



McGuireWoods



**CROSS-BORDER ENFORCEMENT AND TRENDS
2022 YEAR IN REVIEW**

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INTRODUCTION

Perhaps more than in years past, the key developments in U.S. cross-border enforcement were driven by the year's most newsworthy developments, from Russia's invasion of Ukraine and the battery of sanctions that swiftly followed, to the collapse of the cryptocurrency market. In this inaugural annual review of cross-border enforcement and trends, we have focused in particular on anti-money laundering (AML), as this issue continued its rise up the enforcement and regulatory agenda.

Indeed, just two weeks into 2023, public remarks from the Assistant Attorney General (AAG) and Head of the DOJ's Criminal Division set firm expectations that this trend is set to continue into the foreseeable future. The AAG touted the success of the DOJ's Money Laundering and Asset Recovery Section, which convicted more than two dozen individuals and secured two corporate guilty pleas, one of which included the forfeiture of \$2 billion, only to warn that "there will be more in 2023."¹ There is every sign this is not just empty rhetoric. A day after the AAG's remarks, DOJ charged and arrested the founder and majority owner of a cryptocurrency exchange for his alleged involvement in the transmission of \$700 million in illicit funds and failure to meet anti-money laundering requirements.²

With the past year's events and the AAG's recent remarks, we can forecast that AML will continue to grow as one of the principal areas of focus for the United States' cross-border enforcement efforts. This, along with continuing geopolitical tension; predictably increased focus on cryptocurrency institutions and other regulated entities in their orbits; and the likelihood that economic volatility and a possible recession will lead to scrutiny of individuals and entities engaged in suspected illegal financial activity, make it clear that AML will and should be at the forefront of companies' risk agendas.

¹Kenneth A. Polite, Jr., Assistant U.S. Att'y Gen., Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy (Jan. 17, 2023) (transcript available through the U.S. Dep't of Just. at <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>).

²Press Release, Off. of Pub. Affs., U.S. Dep't of Just., Founder and Majority Owner of Cryptocurrency Exchange Charged with Processing Over \$700 Million of Illicit Funds (Jan. 18, 2023), <https://www.justice.gov/opa/pr/founder-and-majority-owner-cryptocurrency-exchange-charged-processing-over-700-million>.



2022 ENFORCEMENT HIGHLIGHTS

United States Department of Justice

The United States Department of Justice (DOJ) continued to play an important role last year in attempts to counter illicit finance and international money laundering activity, both through its ongoing investment in task forces with AML-related mandates, as well as its prosecution of several prominent cross-border and illicit finance matters. We discuss key developments in DOJ's prosecutorial efforts below.

National Cryptocurrency Enforcement Team

In October 2021, Deputy Attorney General Lisa Monaco announced the formation of the National Cryptocurrency Enforcement Team (NCET) to lead investigations and prosecutions of "criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors."³ DOJ conceived of the NCET to develop expertise in cryptocurrency and blockchain technologies due to wide-ranging misuse of cryptocurrency including money laundering and the operation of illicit or unregistered money services businesses. The NCET draws on experience from various of DOJ's Criminal Division sections, including the Money Laundering and Asset Recovery Section (MLARS) and the Computer Crime and Intellectual Property Section (CCIPS).

The Department continued to invest in NCET and its capabilities last year. In February 2022, Eun Young Choi was appointed as its Director, transitioning to the role from her post as Senior Counsel to Deputy Attorney General Monaco.⁴ Ms. Choi previously served as an Assistant U.S. Attorney in the Southern District of New York where, as the Office's Cybercrime Coordinator, she investigated and prosecuted money laundering, fraud, and cyber-crime cases.

In September 2022, DOJ also announced the establishment of the nationwide Digital Asset Coordinator (DAC) Network, which the NCET will lead.⁵ The DAC Network comprises more than 150 federal prosecutors from U.S. Attorneys' Offices, all of whom will receive specialized training and technical expertise to investigate and prosecute digital asset crimes more effectively. With the NCET and DAC Network now staffed and operational, the year ahead will be pivotal for financial institutions and other businesses working with cryptocurrencies to evaluate their AML and other compliance efforts.

³ Press Release, U.S. Dep't of Just., Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team (Oct. 6, 2021), <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team>.

⁴ Press Release, U.S. Dep't of Just., Justice Department Announces First Director of National Cryptocurrency Enforcement Team (Feb. 17, 2022), <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team>.

⁵ Press Release, U.S. Dep't of Just., Justice Department Announces Report on Digital Assets and Launches Nationwide Network (Sept. 16, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-report-digital-assets-and-launches-nationwide-network>.

Task Force KleptoCapture

On March 2, 2022, Attorney General Merrick B. Garland announced the formation of Task Force KleptoCapture, an interagency group established to assist in the enforcement of U.S. sanctions and related measures imposed in response to Russia's invasion of Ukraine. KleptoCapture is based in the Office of the Deputy Attorney General and, according to the DOJ press release announcing its formation, is "staffed with prosecutors, agents, analysts, and . . . [experts] in sanctions and export control enforcement, anticorruption, asset forfeiture, anti-money laundering, tax enforcement, national security investigations, and foreign evidence collection."⁶

In particular, the task force is focused on investigating and prosecuting violations of Russia-related sanctions, including by non-sanctioned individuals who facilitate sanctions evasion; combating efforts to undermine restrictions on Russian financial institutions, including efforts to evade know-your-customer and AML measures; targeting the use of cryptocurrency to launder funds or evade sanctions; and leveraging civil and criminal asset forfeiture authorities to seize assets belonging to sanctioned parties.

Since its inception in early 2022, KleptoCapture has initiated or participated in at least twelve different prosecutions of national and international entities, resulting in numerous indictments and hundreds of millions of dollars in seizures.⁷ Some notable enforcement actions include: (1) the indictment of five Russian nationals, including a suspected FSB officer, and two U.S. nationals for conspiring to obtain military-grade and dual-use technologies from U.S. companies for Russia;⁸ (2) obtaining a warrant for seizure of two planes worth over \$400 million that belong to Russian oligarch Roman Abramovich;⁹ (3) the indictment of five Russian nationals and two oil brokers for their alleged participation in a global sanctions evasion and money laundering scheme;¹⁰ and (4) the indictment of European entities and individuals on charges of violating U.S. export laws for their attempts to export dual-use technology to Russia.¹¹

Notable 2022 Prosecutions

In addition to building its prosecutors' substantive skills by creating targeted task forces and focusing resources on prosecuting illicit finance crimes related to digital assets and Russia, DOJ drove several significant criminal AML-related actions to completion during 2022. Though not a comprehensive list, the below describes the most significant concluded and pending matters with an international nexus brought by the Department last year. We will provide updates on future significant enforcement actions as they become public.

⁶ Press Release, U.S. Dep't of Just., Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team (Oct. 6, 2021), <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team>.

⁷ Press Release, U.S. Dep't of Just., Justice Department Announces First Director of National Cryptocurrency Enforcement Team (Feb. 17, 2022), <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team>.

⁸ Press Release, U.S. Dep't of Just., Justice Department Announces Report on Digital Assets and Launches Nationwide Network (Sept. 16, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-report-digital-assets-and-launches-nationwide-network>.

⁹ Press Release, U.S. Dep't of Just., United States Obtains Warrant For Seizure Of Two Airplanes Of Russian Oligarch Roman Abramovich Worth Over \$400 Million (June 6, 2022), <https://www.justice.gov/usao-sdny/pr/united-states-obtains-warrant-seizure-two-airplanes-russian-oligarch-roman-abramovich>.

¹⁰ Press Release, U.S. Dep't of Just., Five Russian Nationals and Two Oil Traders Charged in Global Sanctions Evasion and Money Laundering Scheme (Oct. 19, 2022), <https://www.justice.gov/usao-edny/pr/five-russian-nationals-and-two-oil-traders-charged-global-sanctions-evasion-and-money>.

¹¹ Press Release, U.S. Dep't of Just., European Nationals and Entities Indicted on Charges of Violating U.S. Laws for Their Attempt to Export a Dual-Use High-Precision Jig Grinder to Russia (Oct. 19, 2022), <https://www.justice.gov/usao-ct/pr/european-nationals-and-entities-indicted-charges-violating-us-laws-their-attempt-export>.

- **Danske Bank:** In December 2022, Danish bank Danske Bank pleaded guilty to conspiracy to commit bank fraud in the Southern District of New York in connection with inadequate AML controls at its branch in Estonia (Danske Bank Estonia), which provided services to non-resident customers residing in high-risk jurisdictions such as Russia from 2007 to 2016.¹²

According to the [plea](#), Danske Bank knew these customers conducted transactions in U.S. currency, requiring Danske Bank Estonia to use U.S. banks and accounts to process the transactions. By 2013 Danske Bank knew that these non-resident customers frequently used shell companies to conceal the ultimate beneficial owners or parties to transactions and that they engaged in suspicious transactions through U.S. banks. Danske Bank Estonia employees facilitated this by setting up bank accounts for shell companies and assisting customers in creating new shell companies. By 2014, Danske Bank knew that some non-resident customers were engaging in suspicious transactions using U.S. currency at several banks in the United States and that Danske Bank Estonia's AML program and procedures were inadequate and allowed non-resident customers to open accounts and conduct transactions without appropriate due diligence or monitoring.

Danske Bank Estonia also misrepresented the condition of its AML compliance program, transaction monitoring, and information regarding its customers and risk profiles in response to requests from U.S. banks. This caused the U.S. banks to maintain accounts and, in one instance, open an account through which Danske Bank Estonia facilitated approximately \$160 billion in transactions on behalf of its non-resident customers between 2007 and 2016.

In January of this year, Danske Bank was sentenced to three years' probation and required to pay \$2.06 billion in a global resolution with the DOJ, SEC, and Danish authorities.

- **Lafarge S.A. and Lafarge Cement Syria S.A.:** In October 2022, Lafarge S.A. (Lafarge) and its Syrian subsidiary, Lafarge Cement Syria S.A. (LCS), pleaded guilty to a one count criminal information charging the corporations with conspiring to provide material support and resources for terrorism.¹³ The matter arose from Lafarge and LCS negotiating with and paying the Islamic State of Iraq and al-Sham (ISIS) and the al-Nurash Front (ANF) for the terrorists groups' protection of an LCS-owned cement plant in the Jalabiyeh region of Northern Syria. Though not a money laundering prosecution, this matter is the first instance in which DOJ has brought a material support to terrorism charge against a corporate entity,¹⁴ and is a notable example of DOJ's pursuit of illicit finance cases in the cross-border space.

According to the [plea](#), from approximately 2013 to 2014 Lafarge and LCS routed nearly \$6 million dollars in illicit payments to ISIS and the ANF in exchange for the continuous operation of the plant, and to obtain an economic advantage over competitors in the Syrian cement market through a revenue-sharing agreement with ISIS. Under that agreement, LCS executives purchased raw materials needed to manufacture cement from ISIS-controlled suppliers, and then paid monthly "donations" to ISIS through third-party intermediaries so that employees, customers, and suppliers could traverse

¹² Press Release, U.S. Dep't of Just., Danske Bank Pleads Guilty to Fraud on U.S. Banks in Multi-Billion Dollar Scheme to Access the U.S. Financial System (Dec. 13, 2022), <https://www.justice.gov/opa/pr/danske-bank-pleads-guilty-fraud-us-banks-multi-billion-dollar-scheme-access-us-financial>.

¹³ Press Release, U.S. Dep't of Just., Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations (Oct. 18, 2022), <https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>.

¹⁴ See U.S. Dep't of Just., Deputy Attorney General Lisa O. Monaco Delivers Remarks Announcing a Guilty Plea by Lafarge on Terrorism Charges (Oct.18, 2022), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-announcing-guilty-plea-lafarge> ("And for the first time, companies have pleaded guilty to supporting terrorist organizations, with Lafarge SA and its Syrian subsidiary facing criminal penalties of more than three-quarters of a billion dollars").

checkpoints controlled by ISIS on the roads around Jalabiyeh. E-mails from LCS executives instructed the intermediaries to setup fictitious business entities and then pay ISIS 750 Syrian pounds per each ton of cement that LCS sold. As part of the agreement, LCS expected ISIS to act against its competitors—either by stopping the sale of competing imported Turkish cement in the areas under ISIS’s control—or by imposing taxes on competing cement that would allow LCS to raise the prices at which it sold cement.

The scheme allowed Lafarge and LCS to generate approximately \$70.3 million in revenue out of the Syrian cement plant during the most violent periods of the Syrian Civil War. In September 2014, LCS evacuated the cement plant and ISIS took possession to resume cement production. Thereafter, Lafarge and LCS executives actively concealed the scheme by falsifying records and backdating contracts with the intermediaries to falsely suggest that no negotiations with ISIS and the ANF occurred after the U.N. resolution prohibiting business with the terrorist groups passed. In July 2015, Lafarge and LCS were acquired by a competitor, Holcim Ltd., that failed to conduct pre- and post-acquisition due diligence of LCS’s operations in Syria. The Department of Justice stated that Lafarge, LCS, and Holcim Ltd. did not self-report the conduct or fully cooperate in the investigation.

Immediately following the guilty pleas, Lafarge and LCS were sentenced to terms of probation and required to pay financial penalties, including criminal fines and forfeiture, totaling \$778.78 million.

- **Hanan Ofer:** In September 2022, Hanan Ofer pleaded guilty in the Eastern District of New York to failure to maintain an effective AML program in violation of the Bank Secrecy Act (BSA).¹⁵ Ofer operated the New York State Employees Federal Credit Union Service Organization (NYSEFCU), a money services business required to have an effective anti-money laundering program. Through the NYSEFCU and other entities, Ofer participated in a scheme that brought more than \$1 billion in high-risk transactions, including millions of dollars of bulk cash transactions from a Mexican bank to the NYSEFCU.

Ofer represented to the NYSEFCU that he and his business would conduct appropriate AML oversight as required by the BSA. Instead, the government alleged that Ofer willfully failed to implement an effective AML program which caused the NYSEFCU to process high-risk transactions without appropriate oversight and without ever filing Suspicious Activity Reports (SARs). Ofer is scheduled for sentencing in March 2023.

- **Roger Ng:** On April 8, 2022, after a seven-week trial, Roger Ng was convicted in the Eastern District of New York on all counts of an indictment charging him with conspiring to launder billions of dollars embezzled from the 1Malaysia Development Berhad (1MDB), conspiring to violate the Foreign Corrupt Practices Act (FCPA) by paying bribes to dozens of government officials in Malaysia and Abu Dhabi, and conspiring to violate the FCPA by circumventing the internal accounting controls of Goldman Sachs Group, Inc. (Goldman Sachs).¹⁶

Ng is a citizen of Malaysia and a former Managing Director of Goldman Sachs, where he worked as a banker from approximately 2005 to 2014. 1MDB is a sovereign wealth fund created to pursue investment and development projects for the economic benefit of Malaysia and its people.

¹⁵ Press Release, U.S. Dep’t of Just., Defendant Pleads Guilty to Bank Secrecy Act Charges (Sept. 13, 2022), <https://www.justice.gov/usao-edny/pr/defendant-pleads-guilty-bank-secrecy-act-charges>.

¹⁶ Press Release, U.S. Dep’t of Just., Former Goldman Sachs Investment Banker Convicted in Massive Bribery and Money Laundering Scheme (Apr. 8, 2022), <https://www.justice.gov/usao-edny/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering>.

Ng conspired with others—including, most prominently, Malaysian businessman Jho Low—to launder billions of dollars misappropriated and fraudulently diverted from 1MDB, to pay more than \$1 billion in bribes to a dozen government officials in Malaysia and the United Arab Emirates, and to launder the proceeds of their criminal conduct through the U.S. financial system. The scheme included funding major Hollywood films and purchasing artwork, jewelry, handbags, and luxury real estate. Ultimately, Ng and his co-conspirators misappropriated more than \$2.7 billion from the sovereign wealth fund. He is scheduled for sentencing in February 2023.

- **Odebrecht-Related Matters:** Six years after global construction conglomerate Odebrecht S.A. (Odebrecht) pleaded guilty to charges of conspiracy to violate the Foreign Corrupt Practices Act, DOJ has continued its efforts to prosecute individuals involved in that and related schemes.¹⁷

- **Carlos Ramon Polit Faggioni:** First, in March 2022, DOJ unsealed an indictment against Carlos Ramon Polit Faggioni (Polit), the former Comptroller General of Ecuador, for his alleged involvement in a scheme to launder bribes received from Odebrecht.¹⁸ Among other schemes, the government accused Polit of soliciting and receiving more than \$10 million in bribe payments from the company in exchange for using his position to benefit Odebrecht and its interests in Ecuador between roughly 2010 and 2016.

The [indictment](#) further alleges that Polit and several co-conspirators laundered the bribe payments through bank accounts in Florida, as well as through the purchase of real estate in Florida and other locations. A jury trial is currently scheduled for May 2023.

- **Luis Enrique Martinelli Linares and Ricardo Enrique Martinelli Linares:** After pleading guilty in December 2021, brothers Luis Enrique Martinelli Linares and Ricardo Enrique Martinelli Linares were each sentenced in May 2022 to serve 36 months in prison, and were ordered to forfeit more than \$18.8 million and pay a \$250,000 fine for their participation in the money laundering and bribery scheme involving Odebrecht.¹⁹ The two are the sons of former Panamanian President Ricardo Martinelli, who served in that role from 2009 to 2014.

According to the [plea agreement](#), the brothers conspired with others to establish offshore bank accounts in the names of shell companies to receive and disguise more than \$28 million in bribe payments sent by Odebrecht to a close relative who was a high-ranking public official in Panama. Approximately \$19 million of the bribes were transferred through U.S. banks. Though not named in court documents, the press widely reported that the brothers received bribes on behalf, and at the direction, of their father.²⁰ The Linares brothers returned to Panama after completing their sentences in January 2023, and have been banned by the U.S. Department of State from ever returning to the United States.²¹

¹⁷ In December 2016, Odebrecht pleaded guilty in the Eastern District of New York to a criminal information charging it with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) for its involvement in the money laundering and bribery scheme. According to court documents, Odebrecht paid more than \$700 million in bribes to government officials, public servants, political parties, and others in Panama and other countries to obtain and retain business.

¹⁸ Press Release, U.S. Dep't of Just., Former Comptroller General of Ecuador Indicted for Alleged Bribery and Money Laundering Scheme (March 29, 2022), <https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-indicted-alleged-bribery-and-money-laundering-scheme>.

¹⁹ See Press Release, U.S. Dep't of Just., Panama Intermediaries Each Sentenced to 36 Months in Prison for International Bribery and Money Laundering Scheme (May 20, 2022), <https://www.justice.gov/opa/pr/panama-intermediaries-each-sentenced-36-months-prison-international-bribery-and-money>.

²⁰ See e.g., *Odebrecht en Panamá: condenan en EE.UU. a dos hijos del expresidente Ricardo Martinelli por ayudar en los sobornos de la constructora "para su padre,"* BBC NEWS MUNDO (May 21, 2022), <https://www.bbc.com/mundo/noticias-america-latina-61532375>; Patricia Hurtado and David Voreacos, *Ex-Panamanian President's Sons Get 3 Years for Money Laundering*, BLOOMBERG (May 20, 2022), <https://www.bloomberg.com/news/articles/2022-05-20/ex-panamanian-president-s-sons-get-3-years-for-money-laundering?leadSource=uverify%20wall>.

²¹ Juan Zamorano, *Panama ex-president, 2 sons barred from US for corruption*, ASSOCIATED PRESS (Jan. 25, 2023), <https://apnews.com/article/united-states-government-caribbean-ricardo-martinelli-panama-business-18305672125978161c82f4bc66b11466>.

• **PDVSA-Related Prosecutions:** Similarly, as part of DOJ’s ongoing investigation of corruption linked to Petróleos de Venezuela, S.A. (PDVSA), Venezuela’s state-owned and state-controlled oil company, the Department this year brought several significant cases alleging money laundering in connection with the oil company. They included:

• **Daniel D’Andrea Golindano and Luis Javier Sanchez Rangel:** First, on March 8, 2022, two former Venezuelan prosecutors—Daniel D’Andrea Golindano (D’Andrea) and Luis Javier Sanchez Rangel (Sanchez)—were charged with conspiracy to commit money laundering in the Southern District of Florida for receiving bribes in exchange for agreeing not to pursue criminal charges against individuals in Venezuela.²² The defendants remain at large as of February 2023.

According to the [indictment](#), in or around 2017 D’Andrea and Sanchez were prosecutors in the Venezuelan Attorney General’s Office investigating an unnamed contractor for allegations of corruption connected to PDVSA. As part of the scheme, D’Andrea and Sanchez agreed to accept over \$1 million in exchange for not pursuing criminal corruption charges against the contractor. In order to conceal the payments, D’Andrea, Sanchez, and an unnamed co-conspirator created false invoices from a Florida corporation showing the contractor owed that amount for medical equipment, resulting in payments to accounts in Florida for their personal benefit.

• **Ralph Steinmann and Luis Fernando Vuteff:** Later in the summer, on July 12, 2022, DOJ charged two financial asset managers—Ralph Steinmann of Switzerland and Luis Gernando Vuteff of Argentina—with one count each of conspiracy to commit money laundering in connection with a \$1.2 billion international scheme to launder PDVSA funds.²³

According to press reporting and court documents, Vuteff was arrested in Switzerland and extradited,²⁴ but Steinmann has not been apprehended. Steinmann, Vuteff, and others are accused of working to launder the proceeds of a bribery scheme involving PDVSA officials between approximately 2014 and 2018.

• **Arthur Hayes and Benjamin Delo:** In October 2020, the Commodity Futures Trading Commission (CFTC) and DOJ filed joint civil and criminal enforcement actions against off-shore cryptocurrency derivatives exchange the Bitcoin Mercantile Exchange (BitMEX) alleging a willful failure to establish, implement, and maintain adequate AML programs, including adequate customer identification programs.

The action focused on four individual actors: Arthur Hayes, Benjamin Delo, and Samuel Reed—all co-founders and executives at BitMEX—as well as Gregory Dwyer, who served as Head of Development. The government alleged that, from September 2015 until September 2020, BitMEX failed to (1) establish and maintain an AML program; (2) verify the identities of the exchange’s customers; (3) file SARs even when the company had knowledge that cryptocurrency hackers were using BitMEX to launder illicit proceeds; and (4) comply with the Office of Foreign Assets Control’s (OFAC) Iran sanctions program.²⁵

²² Press Release, U.S. Dep’t of Just., Two Former Senior Venezuelan Prosecutors Charged for Receiving Over \$1 Million in Bribes (March 8, 2022), <https://www.justice.gov/opa/pr/two-former-senior-venezuelan-prosecutors-charged-receiving-over-1-million-bribes>.

²³ Press Release, U.S. Dep’t of Just., Two Financial Asset Managers Charged in Alleged \$1.2 Billion Venezuelan Money Laundering Scheme (July 12, 2022), <https://www.justice.gov/opa/pr/two-financial-asset-managers-charged-alleged-12-billion-venezuelan-money-laundering-scheme>.

²⁴ Mengqi Sun, *Two Asset Managers Charged in Alleged PdVSA Money-Laundering Scheme*, WALL ST. J. (July 12, 2022), https://www.wsj.com/articles/two-asset-managers-charged-in-alleged-pdvsa-money-laundering-scheme-11657667703?mod=business_minor_pos4.

²⁵ Press Release, U.S. Dep’t of Just., Founders Of Cryptocurrency Exchange Plead Guilty To Bank Secrecy Act Violations (Feb. 24, 2022), <https://www.justice.gov/usao-sdny/pr/founders-cryptocurrency-exchange-plead-guilty-bank-secrecy-act-violations>.

BitMEX allegedly received over \$11 billion in bitcoin deposits and earned more than \$1 billion in fees. However, the Exchange attempted to avoid U.S. laws and regulations through “affirmative steps” to exempt BitMEX from AML and know-your-customer (KYC) requirements, including by withdrawing from the U.S. market in 2015, while continuing to knowingly accept orders and funds from customers based in the United States.

On February 24, 2022, Hayes and Delo pleaded guilty to violating the BSA by willfully failing to establish, implement, and maintain an AML program. Delo received 30 months’ probation without home confinement, while Hayes received six months’ home detention as part of a 24-month probation. On March 9, 2022, Reed pleaded guilty to the same charge and was sentenced to 18 months of probation. The co-founders also agreed to pay a \$10 million fine. Dwyer subsequently pleaded guilty on August 8, 2022, was sentenced to 12 months of probation, and agreed to pay a \$150,000 fine.

- **Claudia Patricia Diaz Guillen and Adrian Jose Velasquez Figueroa:** Finally, in December 2022, the former National Treasurer of Venezuela, Claudia Patricia Diaz Guillen (Diaz) and her husband, Adrian Jose Velasquez Figueroa (Velasquez), were convicted of money laundering charges following a jury trial arising from their involvement in a billion-dollar currency exchange, bribery, and money laundering scheme.

The government contended at trial that Diaz and Velasquez accepted more than \$100 million in bribes from a Venezuelan billionaire and owner of the Globovision news network in exchange for facilitating his purchase of bonds from the Venezuela National Treasury at a favorable exchange rate, resulting in hundreds of millions of dollars in illicit gains. The billionaire, Raul Gorrin Belisario, was indicted in 2018 and remains at large in Venezuela. Diaz and Velasquez are scheduled to be sentenced on February 21, 2023.

Notable Ongoing Cases

- **Rixon Rafael Moreno Oropeza:** In another Venezuela-related prosecution, DOJ on August 24, 2022 charged Venezuelan national Rixon Rafael Moreno Oropeza (Moreno) with conspiracy to commit money laundering and other charges for his involvement in a scheme involving inflated procurement contracts, which were obtained through bribes paid to senior officials at Petropiar, a joint venture between an American oil company and Venezuela’s state-owned energy company.²⁷

The indictment alleged that Moreno bribed a senior Venezuelan government official to appoint another individual to serve as a senior procurement official at Petropiar, and that he also sent bribes to other Petropiar officials from accounts in Florida. In exchange, Moreno received millions of dollars in payments on contracts from Petropiar, which were sent to Moreno’s Florida accounts. Court documents suggest Moreno remains at large as of February 2023.

- **Update on Huawei Enforcement:** On October 24, 2022, the U.S. Attorney’s Office for the Eastern District of New York unsealed a criminal complaint charging two Chinese intelligence officers, Guochun He and Zheng Wang, with attempting to obstruct a criminal prosecution of a global telecommunications company.²⁸ The complaint also charged one of the officers with two counts of money laundering for sending payments to a U.S. government employee in an attempt to obtain confidential information about the criminal prosecution.

²⁷ Press Release, U.S. Dep’t of Just., Venezuelan Businessman Charged in Bribery and Money Laundering Scheme (Aug. 24, 2022), <https://www.justice.gov/opa/pr/venezuelan-businessman-charged-bribery-and-money-laundering-scheme>.

²⁸ While the complaint does not name the company at the heart of the underlying prosecution, it has been reported to be Huawei. See e.g., Dan Mangan, *Chinese intelligence officers charged with obstructing Huawei prosecution as DOJ reveals 2 more cases of China interference*, CNBC (Oct. 24, 2022), <https://www.cnbc.com/2022/10/24/chinese-intelligence-officers-charged-in-huawei-prosecution-obstruction.html>.

According to the [complaint](#), beginning in 2019, the two Chinese intelligence officers allegedly began instructing a U.S. law enforcement agency employee, whom they believed they had recruited as an asset, to provide non-public information on the investigation of Huawei. The complaint alleges that, in October 2021, the U.S. government employee sent the Chinese intelligence officers a one-page apparently classified document purporting to be part of an internal strategy memo about Huawei from the U.S. Attorney's Office for the Eastern District of New York. In return, He allegedly sent the U.S. agent approximately \$61,000 in Bitcoin over the following year. The case remains pending, and neither He nor Wang have been apprehended.

- **Samuel Bankman-Fried:** On December 13, 2022, the U.S. Attorney's Office for the Southern District of New York charged Samuel Bankman-Fried (Bankman-Fried) the CEO and Co-Founder of cryptocurrency exchange FTX Trading Ltd. (FTX), with wire fraud, conspiracy to commit commodities and securities fraud, and conspiracy to commit money laundering, among other charges.²⁹ On the same day, the SEC filed a complaint against Bankman-Fried for violations of securities laws³⁰ arising from his alleged "engage[ment] in a scheme to defraud equity investors in [FTX], a crypto[currency] trading platform," from "at least May 2019 through November 2022."³¹ Bankman-Fried is alleged to have "improperly diverted customer assets to his privately-held crypto hedge fund, Alameda Research LLC (Alameda), and then used those customer funds to make undisclosed venture investments, lavish real estate purchases, and large political donations."³² This alleged fraud came to a head in November of 2022 when FTX filed for Chapter 11 bankruptcy³³ following the sudden downturn of crypto markets beginning in May 2022.

In December 2022, Bankman-Fried was arrested in the Bahamas, extradited to the United States,³⁴ and released on a \$250 million bond with a special bail condition that prohibits him from accessing FTX or Alameda assets. On January 3, 2023, Bankman-Fried plead not guilty to the criminal charges in the United States District Court for the Southern District of New York.³⁵ His trial is currently set for October 2, 2023.

²⁹ Press Release, U.S. Dep't of Just., United States Attorney Announces Charges Against FTX Founder Samuel Bankman-Fried (Dec. 13, 2022), <https://www.justice.gov/usao-sdny/pr/united-states-attorney-announces-charges-against-ftx-founder-samuel-bankman-fried>.

³⁰ The SEC's Complaint specifically alleged violations of the Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (fraud in connection with the purchase or sale of securities), and the Securities Act of 1993 § 17(a), 15 U.S.C. § 77q(a) (fraud in the offer or sale of securities).

³¹ Complaint, SEC v. Bankman-Fried, No. 22-cv-10501 (S.D.N.Y. Dec. 13, 2022), <https://www.sec.gov/litigation/complaints/2023/comp25616.pdf>.

³² *Id.*

³³ Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings, *In re* FTX Trading Ltd., No. 22-11068 (Bankr. D. Del. Nov. 17, 2022), <https://pacer-documents.s3.amazonaws.com/33/188450/042020648197.pdf>.

³⁴ MacKenzie Sigalos & Rohan Goswami, *FTX founder Sam Bankman-Fried arrested in the Bahamas after U.S. files criminal charges*, CNBC (Dec. 12, 2022), <https://www.cnbc.com/2022/12/12/ftx-founder-sam-bankman-fried-arrested-in-the-bahamas-after-us-files-criminal-charges.html>.

³⁵ Jack Queen & Luc Cohen, *Sam Bankman-Fried pleads not guilty in FTX fraud case; October trial set*, REUTERS (Jan. 4, 2023), <https://www.reuters.com/legal/bankman-fried-set-enter-not-guilty-plea-ftx-fraud-case-2023-01-03/>.

FinCEN Enforcement

Another key AML enforcement player in the federal universe is, of course, the United States Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN). While 2022 was another relatively quiet year for FinCEN enforcement, it remains an active and important regulator in this area.

As noted, FinCEN enforcement levels remained well below mid-2010 levels—when FinCEN brought eight actions in 2014, twelve in 2015, and six in 2014—and instead mirrored more recent years, with only three resolutions.

Recent FinCEN Enforcement Actions by Year ³⁶	
YEAR	NUMBER OF ENFORCEMENT ACTIONS
2022	3
2021	3
2020	2
2019	1
2018	3
2017	5
2016	6
2015	12
2014	8

FinCEN has also undergone several leadership changes over the past two years. In April 2021, then-Director Kenneth A. Blanco announced he would leave FinCEN after serving as the organization’s director since December 2017.³⁷ He was succeeded by the then-Deputy Director Michael Mosier, who served as Acting Director for four months before departing and being replaced by current Acting Director Himamauli “Him” Das in August 2021.³⁸ FinCEN’s Associate Director for Enforcement and Compliance—Alessio Evangelista—also departed the agency in August 2022 after serving in the role since 2020.

FinCEN’s three enforcement actions in 2022, described below, related to relatively dated conduct and arose from substantially disparate facts and circumstances—little unites them beyond the broadest strokes of BSA/AML enforcement policy. A review of the agency’s more recent publications suggests FinCEN is keenly focused on Russian illicit finance issues in 2023,³⁹ though it remains to be seen whether that focus will translate into near-term enforcement activity.

³⁶ FIN. CRIMES ENF’T NETWORK, U.S. TREASURY, ENFORCEMENT ACTIONS, <https://www.fincen.gov/news-room/enforcement-actions>.

³⁷ Press Release, Fin. Crimes Enf’t Network, U.S. Treasury, FinCEN Announces Acting Director and New Deputy Director (Apr. 2, 2021), <https://www.fincen.gov/news/news-releases/fincen-announces-acting-director-and-new-deputy-director>.

³⁸ Press Release, Fin. Crimes Enf’t Network, U.S. Treasury, FinCEN Announces New Acting Director (Aug. 3, 2021), <https://www.fincen.gov/news/news-releases/fincen-announces-new-acting-director>.

³⁹ Press Release, Fin. Crimes Enf’t Network, U.S. Treasury, New FinCEN Analysis of BSA Data Reveals Trends on the Financial Activity of Russian Oligarchs (Dec. 22, 2022), <https://www.fincen.gov/news/news-releases/new-fincen-analysis-bsa-data-reveals-trends-financial-activity-russian-oligarchs>; Press Release, Fin. Crimes Enf’t Network, U.S. Treasury, FinCEN Alert on Potential U.S. Commercial Real Estate Investments by Sanctioned Russian Elites, Oligarchs, and Their Proxies (Jan. 25, 2023), <https://www.fincen.gov/news/news-releases/fincen-alert-potential-us-commercial-real-estate-investments-sanctioned-russian>; Press Release, Fin. Crimes Enf’t Network, U.S. Treasury, FinCEN Identifies Virtual Currency Exchange Bitzlatto as a “Primary Money Laundering Concern” in Connection with Russian Illicit Finance (Jan. 18, 2023), <https://www.fincen.gov/news/news-releases/fincen-identifies-virtual-currency-exchange-bitzlatto-primary-money-laundering>.

- **USAA Federal Savings Bank:** On March 17, 2022, FinCEN assessed a \$140 million civil money penalty against USAA Federal Savings Bank (USAA FSB), alleging that the bank willfully violated the BSA and its implementing regulations.

Per the consent order,⁴⁰ between approximately January 2016 and April 2021, USAA FSB experienced significant growth but allegedly did not correspondingly expand its AML compliance capabilities. Specifically, FinCEN alleged that—despite warnings from the Office of the Comptroller of the Currency (OCC) in 2017 that its compliance program fell short of meeting regulatory requirements, and the bank’s commitment in 2018 to remediate those issues—USAA FSB did not make adequate progress and missed the completion deadlines for its proposed remediation program. Among other issues, the consent order noted that USAA FSB: (1) lacked comprehensive risk-based policies and procedures to address AML risks; (2) had a compliance department that was understaffed; (3) did not conduct adequate testing of a new transaction monitoring system; (4) relied on an internal audit team to conduct enterprise-wide AML testing; (5) lacked tailored AML and KYC training; (6) had deficient customer due diligence policies and procedures; and (7) failed to file SARs due in part to low staffing and a large backlog of transaction monitoring alerts.

USAA FSB agreed to pay \$80 million to FinCEN and \$60 million to the OCC to resolve the allegations in this matter; however, FinCEN agreed to credit the bank’s payment to the OCC towards satisfaction of its penalty.

- **A&S World Trading:** Two weeks after the USAA FSB resolution, on March 31, 2022, FinCEN assessed a \$275,000 civil money penalty on A&S World Trading, Inc. (A&S) for willful violations of the BSA resulting from failure to comply with a Geographic Targeting Order (GTO). This was the first enforcement action stemming from the Los Angeles Fashion District GTO that FinCEN issued in October 2014, and that was effective through April 6, 2015. A&S was a non-financial entity that operated a Los Angeles perfume store called Fine Fragrance.

The GTO created additional reporting and recordkeeping obligations for certain trades and businesses in the Los Angeles Fashion District. It was intended to fight money laundering schemes that allow international drug cartels in Central and South America to reach drug proceeds generated in the United States. In these schemes, narco-trafficking profits in the United States are converted into goods purchased in the Fashion District, which are then shipped to countries in South and Central America. The goods are then sold, and the cash proceeds flow back to drug trafficking organizations. Entities covered by the GTO must report any instances of receiving more than \$3,000 in currency in one transaction, or in two or more related transactions in a 24-hour period.

According to the consent order,⁴¹ A&S operated Fine Fragrance as a predominantly cash-based business engaged in both retail and wholesale transactions. Beginning in 2014, the IRS investigated A&S and found that the business processed approximately \$4.6 million in cash sales but failed to report any of these transactions as required by the GTO. Following the IRS examination, A&S filed numerous currency transaction reports to comply with a separate regulatory requirement to report transactions that exceed \$10,000 but did not describe 114 transactions—totaling roughly \$2.3 million—that the IRS had identified as requiring reports under the GTO. Ultimately, A&S’s cooperation, and its agreement to toll the applicable statute of limitations, contributed to the relatively low penalty.

⁴⁰ FinCEN Consent Order Imposing Civil Money Penalty, USAA Federal Savings Bank, No. 2022-01 (March 17, 2022), [https://www.fincen.gov/sites/default/files/enforcement_action/2022-03-18/USAA%20Consent%20Order_Final%20508%20\(2\).pdf](https://www.fincen.gov/sites/default/files/enforcement_action/2022-03-18/USAA%20Consent%20Order_Final%20508%20(2).pdf).

⁴¹ FinCEN Consent Order Imposing Civil Money Penalty, A&S World Trading Inc., No. 2022-02 (March 31, 2022), (https://www.fincen.gov/sites/default/files/enforcement_action/2022-04-01/AS%20World%20Trading%20Consent%20Order%20FINAL.pdf).

- **Bittrex:** On October 11, 2022, FinCEN and OFAC announced settlements with Bellevue, Washington-based virtual cryptocurrency exchange Bittrex Inc. (Bittrex), their first parallel enforcement action in the digital assets space. According to a Treasury Department press release,⁴² Bittrex allegedly violated multiple sanctions programs, and committed willful violations of the BSA’s AML and SAR reporting requirements. To resolve the allegations, Bittrex agreed to settlements of approximately \$24 million with OFAC, and approximately \$29 million with FinCEN; however, FinCEN agreed to credit the OFAC payment towards Bittrex’s resolution with FinCEN.

The parallel actions alleged that Bittrex engaged in 116,421 separate violations of OFAC sanctions programs by serving customers located in regions such as Crimea, Cuba, Iran, Sudan, and Syria between March 2014 and December 2017, resulting in roughly \$263 million in virtual currency-related transactions.⁴³ At the time, Bittrex did not screen users’ IP addresses to determine whether they were associated with sanctioned jurisdictions. Additionally, from February 2014 through December 2018, the government alleged that Bittrex failed to maintain an effective AML program by inadequately monitoring transactions on its platform and neglecting to address the enhanced risks associated with cryptocurrency.⁴⁴ The resolutions allege that, as Bittrex grew from a startup to a major U.S. cryptocurrency exchange, it did not implement appropriate BSA or OFAC controls. For example, it relied on as few as two inexperienced staff members to handle its compliance program and did not file any SARs from its founding in 2014 through May 2017, and only filed one SAR between May and November of 2017.

The FinCEN consent order cites Bittrex’s “cooperation and significant investment and efforts to design and build an effective AML compliance program” as a factor in FinCEN’s not requiring additional remedial measures. In particular, the order calls out numerous improvements—such as hiring experienced personnel, engaging outside auditors, improving training, and pausing new customer registrations while the company worked to improve its programs—as well as Bittrex’s “proactive[] work[] with U.S. government agencies on ways to improve BSA/AML compliance by virtual asset service providers.”

In announcing the resolution, OFAC Director Andrea Gacki emphasized the need for virtual currency firms to understand “both who—and where—their customers are” by implementing sanctions compliance controls and screening customers in sanctioned jurisdictions.⁴⁵ FinCEN Director Das similarly observed that “[v]irtual asset service providers are on notice that they must implement robust risk-based compliance programs and meet their BSA reporting requirements. FinCEN will not hesitate to act when it identifies willful violations of the BSA.”⁴⁶

⁴² Press Release, U.S. Dep’t of Treasury, Treasury Announces Two Enforcement Actions for over \$24M and \$29M Against Virtual Currency Exchange Bittrex, Inc. (Oct. 11, 2022) [hereinafter Treasury Announces Two Enforcement Actions Against Bittrex], <https://home.treasury.gov/news/press-releases/jy1006>.

⁴³ Enforcement Release, U.S. Dep’t of Treasury, OFAC Settles with Bittrex, Inc. for \$24,280,829.20 Related to Apparent Violations of Multiple Sanctions Programs (Oct. 11, 2022), https://home.treasury.gov/system/files/126/20221011_bittrex.pdf.

⁴⁴ FinCEN Consent Order Imposing Civil Money Penalty, Bittrex, Inc., No. 2022-03 (Oct. 11, 2022), https://www.fincen.gov/sites/default/files/enforcement_action/2022-10-11/Bittrex%20Consent%20Order%2010.11.2022.pdf.

⁴⁵ U.S. Dep’t of Treasury, Treasury Announces Two Enforcement Actions Against Bittrex, *supra* note 38.

⁴⁶ *Id.*

Notable State Activity – New York Department of Financial Services (DFS)

In addition to the activity at the federal level highlighted above, the New York Department of Financial Services (DFS) has remained very active in the AML cross-border space. In 2022, DFS took an aggressive enforcement posture in several matters and assessed large fines on multiple financial institutions for AML and sanctions-related violations.

- **National Bank of Pakistan:** On February 24, 2022, DFS issued a consent order with the National Bank of Pakistan (NBP), which required the bank to pay \$35 million in penalties for alleged BSA/AML compliance deficiencies that persisted at the bank’s New York branch “despite repeated regulatory warnings.”⁴⁷ That same day, in conjunction with the DFS enforcement action, the Federal Reserve Bank of New York (FRBNY) announced a \$20.4 million penalty against the bank for AML violations.

According to the [consent order](#), NBP is a “multinational commercial bank incorporated in Pakistan . . . that is majority owned by the Pakistani government, with more than \$20 billion in assets as of June 30, 2021,” and approximately \$188 million in assets held by the bank’s New York branch. Examinations conducted by the DFS and FRBNY in 2014 and 2015 found that the New York branch had inadequate BSA/AML compliance programs, a deficient transaction monitoring system, weak internal controls, insufficient managerial oversight, and a new money remittance service that lacked proper safeguards. The examinations also found that the bank failed to mitigate and manage BSA/AML risks inherent to money remittance services when it did not implement risk-based due diligence and monitoring processes. Consequently, in a 2016 written agreement with the regulators, the bank acknowledged its deficiencies and agreed to remediate them.

In five subsequent examinations, however, DFS and the FRBNY found that the New York branch’s risk management and compliance programs had worsened. The government alleged that senior management in the branch failed to promote a culture of compliance, that compliance programs lacked adequate resources, and that NBP failed to adequately supervise the New York branch.

In addition to the \$35 million penalty, the consent order required NBP to develop a written plan, subject to approval by DFS, to enhance the policies and procedures underlying the bank’s BSA/AML compliance program, Suspicious Activity Monitoring and Reporting program, and customer due diligence requirements. At the discretion of DFS, the bank may be required to engage an independent consultant to evaluate NBP and the New York branch’s remediation efforts. Upon review of the independent consultant’s evaluation report, the DFS could nevertheless impose a full monitorship on the bank and the New York branch.

- **MoneyGram:** In March 2022, DFS announced that MoneyGram International Inc. (MoneyGram) agreed to pay \$8.25 million in penalties to resolve its alleged failure to adequately supervise local agents in New York City that processed a substantial volume of suspicious transactions to China, in violation of BSA/AML requirements and New York law.⁴⁸

Per the [consent order](#), MoneyGram experienced a surge in China-related transactions during the 17-month period from January 2016 through May 2017, when it processed more than 25,000 transactions to China, totaling more than \$100 million. In comparison, in the year preceding the spike in transaction

⁴⁷ Press Release, N.Y. Dep’t of Fin. Services, Superintendent Adrienne A. Harris Announces \$35 Million Penalty on National Bank of Pakistan for Repeated Compliance Failures (Feb. 24, 2022), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202202241.

⁴⁸ Press Release, N.Y. Dep’t of Fin. Services, Superintendent Adrienne A. Harris Announces that DFS Has Imposed a Penalty of \$8.25 Million on Moneygram for Compliance Failures (March 16, 2022), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202203161.

volume, MoneyGram processed approximately 7,500 transactions between customers in New York and China, totaling around \$30 million. DFS alleged that the increase in transaction amount and volume, as well as suspicious transaction patterns, should have put the company on notice of the potential money laundering risk associated with those payments.

After being made aware of the suspicious spike in activity, MoneyGram terminated its relationship with the problematic agents and began instituting remedial measures designed to ensure better supervision of agents across its network, among other measures. In addition to paying the \$8.25 million penalty, MoneyGram is required to report to the Department on the enhancements to its BSA/AML compliance program, including its suspicious activity monitoring and reporting program, and customer due diligence measures.

- **Robinhood Crypto:** In August 2022, DFS announced that Robinhood Crypto, LLC (RHC) would pay a \$30 million penalty for alleged BSA/AML and cybersecurity issues. In addition to the penalty, RHC would also be required to retain an independent consultant to perform a comprehensive evaluation of its compliance with DFS regulations and RHC's own remediation plan.⁴⁹

DFS's investigation alleged that RHC's BSA/AML program was inadequately staffed; failed to timely transition from a manual transaction monitoring system that was inadequate for RHC's size, customer profiles, and transaction volumes; and did not devote sufficient resources to adequately address risks specific to its business. The Department also found issues in RHC's cybersecurity program. According to DFS, these deficiencies resulted from alleged shortcomings in the management, oversight, and resourcing of RHC's compliance programs, including a failure to foster and maintain a culture of compliance at the company.

- **Coinbase:** Finally, on January 23, 2023, DFS announced a \$100 million settlement with Coinbase, Inc. (Coinbase), an online cryptocurrency platform.⁵⁰ The settlement requires Coinbase to pay a \$50 million penalty and to invest an additional \$50 million in its compliance program.

According to the consent order, DFS licensed Coinbase to conduct virtual currency and money transmitting business in New York beginning in 2017. Following an examination and subsequent enforcement investigation, the Department found that Coinbase's BSA/AML program was inadequate for a financial-service provider of Coinbase's size and complexity. In particular, the Department noted that Coinbase's know-your-customer and customer due diligence programs, as written and implemented, were inadequate because Coinbase failed to conduct appropriate due diligence during customer onboarding. Moreover, Coinbase could not keep pace with the growth in the volume of alerts generated by its Transaction Monitoring System. By late 2021, Coinbase had a backlog of more than 100,000 unreviewed transaction monitoring alerts. In turn, Coinbase routinely failed to timely investigate and report suspicious activity, as required by law.

Given the status of Coinbase's compliance program, in early 2022, during its investigation, the Department installed an independent monitor to evaluate the company and work with Coinbase to fix outstanding issues.

⁴⁹ Press Release, N.Y. Dep't of Fin. Services, DFS Superintendent Harris Announces \$30 Million Penalty on Robinhood Crypto for Significant Anti-Money Laundering, Cybersecurity & Consumer Protection Violations (Aug. 2, 2022), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208021.

⁵⁰ Press Release, N.Y. Dep't of Fin. Services, Superintendent Adrienne A. Harris Announces \$100 Million Settlement with Coinbase, Inc. after DFS Investigation Finds Significant Failings in the Company's Compliance Program (Jan. 4, 2023), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202301041.

KEY TRENDS

In 2023, we anticipate that AML will continue to feature prominently in U.S. criminal and regulatory enforcement actions in the cross-border space. The passage of the Anti-Money Laundering Act of 2020 (AMLA) and, within that, the Corporate Transparency Act (CTA), two years ago provided U.S. law enforcement with new tools to more effectively detect and combat corruption and illicit finance and has kept the Biden Administration focused on AML as a key policy priority.

Throughout 2022, the Executive Branch—and FinCEN in particular—continued working to enact the reforms mandated by the AMLA, most notably through the adoption of a Final Rule implementing the CTA in September.⁵¹ The Rule will require a broad swath of foreign and domestic companies to begin reporting their beneficial ownership information to FinCEN, which will be maintained in a new database that is accessible both to law enforcement and financial institutions in certain circumstances. Though companies are not required to begin reporting their beneficial ownership information until 2024, over time, this database should become an important resource for law enforcement, prosecutors, and regulators investigating matters involving illicit finance, corruption, sanctions evasion, and more.

We also expect that current events will continue to drive enforcement in the AML space, particularly in light of the ongoing war in Ukraine. The complex sanctions and export control measures imposed on Russian individuals and entities and their allies—and those parties' attempts to evade or circumvent them—create significant compliance challenges for U.S. and international companies and highlight the need for ongoing vigilance, especially with respect to companies' know-your-customer and due diligence efforts. Without doubt, countering Russia-linked illicit financial activity will remain a top enforcement priority for DOJ, FinCEN, and OFAC as the first anniversary of Russia's invasion approaches. Likewise, the ongoing volatility in cryptocurrency markets, and the international community's focus on combating the use of digital assets to facilitate a wide array of illicit activities, almost certainly will lead to additional enforcement actions in the coming months.

There is much to say on these topics, and we will continue to provide updates on new cross-border enforcement matters through regular publications. We look forward to discussing developments and challenges in this space with you over the course of this year.

CONTRIBUTORS

If you have further questions about the impact of these developments, or the breadth and capabilities of our practice, please reach out to your McGuireWoods contact. The following attorneys contributed to this update: Benjamin A. O'Neil, V. Kathleen Dougherty, Andrew Thornton-Dibb, Elissa N. Baur, Abigail G. Urquhart, Elizabeth F. Tyler, Kaiwon Tresvant, Clare E. Reardon, Catherine S. Rosenberg, Katherine C. Cienkus, Jessie K. Dawe, and Alex Scandrolì.

⁵¹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498 (Sept. 30, 2022).

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