The background of the slide is a photograph of a classical building's exterior, featuring a series of tall, light-colored stone columns that recede into the distance, creating a sense of depth and perspective. The lighting is soft, highlighting the texture of the stone.

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

December 10, 2020

Panelists:

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MCLE Certificate Information

- Most participants should anticipate receiving their certificate of attendance via email approximately four weeks following the webcast.
- Virginia Bar Association members should anticipate receiving their certificate of attendance six weeks following the webcast.
- **Please direct all questions regarding MCLE to CLE@gibsondunn.com.**

Agenda

- 1. Introduction**
- 2. Regulatory, Legal, and Advisory Updates**
- 3. AML / Sanctions Topics in the Spotlight**
- 4. Recommended Best Practices**
- 5. AML and Sanctions in the New Administration**

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Introduction

U.S. Enforcement Agencies and Regulators

Enforcement Responsibilities



**DOJ (Civil, Criminal, and
Forfeiture)**



FinCEN (Civil)



OFAC (Civil)



SEC (Civil)



CFTC (Civil)



FINRA (SRO)

Banking Regulators and Enforcers



OCC



Fed



FDIC

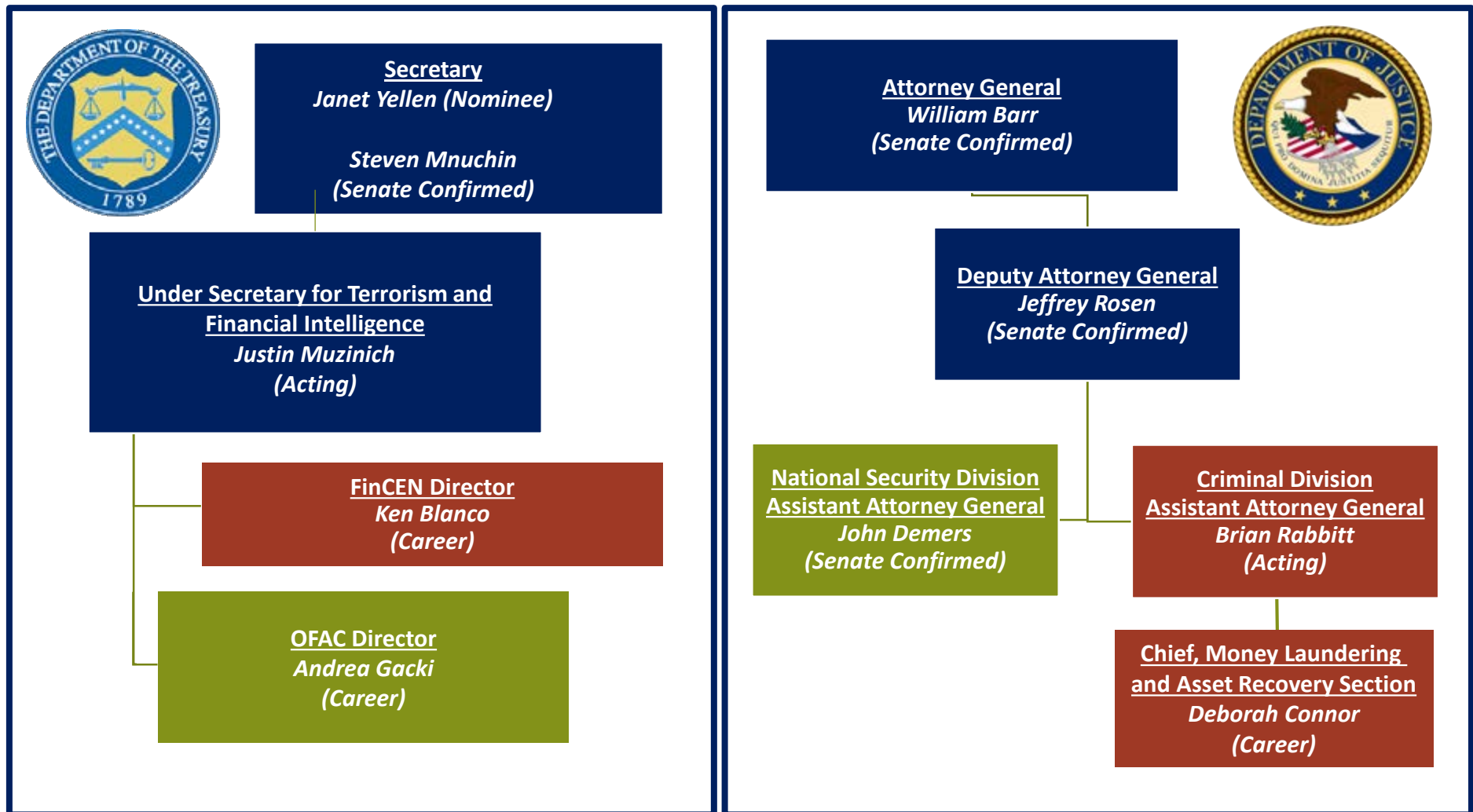


NCUA



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
- 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

AML Framework

Criminal Provisions - 18 U.S.C. 1956 and 1957

- Under the money laundering statutes, **it is a crime to engage in a financial transaction with knowledge that the proceeds involved are the proceeds of unlawful activity if the government can prove that the proceeds were derived from a specified unlawful activity.**
 - **Unlawful Activity** – Generally any violation of criminal law – federal, state, local or foreign.
 - **Specified Unlawful Activities** – There are over 200 specified unlawful activities – U.S. and certain foreign crimes.
 - Foreign crimes: Bribery of a public official; misappropriation, theft, or embezzlement of foreign public funds; fraud, or any scheme or attempt to defraud, by or against a foreign bank; smuggling or export control violations; controlled substance violations; and specified violent crime offenses.
 - **Knowledge includes "willful blindness"** – turning a blind eye or deliberately avoiding gaining positive knowledge when faced with a high likelihood of criminal activity, i.e., ignoring red flags.



AML Framework

The Bank Secrecy Act & Forfeiture

- **The main source for AML reporting, recordkeeping, and compliance program requirements for "financial institutions" is the Bank Secrecy Act (BSA).**
 - The BSA requires financial institutions to have an anti-money laundering compliance program and comply with a number of reporting and recordkeeping requirements.
 - Agencies can impose civil and criminal penalties for violations of the BSA. State banking agencies can impose similar penalties.
- Under 18 U.S.C. 981, **funds involved in money laundering transactions or traceable to them can be subject to civil forfeiture.**
 - **Innocent owner defense.**



AML Framework

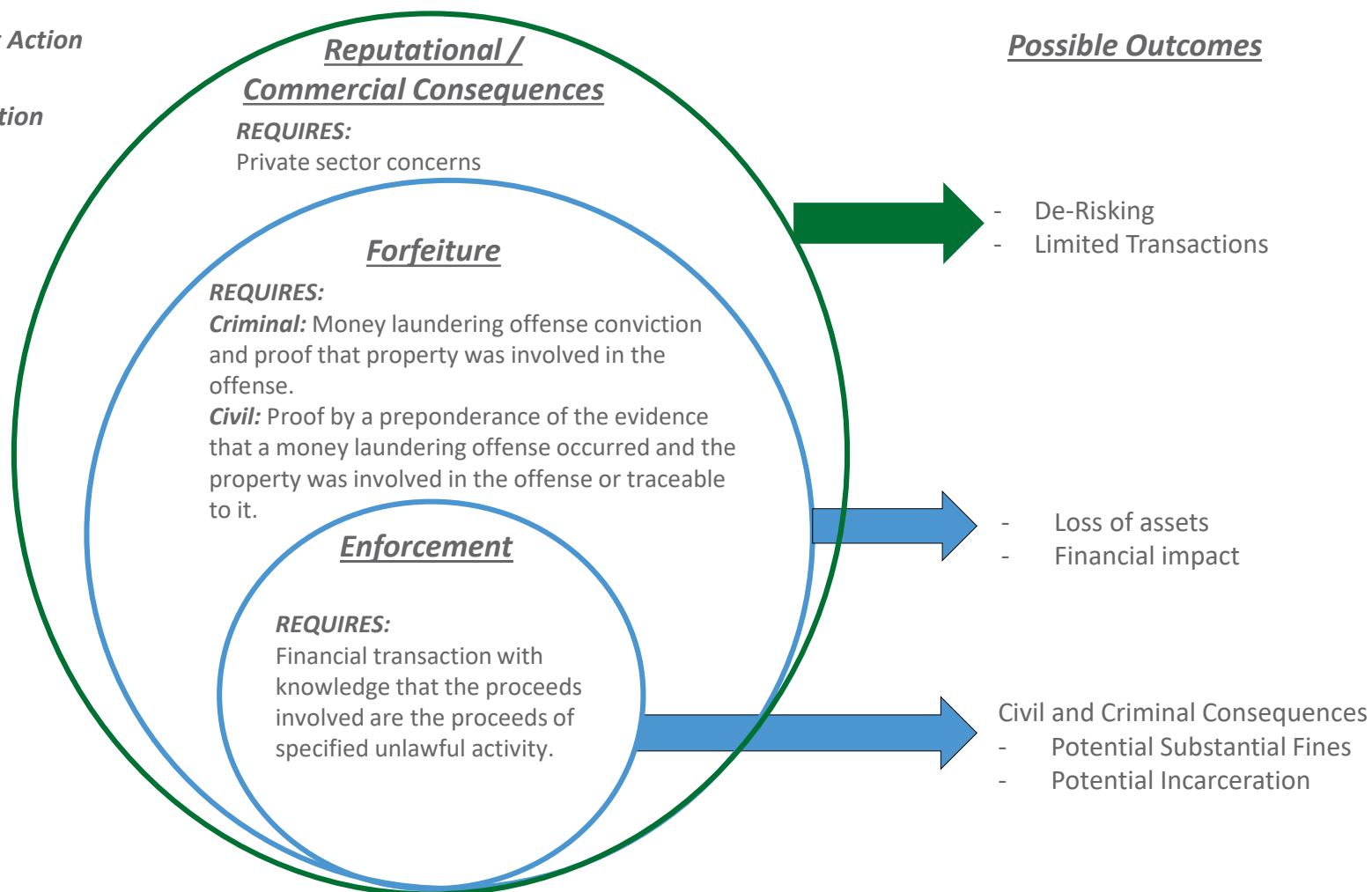
Refresher on AML Risks



U.S. Government Action



Private Sector Action



Sanctions Framework

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”

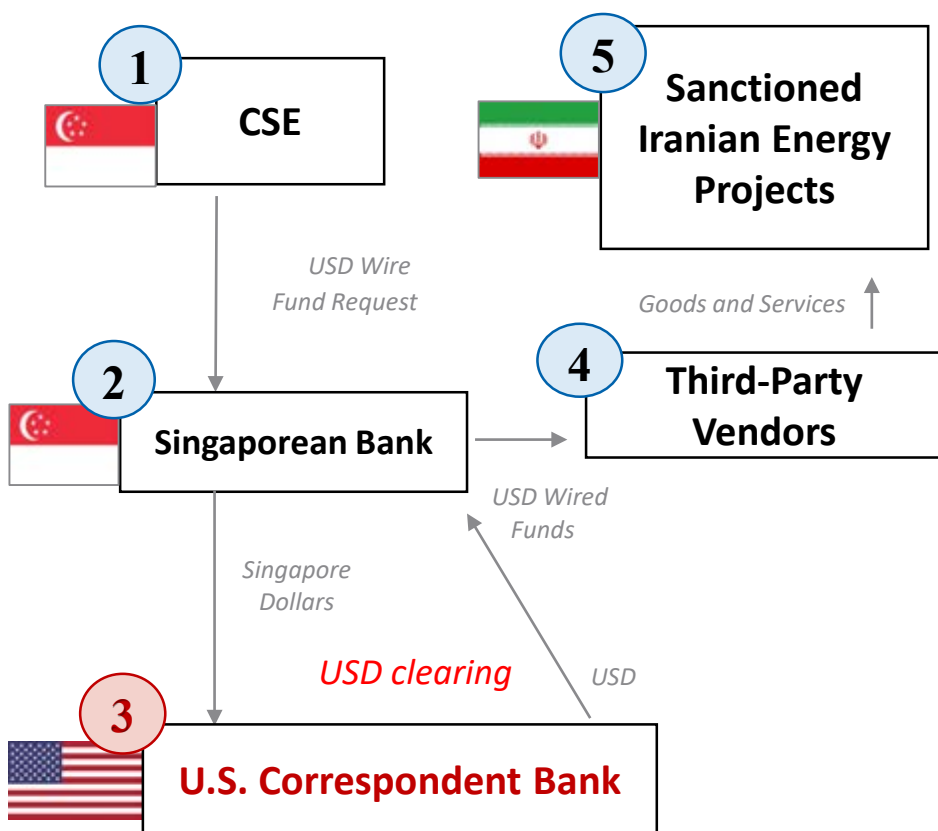
Threaten the imposition of U.S. sanctions against non-U.S. persons for engaging in transactions with targeted entities

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

Sanctions Framework

U.S. Dollar as Jurisdictional Hook

OFAC has targeted transactions conducted in USD 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 Framework

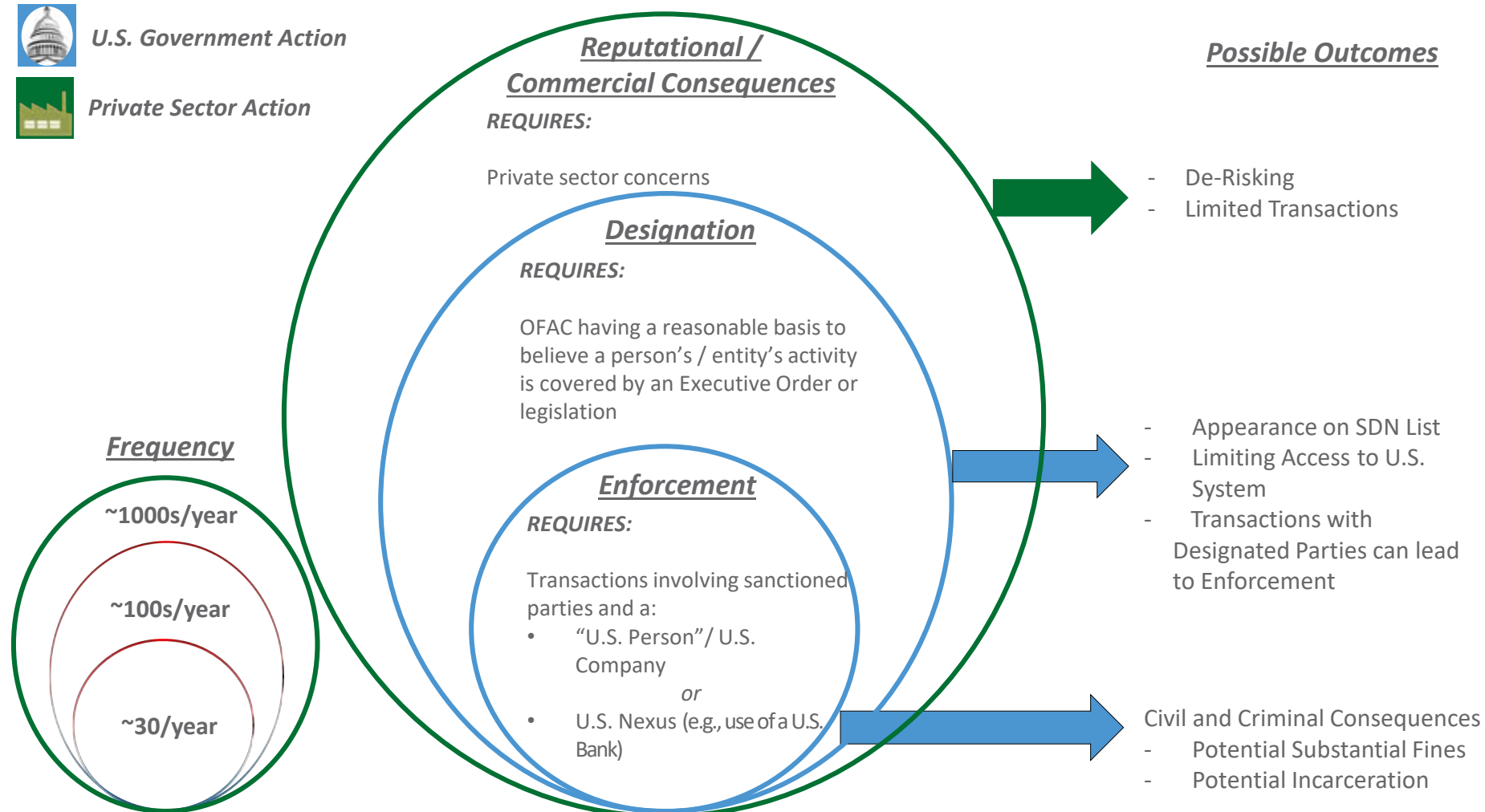
Refresher on Sanctions Risks



U.S. Government Action



Private Sector Action

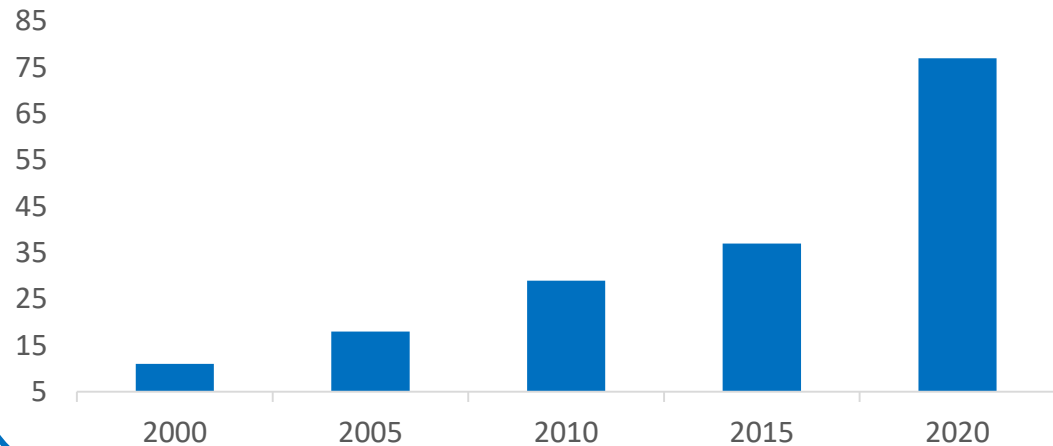


Development of U.S. Sanctions Policy

An Ever-Expanding Footprint for U.S. Sanctions

- On a bipartisan basis, the U.S. 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.
- The Trump administration has been particularly aggressive in its use of sanctions, averaging two times more additions to the SDN list compared with the Bush and Obama administrations.

Active OFAC Sanctions Programs



60%

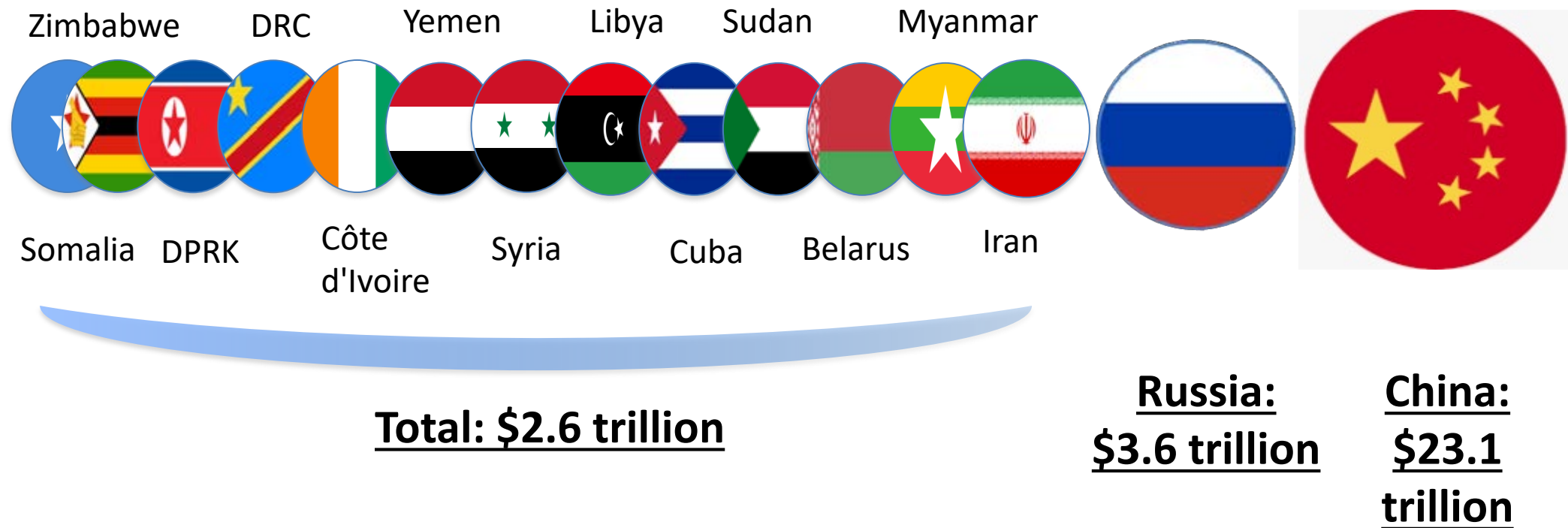
Since 2009, the increase in the number of individuals and entities on the SDN blacklist.

1000s

Annual changes to the SDN list, including additions, subtractions, clarifications. On an annual basis, the average rate of change has almost doubled since 2007.

Development of U.S. Sanctions Policy

Growing Size and Economic Importance of Targets

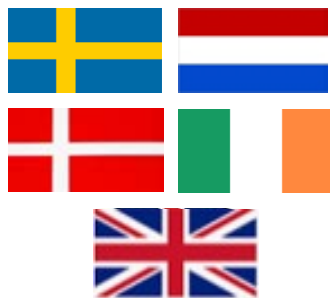


EU Blocking Statute Overview



- Adopted in 1996, the main effect of the EU Blocking Statute is to **prohibit compliance** by so-called “EU operators” (i.e. EU persons including EU companies with U.S. parents) with **certain U.S. sanctions on Cuba and Iran**.
- 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.
- The German Hanseatic Higher Regional Court recently has made a request to the Court of Justice of the European Union (CJEU) for a **preliminary ruling** on the meaning of certain aspects of the EU Blocking Statute – the judgment might provide additional clarity on the scope and enforcement of the EU Blocking Statute.
- Domestic authorities (not the European Commission) are responsible for its enforcement, so penalties vary from one EU Member State to the next.

Criminal Penalty



Administrative Penalty



No implementation



Increased Global Enforcement

Regulatory and Enforcement Trends



- 2019 was the second highest year in history for fines with 8.4 billion USD levied against global financial institutions. By the **end of July 2020**, 2020 penalties against global financial institutions had totaled **5.6 billion USD** for AML-related offenses.



Sanctions-related penalties in Germany:

- Sanctions-related sentence of a **Russian Citizen** to **seven years in prison** for violating European sanctions by selling sensitive dual-use technology worth over 1.83 million euros to Russians with military backgrounds between 2014 and 2018.
- In another trial, which is still in progress, the accused is in pre-trial detention which has so far been extended to 12 months. He is alleged to have **supplied dual-use goods to a Russian military end user** from 2016 to 2018. The required export licenses were obtained by fraudulent means by providing incorrect information on the intended use of the machines.



Sanctions-related accusation in Denmark:

- Charges have been brought against a Danish Holding Company and its director. They are accused of **selling jet fuel worth 87 million euros** to Russian companies that transported the fuel to **Syria**. This is a violation of the EU's prohibition on "*the sale, supply, transfer or export of jet fuel and fuel additives to persons, entities or bodies in Syria or for use in Syria.*"

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Regulatory, Legal, and Advisory Updates

FinCEN Enforcement Guidance



Enforcement Guidance

- In August 2020, FinCEN released guidance regarding its approach to enforcing the BSA. The guidance included three key points:
 - FinCEN clarified that in bringing enforcement actions, the agency will seek to establish violations of laws and regulations and will not treat noncompliance with standards of conduct promulgated in guidance documents as a violation.
 - FinCEN clarified the types of actions it might take when an actual or potential violation of law is identified, including: no action, a warning letter, equitable remedies, a settlement, a civil money penalty, and/or a criminal referral.
 - FinCEN identified the factors it will consider in bringing enforcement actions.

FinCEN Enforcement Factors:

1. Nature and seriousness of the violations
2. Impact or harm of the violations on FinCEN's mission to safeguard the financial system
3. Pervasiveness of wrongdoing
4. History of similar violations, or misconduct in general
5. Financial gain or other benefit
6. Presence or absence of prompt, effective action to terminate the violations
7. Timely and voluntary disclosure
8. Quality and extent of cooperation with FinCEN and other relevant agencies
9. Systemic nature of violations
10. Whether another agency took enforcement action for related activity

Banking Regulators' Joint Enforcement Guidance

- In August 2020, the Federal Reserve, FDIC, NCUA, and OCC issued joint guidance clarifying the circumstances in which the agencies would take enforcement action for noncompliance with the BSA.
- The joint statement:
 - Emphasizes that isolated or technical deficiencies will generally not result in mandatory cease and desist orders.
 - Sets forth specific types of BSA/AML program deficiencies that would or would not result in a cease and desist order.
 - Identifies the pillars of BSA/AML compliance programs as a system of internal controls, independent testing, designated individual(s) responsible for BSA/AML compliance, and training.



FinCEN CDD and PEP Guidance



Customer Due Diligence (CDD) FAQs

- In these FAQs, FinCEN made clear that the CDD Rule does not categorically require the collection of any particular customer due diligence information (e.g. media searches) or the updating of that customer information on a specific schedule.
- Rather, covered financial institutions may take a risk-based approach to collecting and updating customer information, based on established policies and procedures.
- Financial institutions also do not have to use a specific method to risk rate customers.

Politically Exposed Persons (PEPs) Updated Guidance

- FinCEN and other agencies issued a joint statement clarifying the BSA due diligence requirements for customers who may be considered PEPs.
 - Foreign official focus.
- Not all PEPs are high risk. Rather, the risk depends on facts and circumstances specific to the relationship; due diligence should be commensurate with that risk.
 - Examples of these facts and circumstances include the volume and nature of transactions, type of products and services used, relevant jurisdiction(s), customer's public office and level of influence, customer's access to significant government assets or funds, and overall nature of the customer relationship.

FinCEN ANPRM



Recordkeeping and Travel Rule

- In October 2020, FinCEN and the Federal Reserve announced a joint ANPRM that would amend the recordkeeping and travel rule regulations under the BSA. The proposal would:
 - Reduce the recordkeeping and travel rule thresholds from \$3,000 to \$250 for transmittals that begin or end outside the U.S.;
 - Clarify that “money” as used in these provisions includes convertible virtual currency;
 - Clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

AML Effectiveness ANPRM

- In September 2020, FinCEN solicited public comment on incorporating an “effective and reasonably designed” AML program component into the BSA regulations. Elements include:
 - Identifying, assessing, and mitigating risk from illicit financial activity consistent with the institution’s risk profile and the risks communicated by relevant government authorities;
 - Assuring and monitoring compliance with the recordkeeping and reporting requirements of the BSA; and
 - Providing information with a high degree of usefulness to government authorities.

OFAC Guidance to Industry: Xinjiang Supply Chain Advisory



- On July 1, the U.S. Departments of State, Commerce, Homeland Security, and Treasury issued an advisory on the reputational, economic, and legal risks for businesses with exposure in their supply chain to entities engaged in human rights abuses in the **Xinjiang Uyghur Autonomous Region (XUAR)**.
 - An estimated 84% of China’s cotton production comes from Xinjiang.
 - CBP has seized imports of **cotton, apparel, and hair products** from Xinjiang under the Tariff Act.
 - FAR provision 52.222-50 prohibits the use of forced labor in USG supply chain.
 - The advisory describes a Chinese internal “pairing” system whereby companies in the more-developed Eastern provinces open factories in XUAR.
 - The agencies acknowledge unusual challenges with conducting supply chain audits and suggest engagement with international stakeholders, including the ILO.
- On September 30, the State Department issued closely related guidance encouraging U.S. businesses to undertake supply chain due diligence when exporting items to **foreign government end users** that can be used in **surveillance activities**—such as **facial recognition software, biometric data collection items, social media analytics software, recording and listening devices, and internet communications surveillance tools**.

Photo source: Council on Foreign Relations cfr.org

OFAC Guidance to Industry:

North Korea Ballistic Missile Procurement Advisory



- On September 1, the U.S. Departments of State, Treasury, and Commerce issued an advisory on North Korea's ballistic missile procurement activities.
 - **Key participants** in these activities are spotlighted, including the Korea Mining Development Trading Corporation (KOMID) and the Korea Tangun Trading Corporation (Tangun).
 - An annex is provided with **materials and equipment** that North Korea often attempts to source internationally.
- The advisory warns companies of the deceptive tactics that North Korea employs, e.g.:
 - Using North Korean officials **accredited as diplomats** to attempt to orchestrate the acquisition of sensitive technology.
 - Using foreign-incorporated companies (often Chinese or Russian) to purchase items to send onward to North Korea. Sensitive goods may be **mislabeled** to **escape export control requirements** or to **conceal the true end user**.
- The electronics, chemicals, and materials industries, as well as the financial, transportation, and logistics sectors, are at particular risk of exposure. Consistent with OFAC's compliance framework, companies should take a **risk-based approach**.

Photo source: Jung Yeon-Je/Agence France-Presse, via
Getty Images

OFAC/FinCEN Guidance to Industry:

Discouraging Ransomware Payments



- On October 1, OFAC and FinCEN concurrently issued advisories warning of the sanctions and AML risks of **facilitating ransomware payments** on behalf of cyber attack victims.
 - Ransomware is malicious software that blocks access to the victim's data.
 - Demands a ransom payment—often in the form of digital currency—to restore access.
- Sources of sanctions-related risk for **financial institutions** and **cyber insurance firms** include:
 - Growing number of malicious cyber actors are subject to U.S. sanctions.
 - Payments are frequently to anonymous recipients.
 - Extremely challenging to assess whether funds are destined for an SDN or a sanctioned jurisdiction.
- OFAC is concerned payments may **finance malign activities** and **encourage future ransomware attacks**.
- Persons that facilitate such payments are strongly encouraged to **timely self-report**.
- License applications for ransomware payments are now subject to a **presumption of denial**.

OFAC Guidance to Industry:

Artwork Advisory and the Berman Amendment



- On October 30, OFAC issued an advisory highlighting the sanctions risks arising from dealings in high-value artwork associated with blocked persons.
- According to the advisory, the market for high-value artwork allows a **high degree of anonymity and confidentiality**, especially as to the sellers and purchasers (who may be hiding behind multiple tiers of proxy entities). The risk of sanctions evasion is exacerbated by the “mobility, concealability, and subjective value of artwork.”
 - In July, the Senate published a report on how designated Russian oligarchs Arkady and Boris Rotenberg utilized shell companies to purchase artwork in the U.S.
- Per the advisory, OFAC does not interpret the “**Berman Amendment**” to IEEPA and TWEA as “allow[ing] blocked persons or their facilitators to evade sanctions by exchanging financial assets such as cash, gold, or cryptocurrency for high-value artwork or vice versa.” This is in tension with:
 - The text of the Berman Amendment, which unequivocally states that **the President cannot “directly or indirectly” regulate** “information or informational materials, including but not limited to . . . **artworks.**” 50 U.S.C. § 1702(b)(3); 50 U.S.C. § 4305(b)(4).
 - Recent court rulings in the WeChat and TikTok cases emphasizing the broad scope of the Berman Amendment, as originally intended by Congress. *See, e.g., Marland v. Trump*, No. 20-cv-4597 (E.D. Pa. Oct. 30, 2020), Opinion, Dkt. No. 35 at 3.

EU steps up fight against money laundering

Combined EU-Action Plan 2020/2021



“We need to put an end to dirty money infiltrating our financial system. Today we are further bolstering our defenses to fight money laundering and terrorist financing, with a comprehensive and far-reaching Action Plan. There should be no weak links in our rules and their implementation.”

Exec. VP V. Dombrovskis (May 7, 2020)

Six pillar approach

- Strengthen **EU's global role** with new tools to combat third world country AML deficiencies, e.g. alignment with FATF list.
- **Effective application of EU rules** on a national level with constant monitoring by **European Banking Authority**
- **Single EU Rulebook** to develop cohesion within 27 national legal frameworks.
- **EU-level supervision** to assure EU Member State's private sector measures are up to EU standards.
- **Coordination/support mechanism** for EU Member's **Financial Intelligence Units** as hubs of financial intelligence, e.g. by establishing a refined methodology to identify high-risk countries.
- **Enforcing EU-level criminal law provisions/information exchange** by creating Financial Crime Centre at EUROPOL and EU wide AML supervisory system guided by European Commission.

Sixth EU AML Directive

- EU Member States are required to transpose The EU's **Sixth Anti-Money Laundering Directive (“AMLD6”)** into national law by December 3, 2020. After which, relevant regulations must be implemented by institutions within EU Member States 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.

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AML/Sanctions Topics in the Spotlight

FinCEN Files



- On September 1, 2020, FinCEN published a news alert previewing that media outlets intended to publish a series of articles based on unlawfully disclosed SARs, as well as other sensitive government documents.
- Beginning on September 20, 2020, various media sources began reporting dozens of articles tracing proceeds from illicit conduct that allegedly went through financial institutions around the globe.
- This information was reportedly derived from over 2,100 Suspicious Activity Reports and over two years of investigative work by over 400 reporters.

Global Banks Defy U.S. Crackdowns By Serving Oligarchs, Criminals, and Terrorists

Unchecked By Global Banks, Dirty Cash Destroys Dreams and Lives

European lawmakers call for coordinated banking industry reforms in wake of FinCEN Files

Rinse, Profit, Repeat: How a Small Team of Estonians Turned a Danish Bank into a Laundromat

FinCEN Files sparks fresh UK inquiry into laundering of dirty billions

8 Things You Need To Know About The Dark Side Of The World's Biggest Banks, As Revealed In The FinCEN Files

Cryptocurrency

Recent Guidance and Enforcement Actions



- In May 2019, **FinCEN issued guidance** regarding the application of BSA registration, program, and reporting requirements to certain business models involving CVCs.
- Law enforcement and regulator updates in 2020 show a serious increased focus on providers of cryptocurrency-related services, particularly with respect to compliance with the BSA.
- On October 8, 2020, DOJ published its Cryptocurrency Enforcement Framework:

“[I]n Part I, the Framework provides a detailed threat overview, cataloging the three categories into which most illicit uses of cryptocurrency typically fall: (1) financial transactions associated with the commission of crimes; (2) money laundering and the shielding of legitimate activity from tax, reporting, or other legal requirements; and (3) crimes, such as theft, directly implicating the cryptocurrency marketplace itself.

Part II explores the various legal and regulatory tools at the government’s disposal to confront the threats posed by cryptocurrency’s illicit uses, and highlights the strong and growing partnership between the Department of Justice and the Securities and Exchange Commission, the Commodity Futures Commission, and agencies within the Department of the Treasury, among others, to enforce federal law in the cryptocurrency space.”

Cryptocurrency

Recent Guidance and Enforcement Actions



- On October 1, 2020, the **Department of Justice** unveiled charges against four executives of **BitMEX** alleging that they willfully failed to comply with BSA program compliance requirements. The **Commodity Futures Trading Commission** brought a companion civil enforcement action against five entities and three individuals that own and operate the BitMEX trading platform.
- On October 19, 2020, FinCEN announced a \$60 million civil penalty assessed against **Larry Dean Harmon**, the founder of **Helix**, a convertible virtual currency “mixer” or “tumbler.”
 - Citing its May 2019 guidance, FinCEN characterized Helix as a money transmitter because it accepted and transmitted bitcoin and other CVCs through various means. As such, FinCEN alleged that Helix had an obligation to register with FinCEN, to maintain an AML compliance program, and to meet applicable reporting and recordkeeping requirements.
 - FinCEN found that Harmon willfully violated the BSA’s registration, compliance, monitoring, and suspicious activity reporting rules.
- This is also a **pending criminal action in D.C. District Court** against Harmon for money laundering offenses and operating an unlicensed money transmitting business.

Cryptocurrency

Key Developments and Regulatory Landscape

FINANCIAL CRIMES



ENFORCEMENT NETWORK

- As discussed, on October 23, 2020, FinCEN announced its intention to issue further regulations regarding cryptocurrencies by issuing a **Notice of Proposed Rulemaking** soliciting comments on proposed amendments to modify the Travel Rule by **changing the existing definition of money to include CVCs**.
- This increased regulatory focus comes as regular use of CVCs expands into the mainstream market. In October 2020, **PayPal launched a new service** enabling users to use cryptocurrency as a funding source for purchases through PayPal's 26 million merchant partners.
- PayPal offers this service pursuant to a Bitlicense issued by NYDFS.

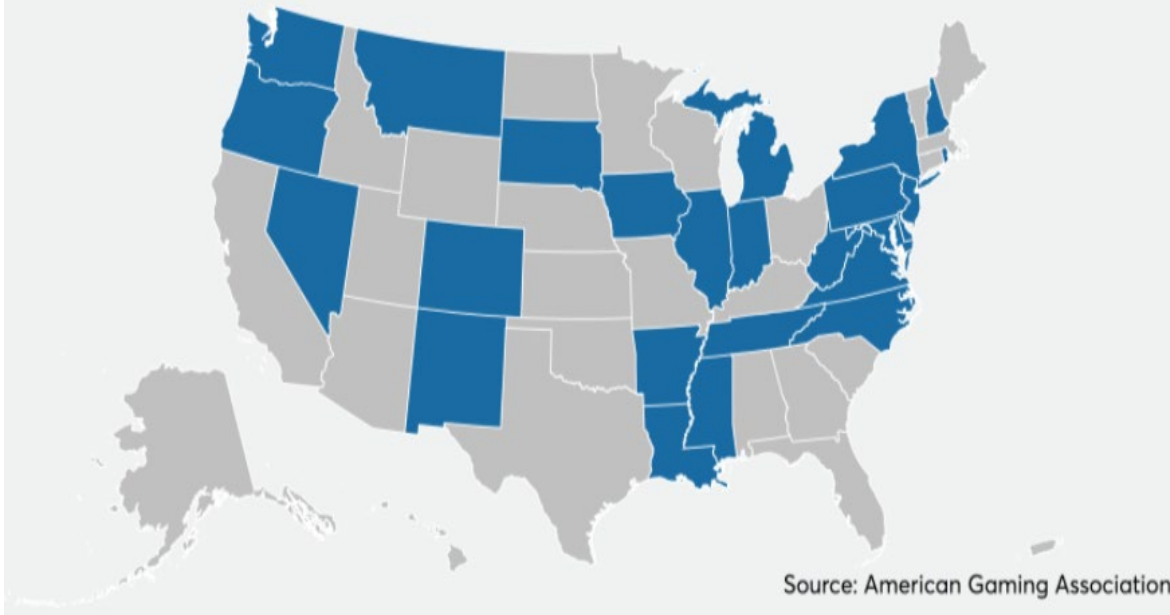


Sports Betting and Online Gambling

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.

The 25 states shaded in blue, as well as Washington, D.C., either allow sports betting or have recently passed legislation or referendums authorizing it



- **19 states** and the District of Columbia have legalized sports betting; in an additional 6 states, sports betting is authorized but not yet operational; 2 states have active bills or ballot.
- Sports betting conducted through casinos is subject to the BSA program, reporting, and recordkeeping 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.

Sports Betting and Online Gambling

Overseas Enforcement Actions

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

- In November 2020, the **UK Gambling Commission** fined **Boylesports Enterprise**, an Irish online betting company, £2.8 million (\$3.7 million) for alleged “**unsuitable**” **AML policies and procedures on two of its websites**.
- The UK Gambling Commission also issued an official warning and added the following conditions to Boylesports’s license:
 - Boylesports must appoint a **money laundering reporting officer**, who will be required to undertake yearly AML training.
 - Senior managers must undergo **external training**.



Sports Betting and Online Gambling



- In the absence of harmonization at the EU level, EU Member States can organize their gambling services autonomously, but they have to comply with **fundamental freedoms** under the **TFEU**, as interpreted by the **CJEU**.
 - Article 56 TFEU prohibits restrictions on the freedom to provide services to recipients in other EU countries. According to the CJEU, the provision and use of cross-border gambling services constitutes an economic activity that falls within the scope of the fundamental freedoms of the TFEU, but there is no obligation of mutual recognition of authorizations or licenses to provide gambling services granted by an authority in an EU country.
- Most EU Member States allow **at least some online gambling** to be offered on the internet. Some only allow certain types (betting, poker or casino games), while others allow all games.
- Online gambling regulation in EU Member States is characterized by **diverse regulatory frameworks**. The **CJEU** has repeatedly ruled on the compliance of national regulatory frameworks with EU law, i.e. the CJEU recognized **EU countries' rights to restrict the cross-border supply** of certain gambling services where necessary to protect public interest objectives, such as the protection of minors, the fight against gambling addiction, and the prevention of crime and fraud.

Key Developments



Vex

- GIBSON DUNN

Marijuana-Related Businesses

Key Developments

Biden Administration and the 117th Congress

- President-elect Joe Biden has historically not supported the legalization of marijuana, though he has been supportive of decriminalization measures for marijuana offenses.
- Vice President-elect Kamala Harris has been a very vocal supporter of federal legalization of marijuana.
- Senate Majority Leader Mitch McConnell does not support legalization. If Democrats were to gain control of the Senate, Current Senate Minority Leader Chuck Schumer has stated that legalization would be a major priority.
- Legislation Options:
 - The **SAFE Banking Act** would allow banks and financial institutions to legally do business with the cannabis industry without fear of federal arrest or prosecution or other punitive actions.
 - The **STATES Act**, which would recognize states' ability to legalize cannabis at the state level without the risk of federal intervention.
 - The **MORE Act**, which would fully remove cannabis from the Controlled Substances Act, has been the preferred legalization proposal of House Democratic leadership in the current Congress. This Act passed the House Judiciary Committee on December 4.

Marijuana-Related Businesses

Key Developments



FinCEN Guidance: Due Diligence Requirements under the Bank Secrecy Act for Hemp-Related Business Customers

On June 29, 2020, FinCEN issued new guidelines clarifying the customer due diligence requirements for hemp-related businesses and explaining the SAR reporting requirements.

BSA/AML Program Expectations

- Financial institutions should obtain basic identifying information about hemp-related businesses through the application of the financial institutions' customer identification programs and risk-based CDD processes.
- Standard SAR monitoring protocols should apply.
- To the extent the financial transactions of a hemp-related business are comingled with marijuana-related activities, FinCEN's 2014 Marijuana Guidance, which provides clarity on how to file SARs on marijuana-related activities, should be applied.

Marijuana-Related Businesses in the EU



- **Recreational cannabis:**

- There is **no harmonized EU** law on recreational cannabis use.
- Possession of cannabis for personal use is an **offense** in all EU Member States, but over one-third do not allow prison as a penalty for minor offenses.

- **Medical Cannabis:**

- Approved by the European Medicines Agency for specific use cases.
- Several EU Member States have specific legal processes governing its distribution and use.

- **Hemp:**

- Legal to cultivate and supply cannabis plants with low levels of THC for hemp fiber.
- CJEU ruled that the cultivation of hemp fulfilling the strict EU conditions cannot be prohibited by any EU Member States.

- **Specific use case food:**

- European Commission recently paused all novel food applications for CBD and hemp products and is considering recategorizing CBD as a narcotic extract.

CFTC Increased AML Enforcement



- Over the past few months, **CFTC has demonstrated an increased focus on AML enforcement**, by bringing cases for violations of CFTC Regulation 42.2, which requires futures commission merchants and introducing brokers to comply with the BSA.
 - **August 2020**: CFTC found that **Interactive Brokers**, a registered FCM, failed to meet its obligations to monitor account activity and file suspicious activity reports when appropriate.
 - **September 2020**: CFTC settled charges against **A&A Trading, Inc.**, a registered investment broker, for allegedly failing to timely file a suspicious activity report and failing to properly supervise employees.
 - **October 2020**: As discussed, CFTC filed a complaint against **BitMEX** for, among other things, allegedly failing to implement a BSA-compliant AML program.

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 Hajiyeveva – the first UWO recipient and wife of jailed International Bank of Azerbaijan chairman Jahangir Hajiyevev – lost her appeal against two UWOs issued in 2018.
- If Ms. Hajiyeveva 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.

Sanctions & AML Enforcement: North Korea



- On July 16, OFAC and the Justice Department announced a settlement with **Essentra FZE**, including a \$665,112 penalty, and deferred prosecution agreement for violations of the **North Korea Sanctions Regulations (31 C.F.R. Part 510)**. Essentra FZE, a UAE company, sold cigarette filter products to North Korea via third parties in China and received payments in U.S. dollars at the foreign branch of a U.S. bank. The company's knowing use of false invoices and shipping documents "caused a violation" of the sanctions statute.
 - Essentra was DOJ's first corporate enforcement action for violations of North Korea sanctions.
- In August, DOJ announced that **Yang Ban Corporation**, a BVI entity with operations in southeast Asia, entered a guilty plea to charges that it conspired to launder money in connection with evading North Korea sanctions and deceiving U.S. banks into processing prohibited U.S. dollar transactions.
- In May, the federal district court for the District of Columbia unsealed an indictment charging **28 North Korean nationals** and **5 Chinese nationals** for facilitating more than \$2.5 billion in payments on behalf of North Korea's Foreign Trade Bank, a state-controlled enterprise alleged to be engaged in WMD proliferation.

Theories of criminal liability have ranged from intentional violations of IEEPA, to intentional failure to comply with AML requirements, to simply intentional deception of a U.S. financial institution ("bank fraud").

Deficiencies in Automated Screening Systems

- In recent years, OFAC has consistently brought enforcement actions against companies for sanctions violations resulting from the failure of companies' automated screening systems to detect transactions involving SDNs or other prohibited parties.
 - **Amazon (July 2020):** OFAC brought an action against Amazon.com, Inc. for allegedly providing goods and services to persons located in sanctioned regions (Crimea, Iran, Syria), to individuals employed by governments of sanctioned countries (Cuba, Iran, North Korea, Sudan, Syria), and to individuals included on the SDN List under various sanctions programs due to Amazon's screening software's failure to fully analyze all relevant transaction and customer data.
 - **American Express (April 2020):** OFAC brought an action against American Express Travel Related Services for allegedly issuing a prepaid card to and processing 41 transactions on behalf of an SDN due to an error in Amex's screening software, allowing the transactions to be processed despite initially being flagged and denied.
 - **Apple (November 2019):** OFAC brought an action against Apple, Inc. for allegedly transacting with an SDN listed as a significant narcotics trafficker due to the failure of Apple's screening software to detect differences in capitalization of the entity's name as well as the company's failure to screen all individual users identified with an App Store account.

U.S. Measures Against China

A “whole of government” approach in 2020



Congressional Action:

- **Uyghur Human Rights Policy Act** (Pub. L. 116-145), signed June 17, requires a report within 180 days identifying foreign persons responsible for human rights violations in XUAR.
- **Hong Kong Autonomy Act** (Pub. L. 116-149), signed July 14, authorizes sanctions against CCP and Hong Kong leaders in response to the National Security Law.

Initiatives affecting trade with China are numerous. Below we highlight a few of the key recent developments.

U.S. Department of State:

- Imposed **visa restrictions** on CCP officials and immediate family members connected to human rights violations in Xinjiang and Hong Kong.
- On May 28, the State Department **revoked its certification** of Hong Kong’s “high degree of autonomy” from China, an action that removes Hong Kong’s special status under the Hong Kong Policy Act of 1992.
- State Department announced immediate policy change to end exports of **defense items** to Hong Kong.

U.S. Department of the Interior:

- On September 30, the President declared a national emergency with respect to the United States’ “undue reliance on foreign adversaries,” specifically referencing China, for rare earth elements and other “**critical minerals**.” EO 13953 suggests restrictions on imports, including tariffs and quotas, and directs the Department of Interior to take action to increase domestic supply.

U.S. Measures Against China

A “whole of government” approach in 2020



U.S. Department of Treasury:

- In July, OFAC designated 4 persons under **Global Magnitsky Act sanctions** for alleged human rights abuses in Xinjiang.
- In August, OFAC designated Chief Executive of HKSAR **Carrie Lam** and 10 other leaders in Hong Kong and PRC, for actions undermining Hong Kong’s democratic institutions. In September, OFAC published **FAQ 840** warning against direct negotiations with or entering contracts signed by governmental SDNs.
- In September, President Trump issued EO 13959 restricting the ability of U.S. persons to invest in publicly traded securities of certain “**Communist Chinese military companies.**” The E.O. currently applies to 33 companies previously identified by the U.S. DoD as having alleged ties to the Chinese military.

U.S. Department of Commerce:

- In May, BIS announced a new Huawei-specific Direct Product Rule, designed to increase the range of items subject to U.S. restrictions on trade with Huawei.
- In August, BIS added 24 Chinese companies to the Entity List for their role in helping the Chinese government build militarized artificial islands in the South China sea.
- In October, BIS expanded its ability to review license applications for human rights concerns, and expanded its licensing policy for reviewing crime control items—and specifically noted China’s use of technology to enable abuses in Hong Kong and Xinjiang.

DOJ China Initiative:

- DOJ has stated an enforcement priority of cases arising out of China.

U.S. Measures Against China

Targeting of WeChat and TikTok



- In November 2019, the Committee on Foreign Investment in the U.S. (“**CFIUS**”) began reviewing the acquisition by ByteDance, TikTok’s Chinese parent company, of Music.ly, TikTok’s predecessor, to determine whether that transaction presented national security concerns.
- Before the CFIUS case concluded, President Trump intervened in early August, announcing in two executive orders that the Commerce Department would impose restrictions not only on **TikTok**-related transactions but also on transactions involving **WeChat**—another Chinese-owned mobile app.
- The announcement, which referenced a national emergency declared in 2019 regarding the information and communication technology and services supply chain, represented an unprecedented use of the President’s authority under **IEEPA**.
- The President also announced that, at CFIUS’s recommendation, he would **require ByteDance to divest** its ownership of TikTok, sparking a public bidding war ultimately won by Oracle and Walmart.
- In early September, the Commerce Dept. announced that it would prohibit U.S. persons from participating in a list of transactions relating to distribution of or support for the TikTok and WeChat mobile apps.
- Before these restrictions could come into effect, federal judges in three cases blocked their implementation on the grounds that the President may have overstepped his IEEPA authorities or violated users’ first amendment rights—suggesting a rare restriction on the President’s expansive sanctions authority.

Sanctions Legislative Developments:

A Focus on China



Impact of China's Hong Kong National Security Law

- On July 28, 2020, the Council adopted conclusions expressing grave concern over this national security legislation. According to the EU, China's actions call into question China's will to uphold its international commitments, undermine trust and impact EU-China relations.
- The conclusions restate the **EU's support for Hong Kong's high degree of autonomy** under the "One Country, Two Systems" principle, and its solidarity with the people of Hong Kong, whilst setting out a coordinated response package of measures in various fields.
- In particular, the EU endorsed **measures** further scrutinizing and limiting exports of specific sensitive equipment and technologies for end-use in Hong Kong, specially where there are grounds to suspect undesirable use relating to internal repression, the interception of internal communications or cyber surveillance.

Impact of China's supposed "re-education camps" for Uyghurs in Xinjiang

- EU parliament says that China must close its "re-education camps" for Uyghurs in Xinjiang.
- They call on Council to adopt targeted sanctions and freeze assets.
- EU urged Beijing to let independent observers into Xinjiang.

China's Latest Movements

Recent Counter Sanctions on U.S. Persons and Entities



- **July Sanctions**

- **July 9:** OFAC sanctioned Xinjiang Public Security Bureau and four officials based on alleged human rights abuse in Xinjiang.
- **July 13:** A spokesperson of China's Ministry of Foreign Affairs ("MOFA") announced "corresponding sanctions" on the U.S. Congressional-Executive Commission on China and four officials.

- **August Sanctions**

- **August 7:** OFAC sanctioned Hong Kong Chief Executive Carrie Lam and 10 other Chinese and Hong Kong senior officials pursuant to "The President's Executive Order on Hong Kong Normalization."
- **August 10:** A MOFA spokesperson announced sanctions on 11 U.S. individuals who "behaved badly with respect to Hong Kong-related matters," including Senators Ted Cruz, Marco Rubio, Tom Cotton, Josh Hawley, and Pat Toomey and Representative Chris Smith, as well as certain individuals at non-profit and human rights groups.

- **October Sanctions**

- **October 21:** The U.S. State Department approved the potential sale of three weapons systems with a total value of US\$1.8 billion to Taiwan.
- **October 26, 2020:** A MOFA spokesperson declared sanctions on Lockheed Martin, Boeing Defense, Raytheon and others "who had a negative influence in selling weapons to Taiwan."

- **The actual effect of these Chinese sanctions measures is not yet clear.**

China's Latest Movements

New Export Control Law



- China's Export Control Law was passed on **October 17, 2020** and came into effect on **December 1, 2020**. This marks the first milestone on China's journey towards a comprehensive and unified export control regime.
 - Deemed exports are also captured under this law, although details should be clarified when China's export control administration would require export operators to submit **end user and end-use certification**.
 - Import operators and end users who violate such end user and end-use certification risk, among other things, being added to a **control list**. Transactions with those on the control list may be prohibited, restricted, or suspended.
 - **Re-exports** and **deemed exports** are also captured under this law, although details should be clarified when China issues a set of corresponding implementation rules
- Also worth noting is China's proposed **unreliable entity list**, which was first introduced in the midst of the U.S.-China trade war. This list would purportedly include foreign individuals and entities detrimental to China's sovereignty, national security and interests, or those who interrupt normal transactions with or take discriminating measures against Chinese persons.

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Recommended Best Practices

Recommended Best Practices

- **Risk-based compliance programs** supported by dedicated AML, payment, and sanctions policies
 - BSA-covered entities will be guided by regulations
 - Non-regulated entities should also have these elements in place
- **Detailed KYC and continuous monitoring**
- **Sanctions screening** at onboarding, for third parties, and for transactions
 - Deep review, not just name and address
- **Know your risk areas**
 - Geographic risk, government interactions, third parties, marijuana-related businesses, and virtual currencies
- **Automated transaction monitoring**
- **Create a culture of compliance**
- **Independent testing of the compliance program**
- **Regular and mandatory training**

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AML and Sanctions in the New Administration

AML Under the New Administration

- **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.
 - Focus on virtual currencies and individual liability.
- **Mixed Cases:** We will likely continue to see an increased intersection between AML enforcement and FCPA and sanctions enforcement.
- **FinTech:** Legislators and regulators will continue to try to ensure that financial technology platforms are not used for money laundering.
- **Marijuana:** Federal decriminalization or banking protections.
- **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.

BSA/AML Reform Legislation

- On Tuesday, the House passed The National Defense Authorization Act, which includes widespread changes to the Bank Secrecy Act, as well as other changes related to AML and CTF reform.
- Highlights include:
 - National registry of beneficial ownership information;
 - Required efficiency studies related to the BSA requirements and streamlining CTR and SAR requirements;
 - Enhanced penalties under the BSA for repeat offenders;
 - Enhanced information sharing provisions;
 - BSA whistleblower provision;
 - Addition of dealers in antiquities to the definition of financial institutions covered by the BSA;
 - Addition of digital currency in the BSA's definition of "coins and currency."

Sanctions Under the New Administration

Multilateralism

- Sanctions will remain as a core instrument of U.S. foreign policy
- Supplement sanctions with additional emphasis on diplomacy
- Renewed coordination with traditional allies

Recalibrating Sanctions

- Evaluate removal or narrowing of some Trump administration sanctions and under what conditions
- Potentially remove sanctions (e.g., of ICC officials) inconsistent with commitment to multilateral institutions
- Consider new sanctions on countries, e.g., Turkey or Myanmar

China

- Broad, bipartisan support for pressure on Beijing; limited cooperation in some areas
- Relaxing Trump-era measures will likely require concessions
- Sustained focus on human rights in Xinjiang and Hong Kong

Iran

- Potentially rejoin Joint Comprehensive Plan of Action (JCPOA)
- Counterterrorism sanctions may be challenging to reverse
- Limited constituency for easing pressure on Tehran

Sanctions – What's Next?

Cuba

- Possible return to Obama-era sanctions relief
- Waiver of Title III of Helms-Burton Act
- Act of Congress required to lift most Cuba sanctions

Russia

- Bipartisan support for tough approach to Russia; potential for additional sanctions
- Condemnation of Russian actions; focus on human rights and democracy
- Broader strategy for Western opposition to Russian policies

Venezuela

- Potentially narrow sanctions to reduce humanitarian crisis in the country
- Focus on multilateral diplomatic solutions to crisis
- Continuation of substantial criminal prosecution of regime government officials

Recorded Webcasts (CLE credit available)

- [Congressional Investigations and Oversight Post-Election](#)
- [SEC Enforcement Focus on COVID-19 Issues and Key Areas of Risk](#)
- [Corporate Compliance and Sentencing Guidelines](#)
- [Managing Internal Audit](#)
- [Spoofing What it is, where it's going](#)
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F. Joseph Warin is chair of the 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 2020, 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.

Mr. Warin's group was recognized by *Global Investigations Review* in 2020 as the leading global investigations law firm in the world. This is the fifth time in six 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. 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."

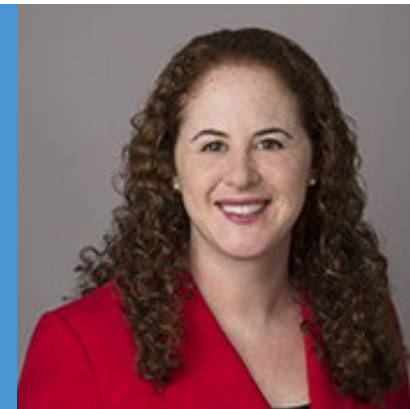
Mr. Warin has handled cases and investigations in more than 40 states and dozens of countries. His clients include corporations, officers, directors and professionals in regulatory, investigative and trials involving federal regulatory inquiries, criminal investigations and cross-border inquiries by 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.

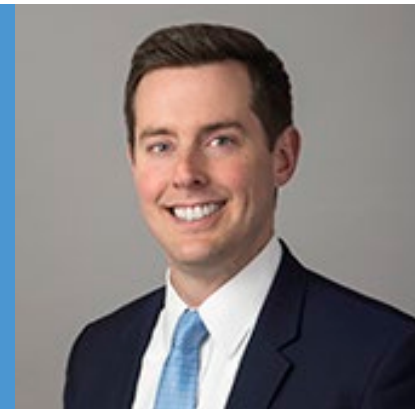
Mr. Smith travelled extensively in Europe, the Middle East, Asia, Africa, and the Americas conducting outreach with governments and private sector actors on sanctions, risk, and compliance. This outreach included meetings with senior leadership in several sectors including finance, logistics, insurance 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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Mr. Kendall Day is a litigation 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.

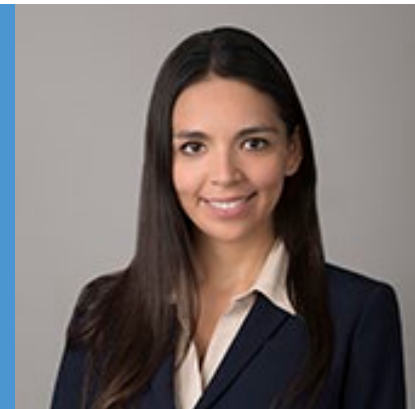
Earlier in his time as a white collar prosecutor, from 2005 until 2013, Mr. Day served as a deputy chief and trial attorney in the Public Integrity Section of the DOJ. During his tenure at the Public Integrity Section, Mr. Day prosecuted and tried some of the Criminal Division's most challenging cases, 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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Ms. Capone regularly conducts internal investigations and advises multinational corporations and financial institutions, including major banks and casinos, on compliance with anti-corruption and anti-money laundering laws and regulations. She has significant experience representing clients in white collar and securities matters involving the U.S. Department of Justice (DOJ), U.S. Securities and Exchange Commission (SEC), Financial Crimes Enforcement Network (FinCEN), Office of the Comptroller of the Currency (OCC), Office of Foreign Assets Control (OFAC), and the Federal Reserve Board. Additionally, Ms. Capone has experience representing individuals and financial institutions in a variety of criminal and civil litigation, particularly including alleged securities fraud.

Ms. Capone's practice additionally includes advising clients on the effectiveness of their internal controls and compliance programs, as well as conducting and advising on compliance due diligence for corporate deals.

Ms. Capone regularly works on international matters, with particular expertise in Latin America. Her representative matters include several anti-corruption and corporate compliance matters in Brazil. She is proficient in Portuguese and regularly uses Portuguese in professional contexts.

Ms. Capone frequently writes and presents on anti-corruption and compliance issues. Her recent written work includes the 2018 edition of Bloomberg BNA's Securities Practice Series Portfolio No. 285, The U.S. Foreign Corrupt Practices Act: Enforcement and Compliance; the 2017, 2018, 2019, and 2020 ABA Treatise, Practice Under the Federal Sentencing Guidelines; and ICLG To: Anti-Money Laundering 2018, USA.

Ms. Capone graduated from New York University School of Law in 2011, where she was a member of the Honorary Moot Court Board. She graduated summa cum laude and with departmental honors for all years from Fordham University, where she earned a dual degree in Psychology and Sociology and was inducted into Phi Beta Kappa. Prior to joining Gibson Dunn, she practiced at a major international law firm in Washington, D.C. and New York, where she specialized in white collar criminal defense, securities litigation, and internal investigations.

Ms. Capone is admitted to practice law in the District of Columbia and New York, as well as before the United States District Courts for the Eastern and Southern Districts of New York.

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