and entities.
- On June 17, 2020, President Trump signed into law the Uyghur Human Rights Policy Act of 2020, which provides for sanctions on persons responsible for human rights violations against Chinese ethnic and religious minorities, particularly the Uyghurs in the Xinjiang region.

BSA/AML – What's Next?

- **Continued Emphasis on BSA/AML Investigations:** International, federal, and state regulators/enforcers remain keenly focused on BSA/AML compliance. Regulators and enforcers will focus on financial institutions' response to COVID-19.
- **Broad Application of AML Requirements:** Actions against crypto-businesses illustrate the broad view U.S. regulators are taking in mandating adequate AML compliance. Developments in application of BSA rules to sports betting, additional crypto regulations, further attention on the real estate industry, and enactment of pending legislation 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.
 - Revised DOJ compliance guidance suggests that these principles will have continued prominence in the AML space.

Sanctions – What’s Next?



Financial Institutions and Export Controls Compliance?

- The increase in export-related restrictions has led banks to inquire whether they must screen for export control issues.
- No history of U.S. cases against banks for export controls.
- The option is legally available, though difficult to implement.
- Few banks are ready to address that risk – will it mean new requirements for customers, shippers, logistics providers?

Will OFAC Impose Compliance Monitors?

- OFAC’s new compliance certifications – along with its Compliance Framework – increases work for the regulated community *and* for the agency.
- OFAC remains small (approx. 200 staff) and likely does not have the resources for the new oversight requirements.
- OFAC could go the way of the Justice and Commerce Departments and impose compliance monitors.



UK Sanctions Post-Brexit?

- There is uncertainty across a full spectrum of post-Brexit policies – including how London will deal with sanctions.
- In the short term, London will simply adopt the EU’s existing measures.
- Over the longer term, it is uncertain how independent and muscular UK sanctions will be.



Counter-Sanctions to U.S. Measures?

- Counter-sanctions against U.S. unilateral measures have existed for more than 20 years in the EU – but they have not been meaningfully enforced. Will they be now?
- China has indicated that it will develop its own “black list” to respond to Huawei restrictions and foreign firms have been warned against complying with the U.S. measures.
- Will Russia’s counter-sanctions (which include potential criminal liability) finally be approved by the Duma?



2020 Elections

- Adds another element of uncertainty in the near- and mid-term – sanctions could become even more politicized.
- Given the attractiveness of sanctions, it is likely that there will be more measures and stronger enforcement in the lead up to November 2020 – across the full range of sanctions programs.

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Questions?

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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 a "Global Elite Thought Leader" in its 2020 and 2019 Investigations guides list for Business Crime Defense - Corporate and Investigations. In 2018, Mr. Warin was selected by *Chambers USA* as a "Star" in FCPA, a "Leading Lawyer" in the nation in Securities Regulation: Enforcement, and a "Leading Lawyer" in the District of Columbia in Securities Litigation and White Collar Crime and Government Investigations. 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." He has been listed in *The Best Lawyers in America*® every year from 2006 - 2020 for White Collar Criminal Defense. *U.S. Legal 500* has repeatedly named him as a "Leading Lawyer" for Corporate Investigations and White Collar Criminal Defense Litigation. He has been recognized by *Benchmark Litigation* as a U.S. White Collar Crime Litigator "Star" for ten consecutive years (2011-2020), and was named to *Securities Docket's* "Enforcement 40" for 2017.

Mr. Warin's group was recognized by *Global Investigations Review* in 2019 as the leading global investigations law firm in the world. This is the fourth time in five years to be so named. *Global Investigations Review* reported that Mr. Warin has now advised on more FCPA resolutions than any other lawyer since 2008. *Best Lawyers*® named Mr. Warin the Lawyer of the Year in 2020 and in 2016 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

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Stephanie L. Brooker, former Director of the Enforcement Division at the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and a former federal prosecutor, is 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 the 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 has been named a *National Law Journal* White Collar Trailblazer and a *Global Investigations Review* Top 100 Women in Investigations.

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.

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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. *In 2019 and 2020, Mr. Smith was ranked nationally by Chambers USA as a leading attorney in International Trade: Export Controls & Economic Sanctions.* Mr. Smith was also identified by Global Investigations Review as one of the leading sanctions practitioners in Washington, DC.

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.

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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.

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