

The background of the slide is a photograph of a classical building's exterior, featuring a series of tall, fluted columns and a stone floor. The lighting is soft, creating a sense of depth and architectural grandeur. A semi-transparent blue rectangular box is positioned in the lower right quadrant of the slide, serving as a container for the panelists' names.

GIBSON DUNN

*Anti-Money Laundering and Sanctions
Enforcement and Compliance in 2019 and
Beyond*

May 21, 2019

Panelists:

Stephanie L. Brooker
M. Kendall Day
Adam M. Smith

Moderator: F. Joseph Warin

MCLE Certificate Information

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

Agenda

1. Introduction

2. Regulatory and Enforcement Trends

- Trends in BSA/AML Examinations and Enforcement
- Trends in Sanctions Enforcement

3. Key Developments

- Key Developments in BSA/AML Enforcement and Compliance
- Key Developments in Core Sanctions Programs

4. Up Next . . .

- Potential BSA/AML Legislative Changes
- Sanctions Legislative Developments

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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)

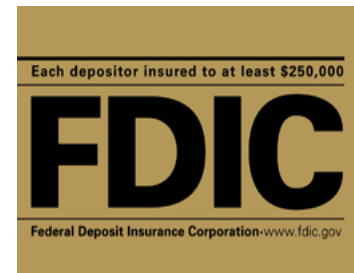
Banking Regulators and Enforcers



OCC



Fed



FDIC

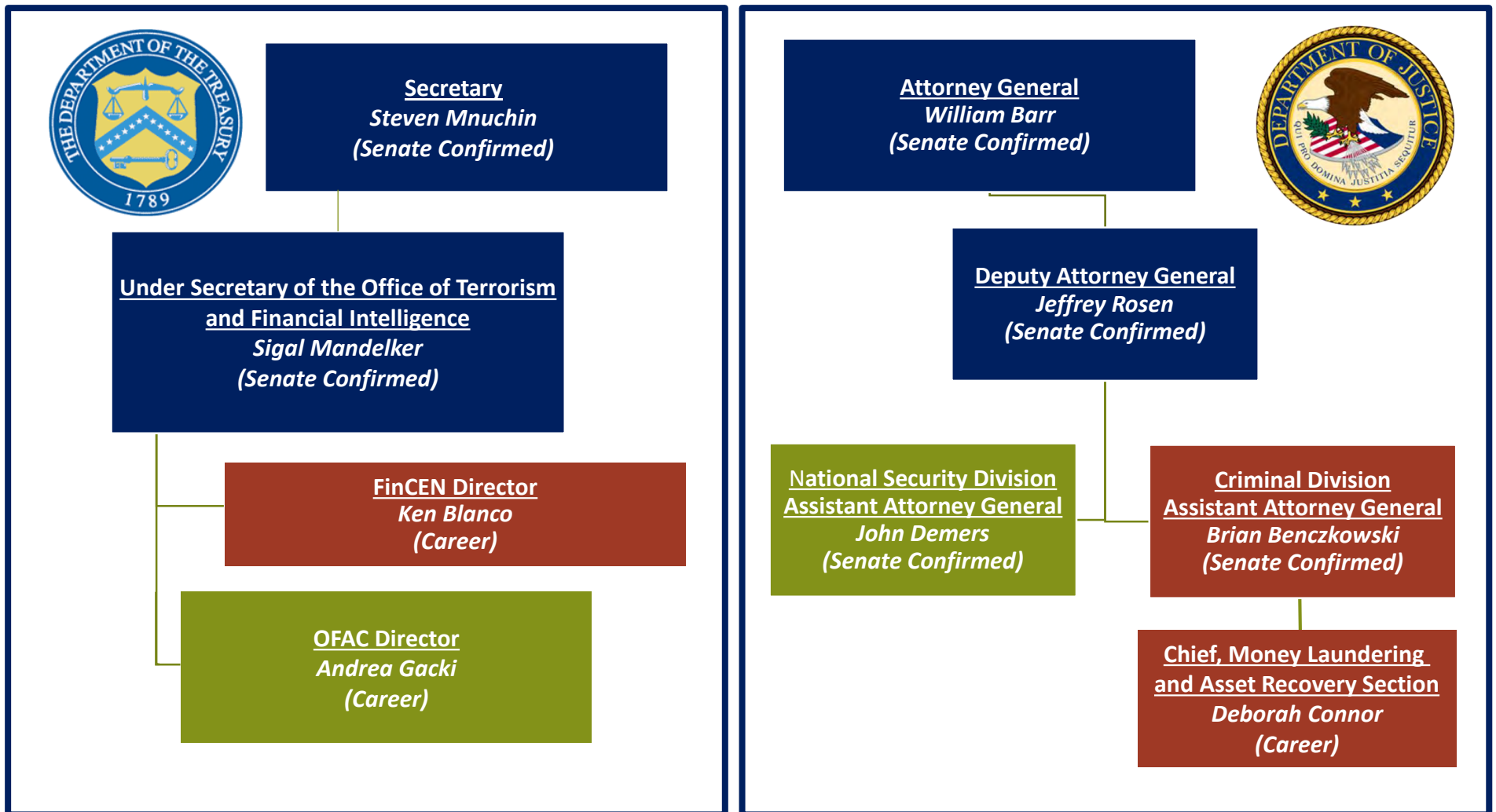


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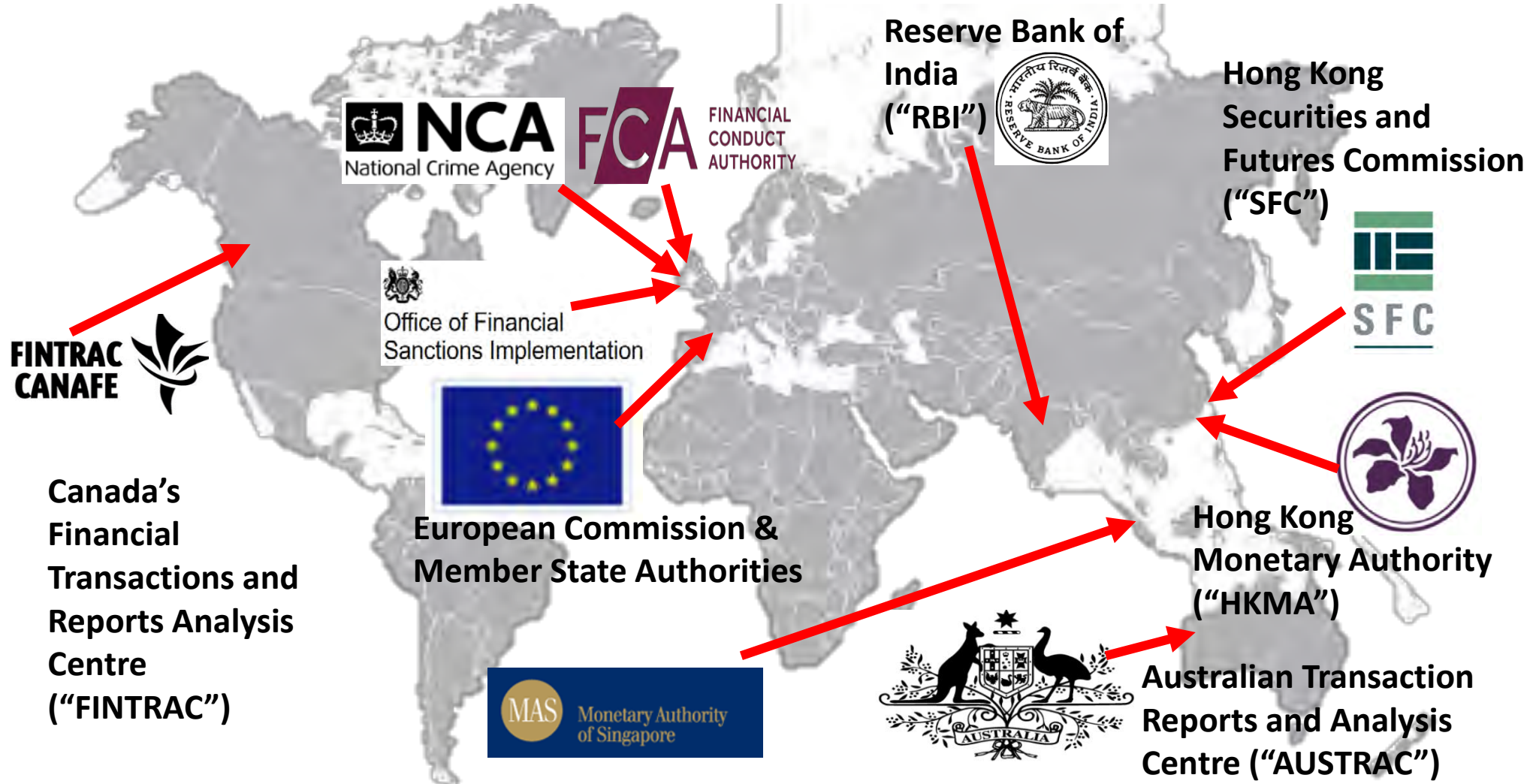


DFS

U.S. Enforcement Agencies



International Enforcement Agencies and Regulators



Types of U.S. Enforcement Actions

Criminal:

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

Resolutions May Include:

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

Regulatory:

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

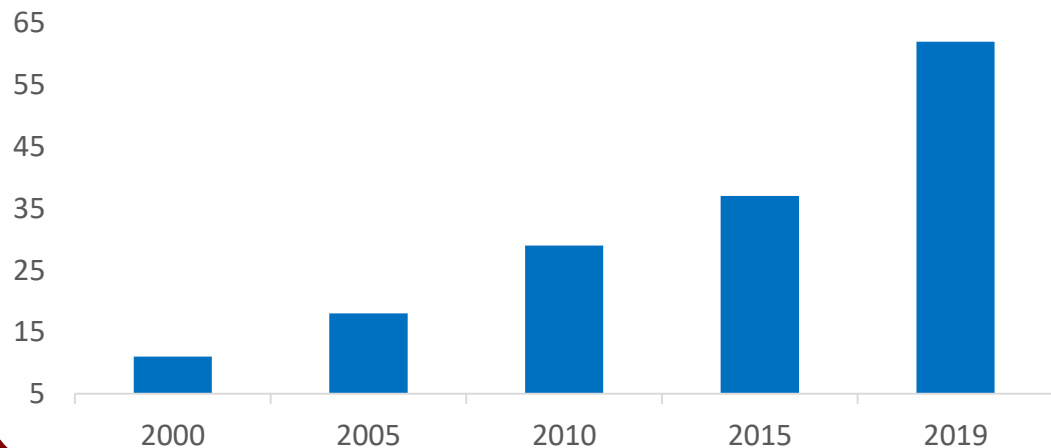
Development of U.S. Sanctions Policy

An Ever-Expanding Footprint for U.S. Sanctions

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



Active OFAC Sanctions Programs



56%

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

1000s

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

Types of U.S. Sanctions

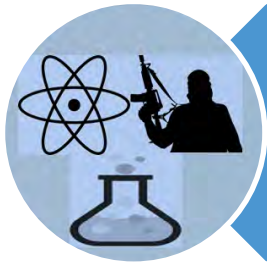
Primary v. Secondary

Primary Sanctions



Jurisdiction-Based

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



Behavior-Based

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



Sectoral Sanctions

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

Secondary Sanctions



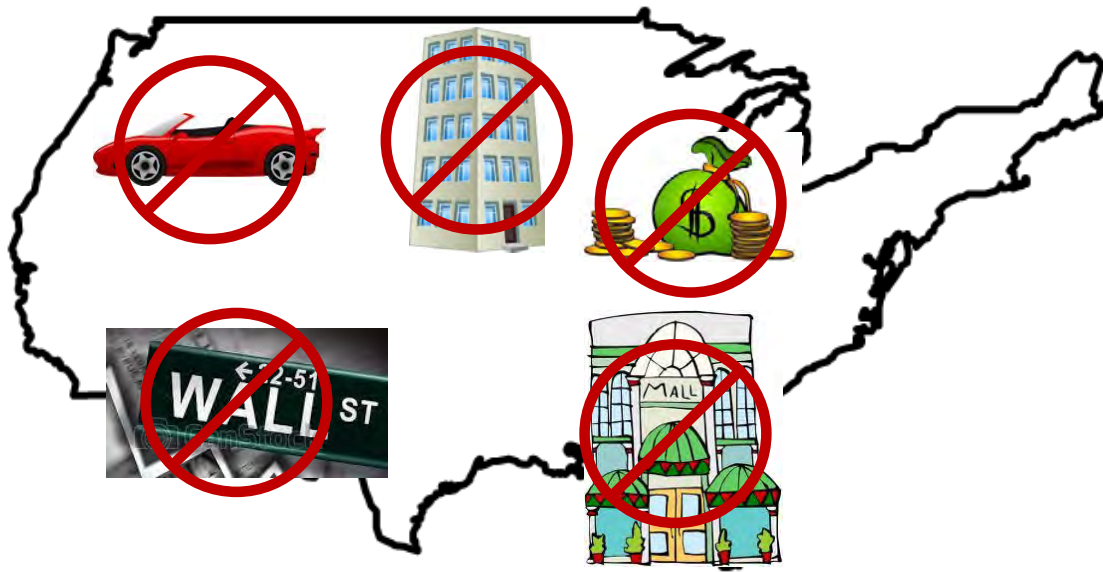
“With Us or Against Us”

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

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

How Primary Sanctions Work

Primary Sanctions eliminate access to:



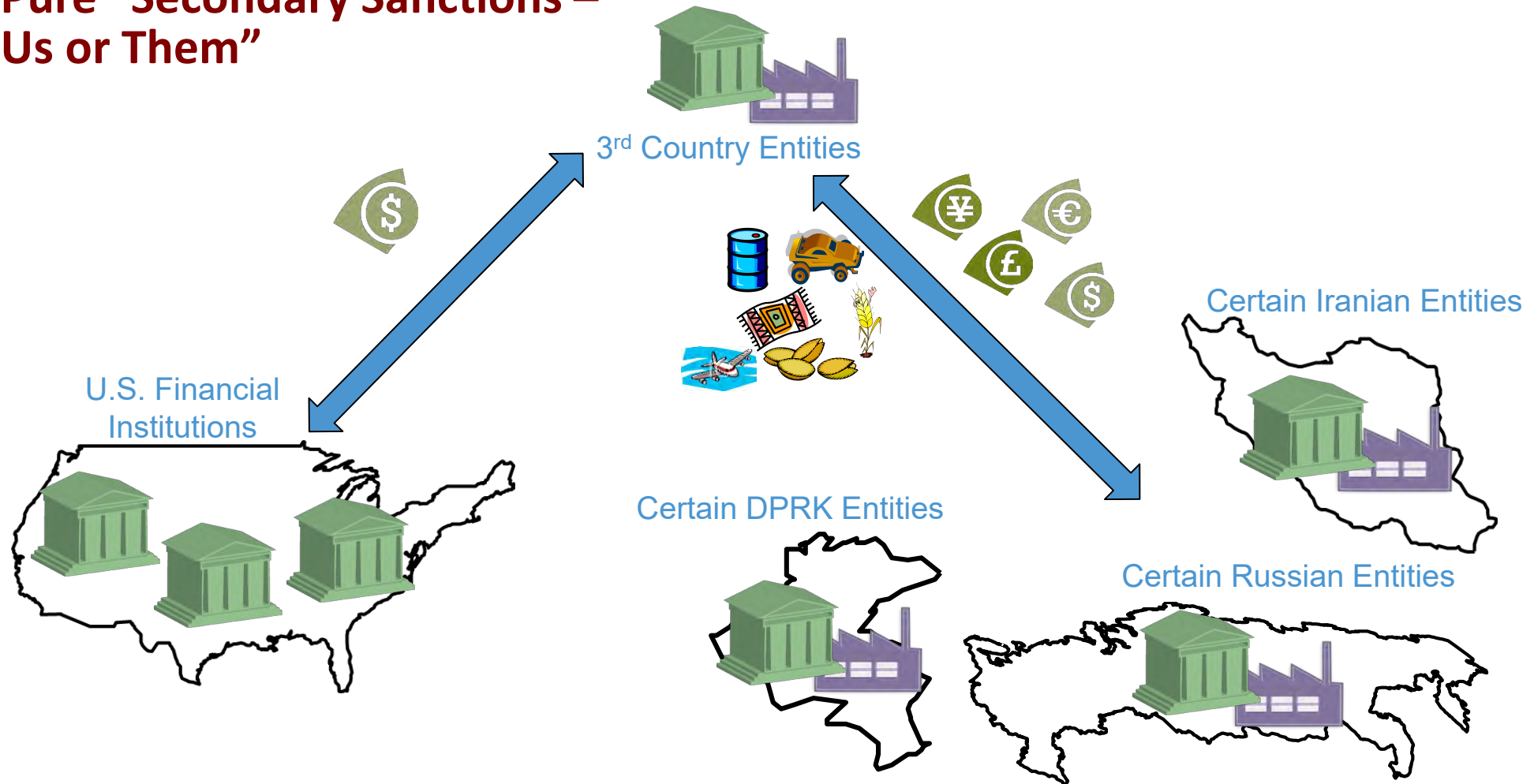
- All property and assets held in the United States
- U.S. financial, commercial, and consumer markets
- Use of U.S. banks for clearing U.S. dollars

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

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

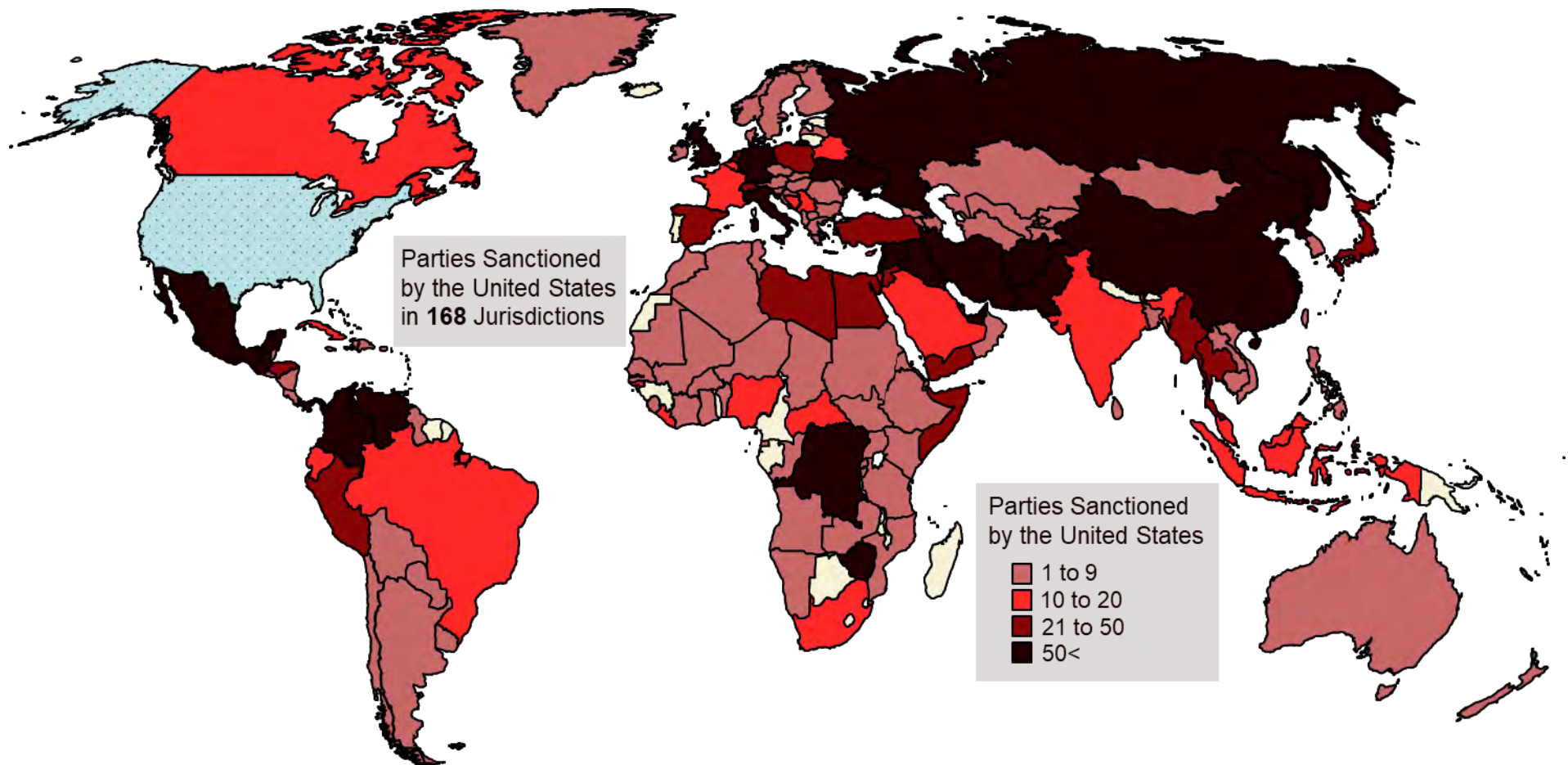
How Secondary Sanctions Work

“Pure” Secondary Sanctions – “Us or Them”



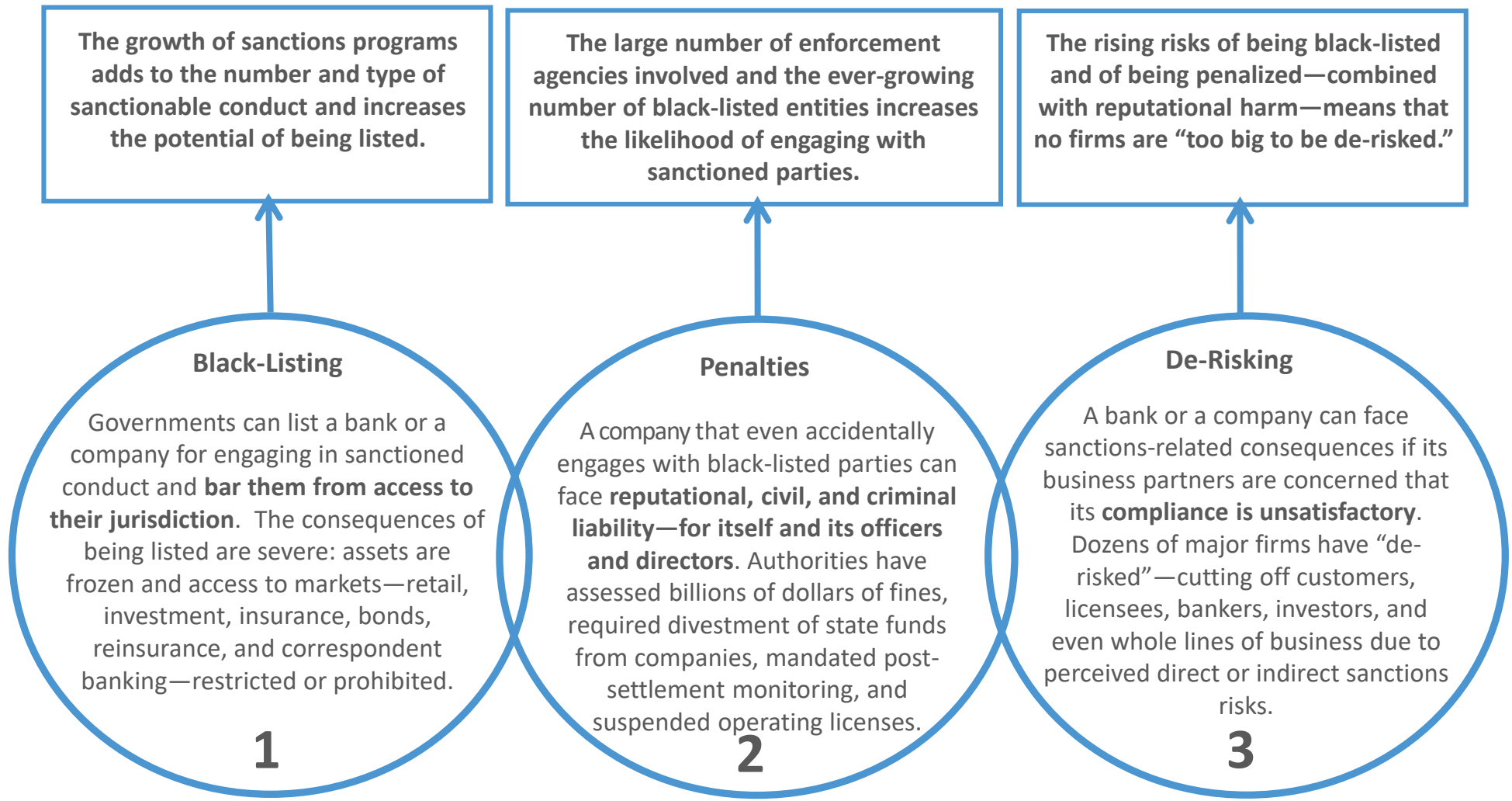
Designations

Distribution of parties designated as SDNs by the United States



Three Principal Sanctions Risks

Best-Practice Compliance Needs to Simultaneously Cover Each Risk



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Regulatory and Enforcement Trends

U.S. AML Enforcement: Overview

Regulatory and Enforcement Trends

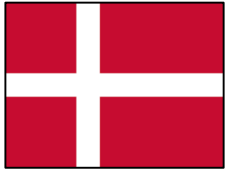
Recent media: Increase in BSA/AML enforcement

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

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

Increased International Enforcement

Regulatory and Enforcement Trends



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



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



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

Recent BSA Enforcement Actions

Regulatory and Enforcement Trends

In 2019, Regulators continue to focus on:

Priority

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

Recent Enforcement Actions

Regulatory and Enforcement Trends

Recent Enforcement Cases (2018-2019)

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

Recent Enforcement Actions

Regulatory and Enforcement Trends

Recent Enforcement Cases (2018)

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

Supervisory Guidance

Regulatory and Enforcement Trends

Interagency Statement Clarifying the Role of Supervisory Guidance

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

Joint Release

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

NR 2018-97
FOR IMMEDIATE RELEASE
September 11, 2018

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

Focus on Innovation and Modernization

Regulatory and Enforcement Trends

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

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

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

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



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

BSA Working Group

Regulatory and Enforcement Trends

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



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

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

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

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

– Sigal Mandelker
March 12, 2019

OCC Supervisory Priorities

Regulatory and Enforcement Trends



2019 Supervision Priorities Include:

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

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

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

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

Federal Reserve Supervisory Priorities

Regulatory and Enforcement Trends



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

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

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

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

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

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

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

Federal Reserve Enforcement

Regulatory and Enforcement Trends



Recent FRB enforcement actions include:

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



SEC Priorities and Enforcement

Regulatory and Enforcement Trends

- In its 2019 Examination Priorities, the Office of Compliance Inspections and Examinations included BSA/AML compliance as a priority.
 - Emphasis on customer due diligence, filing timely and adequate SARs, and determining whether entities are conducting adequate independent testing.
- Peter Driscoll, OCIE Director, in a May 2019 speech explained:
 - “Suspicious activity includes more than just activity associated with money movements and traditional money laundering. It also includes activity associated with potential securities fraud, insider trading, and a wide variety of manipulative trading schemes.”
 - “OCIE is not here to second guess decisions firms have made regarding implementation of their AML compliance programs or whether to file . . . SARs[], provided those decisions appear reasonable under existing regulatory guidance as well as the firms’ own business activities and risk-based policies and procedures.”
 - “OCIE examiners continue to identify firms that are not conducting independent tests, are not conducting tests on a timely basis, or conduct ineffective tests that cannot identify failures.”

SEC Priorities and Enforcement

Regulatory and Enforcement Trends



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

- \$750,000 penalty against broker-dealer Aegis Capital Corporation for allegedly failing to file SARs on transactions that had red flags of market manipulation; settlement required the Company to retain a compliance expert.
- Chardan Capital Markets LLC was ordered to pay a \$1 million penalty for allegedly failing to file SARs related to suspicious sales of billions of penny stock shares. Its Chief Compliance Officer also agreed to pay a \$15,000 penalty.
- Industrial and Commercial Bank of China Financial Services LLC agreed to a \$860,000 penalty for conduct similar to Chardan's.

SEC Priorities and Enforcement

Regulatory and Enforcement Trends



- In *SEC v. Alpine Sec. Corp.*, 354 F. Supp. 3d 396, 417 (S.D.N.Y. 2018), Judge Cote rejected a challenge to the SEC's authority to enforce BSA/AML violations, concluding that even though FinCEN has not delegated BSA enforcement authority to the SEC, the SEC has its own enforcement authority over broker-dealer reporting obligations. The decision was not appealed.
- In 2019, all 52 actions the SEC has filed against public companies and their subsidiaries to date have been filed as administrative proceedings instead of federal court actions.

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

FINRA Exam Priorities & Guidance

Regulatory and Enforcement Trends

2019 Risk Monitoring and Examination Priorities Include:

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

Regulatory Notice

19-18

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



FINRA Exam Priorities & Enforcement

Regulatory and Enforcement Trends

Recent FINRA Enforcement Actions

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

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

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



Role of DFS in AML Enforcement

Regulatory and Enforcement Trends



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

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

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

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

State Enforcement Trends

Regulatory and Enforcement Trends



DFS Leadership Changes



Linda Lacewell, Acting Superintendent

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

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

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

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

Sanctions Under This Administration: Executive Power

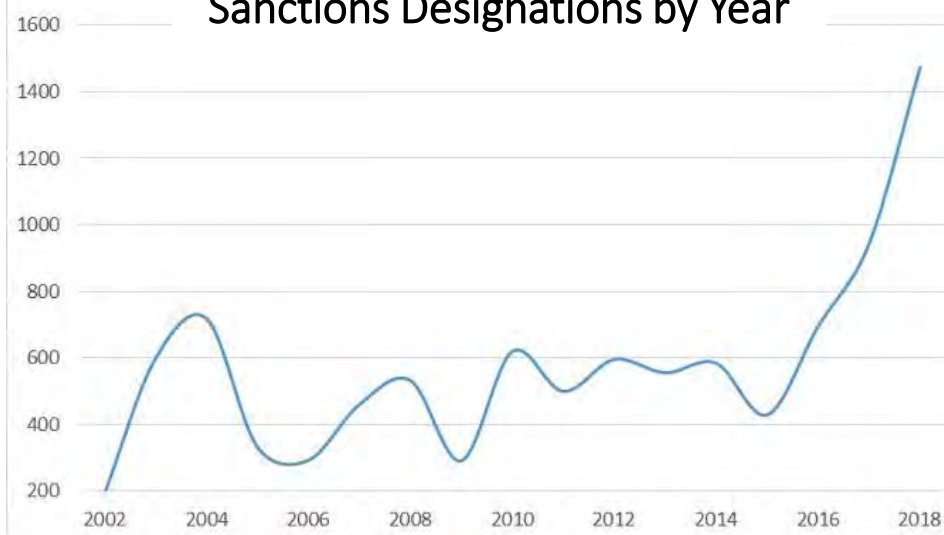
Regulatory and Enforcement Trends

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

Sanctions Employed at Highest-Ever Rate During 2017 and 2018

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

Sanctions Designations by Year



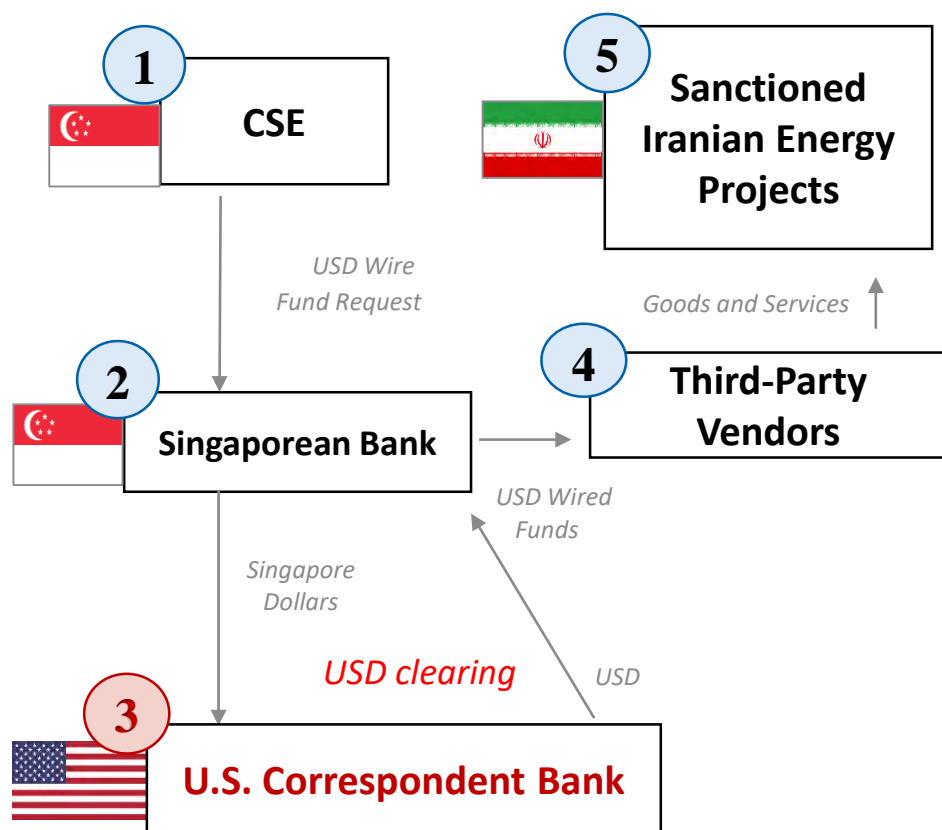
This includes explicit and implicit targeting of some of the largest firms in the world – including major corporations and publicly traded firms with substantial floats on major exchanges.

Sanctions Enforcement Trends

Regulatory and Enforcement Trends

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

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



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

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

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

Sanctions Enforcement Trends

Regulatory and Enforcement Trends



(2) Severe Penalties for Serious Violations & Compliance Failures

- OFAC and other export-control agencies have increasingly demonstrated willingness to impose severe penalties for serious sanctions violations.
- In March 2017, the Chinese technology firm ZTE [settled with OFAC for \\$101 million](#) for alleged sanctions violations, as part of a larger [\\$1.19 billion settlement with DOJ, OFAC, and the Department of Commerce](#) for sanctions and export-control violations.
- In January 2018, in the largest sanctions evasion case in recent history, a Manhattan jury [convicted a banker at Halkbank, a major Turkish financial institution](#), of conspiring to evade U.S. sanctions against Iran. The banker was sentenced to 32 months in prison in April 2018.
- OFAC penalties in two April 2019 enforcement actions against non-U.S. financial institutions (UniCredit Bank and Standard Chartered) [exceeded \\$600 million each](#).
- Three enforcement cases in early 2019 (against Stanley Black & Decker, AppliChem, and Kollmorgen) resulted in relatively low penalty amounts but clearly indicate OFAC's expectations with respect to [sanctions compliance \(including for post-acquisition conduct\)](#).

Bottom Line

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

Sanctions Enforcement Trends

Regulatory and Enforcement Trends

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

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



Sanctions Enforcement Trends

Regulatory and Enforcement Trends



(4) Enhanced Expectations for Risk-Based Compliance Systems

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

Export Controls

Regulatory and Enforcement Trends



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

- 1. ICT EO:** The Administration issued an Executive Order declaring a national emergency with respect to the ICT supply chain and allowing the imposition of further [restrictions on ICT trade and transactions](#).
 - The EO gives the Secretary of Commerce broad authority to create an entirely [new regulatory framework](#) that could impose new import, export, use, and other transaction-based restrictions.
 - New regulations are expected by **October 12** and could include import bans for certain ICT and a prohibition on U.S.-person involvement in certain ICT projects outside the United States.
- 2. Huawei Entity List Designation:** The Bureau of Industry and Security (“BIS”) [added Huawei and 68 of its affiliates to the Entity List](#), imposing stringent restrictions on exports and transfers of U.S.-origin items to the company.
 - As a result of the designation, any person (not just U.S. persons) who seeks to provide U.S.-origin or U.S.-controlled materials to Huawei or its listed affiliates will [need to get a license](#), but BIS will [presumptively deny](#) applications for those licenses—making them largely unavailable.
 - These new restrictions will severely hamper Huawei’s supply chain. Huawei may still apply for licenses, use license exceptions, and enter into negotiations regarding export controlled items.
 - A general license issued on **May 20** effectively stays the imposition of these new restrictions for several types of exports to Huawei until **August 19, 2019**.

OFAC Leadership Changes

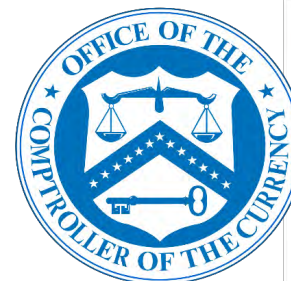
Regulatory and Enforcement Trends

OFAC and OCC Leadership Changes

Charles Steele, OFAC Chief Counsel



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



GIBSON DUNN

Key Developments

Global AML & Sanctions Developments

Key Developments

Brazil unleashes AML agency with broad new powers

By [Lucas Zanoni](#) | Monday, March 4, 2019 at 9:28AM



By Adrian Zmudzinski

APR 07, 2019

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

U.S. Exposes Bitcoin Addresses of Sanctioned Iranians

By [Alastair Marsh](#)

November 28, 2018, 1:10 PM EST

BUSINESS

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

April 29, 2019 | [Nandini Roy Choudhury](#) | 3 Min Read

NEWS / [HEZBOLLAH](#)

US issues new Hezbollah-related sanctions

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

24 Apr 2019



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

March 7, 2019

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

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

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

March 28, 2019

AML Features Prominently in Major National Criminal Cases

Key Developments



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

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

By KC Baker | April 09, 2019 03:08 PM



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



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

By WILSON ANDREWS and ALICIA PARLAPIANO OCT. 31, 2017



Rapper, financier charged with laundering money for Obama campaign

Published: May 11, 2019 12:24 p.m. ET



HOME > POLITICS > POLITICS NEWS

FEBRUARY 7, 2019 4:56PM ET

Maria Butina's Boyfriend Indicted on Money Laundering Charges

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

PDVSA-Related Money Laundering Prosecutions

Key Developments



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

BY JAY WEAVER AND ANTONIO MARIA DELGADO

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

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

BY JAY WEAVER AND ANTONIO MARIA DELGADO

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

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

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

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