

# Regulating The Enablers

**How the U.S. Treasury Should Prioritize Imposing  
Rules on Professionals Who Endanger National  
Security by Handling Dirty Money**

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democracy**



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## **Alliance for Securing Democracy**

The Alliance for Securing Democracy (ASD), a nonpartisan initiative housed at the German Marshall Fund of the United States, develops comprehensive strategies to deter, defend against, and raise the costs on autocratic efforts to undermine and interfere in democratic institutions. ASD has staff in Washington, D.C., and Brussels, bringing together experts on disinformation, malign finance, emerging technologies, elections integrity, economic coercion, and cybersecurity, as well as Russia, China, and the Middle East, to collaborate across traditional stovepipes and develop cross-cutting frameworks.

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# Executive Summary

When kleptocrats, foreign intelligence services, home-grown autocrats, and other malign actors weaponize corruption to undermine U.S. democracy, their financial secrecy relies upon the services of ten sectors of U.S. professionals, including lawyers, real estate agents, hedge fund managers, and others. The U.S. government should promulgate new financial regulations—similar to existing rules for banks—that would require non-bank enablers to watch out for dirty money. Regulators should prioritize six or seven sectors of professionals known to gravely endanger U.S. national security by facilitating corruption.

Unfortunately, the United States is among the less than 10 percent of countries that do not require non-bank enablers to establish anti-money laundering (AML) programs, which are mandatory for banks. That is, unlike enablers based in more than 90 percent of the world, U.S. non-bank enablers do not need to have compliance officers, trainings, audits, and controls reasonably designed to spot potential money laundering by identifying customers, scrutinizing transactions, keeping records, and reporting suspicious activity to the government.

Fortunately, that may change soon, as the regulation of enablers has become a top priority among U.S. lawmakers, law enforcement, civil society, and other stakeholders.<sup>1</sup> President Joe Biden's memorandum prioritizing the fight against corruption as a core national security interest—and ordering U.S. departments and agencies to develop a presidential anti-corruption strategy within 200 days—included a prominent warning about the threat of U.S.-based professional enablers who move and launder dirty money.<sup>2</sup>

One implementation challenge is the severe underfunding of the Financial Crimes Enforcement Network (FinCEN), the bureau within the U.S. Treasury Department responsible for AML regulation.<sup>3</sup> Moreover, there is limited consensus among policymakers and experts about which sectors of enablers FinCEN should prioritize regulation of between now and the end of Biden's four-year term. There is little comprehensive research on which sectors pose the greatest national security threats, which regulatory efforts require additional statutory authorities or at least broad political support, and what other timing considerations should inform Treas-

ury's plan to expand regulation to cover enablers.

This report aims to fill that gap by sorting out those differences and recommending an order of prioritization for Treasury based on five timing considerations that vary significantly across the top ten sectors of enablers: how severely the lack of regulation threatens national security, whether mandatory deadlines are coming up, whether regulations are already drafted, how much experience FinCEN and each sector have with each other, and how much legal and political pushback regulations would unleash.

Based on those factors, this report recommends that Treasury strategically sequence a major regulatory roll-out over the next few years, starting with easy wins before gauging the political appetite for harder fights:

- **Stage I:** During Biden's Summit for Democracy in December 2021, Treasury should announce that it is embarking upon a campaign to regulate enablers, starting with the three lowest hanging fruit: investment advisors, title insurers, and art dealers.
- **Stage II:** After that, the regulatory trajectory should depend on whether Congress delivers the strong political support that Treasury would need to take on the four most problematic sectors: lawyers, trust and company service providers, accountants, and covert public relations operatives.
- **Stage III:** Without congressional support, Treasury should dedicate fewer resources to Stage II and instead focus the last two years of the Biden administration on repealing regulatory exemptions for sectors like real estate agents and sellers of yachts and jets, and sealing up cracks in the rules for cryptocurrencies and other money services businesses.

## Stage I: Summit for Democracy

The anti-corruption strategy that Biden ordered to be completed by December 20, 2021 should feature the most sweeping plan to regulate non-bank professional enablers in U.S. history.<sup>4</sup> The timing aligns closely



with the first Summit for Democracy, which Biden will host on December 9 and 10 and will be followed by a second summit roughly a year later.<sup>5</sup> At the December 2021 summit, FinCEN's first two deliverables should be strong final rules for beneficial ownership (instructing U.S. companies to disclose to Treasury who ultimately owns them) and for antiquities dealers (imposing AML obligations on that market), both of which are statutorily mandated by year's end.<sup>6</sup> Crucially though, FinCEN should demonstrate that it is going beyond the mandatory minimum by also announcing that it will start implementing a national strategy to regulate enablers, beginning with the imposition of AML obligations on investment fund advisors, title insurers, and art dealers. At an official side event associated with the December 2021 summit, Treasury should publicly announce that it will be formally promulgating these three rulemakings in 2022. Treasury should plan to similarly initiate the second half of its strategy (focused on either Stage II or Stage III) at the second Summit for Democracy scheduled for late 2022.

## 1. Private equity and hedge funds

Kremlin-connected oligarchs have repeatedly used private investment funds and their managers as conduits to secretly funnel money into Western political systems. Examples include sweetheart investment opportunities for the top pro-Brexit donor, billions in lucrative Russian infrastructure deals for a Tory party donor, and several cases linked to private equity fund founder Konstantin Malofeev.<sup>7</sup> The Mueller report documented how Vladimir Putin ordered Moscow businessmen to make contact with Donald Trump after the 2016 election, leading the head of Russia's sovereign wealth fund to dangle an exclusive investment opportunity to a hedge fund manager close to Jared Kushner (a channel through which the Russians successfully submitted a secret foreign policy proposal).<sup>8</sup> Now Kushner plans to launch his own investment company to make money in the Middle East, evoking concerns that the Saudis and Emiratis could secretly buy influence in U.S. politics through this private investment company, just as they appear to have done in the case of alleged secret agent Tom Barrack.<sup>9</sup> To help law enforcement follow the money in cases like these, a leaked FBI bulletin suggests that regulators should impose AML obligations on private investment funds.<sup>10</sup>

**Recommendation:** FinCEN should update and finalize the rule it proposed in 2015 to make investment advisors (the SEC term for the management companies and professionals who run U.S. investment funds) establish AML programs.<sup>11</sup> When proposing a new rule, the 2015 draft should be expanded to also cover advisors managing less than \$100 million (an existing SEC registration threshold that works fine for investor protection but is too low to have caught any of the known cases of election interference to date) and those solely advising venture capital funds, family offices, rural funds, single-state funds, and overseas advisors with fewer than 15 U.S. clients.<sup>12</sup> FinCEN should also expand the rule to include customer due diligence requirements that were still under development in 2015 but are now fully operable.<sup>13</sup>

## 2. Real estate title insurers

High-end real estate in U.S. cities is the world's leading destination for vast sums of dirty money.<sup>14</sup> The greatest testament to the dangerous opacity of U.S. property ownership may be the fact that over the past six years, journalists expended an unprecedented degree of effort probing whether Trump was deliberately enriched by Kremlin proxies through investments in Trump's properties yet no reporters or any other investigators arrived at definitive conclusions one way or the other.<sup>15</sup> In 2016, following a bombshell report on how often luxury condos are secretly owned by corrupt foreign elites, FinCEN started requiring U.S. title insurers to identify individuals who ultimately own at least 25 percent of any legal entity using all cash to buy high-end properties in big cities.<sup>16</sup> That official data continues to show that 35 percent of the beneficial owners or their representatives are indeed suspicious.<sup>17</sup> The usefulness of these geographic targeting orders (GTOs)—a temporary tool that FinCEN has been renewing every six months—demonstrates why FinCEN should make these reporting obligations permanent. The title insurance industry has implemented GTOs proficiently and would be receptive to a more certain regulatory regime. Importantly though, the regulations should be expanded to cover other markets exploited by kleptocrats to stash their ill-gotten wealth, exemplified by the case of Ukrainian oligarch-warlord Ihor Kolomoisky secretly buying up commercial office buildings scattered across the American Midwest.<sup>18</sup>

**Recommendation:** FinCEN should introduce a new rule imposing on U.S. title insurance companies the obligations that they currently face under GTOs to collect beneficial ownership data and remit it to FinCEN. However, compared to the relatively narrow scope of the GTOs, the new rule should be permanent, nationwide, not limited to any value thresholds, include commercial properties (in addition to residential), cover the seller's identity (not just the buyer's), and adopt the broader definition of a beneficial owner as stipulated under the new law mandating a separate ownership registry.<sup>19</sup>

### 3. Art dealers

In 2014, when Russia was invading Ukraine and Treasury was responding by sanctioning Kremlin cronies, email records obtained by Senate investigators suggest that the world's largest auction house—Christie's—was busy plotting to help the Russians evade the new sanctions by selling them art on the ground in Moscow.<sup>20</sup> Within days, the newly sanctioned Rotenberg brothers started stashing \$18 million in works of art bought by their Moscow-based art advisor.<sup>21</sup> The advisor was a U.S. citizen, who in turn bought the art from auction houses and private dealers through chains of intermediaries such as advisors, galleries, and consultants—enablers who do not face U.S. obligations to ask who is on the other end of a transaction.<sup>22</sup> The same expectation of secrecy is widespread in the auction markets for antiques and collectibles, which enabled one of the world's most notorious kleptocrats—Teodorin Obiang of Equatorial Guinea—to conspire with Julien's auction house in Beverly Hills to cover up the paper trail behind his use of intermediaries and straw purchases to become the largest buyer of Michael Jackson memorabilia.<sup>23</sup>

**Recommendation:** In its study of the art market, statutorily mandated to be completed by December 27, 2021, Treasury should conclude that U.S. dealers, advisors, consultants, custodians, galleries, auction houses, and museums trading in works of art, collectibles, or antiques worth at least \$10,000 should be subject to AML regulations.<sup>24</sup> In either the study or an accompanying statement, Treasury should announce that it will be initiating a rulemaking process to regulate these markets.

## Stage II: The Four Horsemen

If FinCEN were to set regulatory priorities for the rest of Biden's term based solely on which sectors of enablers threaten U.S. national security the most, it would focus

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on what this report calls the “four horsemen” of non-bank dirty money. Together with the previously recommended summit deliverables, regulating the first three horsemen—lawyers, accountants, and trust and company service providers—would largely bring the United States into compliance with international standards set by the Financial Action Task Force (FATF). Also regulating the fourth horseman—public relations firms enabling unattributable black ops through troll farms and influencers—would set a new best practice for an age of disinformation.

However, successfully regulating these powerful interest groups would require overwhelming political support. That would ideally include congressional legislation, but, at a minimum, it would have to be led by strong and visible backing from the president, the Treasury secretary, and a very broad coalition of lawmakers and interest groups. Absent that, FinCEN should assign just one or two full-time staffers to coordinate long-term projects dedicated to each of the four horsemen, tasked with preparing for future regulations by tracking malign activity, working within Treasury to develop future rules, and advocating for support on Capitol Hill and with allied factions within key interest groups.

### 4. Lawyers

Three stories show how lawyers can be the most dangerous enablers secretly funneling the proceeds of foreign corruption into the United States. A Global Witness investigation showed 12 out of 13 New York law firms eagerly sitting down with a representative of an obviously corrupt official from Africa to explain how he could abuse the law firms' own escrow accounts and trustee services to launder money into purchases of luxurious U.S. properties and vehicles.<sup>25</sup> Malaysian kleptocrat Jho Low used a bank account in the name of Manhattan law firm Shearman & Sterling to wire \$369 million that he stole abroad into the United States, where he spent it on outrageous parties, yachts, jets, jewels, properties, Hollywood productions, and other lavish expenditures.<sup>26</sup> Before Teodorin bought most of Michael Jackson's estate, he used U.S. lawyers to trick six U.S. banks into accepting his dirty money by concealing it through attorney-client, law office, and other third-party conduit accounts.<sup>27</sup>

**Recommendation:** If lawyers are kleptocrats' most useful enablers, they are also the sector that is the most politically organized in opposition to regulation.<sup>28</sup> As such,

an initiative to regulate lawyers needs to be prepared with well-laid legal and political strategies, including advocacy tactics to divide and conquer opponents from within. Except for a powerful faction of deregulation fanatics and real estate lawyers within the American Bar Association (ABA), most legal scholars and foreign courts agree that FATF standards for lawyer regulations—including mandatory suspicious activity reporting without tipping off clients—are scoped narrowly enough to avoid infringing upon attorney-client privilege.<sup>29</sup> But just to be extra defensible in the likely event that the ABA sues to resist regulation, Congress could enact legislation to impose AML duties on lawyers, law firms, and notaries, and such a law could be narrowly scoped to only apply if and when legal professionals become “involved in financial activity or related administrative activity on behalf of another person.” That is, lawyers should be allowed to handle their clients’ money or avoid having to look for dirty money, but not both.

## 5. Trust and company service providers

About half of the 2 million U.S. legal entities created each year are formed with help from professionals known as trust and company service providers (TCSPs), which range from mom-and-pop outfits to sophisticated law firms providing an extra service to their clients.<sup>30</sup> In addition to filing company formation paperwork with states on behalf of owners, for additional fees some TCSPs will allow owners to remain hidden by writing the TCSP’s own name and address on any documentation.<sup>31</sup> Because the United States is one of the only countries in the world that does not impose AML regulations on TCSPs, it is not entirely surprising that U.S. TCSPs are the most likely in the world to not ask for any identification (almost half the time).<sup>32</sup> Strikingly, academic researchers found that when potential customers present red flags of foreign corruption, that actually makes U.S. TCSPs *less* likely to turn away the customer or insist upon documentation.<sup>33</sup> In one case, researchers posing as a Muslim charity in Saudi Arabia seeking financial secrecy were told by a U.S. TCSP, “[Y]our stated purpose could well be a front for funding terrorism...[I]f you wanted a functioning and useful Florida corporation you’d need someone here to put their name on it, set up bank accounts, etc. I wouldn’t even consider doing that for less than 5k a month.”<sup>34</sup> Five thousand dollars a month to—in the eyes of the TCSP—potentially help fund terrorism.

**Recommendation:** Congress could make U.S. TCSPs stop being the most lax TCSPs globally by enacting the international standard, which is to impose AML obligations on the three main TCSP subsectors: company formation agents, trustee or nominee service providers, and providers of registered offices or business addresses.<sup>35</sup>

## 6. Accountants

While shady accountants have been integral to the world’s most sophisticated criminal organizations—Al Capone’s Chicago Outfit, the Russian mafia, the New York mob, the Colombian FARC, Ihor Kolomoisky’s grand heist, and the Trump Organization’s alleged tax evasion—no case details the role of modern accountants as clearly as kleptocrat Isabel dos Santos, daughter of Angola’s former longtime ruler.<sup>36</sup> She used the services of PwC and other accountants to become Africa’s richest woman through insider deals, preferential loans, and public contracts ordered by her father.<sup>37</sup> Having once briefly worked as an accountant herself, Santos knew how to retain the most talented and pliant accountants in the world to run her business empire’s finances and advise on corrupt restructurings (even helping to draft self-dealing presidential decrees).<sup>38</sup> And, while the “big four” accounting firms were reaping big fees through consulting, they also audited the financial records despite the clear conflict of interest—leverage that Santos used to pressure the auditors to keep quiet about the true ownership of her companies.<sup>39</sup>

**Recommendation:** Congress could finish bringing the United States into FATF compliance by adding accountants and accounting firms to the statutory list of regulated financial institutions.<sup>40</sup> FinCEN would then have to write regulations establishing minimum standards for accountants’ AML programs, prescribing different rules for lines of business with varying degrees of risk, while also emphasizing useful information that accountants are particularly well-placed to scrutinize, like beneficial ownership.<sup>41</sup>

## 7. Covert PR and marketing firms

Over the past two years, social media platforms and U.S. law enforcement have had difficulty attributing foreign disinformation operations to the ultimate funders, because their investigations are running into dead ends in the form of public relations (PR) and marketing firms whose clients’ identities are well-kept secrets.<sup>42</sup> In the 2020 election, this rapidly proliferating tactic was also



used by domestic campaigners to secretly bankroll a pro-Trump troll farm in Arizona.<sup>43</sup> This national security threat is not limited to election interference, as there are signs that Russia has begun funneling money through PR firms to secretly pay social media influencers to propagate disinformation tarnishing the Pfizer vaccine (falsely suggesting it kills people).<sup>44</sup> If this rapidly growing trend is not arrested, the U.S. information environment risks becoming as polluted with commercial disinformation as the Philippines, where all matters of public debate are hotly contested narrative battles between dueling PR and marketing firms secretly hired by both sides to flood the zone with whatever content and tactics are needed to win.<sup>45</sup>

**Recommendation:** AML rules are not needed or advisable for most PR and marketing firms, because their traditional services—like helping known clients write press releases, speeches, and newsletters—do not involve laundering the source of money and disinformation from secret clients. Instead, legislation should only impose AML obligations on persons engaged in the business of PR, marketing, communications, or other similar services if and when they “provide another person anonymity or deniability” (i.e., black ops).

### Stage III: Exemptions to Repeal

If Congress fails to deliver the overwhelming show of political support (ideally by amending the BSA) needed to regulate the four horsemen, Treasury should announce at the late-2022 Summit for Democracy that it will focus most intensively on repealing regulatory exemptions enjoyed by real estate professionals and luxury vehicle sellers, while also tightening up rules around cryptocurrencies and other money services businesses (MSBs).

Those first two sectors—real estate and luxury vehicles—were to create AML programs two decades ago under the Patriot Act, but Treasury continually granted them “temporary exemptions” to that statutory obligation.<sup>46</sup> MSBs are generally already regulated by Treasury, but cracks continually emerge due to new technologies like cryptocurrencies.

### 8. Real estate agents, escrow agents, and real estate lawyers

In the modern history of the U.S. Treasury Department, no regulatory decision has done more to let dirty

money flow with impunity than the 2002 exemption for real estate professionals. Teodorin’s secret purchase of a Malibu mansion was a joint effort carried out by professionals in the three top subsectors of real estate enablers: realtors, escrow agents, and lawyers.<sup>47</sup> Key details about Ihor Kolomoisky’s Miami-based operation to buy commercial properties have come from brokers and realtors who spoke to the author of a new book, leaks that demonstrate how much information real estate agents have that would be useful for law enforcement.<sup>48</sup> Real estate agents are similarly the most common sources in stories about suspicious oligarchs, mobsters, and crooked foreign officials secretly owning luxury condos in Trump properties.<sup>49</sup> The extent to which real estate lawyers can offer anonymity was shown by the attorney who handled most of the condo sales in Trump SoHo and was caught literally using a pen to cross out Moscow addresses on property deeds and instead scribble in the address of his own law office located in another Trump building.<sup>50</sup>

**Recommendation:** Without any further action from Congress, FinCEN could initiate a rulemaking process to require “persons involved in real estate closings and settlements” to establish full AML programs, repealing the 2002 exemption. At a minimum, this should include title insurers, real estate agents, escrow agents, and real estate lawyers. In either this initiative or future expansions, FinCEN should also consider imposing AML rules on property management companies, real estate investment companies, and real estate development companies. FinCEN must also improve compliance and enforcement of non-bank residential mortgage lenders and originators.<sup>51</sup>

### 9. Luxury vehicle dealers

In addition to Michael Jackson memorabilia and a Malibu beach house, Teodorin funneled the money he stole in Equatorial Guinea into luxury vehicles on land, air, and sea.<sup>52</sup> He would at times buy a new supercar every week or two from auto dealerships in Beverly Hills.<sup>53</sup> He worked through lawyers, escrow providers, title insurers, and sales representatives to buy Gulfstream jets and massive yachts.<sup>54</sup> And Teodorin was ultimately caught by law enforcement partly because his assistant bragged too openly—about his bid for Michael Jackson’s crystal glove—to the staff of a speedboat company in Florida.<sup>55</sup>

**Recommendation:** Again, without any additional action from Congress, FinCEN could impose AML obligations

on “businesses engaged in vehicle sales,” including title insurers, dealerships or other agents of buyers or sellers, escrow agents handling funds for vehicle sales, and lawyers engaged in vehicle sales, while also considering how and when to cover manufacturers of high-end vehicles.

## 10. Crypto and other money services businesses

Most of the U.S. payments system is already regulated, including for some major new technologies like cryptocurrencies, but malign actors continue to exploit emerging regulatory gaps. For example, ransomware payments are usually made to hackers’ software-based “unhosted wallets” that are not operated by any central entity that Treasury can regulate.<sup>56</sup> Beyond crypto and cyber threats, terrorists and fentanyl traders move money below the \$3,000 threshold at which information on wire transfers must “travel” alongside money throughout the payment chain.<sup>57</sup> Kleptocracies secretly funnel millions of dollars to U.S. presidential campaigns through third-party payment service providers that fall outside the definitions of regulated sectors.<sup>58</sup>

**Recommendation:** FinCEN should continue sealing up regulatory cracks related to crypto and other money services businesses (MSBs) by: (1) reducing the travel rule threshold from \$3,000 to \$250 and clarifying that it also applies to cryptocurrencies;<sup>59</sup> (2) making banks and MSBs report their customers’ transactions with cryptocurrency wallets that are unhosted (or hosted in North Korea, Iran, or Burma);<sup>60</sup> (3) redoubling diplomatic efforts to harmonize cryptocurrency standards and implementation globally; and (4) conducting a comprehensive review of third-party service providers that cater to shady phone and internet businesses or high-risk jurisdictions.<sup>61</sup>

## Implementation Time

Biden has launched what could become the most sweeping policy initiative against corruption and kleptocracy in U.S. history.<sup>62</sup> But for the mission to succeed, ambitious rhetoric must now be matched with comprehensive implementation.

The Biden administration should start by including bold plans to regulate enablers in its forthcoming presidential strategy to fight corruption. In time for the December 2021 Summit for Democracy, Treasury should

announce that it will begin implementing Biden’s anti-corruption strategy by imposing AML obligations on investment advisors, title insurers, and art dealers. Separately, Congress should enact legislation naming all ten sectors discussed in this report as types of financial institutions. If those initial steps go well, Treasury should announce at the late-2022 Summit for Democracy that it will also move to regulate lawyers, TCSPs, accountants, and covert PR firms. Otherwise, Treasury should focus the second stage on repealing exemptions for real estate professionals, luxury vehicle sellers, and money services businesses.

This is how the United States stops being the world’s largest haven for dirty money and shows how democracies can deliver against crooked adversaries and powerful special interests.<sup>63</sup> The time has come to regulate the enablers.

# Introduction

President Biden's first national security study memorandum (NSSM-1) established "countering corruption as a core United States national security interest," giving executive departments and agencies 200 days to complete a strategy to fight corruption.<sup>64</sup> The first substantive issue listed in Biden's memo was combating dirty money, while a senior White House official explained on background that "we're looking to make significant systemic changes to the regulatory structure that governs illicit finance."<sup>65</sup> A couple weeks later, FinCEN cited Biden's memo when the bureau established corruption as the number one threat to the U.S. financial system and national security.<sup>66</sup> FinCEN mentioned in its guidance the "financial facilitators" of corruption, while Biden's memo warned that "professional service providers enable the movement and laundering of illicit wealth, including in the United States and other rule-of-law-based democracies."<sup>67</sup>

Thus, the White House and FinCEN have joined the new consensus—shared by lawmakers, law enforcement, standard-setters, international organizations, multilateral groups, reformers, think tanks, and others—that the other top U.S. financial security priority alongside beneficial ownership reform must now be regulation of the non-bank professionals who enable corruption.<sup>68</sup> The growing chorus of experts and authorities warn about U.S. lawyers, accountants, real estate agents, and other enablers who handle dirty money without asking where it came from or alerting the U.S. Treasury Department about suspicious activity.

***“ To ground these priorities in national security, the focus should be on the two financial pathways through which autocrats weaponize corruption.”***

Despite the widespread concurrence that professional enablers should be regulated, nobody has thoroughly analyzed how FinCEN should prioritize the many sectors of enablers. This is particularly important because FinCEN is drastically underfunded and expected to get a significant boost in appropriated resources for fiscal year 2022.<sup>69</sup> Moreover, Congress has already enacted laws covering some sectors (like real estate, which is exempted under Treasury regulations), while other sectors would require either legislation (like PR agents) or strong political support (like lawyers), and still some

others lie somewhere in between (like private equity and hedge fund advisors, which are only partially covered under the law, although Treasury still has broad authority to determine whether they should be subject to AML obligations).

This report aims to sort out these legal and political distinctions while recommending an order in which Treasury should regulate the highest-priority sectors within Biden's four-year presidential term. It will also provide Congress with a comprehensive list of sectors in need of statutory obligations, while explaining the importance of amending the law as soon as possible because it would empower Treasury to regulate the four horsemen of dirty money rather than having to focus mainly on repealing regulatory exemptions.

While five timing considerations should inform Treasury's prioritization—risk severity, mandatory deadlines, drafting status, regulatory experience, and anticipated pushback—the first factor, national security risk severity, is most important. To ground these priorities in national security rather than law enforcement (even though the two overlap), the focus should not be on "illicit finance" per se. Instead, it should be about the two financial pathways through which autocrats directly weaponize corruption, according to Biden and FinCEN.

First, kleptocracy. Whereas authoritarian rivals to the United States were historically organized as mercantilist and communist empires, their modern operating systems run on grand corruption, stealing massively from their own people to buy the loyalty of cronies. FinCEN warns, "Corruption rots democracy from the inside and is increasingly weaponized by authoritarian states to undermine their own democratic institutions."<sup>70</sup> Having destroyed the rule of law in their home countries, kleptocrats secretly store their ill-gotten wealth for safekeeping within Western financial markets, with the assistance of professional enablers. By enabling kleptocracy in this way, the United States fails to uphold its values, fuels anti-American resentment, fortifies adversarial regimes, shows their corrupt model to be a viable alternative, and welcomes the funds of oligarchs and crooks who have no intention of abiding by U.S. laws or investing in U.S. communities. A searing recent example of national security fallout from U.S. support for kleptocracy has been on display in Afghanistan.<sup>71</sup>



Second, malign finance. FinCEN warns that autocrats increasingly deploy corruption to “disrupt democratic processes in other nations through foreign influence campaigns.”<sup>72</sup> The most comprehensive research on this topic, *Covert Foreign Money*, identifies 115 examples of “malign finance,” which usually entails election interference and is often enabled by anonymous financial structures based in the United States.<sup>73</sup> For example, the FinCEN Files revealed that in 2016, Suleyman Kerimov—a Russian oligarch associated with Moscow’s foreign intelligence services and believed to serve as a custodian for Kremlin-controlled cash—secretly funneled \$8 million to a top donor of the U.K. Conservative Party.<sup>74</sup> The only reason why FinCEN had a suspicious activity report (SAR) on the transaction was that it flowed through Deutsche Bank’s New York branch.<sup>75</sup> While *Covert Foreign Money* cites several cases of similar operations running through enabling entities such as private investment funds, there is no telling how many operations Treasury cannot see because it does not regulate the most important non-bank enablers.<sup>76</sup>

This report is organized around the ten most important sectors of professional enablers, with a section for each one listed in order of priority. Before providing a recommendation around how FinCEN should scope and structure AML regulations related to each sector, each section starts with examples illustrating the national security threats. Some cases involve U.S. enablers helping kleptocrats launder and hide their dirty money, while others involve interference against the democratic processes and institutions of the United States or its allies.

Cases of concern include Kremlin cronies evading sanctions, Russian oligarchs enriching Donald Trump through real estate, a Ukrainian oligarch-turned-warlord hiding billions, and the most notorious African kleptocrat flaunting his wealth around the world. These case studies have been examined with sufficient detail to see precisely how different U.S. enablers participated in the corrupt schemes. However, these same regulatory loopholes are also available to other foreign powers that will have more resources over time, such as China, where Xi Jinping has actively weaponized corruption, including through the Belt and Road Initiative.

Importantly, these same professional enablers can also be funded and controlled by purely domestic political interests within the United States in attempts to secretly invest in kleptocratic networks or fund interference

in democratic processes. As Larry Diamond recently warned, when political systems lose bipartisan consensus respecting rules of the democratic game, the slide into autocracy can follow relatively quickly, as happened in Hungary, Turkey, and Venezuela.<sup>77</sup> That process appears to be underway in the United States, with Trumpist elements of the Republican Party willing to work with foreign powers to interfere in elections, propagate the lie that the 2020 election was stolen, and respond to election losses by curtailing the right to vote. This report will mention a few cases that are mostly or entirely domestic, like dirty money propping up Trump’s real estate business and PR firms secretly funding a pro-Trump troll farm. But with a Pandora’s Box of autocratic efforts opening within the United States, there is no limit to the ways homegrown malign actors or would-be oligarchs could use professional enablers to secretly fund their operations against U.S. democracy. Finally, in addition to the direct policy benefits, the image of the U.S. government cracking down on corrupt enablers could provide a healthy political salve by showing Americans who feel cheated by “the system” or “the swamp” that their democracy is delivering for them, not just corrupt elites.<sup>78</sup>

Before evaluating each of the ten individual sectors, we will survey the work of authorities and experts focused on the need to regulate U.S. enablers.

## The most significant gap

When Congress outlawed anonymous shell companies on January 1, 2021, it enacted the most powerful U.S. move against dirty money in a generation. Indeed, on every occasion over the past 15 years when the FATF would compare U.S. anti-money laundering (AML) policies to international standards, the intragovernmental organization prominently criticized the lack of timely access to beneficial ownership information in the United States.<sup>79</sup>

Thus, it might surprise some to learn that beneficial ownership reform is only one of *two* equally glaring U.S. financial policy vulnerabilities. Just as prominently emphasized in FATF evaluations has been the problem that U.S. AML rules only apply to banks and similar financial institutions, leaving other professional enablers of financial crime relatively unregulated.<sup>80</sup> International standards for these enablers, which the FATF calls “designated non-financial businesses and professionals”

(DNFBPs), have been at least partially adopted by 102 out of the 113 countries assessed most recently, with the only three non-compliant developed countries being Australia, Canada, and the United States.<sup>81</sup> The other 8 non-compliant countries are China, Congo, Haiti, Jordan, Madagascar, Palau, the Solomon Islands, and Thailand.<sup>82</sup> With regards to the U.S. system, the FATF warns about “minimal coverage of investment advisers, lawyers, accountants, real estate agents, [and] trust and company service providers.”<sup>83</sup> The IMF agrees, pointing to “lawyers, accountants, trust and company service providers...real estate agents, [and] non-bank mortgage lenders and originators.”<sup>84</sup> The FATF has often criticized this U.S. shortcoming before even mentioning beneficial ownership, highlighting enablers as “the most significant supervisory gap” in its latest U.S. evaluation in 2016.<sup>85</sup>

These vulnerabilities started taking on more urgency in that same year, when Russian interference in the U.S. election illustrated the threat of authoritarian kleptocracies, Trump and Bernie Sanders showed how deeply language around corruption resonates with Americans, and the Panama Papers revealed how financial anonymity is abused by Russian oligarchs, Chinese princelings, African strongmen, Middle Eastern royals, and other corrupt figures.<sup>86</sup>

With regards to the Panama Papers, while the law firm whose data was leaked—Mossack Fonseca—was headquartered in Panama City, its business model was heavily reliant on distribution through professional enablers, including many in the United States.<sup>87</sup> That is, Mossack Fonseca sold its secrecy offerings through intermediaries such as its New York-based corporate formation agent franchise, its law office subsidiary in Nevada, and hundreds of other lawyers, accountants, and bankers. For example, Putin’s personal bank, Bank Rossiya, interacted with Mossack Fonseca through a Swiss law firm known for using code names to shield the identities of influential Russian customers it brought to the Panamanians. These intermediaries had the customer relationship and often were not subject to their own effective due diligence requirements (except for bankers). Thus, in addition to providing Mossack Fonseca with more customers, enablers also offered a layer of secrecy and indemnification, because the Panamanians could tell any authorities who came knocking that they simply presumed the enablers were doing the diligence (although Mossack Fonseca made no effort to ensure they

were actually doing so, and the enablers often lacked an effective regulatory supervisor). In fact, Mossack Fonseca and other enablers rarely asked who the ultimate beneficial owner was, and if they did find out that it was an unsavory character, rather than turn down the client, they would just charge higher fees to compensate for the risk. Moreover, they did not alert the authorities to suspicious activity, because they were usually not legally required to do so (especially the U.S.-based enablers), and their business was driven by their reputation for tight lips.

***“ Beneficial ownership reform is only half the battle, and now it is time to prioritize regulating enablers.”***

The policy implication of these offshore leaks and international watchdog assessments is that beneficial ownership reform is only half the battle, and now it is time to prioritize regulating enablers. This was the key point of a recent letter to Treasury Secretary Janet Yellen from Representative Tom Malinowski and Senator Sheldon Whitehouse, who argued, “With beneficial ownership reform on its way, the top policy priority in the fight against dirty money should now become the expansion of AML obligations to cover financial facilitators and professional service providers that can enable corruption.”<sup>88</sup> Similarly, Gary Kalman, who runs Transparency International’s U.S. office and was a key advocate for beneficial ownership reform, argues, “The next big step is gatekeepers ... the lawyers, accountants, real estate agents, private equity, etc., who work to bring in money to the U.S. financial system ... The Treasury Department has the authority to regulate some of those actors, [starting with investment advisors and title insurers].”<sup>89</sup>

The mounting focus on regulating enablers was also reflected in a major report published in February 2021 by the Organization for Economic Cooperation and Development (OECD).<sup>90</sup> The OECD defines “professional enablers” as “skilled professionals who use their knowledge for facilitating the commission of tax and economic crimes,” including lawyers, accountants, financial advisors, corporate formation agents, notaries, and other professionals who help engineer the legal and financial structures, cross-border elements, or methods to avoid detection that are part of complex financial crimes.<sup>91</sup> The OECD differentiates between enablers (who “actively promote, market, and facilitate the commission of crimes by their clients”) and the far greater number of

professionals who obey the law and provide important services.<sup>92</sup> Enablers are the bad apples who “undermine not only the rule of law, but their own profession, public confidence in the legal and financial system, as well as the level playing field between compliant and non-compliant” businesses and people.<sup>93</sup>

## Warnings from Europe, forays against the United States

To see an ominous snapshot of the dangers that lie ahead for democracy and national security if the United States fails to adequately regulate and supervise enablers, consider the struggles of European countries that are at a more advanced stage of subversion by Russian malign influence. Some of these enablers enjoy the same unregulated status of DNFBPs in the United States, but more commonly they face AML obligations that are on the books but not enforced well due to U.K. and EU supervisory limitations.

The one Western political and financial center that the Kremlin and its proxies have arguably expended the most resources infiltrating since the end of the Cold War has been London, according to an assessment made by the U.K. parliament with evidence submitted by former intelligence officers.<sup>94</sup> A major U.K. parliamentary report finds, “It is not just the oligarchs either: the arrival of Russian money resulted in a growth industry of enablers—individuals and organizations who manage and lobby for the Russian elite in the United Kingdom. Lawyers, accountants, estate agents and PR professionals have played a role, wittingly or unwittingly, in the extension of Russian influence which is often linked to promoting the nefarious interests of the Russian state.”<sup>95</sup> London-based investor Bill Browder warns, “Russian state interests, working in conjunction with and through criminal private interests, set up a ‘buffer’ of Westerners who become de facto Russian state agents, many unwittingly, but others with a reason to know exactly what they are doing and for whom. As a result, U.K. actors have to deal with Russian criminal interests masked as state interests, and Russian state interests masked by their Western agents.”<sup>96</sup> Fiona Hill agrees, “It is remarkably easy for the Russian state to ... buy up London legal firms [and] turn London and all kinds of people who work in it into one of their instruments... There’s been billions of pounds brought into London by Russian oligarchs working with the Kremlin in real estate, law firms, solicitors, barristers, you name it, and

massive investments across the board and contributions to people’s campaigns through all kinds of proxies.”<sup>97</sup> The parliamentary report concludes that over the past 15 years British authorities “took their eye off the ball [and] the U.K. now faces a threat from Russia within its own borders.”<sup>98</sup> Worse, the influential business and investment hooks that the Russian elite has sunk into London are so deep as to be irreversible, so “this cannot be untangled and the priority now must be to mitigate the risk.”<sup>99</sup>

In the European Union, similarly severe entrenchment of malign Russian economic influence was described in a report called *The Kremlin Playbook 2: The Enablers*, by the Center for Strategic and International Studies.<sup>100</sup> It documents how companies owned or controlled by Putin’s cronies deepen business ties with some of the largest corporations in Austria, Italy, and the Netherlands, positioning Moscow to cultivate proximity to politicians and receive tacit support and protection from those governments. Kremlin-connected interests further advance economic and political penetration through organized crime and public corruption, sometimes developing into state capture.<sup>101</sup> The report shows how every step in the process is covertly funded through the financial centers of Vienna, Milan, and Amsterdam, taking advantage of highly developed and secretive corporate services sectors of lawyers, accountants, incorporation agents, real estate agents, and notaries.<sup>102</sup>

While the Kremlin innovated its tactics of malign influence in Europe, Russia has also used professional enablers to target U.S. democracy. In the 2020 election cycle, the U.S. intelligence community assessed that Moscow’s strategy evolved to rely more on proxies of Russian intelligence engaging with “U.S. media organizations, U.S. officials, and prominent U.S. individuals, including some close to former President Trump and his administration.”<sup>103</sup> One such individual is Rudy Giuliani, who appears to use his status as Trump’s personal lawyer to evade regulatory disclosure requirements.<sup>104</sup> And the operation to dig up dirt in Ukraine on then-candidate Joe Biden—the subject of Trump’s first impeachment—appears to have been potentially funded through a combination of a real estate transaction (a \$3 million reverse mortgage financed by the parents of Yandex CFO Greg Abovsky), wire transfers from a Russian owner of an investment fund (Andrey Muraviev, Parus Capital), and at least three payments handled by lawyers (\$200,000 through the diGenova & Toensing



law firm, \$1,000,000 from a Russian bank account controlled by oligarch Dmytro Firtash's Swiss lawyer, and \$500,000 paid to Giuliani by a Long Island lawyer).<sup>105</sup>

***“ Kleptocrats employ talented U.S. professionals. But they do not govern those enablers. The U.S. government does. And it has the tools to fight back.”***

And while Russia pioneered disinformation operations with hidden funding as a geopolitical weapon of state power, in recent years professional enablers such as covert PR agencies have begun offering malign influence as a commercial business.<sup>106</sup> If this rapidly growing industry remains unregulated, U.S. elections risk devolving into the spectacles now on display in the Philippines and elsewhere, whereby each side secretly hires underground operations of trolls to wage information warfare against each other to the detriment of democracy.<sup>107</sup> And with this newest threat vector, the risk of purely domestic actors taking up these weapons against their fellow Americans is not at all theoretical, as demonstrated by a homegrown troll farm secretly funded through an Arizona PR firm.<sup>108</sup>

## **Show me the money**

Funded by the practically unlimited resources of kleptocracy, America's top adversaries employ some of the most talented professionals in the United States to keep their dirty money hidden and available for spending on malign activity. But they do not govern those enablers. The U.S. government does. And it has the tools to fight back.

Weaponized corruption enabled by U.S. professionals poses a wide-ranging challenge that calls for a whole-of-government response.<sup>109</sup> That broader mission extends beyond the scope of this report, involving questions like whether Congress should make enablers liable for their clients' crimes, how intelligence and national security agencies should track influence operations while law enforcement investigates and prosecutes enablers, which regulatory agencies should supervise enablers, or when Treasury should sanction malign foreign actors. Instead, this report is about the narrow but crucial issue of getting the receipts: making enablers figure out who their ultimate customers are and alert

Treasury to any suspicious financial flows they facilitate.

The good news is that Treasury already has a highly developed legal framework—as well as well-established, if underfunded, administrative infrastructure—for collecting suspicious activity reports (SARs) and other information from financial institutions.<sup>110</sup>

Under the Bank Secrecy Act (BSA), U.S. financial institutions must establish AML compliance programs that are reasonably designed to avoid facilitating financial crime, including a system of internal controls, a designated compliance officer, an employee training program, and audits to test compliance. The BSA also requires keeping financial records and reporting suspicious activity to FinCEN, which is the U.S. Treasury bureau that administers the BSA. Under FinCEN's Customer Due Diligence (CDD) rule, most financial institutions also need to verify the identity of ultimate beneficial owners (the human beings who enjoy the economic and control benefits of ownership) behind their legal entity customers. Collecting all this information and sharing it with law enforcement and national security agencies helps counter money laundering and weaponized corruption by supporting investigations, informing policymaking, and deterring bad activity.

While the BSA was first enacted in 1970, only over the past two decades have U.S. banks and other regulated financial institutions gotten particularly good at spotting dirty money, prodded by BSA amendments in the Patriot Act and a series of hefty enforcement actions that followed the 2008 financial crisis. A natural consequence of improved compliance by banks and other regulated financial institutions has been bad actors increasingly relying upon non-bank enablers who have access to useful information but can shield that information from banks that have AML and due diligence obligations. As such, non-bank enablers must now be regulated to help law enforcement and national security agencies detect bad activity.

The BSA defines a financial institution as any of 25 types of sectors enumerated in the statute, starting with banks but also including credit unions, thrifts, broker dealers, credit card networks, insurance companies, casinos, and others.<sup>111</sup> Importantly, however, the U.S. executive and legislative branches also each have their own mechanism to impose BSA obligations on additional types of enablers not explicitly named in the statute.

Starting with the executive branch, at the end of the list of financial institutions identified in the BSA, there are two additional catch-all authorities—the 26th and 27th items in the list—allowing Treasury to determine that additional types of businesses shall be included in the definition of a financial institution. Specifically, the 26th prong covers “any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which [one of the 25 types of financial institutions] is authorized to engage.”<sup>112</sup> The 27th covers “any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.”<sup>113</sup> In other words, Treasury can decide that if it looks like a duck, swims like a duck, and quacks like a duck, then it shall be regulated as a duck.

And of course, Congress can amend the BSA to add new types of entities to the statutory list of financial institutions. In fact, the latest National Defense Authorization Act (NDAA) expanded the list from 24 to 25 by adding antiquities dealers.<sup>114</sup> A legislative proposal in 2018 would have added art dealers too, but in 2019 that was downgraded to a study that Treasury must conduct about whether arts markets should be subject to regulation.<sup>115</sup>

A key recommendation of this report is that Congress should enact the most sweeping expansion of coverage in the history of the BSA, including ten unregulated sectors: investment advisors, art dealers, lawyers, accountants, company formation agents, covert public relations professionals, title insurers, real estate professionals, luxury vehicle dealers, and some additional money services businesses. The last four are already listed in the BSA, so Congress just needs to make Treasury repeal its regulatory exemptions for certain segments of those sectors. As with the recent coverage of antiquities dealers, the legislation should give FinCEN a period of time to issue regulations prescribing exactly who is covered and what their new obligations are. The deadline is one year for antiquities, but it would take a couple years to regulate ten sectors, and even that timeline could only be met with substantially greater resources.

Getting legislation like that through Congress will require replaying the political strategy that got beneficial ownership passed after it had been stalled for nearly two decades.<sup>116</sup> That starts by building an extremely broad

political coalition, including several groups with substantial influence over Republicans, like banks, big and small business, law enforcement (FBI, district attorneys, police, sheriffs, etc.), and national security experts.<sup>117</sup> A strong launchpad from which to focus on issues of importance to those groups is Biden’s elevation of corruption—including professional enablers—as a threat to national security.<sup>118</sup> That context will be key to explaining that the billions of dollars spent on AML compliance are both a valuable investment compared to the trillions spent on U.S. military power and a necessary cost of defending against the trillions in dangerous dark money pools controlled by hostile kleptocracies. In addition to publicly framing the justification, the White House and Treasury leadership should actively support legislation by issuing statements of administration policy and privately pressuring key lawmakers and supportive factions within special interest groups to carry water for the effort.<sup>119</sup> Building the coalition will also require an actively managed advocacy campaign from civil society groups like the FACT Coalition and Transparency International.<sup>120</sup>

The other top priority for Congress should be appropriating enough budgetary resources for FinCEN to carry out this mammoth regulatory undertaking. FinCEN was already strapped for funding before this year, having suffered a stagnant budget for years while the volume of SAR reporting has exploded and financial secrecy has become a top national security vulnerability. In addition to making FinCEN build a registry to warehouse beneficial ownership data for every company in America, the recent NDAA imposed some 50 other mandates on FinCEN, such as the regulation of antiquities and study of art markets. Unfortunately, Congress did not give FinCEN any additional funding for these hefty projects, so the bureau has had to put any optional work on hold.

Fortunately, in the wake of the FinCEN Files, policymakers in control of both ends of Pennsylvania Avenue now clearly understand the national security imperative of expanding FinCEN’s budget.<sup>121</sup> In its fiscal year 2022 appropriations, the House passed the 50 percent increase for FinCEN—from \$137 million to \$190 million—requested by the Biden administration, which must still get through the Senate.<sup>122</sup>

If FinCEN wants to give Congress a sense of what it could do with this additional funding, regulation of

enablers is the perfect issue, because lawmakers are already calling for action, it addresses national security threats, and it could resonate with politicians on both ends of the spectrum focused on corruption (“drain the swamp,” “rigged system,” etc.).<sup>123</sup>

However, FinCEN should make clear that getting this done comprehensively and within a few years—rather than decades of work, and even that only covering segments of markets, like title insurers but not realtors and lawyers—will require substantially higher budgetary funding and even stronger backing from Congress. The best way to spell that out is to publish a national strategy for regulating enablers, explaining how the regulatory rollout should be strategically sequenced by identifying the sectors FinCEN will prioritize first and the sectors that could be covered in the future with support from Congress.

## Strategic sequencing

Assuming Congress significantly increases FinCEN’s budget for fiscal year 2022, the bureau should plan to issue regulations extending AML obligations to six or seven new sectors by January 19, 2025. While that would equate to an average pace of one sector about every six months, some of the regulations should come in stages toward either the beginning of the period (like investment advisors, because the rule was already drafted during the Obama administration) or toward the end of Biden’s first term (like lawyers, which would not succumb to regulation without a protracted political and legal fight, or PR professionals, which would require innovating a new regulatory regime not yet developed by the FATF or other countries).

This report is organized around each of these sectors, sequenced in a recommended order for FinCEN to prioritize issuing related regulations. The prioritization order is driven by five strategic considerations:

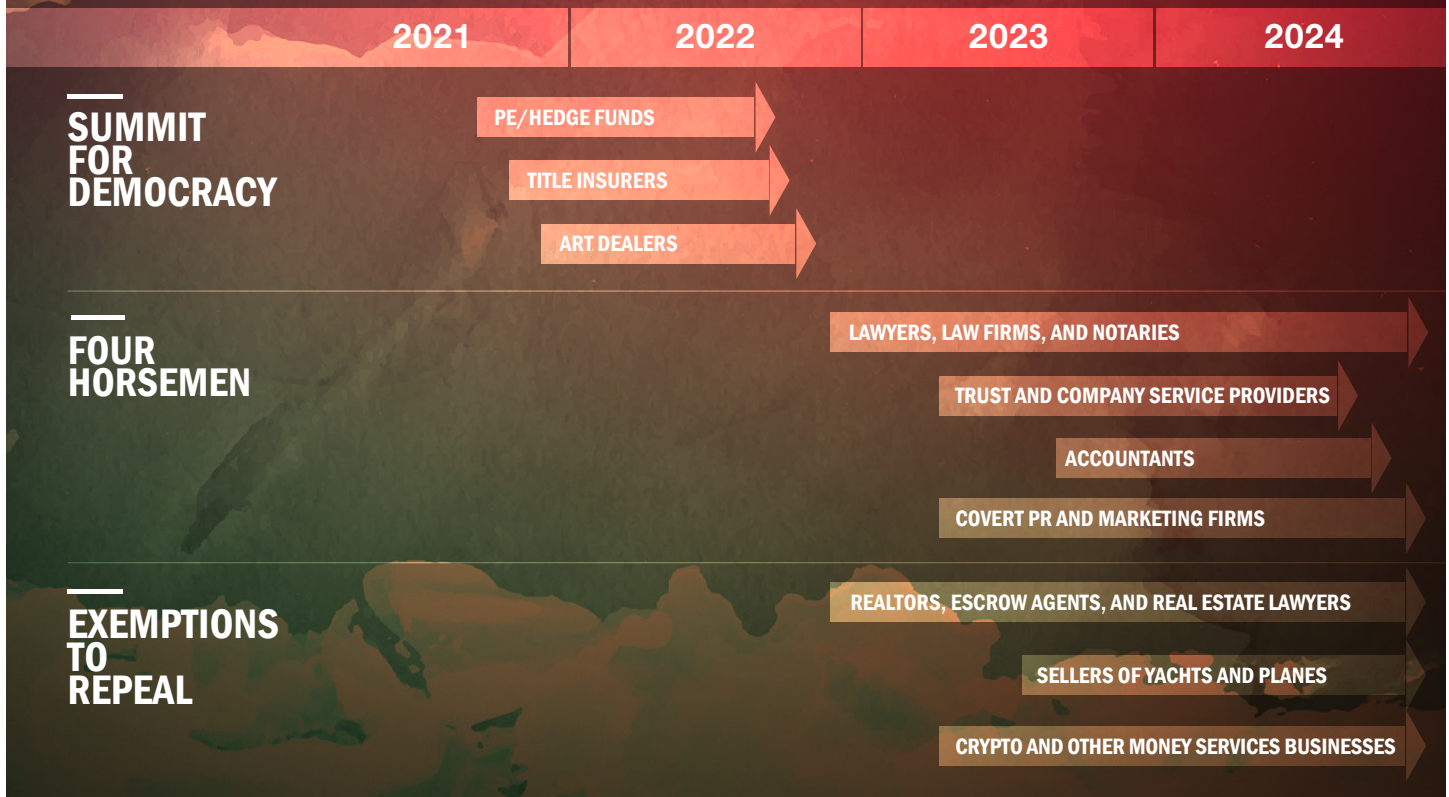
- ***How severely does a given sector threaten U.S. national security?*** The starting point in the analysis of prioritization should be how much risk is posed by a given type of enabler. If this was the only factor, the single highest priority would be lawyers, because they are the most useful enablers of global oligarchs and kleptocrats.<sup>124</sup> Coming in right behind lawyers on the list of importance would be real estate agents, accountants, company formation agents, and in-

vestment advisors, which is why the lack of U.S. supervision and regulation of these professions is prominently criticized by the FATF.<sup>125</sup>

- ***Are there any relevant statutory deadlines?*** A more practical timing consideration is whether FinCEN is subject to a statutory deadline for mandated analytic work that needs to be completed in the months ahead and could potentially be transferrable to a regulatory process. The main example here involves the art market, given that the NDAA-mandated study is due on December 27, 2021.<sup>126</sup>
- ***Have the regulations already been drafted?*** Rules that have previously been drafted—like the 2015 proposal for investment advisors, which just needs to be updated and finalized—would be a lighter lift for FinCEN.<sup>127</sup> The limited amount of work remaining for completion is a practical factor in favor of moving ahead sooner.
- ***How much experience do FinCEN and the sector have with each other?*** Within some industries, like real estate, both FinCEN and the relevant private sector professionals have recent experience with regulation in certain segments (like title insurers under the geographic targeting orders program) than in other segments (like real estate agents). The extension of more permanent and comprehensive rules is more feasible for sectors with greater regulatory experience.
- ***How much legal and political pushback would regulation unleash?*** Enablers tend to be well organized in powerful interest groups, the most prominent example being the American Bar Association, which may well spend years suing the government and leaning on powerful allies in Congress to fight any regulation of lawyers. Treasury would be on much stronger ground if it waits to regulate sectors like that until after it has overwhelming congressional support. This factor could clearly change over time, if legislation names new sectors in the BSA or if public pressure escalates (such as accounting scandals on the scale of Enron and WorldCom, which took down Arthur Andersen and motivated the Sarbanes-Oxley Act).



# Recommended Timetable to Regulate Enablers in Three Stages



Weighing these five considerations, this report recommends that FinCEN strategically sequence its regulatory rollout in roughly three stages (see exhibit).

The first stage should come quickly, making preliminary announcements during the first Summit for Democracy, which Biden will host virtually on December 9 and 10.<sup>128</sup> At a summit side event dedicated to financial transparency, Treasury should announce that in the months ahead it will initiate regulatory rulemakings to extend full AML duties to investment advisors and the art market, plus a rule for title insurers making their obligations under geographic targeting orders permanent and more comprehensive. Ambitious plans to regulate enablers should also be prominently laid out in the presidential study due on December 20, 2021, which is 200 days after the issuance of NSSM-1.<sup>129</sup> Assuming the fiscal year 2022 appropriations are enacted by then and include substantially greater funding for FinCEN, Treasury should telegraph a plan to deploy these resources toward a major campaign to regulate professional enablers over the next couple years, pursuant to Biden’s anti-corruption strategy.

At the second Summit for Democracy in late 2022, the Biden administration should announce it will be regulating another three or four enablers, although the selection of which sectors to cover between then and the end of the administration would depend significantly upon support from Congress. Ideally, in addition to increasing FinCEN’s budget, lawmakers will add to the BSA all ten enabler professions discussed in this report, or at least show strong political support for regulating them (because Treasury already has statutory authority to designate them highly useful for criminal, tax, or regulatory matters). In that case, FinCEN’s second stage should cover the four horsemen of non-bank dirty money: lawyers, accountants, company formation agents, and secretive PR agents. The first three would bring the United States into compliance with FATF standards, while the fourth (PR) would address the newly emerged threat of disinformation. All of that would represent a compelling legacy for Biden to have brought today’s most harmful professional enablers to heel within his four-year term.

If Congress fails to demonstrate strong support for regulating lawyers, accountants, formation agents, and PR

agents—and if the prospects for legislative action look dim after the 2022 midterm elections—FinCEN should dedicate a much smaller allocation of resources to each of those sectors. That might just involve one or two staffers to coordinate efforts around each of the four horsemen, establishing long-term projects to lay the groundwork for future action when a political window opens by continually monitoring bad activity, liaising with Congress and interest groups, and working within the U.S. government to plan the contours of eventual rulemakings. In the meantime, FinCEN should focus more resources on sectors already named in the BSA. Regulatory exemptions should be repealed—and new implementing regulations promulgated—for real estate professionals and luxury vehicle sellers. Money services businesses are generally already regulated, but some subsectors could use updates related to new technologies (cryptocurrencies) or traditional monetary infrastructure (third-party payment processors, check consolidation, and cash vault service providers).

# Stage I: Summit for Democracy

FinCEN should have six deliverables for Biden's December 2021 Summit for Democracy. The first step is to publicly announce a big policy reform campaign, while the remaining five steps involve policy changes that would credibly demonstrate that the United States is serious about fighting corruption by rooting out dirty money from its financial system.

1. **Mission launch:** Through a public speech or official summit side event dedicated to financial transparency, Treasury leadership should announce that it is initiating a national campaign to regulate professional enablers. In that announcement, Treasury should say it is starting to implement Biden's anti-corruption strategy with the five initial policy actions listed below—beneficial ownership, antiquities dealers, investment advisors, title insurers, and art dealers—as well as the establishment of an enablers task force at FinCEN to carry out this mission. Treasury should also unveil further details through the publication of its first-ever National Corruption Risk Assessment and its next National Strategy for Combating Terrorist and Other Illicit Financing, which is statutorily due by January 31, 2022.<sup>130</sup>
2. **Shell companies:** Finalize a rule implementing regulations for a bulletproof beneficial ownership registry.<sup>131</sup> This would entail broadly scoping the entities and information covered by the beneficial ownership reporting obligations, limiting exemptions to companies that already disclose ownership, verifying information for accuracy, and ensuring timely and easy access to the database.
3. **Antiquities dealers:** Finalize a rule imposing AML obligations on persons who trade in antiquities.<sup>132</sup> In addition to advisors and consultants (the two types of intermediaries named in the statute), the rule should set a comprehensive precedent for future art market regulations by also covering custodians, galleries, auction houses, museums, and any other dealers.
4. **Private equity and hedge funds:** Repropose the 2015 rule for investment advisors—updated

to cover certain unregistered advisors, such as those managing less than \$100 million or solely advising venture capital funds, family offices, rural funds, single-state funds, and others—either by issuing a notice of proposed rulemaking or having top Treasury officials publicly announce it is coming in the months ahead.

5. **Real estate title insurers:** Introduce a new rule that would make the beneficial ownership data collection and reporting obligations currently imposed on title insurance companies through geographic targeting orders apply permanently and without any limitations around geography, value thresholds, or purpose (residential or commercial). The new rule should also cover sellers and broaden the definition of beneficial ownership.
6. **Art dealers:** Complete and release the study on the art market mandated by the latest NDAA.<sup>133</sup> The study should conclude that art dealers ought to be subject to AML regulations and Treasury should announce that it will be initiating a rulemaking process to that effect.

Four of these deliverables—national strategy, beneficial ownership, antiquities rule, and art market study—are statutorily mandated to be completed in December or January, so Treasury should target completion in time for the December 9–10 summit. Those statutory mandates (especially beneficial ownership) are currently consuming all of FinCEN's excess capacity, so the other two recommended regulatory expansions—investment advisors and title insurers—should be preliminarily announced at the December 2021 summit, with formal notices of proposed rulemakings to come in 2022.

The rationale and policy approach for the latter three deliverables—each respectively regulating one important type of enabler—are detailed in the first three numbered sections of this report.

## 1. Private equity and hedge funds

The strongest advocate for regulating investment advisors sits within the U.S. government. It is the Federal Bureau of Investigation.



In 2019, a leaked FBI intelligence bulletin raised the alarm that “hedge funds and private equity firms...have been used to facilitate transactions in support of fraud, transnational organized crime, and sanctions evasion” (see exhibit).<sup>134</sup>

The bulletin cited four cases.<sup>135</sup> First, a Florida lawyer formed fake private equity funds to launder the proceeds of a Bulgarian cryptocurrency scam, pretending \$400 million was a legitimate investment from “wealthy European families,” then layering it through several secrecy jurisdictions before remitting the money back to Bulgaria, disguised as investments made by his fake private equity funds.<sup>136</sup> Second, an unnamed New York and London-based hedge fund proposed investing in private funds to buy and sell prohibited items from sanctioned countries.<sup>137</sup> Third, a Mexican drug cartel recruited people in Los Angeles to open hedge fund accounts at private banks to launder \$1 million per week.<sup>138</sup> Fourth, a New York-based private equity fund received more than \$100 million in wire transfers from a company in Russia associated with organized crime.<sup>139</sup>

The FBI also expects an increase in illicit activity in the \$84 trillion market for managed investments.<sup>140</sup> The

bulletin warned, “Criminally complicit investment fund managers likely will expand their money laundering operations as private placement opportunities increase, resulting in continued infiltration of the licit global financial system.”<sup>141</sup>

A decade ago, the FBI raised a separate alarm when it noticed a pattern of Russian government-funded venture capital funds opening U.S. operations in Boston and Silicon Valley, where they sought joint ventures with U.S. technology companies and academic research facilities.<sup>142</sup> FBI agents and analysts investigated the activity and determined that the investment funds were linked to a highly corrupt Russian government-financed science park in Moscow, which aimed to steal U.S. military technologies and secretly transmit them to the Russian military through its R&D collaborations with Russian defense contractors.<sup>143</sup> In recent years, private investments funds have been linked to controversial Russian oligarchs such as Viktor Vekselberg, Mikhail Fridman, and Vladimir Potanin.<sup>144</sup> And aside from Russia, concerns about Chinese investment activity meant to gain access to sensitive technologies has motivated the recent seven-fold expansion in the U.S. government apparatus to screen foreign investments.<sup>145</sup>

## FBI Intel Bulletin Raises the Alarm about Private Investment Funds

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FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE BULLETIN



(U) Threat Actors Likely Use Private Investment Funds To Launder Money, Circumventing Regulatory Tripwires

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(U//LES) The FBI assesses threat actors<sup>a</sup> likely<sup>b</sup> use the private placement of funds,<sup>c</sup> including investments offered by hedge funds and private equity firms,<sup>d</sup> to launder money, circumventing traditional anti-money laundering (AML) programs. This assessment is made with high confidence,<sup>e</sup> based on open source reporting from the US Department of Justice (DOJ), human sources with direct access and varied levels of corroboration, and a sensitive financial source with direct access or firsthand knowledge of the financial industry.

(U//LES) The FBI assumes AML programs are not adequately designed to monitor and detect threat actors' use of private investment funds to launder money. Additionally, the FBI assumes threat actors exploit this vulnerability to integrate illicit proceeds into the licit global financial system. The FBI assesses, in the long term, criminally complicit investment fund managers likely will expand their money laundering operations as private placement opportunities increase, resulting in continued infiltration of the licit global financial system. If greater regulatory scrutiny compelled private investment funds to identify and disclose to financial institutions the underlying beneficial owners of investments, this would reduce the appeal of these investment firms to threat actors, at which time the FBI will re-visit this assessment.

Beyond these traditional threats involving illicit finance and military technologies, the FBI bulletin in 2020 expanded the threat context covered by its past analyses to warn that private investment funds are increasingly used to hide the ownership of individuals “beholden to the government of a foreign adversary.”<sup>146</sup> *Covert Foreign Money* catalogues four such cases of beholden individuals facilitating Russian malign influence operations to target democratic processes.<sup>147</sup> First, the U.K. Tory party received a £400,000 donation from Gérard Lopez, the chairman of a private investment fund that had recently signed infrastructure deals worth billions with Russia and whose managing partner is understood to be close to Putin.<sup>148</sup> Second, the British donor who bankrolled the Leave.EU Brexit campaign was offered highly profitable investments by Russian oligarchs and state-owned entities secretly introduced to him by the Russian ambassador in London ahead of the Brexit referendum, and while there is no evidence the donor invested in the sweetheart deals, his business partner did so through his private investment company just three weeks after the referendum.<sup>149</sup> Third, several cases of Russian malign finance—from financing separatists in eastern Ukraine to funneling €11 million to Marine Le Pen’s party—were arranged by Konstantin Malofeev, the Kremlin-connected founder of a private equity fund that has never disclosed the identities of its investors.<sup>150</sup> Fourth, dispatched by Putin to get in touch with Trump’s inner circle immediately after the 2016 election, the head of Russia’s sovereign wealth fund developed influence with Jared Kushner by offering his friend, who runs a New York hedge fund, the possibility of a lucrative joint venture (the deal fell through after the Russians got what they wanted, which was to send Steve Bannon and Rex Tillerson their proposal for reconciliation between the United States and Russia).<sup>151</sup>

Kushner is currently planning to launch a private investment firm that would be headquartered in Miami and have an Israel-based office to pursue deals in the Persian Gulf and elsewhere.<sup>152</sup> The identity of Kushner’s potential investors remains a secret, but one former senior national security official warns that the fund could become a pathway for Saudi and Emirati money to enter U.S. politics.<sup>153</sup> It would not be the first malign finance operation for Saudi Arabia and the United Arab Emirates. These two Gulf countries invested \$1.5 billion in the private equity fund founded by Tom Barrack (one of Trump’s biggest fundraisers), funneling vast profits to Barrack when he was allegedly working as a covert agent

for the ruler of the U.A.E., using his access to Trump to secretly advance the U.A.E.’s foreign policy goals.<sup>154</sup>

In its leaked bulletin, the FBI concluded, “AML programs are not adequately designed to monitor and detect threat actors’ use of private investment funds to launder money,” and “threat actors exploit this vulnerability to integrate illicit proceeds into the licit global financial system...If greater regulatory scrutiny compelled private investment funds to identify and disclose to financial institutions the underlying beneficial owners of investments, this would reduce the appeal of these investment firms to threat actors.”<sup>155</sup>

## Recommendation

In time for the December 2021 Summit for Democracy, FinCEN should issue a notice of proposed rulemaking—or at least work with Treasury officials to stage a public announcement that it is coming over the following months—imposing full AML obligations on advisors to private investment funds.

Regulation of investment advisors should be at the very top of FinCEN’s priority list, for a few reasons, including two having to do with the beneficial ownership rules that are due at the end of 2021. First, the threat activity that the FBI is focused on comes “from entities registered in nations that maintain laws conducive to masking underlying beneficial owners”—that is, from foreign secrecy jurisdictions that will remain problematic even after U.S. companies require disclosure of beneficial ownership information to FinCEN.<sup>156</sup> Second, the most dangerous exemption in the beneficial ownership law is for pooled investment vehicles, and the best way for FinCEN to tighten up that vulnerability is to limit it to vehicles managed by registered investment advisors. Combining that limitation in the beneficial ownership registry rules with a new rule making investment advisors establish AML programs would effectively close the loophole.

Two other factors make the private investment management industry a low-hanging fruit for AML regulation. First, as described above, the market managed by registered investment advisors is massive (four times bigger than the commercial banking sector) with ample evidence of malign financial activity.<sup>157</sup> It is reasonable to assume that the cases noted above are only the tip of the iceberg, given that law enforcement cannot automatically see the money trail (these cases are only known

# Rule Proposed in 2015 Would Cover Regulated Investment Advisors



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## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Chapter X

RIN 1506-AB10

#### Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisors

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Financial Crimes Enforcement Network (“FinCEN”), a bureau of the Department of the Treasury (“Treasury”), is issuing this notice of proposed rulemaking to prescribe minimum standards for anti-money laundering programs (“AML”) to be established by certain investment

advisers and to require such investment advisers to report suspicious activity to FinCEN pursuant to the Bank Secrecy Act (“BSA”). FinCEN is taking this action to regulate investment advisers that may be at risk for attempts by money launderers or terrorist financiers seeking access to the U.S. financial system through a financial institution type not required to maintain AML programs or file suspicious activity reports (“SARs”). The investment advisers FinCEN proposes to cover by these rules are those registered or required to be registered with the U.S. Securities and Exchange Commission (“SEC”). FinCEN is also proposing to include investment advisers in the general definition of “financial institution” in rules implementing the BSA. Doing so would subject investment advisers to the BSA requirements generally applicable to financial institutions, including, for example, the requirements to file

Currency Transaction Reports (“CTRs”) and to keep records relating to the transmittal of funds. Finally, FinCEN is proposing to delegate its authority to examine investment advisers for compliance with these requirements to the SEC. In this rulemaking, FinCEN is not proposing a customer identification program requirement or including within the AML program requirements provisions recently proposed with respect to AML program requirements for other financial institutions. FinCEN anticipates addressing both of these issues with respect to investment advisers, as well as as other issues, such as the potential application of regulatory requirements consistent with Sections 311, 312, 313 and 319(b) of the USA PATRIOT Act, in subsequent rulemakings, with the issue of customer identification program requirements anticipated to be addressed via a joint rulemaking effort with the SEC.

because of human tips and investigative journalism).<sup>158</sup> Second, FinCEN already spent years preparing regulations, having proposed a draft rule in 2015 that was put on ice by the Trump administration in 2017.<sup>159</sup>

FinCEN’s 2015 proposal would include SEC-registered investment advisers in the definition of a “financial institution,” making them establish AML programs, report suspicious activity, and comply with other BSA record-keeping and reporting requirements (see exhibit).<sup>160</sup> The SEC defines an investment advisor as any person (individual or firm) compensated for the business of advising others regarding securities.<sup>161</sup> So, just like banks must go looking for dirty money flowing through customer accounts, this rule would make investment partnerships, management companies, and the professionals they employ do the same for private equity, hedge, and other private investment funds. While a private investment fund is technically organized as just another client of an advisor, most fund families are advised by dedicated firms employing portfolio managers and analysts serving only that family of funds, positioning advisors to be intimately familiar with the funds’ sources and uses of money. This would be the first time FinCEN

invokes its authority to determine that a type of business engages in activities similar to those of BSA-listed financial institutions. It is a solid approach, and FinCEN should move toward finalizing the rule, but only after expanding its scope in a few areas (see exhibit).

The biggest problem with FinCEN’s draft rule is that it only applies to advisors who are required to register with the SEC, a narrow scope that the FBI suggests could exclude some threat actors.<sup>162</sup> The biggest loophole is that it would exempt advisors managing less than \$100 million, because they are statutorily prohibited from registering with the SEC, as the law instead directs them to register with state authorities (to avoid overlapping rules and unclear regulatory jurisdiction at the federal and state levels).<sup>163</sup> In addition to the \$100 million threshold for all investment advisors, the law exempts advisors who work solely for private funds if they manage less than \$150 million.<sup>164</sup> While these \$100 million and \$150 million thresholds may be the right levels for purposes of the SEC’s job to protect investors and maintain orderly markets, they are far too high to meet national security needs, such as detecting malign finance.



Meddling in elections is relatively inexpensive. *Covert Foreign Money* surveys 115 cases of malign finance perpetrated by authoritarian regimes and finds that the average amount of money involved was only \$1 million.<sup>165</sup> Even operations to influence major national elections cost considerably less than \$100 million, such as the \$3.5 million U.A.E. operatives spent trying to buy influence with the 2016 campaign of Hillary Clinton, the €11 million Marine Le Pen's party borrowed from Russian banks in 2014, or the roughly €16 million Montenegrin prosecutors believe Oleg Deripaska and another Russian oligarch spent bankrolling anti-NATO parties in 2016.<sup>166</sup> In fact, there is not a single known case of malign finance involving \$100 million or more.

Thus, FinCEN should update its draft rule to also cover investment advisors who are not required to register with the SEC as they manage less than \$100 million (or \$150 million of solely private funds).<sup>167</sup> This will complicate FinCEN's work of administering the rule, because the bureau will have to collaborate with 51 supervisors—whose levels of capability will be varied—instead of just one (the SEC) for purposes of ensuring compliance and issuing joint rules. However, this is a crucial gap, so it provides another reason why Congress

needs to dramatically increase FinCEN's budget (or for this issue, it could alternatively amend the Investment Advisers Act of 1940 to reduce the \$100 million and \$150 million SEC registration thresholds).

There are several other types of investment advisors that the Investment Advisers Act exempts from the registration requirement—usually because their clients are limited to a selection of investors that make them less relevant for the SEC's mandate of nationwide investor protection—but could risk being used as fronts for weaponized corruption. These include investment advisors who solely advise venture capital funds, family offices, rural business investment companies, or funds located within a single state, as well as advisors who are based overseas and advise fewer than 15 U.S. clients.<sup>168</sup> FinCEN should update its draft rule to also extend AML obligations to these types of unregistered investment advisors.

Finally, the 2015 draft rule did *not* propose including know your customer (KYC) and customer due diligence (CDD) duties within the AML program requirements for investment advisors.<sup>169</sup> FinCEN said it anticipates addressing those and other issues through subsequent

## Recommended Expansions to FinCEN's 2015 Draft Rule for Investment Advisors

- Cover investment advisors who are not required to register with the SEC because they manage less than \$100 million
- Cover investment advisors who are unregistered because they solely advise clients that are one of the following:
  - Venture capital funds
  - Family offices
  - Rural business investment companies
  - Funds located within a single state
  - Private funds with less than \$150 million
- Cover investment advisors who are unregistered because they are based overseas and advise fewer than 15 U.S. clients
- Include KYC and CDD duties within the AML program requirements for investment advisors

rulemakings, some issued jointly with the SEC.<sup>170</sup> That made sense in 2015, because getting investment advisors ready in time for finalization of the CDD rule in 2016 would have required rushing too many moving parts. But now that the CDD rule is fully operable, FinCEN should expand its draft rule for investment advisors to include full KYC, CDD, and SAR filing requirements at the inception of their AML programs. In addition to being a stronger policy, doing it all at once would offer more certainty and simplicity to investment advisors as they develop their AML programs, rather than having to come back and modify their policies, controls, procedures, trainings, audits, and other program features at some unknown date in the future. All of this will need to be ironed out together with industry groups like SIFMA, the American Investment Council, and the Managed Funds Association.

## 2. Real estate title insurers

Luxury properties in Western cities are the easiest place in the world to stash massive amounts of dirty money.<sup>171</sup> Real estate is by far the biggest asset market in the world, larger than all the stock and bond markets combined.<sup>172</sup> In the United States, some 20,000 homes are sold daily with no regulatory requirement for real estate professionals to identify the buyer or ask where their money comes from.<sup>173</sup> That scale and secrecy combined with valuations that are high and subjective make property markets a money launderer's paradise.

Real estate is the one sector covered in this report that is so big and diverse—with macroeconomic implications, powerful political allies, and many subsectors of professionals with varying degrees of sophistication—that it is split into two sections. Section eight will cover real estate agents, escrow agents, real estate lawyers, and other professionals, some of whom who are so widespread, influential, and unaccustomed to federal rules that regulating them—which must be done—will require substantial preparation and handholding. This section focuses on the lowest hanging fruit, which involves expanding a crucial tool that FinCEN has developed over the past five years called geographic targeting orders (GTOs), imposing collection and reporting obligations on title insurers to help law enforcement see who is buying high-end properties in big cities with all cash (i.e., circumventing regulated bankers by not taking out a mortgage). Treasury has repeatedly found that 30 to 35 percent of these buyers or their representatives are suspicious.<sup>174</sup>

The most salient illustration of the opacity of the U.S. real estate market and how easily anonymous ownership could potentially be exploited to funnel covert foreign money to U.S. politicians involves the property empire of the Trump Organization. The possibility that proxies of the Kremlin may have purposefully enriched Trump through secret real estate transactions was subjected to more scrutiny by investigative reporters than perhaps any potential business entanglement in modern history. The strongest evidence of the need for more transparency in U.S. real estate is not proof of any corrupt or malign activity—which has *not* been established—but rather it is the fact that this half-decade of unprecedentedly intensive public examination has failed to reach any definitive conclusions. Trump could be bankrolled by Putin, or he could just be willing to take any and all seemingly dirty money without asking any questions (his right-hand man from 1990 to 2002 said, “Donald doesn’t do due diligence”).<sup>175</sup> It is the inability to determine the truth that presents a grave and ongoing threat to national security.

When Trump Tower opened in 1983, it was one of only two buildings in Manhattan that allowed apartments to be owned in the names of anonymous companies.<sup>176</sup> So a decade later, when the FBI went hunting for a top boss of the Russian mafia in New York City, a team of agents “had to go out and really beat the bushes” for a full year before they finally found the mobster living in a luxury condo in Trump Tower (where he had a phone book with a working number for Trump’s residence).<sup>177</sup> A manhunt like that would be more efficient today, partly thanks to FinCEN’s central database of who owns what real estate in major U.S. cities, based on GTOs carried out by title insurance companies.

Since the 1980s, more than one-fifth of Trump’s U.S. condos—1,326 units—have been bought in secrecy by shell companies in all-cash transactions, according to an investigation by BuzzFeed.<sup>178</sup> In addition to the fact that deploying cash is the whole purpose of money laundering, forgoing a mortgage enables the buyer to avoid U.S. banks, which are required to investigate the source of money, ensure it is legitimate, and otherwise comply with the BSA. This vulnerability is why FinCEN launched its GTO program in 2016, requiring title insurers to discover the ultimate beneficial owners buying high-end properties without a loan and report the information to FinCEN.<sup>179</sup> While GTOs have expanded to cover a dozen U.S. cities, FinCEN started the program in just Manhattan and Miami-Dade County, noting that

one in four people who control shell companies in those two cities have engaged in possible criminal activity.<sup>180</sup> Those two cities are home to half of Trump's properties and some 83 percent of condos Trump has sold to shell companies paying with cash.<sup>181</sup>

**“ U.S. authorities do not have a systematic mechanism to find dirty money disguised as investments across the entire U.S. real estate market.”**

Most of the shell companies buying Trump properties have been based in the British Virgin Islands and Panama, followed by Delaware and many other secrecy jurisdictions.<sup>182</sup> At 77 percent, the Trump property with the highest proportion of sales to shell companies paying cash was Trump SoHo, which was developed by two ex-felons tied to Russia, opened in 2010, and has been called in court “a monument to spectacularly corrupt money laundering and tax evasion.”<sup>183</sup> Trump-branded properties in south Florida, which are popular with elite Russian investors, also have a high proportion of shell company ownership structures at more than a third (roughly 700 of the 2,000 units).<sup>184</sup>

Elsewhere in south Florida, even though global property markets were in freefall at the time in 2008, Russian oligarch Dmitry Rybolovlev bought a mansion from Trump, paying more than double what Trump paid for it four years earlier.<sup>185</sup> Trump tried to hide the fact that the buyer was Russian, but the word got out anyway.<sup>186</sup> Privately, he confided to Michael Cohen that “the real buyer of that house was Vladimir Putin.”<sup>187</sup> Rybolovlev never lived in the mansion and eventually demolished it.<sup>188</sup>

Upon seeing Trump's subservience to Putin at the Helsinki press conference, Special Counsel Robert Mueller privately commented to aides that if Trump was compromised by Putin, “it would be about money.”<sup>189</sup> But Mueller decided not to investigate potential Russian money flowing through Trump properties, because the process of compelling production of financial documents for more than 500 LLCs used over 30 to 40 years would have become public and elevated the risk of Trump firing Mueller.<sup>190</sup> As with the inability of investigative journalists to find the truth, if even the most tightly run criminal investigation in modern history could not follow the money, there is clearly too much anonymity in U.S. real estate markets.

Separate from Trump, an even bigger and less widely known case study shows how entryways for the harmful proceeds of foreign corruption are not limited to residential properties in New York City and Miami, but rather they also extend to commercial real estate all over the United States—a sector and geography not covered by GTOs.

In *American Kleptocracy*, a book slated for publication in November 2021, investigative journalist Casey Michel tells the story of Ukrainian billionaire Ihor Kolomoisky overseeing one of the greatest heists in world history, looting \$5.5 billion from a retail bank he ran before laundering his plunder into commercial real estate in the U.S. Midwest, from Cleveland to Louisville and several steel towns in between.<sup>191</sup> Kolomoisky's U.S. enablers—more on them in section eight—pretended to be investing their family's money to help rehabilitate the American Rust Belt.<sup>192</sup> That story was a complete fabrication meant to hide the truth that they were laundering stolen money on behalf of a foreign oligarch-warlord who could not be bothered to meet factory safety standards or even pay utility bills, leaving already struggling communities with empty and dilapidated buildings.<sup>193</sup>

When Kolomoisky's front men showed up interested in buying buildings in cities and towns desperate for money, local officials would meet them at the properties, surprised to see the prospective buyers just walk around the lobby or front lawn for a few minutes before asking whether they could pay millions in cash, sidestepping the vetting process legally required by corporate mortgage providers and other third parties involved in financing.<sup>194</sup> The purchases were made in the names of anonymous LLCs that were registered in Delaware and secretly controlled by Kolomoisky.<sup>195</sup> In this way, ownership was hidden through the same two-part method as buyers of Trump condos: all cash purchases made by shell companies. The difference was that schemes like Kolomoisky's would still be hidden from law enforcement if they were perpetrated today, because GTOs do not cover commercial real estate or cities like Cleveland.

For Kolomoisky, scattered commercial real estate seemed more attractive than the flashy high-end residential market in big cities, because he hoped nondescript office buildings might fall below the radar of investigators.<sup>196</sup> And the scheme did evade detection for years, and it would have gone unnoticed for longer if not for a political revolution in Ukraine that ushered



in serious regulators who were intent upon cleaning up their own financial system.<sup>197</sup> The new Ukrainian central bank governor suspected that Kolomoisky might be up to no good at his bank and soon discovered that—sure enough—almost all the bank’s loans went to obscure offshore shell companies connected to Kolomoisky, setting off a global hunt to figure out where the stolen \$5.5 billion ended up.<sup>198</sup>

The point is that U.S. authorities do not have a systematic mechanism of finding dirty money disguised as investments across the entire U.S. real estate market. The FBI only investigated Kolomoisky after regulators and private claimants in Ukraine revealed his scheme. The sources of money behind many of Trump’s properties have still not been identified despite years of probing. This is a permanent problem that spans the entire country, across commercial and residential markets big and small, an expansive attack surface that must be reflected in broadly scoped regulatory tools.

## Recommendation

The extent to which cash purchases in the name of anonymous shell companies are exploited by dubious wealthy foreigners to secretly buy luxury real estate across the United States was highlighted by an explosive *New York Times* investigation in 2015.<sup>199</sup> To respond quickly with a new regulatory framework, FinCEN made novel and sweeping usage of GTOs. This regulatory tool was traditionally used to gather data on Latin American cartels laundering drug money through low-value cash transactions by reducing the regulatory threshold above which certain U.S. businesses must report to FinCEN (usually \$10,000), such as electronics exporters in Miami, money transmitters in New York and New Jersey, or armored car services near the Mexican border. But GTOs do not have to be limited to that traditional form, as the BSA broadly authorizes Treasury to design them to impose additional recordkeeping and reporting requirements on businesses in a specific geographic area.

Thus, in January 2016, FinCEN issued GTOs requiring U.S. title insurance companies to identify any individuals who ultimately own at least 25 percent of a legal entity using all cash to buy properties for more than \$1 million in Miami or \$3 million in New York.<sup>200</sup> Over the following two years, FinCEN added ten more cities, each with their own value threshold. Finally, in November 2018, Treasury established the current list of a dozen cities and set a uniform purchase amount threshold

of at least \$300,000.<sup>201</sup> Treasury continues to renew the program with those parameters every May and November (see table).<sup>202</sup>

This has been a tremendously successful program. Within the first year, FinCEN found that a quarter of covered transactions indicate possible criminal activity and 30 percent involve a beneficial owner or buyer representative who had previously been the subject of a SAR.<sup>203</sup> Treasury’s latest analysis in 2020 found that 35 percent of GTO transactions involved subjects identified in SARs, and of those, 17 percent (or more than 1,000 transactions) matched to a higher-risk SAR (involving foreign secrecy havens or signs of foreign threats).<sup>204</sup>

However, dirty money in U.S. real estate is not the kind of localized, temporary, and emergent hot spot that GTOs are meant to address. More than 60 percent of major cases of U.S. real estate money laundering over the past five years involve properties located in non-GTO counties.<sup>205</sup> More than 35 percent involve commercial real estate.<sup>206</sup> No other G7 country limits AML reporting obligations to certain geographic or purpose-based segments within national real estate markets.<sup>207</sup> This risk calls for a permanent, nationwide regulatory rule.

Fortunately, FinCEN already has a well-developed regulatory regime for insurance companies, which exempts title insurers.<sup>208</sup> FinCEN should partially repeal that exemption through a limited expansion of the term “covered products.” Rather than making title insurers establish AML programs—something recommended later in section eight—this modification would just replace the temporary semiannual title insurance GTOs with a narrow program requirement permanently locking in an expanded version of the same obligation, requiring U.S. title insurers to obtain, maintain, and report to Treasury information on the beneficial owners of entities that purchase real estate.

Importantly, the rule should feature six expansions from the title insurance GTOs (see table). First, the rule should apply permanently. Second, it should not be limited to any geographic bounds such as certain cities. Third, it should not be limited to any value thresholds. Fourth, the rule should cover commercial real estate, not just residential. Fifth, the information captured should include the seller’s identify too, not just the buyer’s. Sixth, the rule should adopt the broader definition of beneficial owners in the Corporate Transparency Act (i.e., not only holders of at least 25 percent but also any-

# Recommended Expansions to Title Insurance Reporting Obligations

PARAMETER	SCOPE OF REGULATORY OBLIGATIONS CURRENTLY IMPOSED BY GTOs	RECOMMENDED EXPANDED SCOPE UNDER A NEW RULE	REASONS EXPANSIONS WOULD LIKELY BE ACCEPTABLE TO TITLE INSURERS
Permanence	Lasts 180 days, renewed every May and November	Permanent expansion of term “covered products” under insurance companies regs	Permanence is more attractive than the uncertainty around semiannual renewal
Geography	12 cities: Boston, Chicago, Dallas, Honolulu, Las Vegas, Los Angeles, Miami, New York, San Antonio, San Diego, San Francisco, Seattle	Nationwide	The broader scope is even more straightforward and less costly for the title insurance industry to implement, because they could just incorporate it into their nationwide training module, rather than having to customize different trainings for different segments of the U.S. title insurance market
Value threshold	Purchase price of \$300,000 or more	No threshold	
Type of purpose	Residential real estate	Residential or commercial real estate	Industry would just want to work with FinCEN on market structure differences (e.g., more parties)
Parties identified	Buyer (beneficial owners behind all-cash legal entity purchasers)	Buyer and seller	With compliance infrastructure set up, asking one more question (seller identity) is not a big lift
Beneficial owner	Individual who owns 25% or more of the equity interests	Same as forthcoming registry (25% owner, substantial control, nominee exclusions)	Using the same definition across the registry and real estate rules reduces regulatory complexity

one exercising substantial control, and not simply the real owner’s employee, child, heir, nominee, intermediary, custodian, agent, or creditor).<sup>209</sup>

According to transparency advocates in touch with title insurance industry representatives, the private sector would be amenable to these changes. First, permanent regulations are more attractive than the perpetual uncertainty around FinCEN’s semiannual renewals and the risk of parameters suddenly changing. With regards to the second and third expansions (removing value and geography limitations), that could be even more straightforward and less costly for the title insurance industry to implement, because they could just incorporate it into their nationwide training module rather than having to customize different trainings for different segments of their membership.<sup>210</sup> Fourth, title insurers could do this for commercial real estate too, but they would just want to work with FinCEN to design parameters that fit some differences in how that market is structured versus residential (like the fact that commercial projects typically involve many different owners, controllers, and funders on each side of the transaction, from conglomerates and investment companies

to other debt and equity players).<sup>211</sup> Fifth, with all the collecting and reporting infrastructure set up to identify buyers, asking one more question—the identity of the seller—is not a big lift. Sixth, having the same definition of beneficial ownership across the registry and real estate rules would help reduce regulatory complexity.

That six-part expansion from the current obligations under GTOs would bring a dramatic improvement in U.S. real estate transparency, although it would still not cover two other types of transactions that are left out of GTOs as they usually pose lower risks of money laundering. First, it would only cover transactions made through legal entities, which would cover 82 percent of major U.S. money laundering cases over the past five years, but not the remaining cases in which criminals obscure their ownership through human straw purchasers such as family members.<sup>212</sup> Second, it would only cover all-cash purchases, leaving FinCEN without data on the three quarters of U.S. real estate transactions that include financing.<sup>213</sup> FinCEN could consider closing these gaps in the future, such as when it imposes full AML obligations on title insurers and other real estate professionals.

The need to implement full AML obligations on U.S. real estate professionals will be addressed in section eight of this report. But FinCEN's first actionable step around real estate should be basic reporting obligations for title insurers, because these companies are relatively sophisticated warehouseers of data identifying who owns properties (a useful node of information for Treasury to collect ownership data), and they have adapted well to regulation over the past five years. However, this cannot become a poor man's alternative to mandating full AML programs—not just collecting data but also evaluating whether transactions seem to make sense or present red flags of financial crime—across U.S. property markets. As such, the rule should fit within the auspices of insurance company regulations and commit to being followed by a separate rulemaking process to fully cover professionals involved in real estate closings and settlements including, but not limited to, title insurers.

### 3. Art dealers

The art market is the largest legal, unregulated industry in the United States.<sup>214</sup> Annual sales range from \$50 billion to \$70 billion, not including a \$6 billion underground market, with half of the latter attributed to financial crime.<sup>215</sup> Nearly half of global art sales occur in the United States, arranged through either private dealers or public auctions.<sup>216</sup> The IMF, FBI, Basel, and Interpol warn that art is the perfect vehicle for money laundering.<sup>217</sup> In addition to the features of real estate—valuations are high and subjective while transactions are private and secret—works of art are small and portable, so they can be smuggled and hidden in unregulated freeports.<sup>218</sup> While major auction houses like Sotheby's and Christie's have voluntary AML guidelines for their employees, they do not require asking the most basic question, which is who the ultimate beneficial owner is standing behind an intermediary such as a dealer, advisor, or consultant, let alone a shell company the intermediary might be representing.<sup>219</sup> In this secretive market, buyers and sellers often remain unidentified to everyone involved, offering a ripe venue to launder dirty money. Two case studies show how abuse of secrecy extends across buyers and markets, from art in Moscow to collectibles in Beverly Hills.

First, the deepest investigative dive into art market vulnerabilities—reviewing more than 1 million documents from the four major auction houses—was released in July 2020 by the bipartisan Senate Permanent Subcom-

mittee on Investigations (PSI).<sup>220</sup> Using its powers to subpoena evidence, put witnesses under oath, get investigative assistance from banks, and access U.S. intelligence, PSI built upon revelations in the Panama Papers to document how Russian oligarchs evade sanctions through the art market.<sup>221</sup>

When Russia invaded Ukraine in 2014, the U.S. government sanctioned some of Putin's closest cronies who hold billions of dollars in wealth on his behalf, including brothers Arkady and Boris Rotenberg.<sup>222</sup> In the days before Treasury issued the sanctions, shell companies linked to the Rotenbergs transferred more than \$120 million from Switzerland to Moscow through the U.S. financial system.<sup>223</sup> When Christie's employees circulated Treasury's sanctions list over an internal email chain and lamented no longer being able to do business with the named individuals, the head of Christie's business in Russia disagreed, "No. The message internally though should I think focus on the fact that there is huge amounts of money currently being repatriated to Russia from overseas. This will lead to a lot of money needing to be invested in 'safe' assets which means being able to sell [post sanctions] locally becomes increasing [sic] interesting...It's also a strong message of support from Senior management that even in this economic climate Christie's is still investing in its Russian operation by going ahead with the new [Moscow] office. So look at the positives."<sup>224</sup> In other words, while Russian militants were storming eastern Ukraine and the U.S. and EU were sanctioning Kremlin cronies, the world's largest auction house saw an opportunity to help the Russians evade sanctions by selling them art in Moscow.

***“ It will take regulatory requirements for art market professionals to break the taboo against identifying their ultimate customers.”***

Sure enough, starting ten days later, the Rotenbergs poured more than \$18 million into works of art, bought through their Moscow-based art advisor who is a U.S. citizen, Gregory Baltser.<sup>225</sup> His first post-sanctions purchase was for \$6.8 million at a Sotheby's auction in New York.<sup>226</sup> The money originated from a shell company owned by the Rotenbergs, flowed through an Estonian bank account of a Belize company, and was then wired to the Barclays account of Baltser, who paid the auction house's account at JPMorgan and took title of the art before putting it in the name of the Rotenberg



shell company.<sup>227</sup> When asked by PSI, Sotheby's said it assumed Baltser was buying the art on behalf of one or more of his clients, but they did not know who that was and they never asked.<sup>228</sup> Baltser used the same or similar money trails on behalf of the Rotenbergs several times throughout 2014, buying art from Christie's New York (which never asked Baltser to identify the buyer), Bonhams New York (which treated Baltser as the buyer of record), Phillips New York (which recorded the Belize shell company as the buyer because it accidentally paid the auction house directly, but Phillips did not know who owned the company), and a private art dealer in New York (whose connection to Baltser flowed through a confidential series of art advisors and selling agents who never asked who was on the other end of the chain).<sup>229</sup>

Second, a case study completely unrelated to Russians buying paintings shows why regulations on auction houses and private dealers should be broadly scoped to also encompass antiques and luxury collectibles, classes of high-end goods with dedicated departments at Christie's and Sotheby's, as well as entire auction houses like Julien's in Beverly Hills.<sup>230</sup> In *American Kleptocracy*, Casey Michel recounts how the world's largest collector of Michael Jackson memorabilia is one of the most notorious kleptocrats ever targeted by U.S. law enforcement: Teodorin Obiang, the outrageously corrupt Vice President of Equatorial Guinea and son of today's most longstanding dictator in the world.<sup>231</sup>

As Minister of Forestry for the seventh-most corrupt country on earth, Teodorin stole billions of dollars by shaking down foreign timber export companies.<sup>232</sup> At first, he made them pay him personal bribes worth ten percent of the wood they chopped down and shipped. Later, he added arbitrary "taxes," and whenever the companies balked at being extorted, he would raid their operations, take executives hostage, and confiscate equipment.<sup>233</sup> Teodorin stashed hundreds of millions of embezzled and laundered dollars in U.S. asset markets that will be covered later in this report, such as real estate and luxury vehicles.<sup>234</sup> By the late 2000s, he was looking for more opportunities to transform his dirty money into tangible assets while transforming himself from pilloried kleptocrat to celebrity mogul.

Then, in 2009, Michael Jackson died. Teodorin quickly became the largest buyer of memorabilia auctioned by the pop star's estate at Julien's auction house, purchasing

the "Bad" tour crystal glove, a jacket from the "Thriller" tour, a half-dozen life-size statues of Jackson from his Neverland ranch, and many other collectibles.<sup>235</sup> Teodorin arranged the bids through intermediaries and straw purchasers, and then wired the money from a construction company in Equatorial Guinea that he misappropriated from an Italian business partner he later tortured.<sup>236</sup>

Because Julien's is not subject to AML rules, the auction house was free to conspire with Teodorin to keep his name off the documentation, but their mistake was leaving an email record. At the first of several auctions, the intermediary who originally registered Teodorin as the bidder later emailed the auction house to "Please make sure that [Teodorin's] name does not appear anywhere, he should be invisible," and to "please make sure that where a name needs to be, my name is there. This is very important."<sup>237</sup> When the auction house sent invoices in the name of the intermediary to Teodorin's address, his assistant told them to revise it to instead name a straw purchaser at another address.<sup>238</sup> And that was how Julien's continued invoicing Teodorin's purchases, with an employee at the auction house once emailing her boss to confirm, "I assume I need to rewrite the invoices in the same fashion as I've done in prior sales (... changing the Buyer's name)?"<sup>239</sup> The lead U.S. federal investigator told Michel that thankfully Teodorin's assistant "wasn't smart enough to understand that a subpoena is gonna get me that information."<sup>240</sup>

These art and collectible transactions illustrate markets with a 500-year tradition for secrecy (dating back to the Renaissance, when a class of merchant buyers emerged and art dealers started concealing the identities of clients so that they could not be stolen by competing dealers and so that dealers could charge other clients different prices).<sup>241</sup> While most auction professionals treat secrecy as a matter of class and discretion, enablers offer anonymity to drug dealers, dictators, and oligarchs as unique feature, helping them launder dirty money. In an industry with such thoroughly entrenched traditions and active abuse by deep-pocketed corrupt figures, it will take regulatory requirements for professionals to break the taboo against identifying their ultimate customers.

The EU recently required businesses handling art worth at least €10,000 to comply with AML laws, including verifying beneficial owners behind buyers and sell-

ers.<sup>242</sup> The Basel Institute on Governance and art sector non-profits have also developed AML guidelines for the art market.<sup>243</sup> In response to the international momentum toward regulation, lobbyists for the art industry are unsurprisingly decrying the cost burden.<sup>244</sup> To design effective regulations and avoid getting blindsided by political and legal pushback, Treasury will have to engage with the four major auction houses, the International Confederation of Art and Antique Dealers Associations, the Global Heritage Alliance, and the Committee for Cultural Policy. But there should be no doubt that a regulated market for works of art, collectibles, and antiques ought to be one of the first steps toward a cleaner financial system.

## Recommendation

The latest NDAA mandated that by December 27, 2021, Treasury shall write and submit to Congress “a study of the facilitation of money laundering and the financing of terrorism through the trade in works of art.”<sup>245</sup> The study must include “an evaluation of which markets... should be subject to any regulations [and] whether information on certain transactions in the trade in works

of art has a high degree of usefulness in criminal, tax, or regulatory matters.”<sup>246</sup> That language about “usefulness” implies an important statutory reference. The BSA allows Treasury to impose AML due diligence and reporting obligations upon any type of business if the Secretary designates their transactions as having “a high degree of usefulness in criminal, tax, or regulatory matters.”<sup>247</sup>

FinCEN should find in its forthcoming study (see exhibit) that billions of dollars are laundered annually through U.S. markets for works of art, collectibles, and antiques. Based on that empirical research finding, the study should draw a policy conclusion that persons (individuals or firms) engaged in the trade of works of art, collectibles, or antiques worth at least \$10,000—including dealers, advisors, consultants, custodians, galleries, auction houses, and museums—should be subject to AML regulations because their transactions have a high degree of usefulness in criminal, tax, regulatory, and national security matters. In either the study or an accompanying statement, Treasury should announce its policy decision to initiate a regulatory rulemaking process intended to subject the high-end art, collectibles,

## Recommended Findings for FinCEN’s Forthcoming Art Market Study

- Complete the study in advance of the December 27 statutory deadline, in time to support a policy announcement at the December 9-10 Summit for Democracy
- Find that billions of dollars are laundered every year through U.S. markets for works of art, collectibles, and antiques
- Find that information about high-end transactions would be highly useful in criminal, tax, regulatory, and national security matters
- Suggest a regulatory threshold of \$10,000, consistent with both U.S. cash reporting rules and the EU’s new €10,000 level for works of art
- Conclude that dealers, advisors, consultants, custodians, galleries, auction houses, and museums should be required to establish AML programs and report suspicious activity
- Announce a policy decision to initiate a regulatory rulemaking process to that effect in the months ahead

and antiques markets to AML rules.

That step is included within the first stage of priorities in this report due to two NDAA mandates coming due on December 27, 2021. First is the art market study.<sup>248</sup> Second is the antiques market rulemaking, which will not include the art market, but given the similarity between the two, FinCEN could leverage much of the regulatory drafting work as a starting point for art market rules (which is one reason why the antiques rule should cover the same seven types of intermediaries as are recommended for the art market).<sup>249</sup> FinCEN also has experience regulating dealers in precious metals, stones, and jewels.<sup>250</sup> The main regulatory difference is that art and collectible dealers are not written into the BSA, so Treasury will have to draw from its art market study to make the case under its authority to determine that the sector requires regulation.<sup>251</sup>

# Stage II: The Four Horsemen

Of the five timing considerations discussed in the introduction—risk severity, mandatory deadlines, drafting status, regulatory experience, and anticipated push-back—the most important factor is risk severity: How much are corrupt figures using a given kind of enabler in ways that threaten U.S. national security? And relatedly, on which international standards is the United States most deficient?

The FATF and the IMF agree that three sectors of non-bank enablers are the top priority for the United States to close its financial crime regulatory gaps: lawyers, accountants, and trust and company service providers.<sup>252</sup> Together with timely access to beneficial ownership data—through both the forthcoming registry of U.S. companies and a permanent rule for title insurance—that would largely bring the United States into line with international standards. As such, those three sectors represent the next three sections of this report.

Rounding out the four horsemen of non-bank dirty money is a sector that has become increasingly dangerous in an age of disinformation, even though slow-moving FATF standards have not yet caught up with its importance: covert PR. This sector would be the cherry on top of the most powerful four years in regulating financial crime that the United States has ever seen, equipping Treasury to hold its own in modern warfare against weaponized corruption at home and abroad.

Treasury arguably already has the statutory authority to regulate most of these sectors under existing law, given Treasury's broad power to determine that transactions "have a high degree of usefulness in criminal, tax, or regulatory matters" (as recommended for investment advisors and art dealers).<sup>253</sup> However, it is essential for Treasury to enter this process with the strongest possible political and statutory backing, as some of the four horsemen's interest groups are very powerful. Best would be for Congress to explicitly add these four sectors to the BSA, giving Treasury a year or two to issue regulations. The second-best path would be for FinCEN to at least get backing through a very strong and visible show of political support—led by the president, the Treasury secretary, their party's leadership in Congress, some influential voices from the other side of the aisle, and a very broad coalition of interest groups—in favor of regulating the four horsemen. Without all that sup-

port, FinCEN should limit its approach to establishing long-term projects to prepare for future regulations by tracking and analyzing abuse within each of these sectors, advocating for support among influential lawmakers and allies within interest groups, and laying plans for future regulatory regimes.

## 4. Lawyers

Lawyers are the single most important sector of enablers in need of regulation as a matter of national security. When a kleptocrat wants to secretly move money and buy assets abroad without getting caught, his first and main point of contact tends to be a lawyer.<sup>254</sup> And more than just providing legal advice like a coach (recommending how to conceal the proceeds of corruption), the lawyer also serves as a quarterback—actually handling the ball (dirty money) and passing it down the field to receivers (recipients who range from unsuspecting banks to private spies).<sup>255</sup> The financial details around how lawyers bring foreign corruption into the United States are shown by three stories, respectively featuring a Global Witness investigation, Jho Low, and Teodorin.

***“ When a kleptocrat wants to secretly move money and buy assets abroad without getting caught, his first and main point of contact tends to be a lawyer.”***

The apparent willingness of most U.S. lawyers to help corrupt foreign officials funnel dirty money into the United States was revealed when a Global Witness investigator went undercover posing as an advisor to a minister of mining in an African country.<sup>256</sup> He sat down for preliminary meetings with 13 New York law firms, explaining that the minister had accumulated millions in bribes and wanted to secretly spend it on Manhattan real estate, a Gulfstream jet, and a yacht.<sup>257</sup> One lawyer said it was insulting and kicked him out.<sup>258</sup> But the other 12 eagerly suggested ways to structure the scheme, like using the law firm's escrow account to move the minister's money while hiding his name from banks (because banks only see the name of the law firm and are not required to do any diligence beyond that, as there is no requirement to know your customer's customer) or having the lawyer act as trustee of an offshore



trust (which one lawyer explained he does for his clients who need financial secrecy for a longer periods of time than an escrow account should be limited to).<sup>259</sup> Several of the lawyers—including the then-president of the American Bar Association—offered to provide a list of small banks or national jurisdictions with loose controls on dirty money.<sup>260</sup>

Another example of New York lawyers helping funnel the proceeds of grand corruption into the United States involves an infamous client of Shearman & Sterling: Jho Low.<sup>261</sup> After stealing more than a billion dollars from a Malaysian sovereign wealth fund and layering it through Swiss bank accounts in the names of offshore shell companies, Low wanted to get his money into the United States to spend it on luxuries.<sup>262</sup> He used Shearman's Interest On Lawyer Trust Account (IOLTA), which pools clients' money for short periods while it is waiting to be spent on big acquisitions.<sup>263</sup> As with lawyers' escrow accounts, wire transfers leaving an IOLTA account usually only name the law firm, leaving banks blind to the identity of the ultimate customer, whose information is protected by attorney-client privilege.<sup>264</sup> As a law firm, Shearman & Sterling did not have to do diligence on Low and the source of his money.<sup>265</sup> Their own voluntary checks found sufficient satisfaction from the fact that Low used a prestigious Swiss bank and claimed to have relationships with sovereign wealth funds in Malaysia and Abu Dhabi.<sup>266</sup> When Low first wired \$368 million from Switzerland to Shearman's IOLTA, he was so thrilled that he went on a nine-month bender of splurging on champagne-drenched parties, gambling, yacht rentals, a private jet, jewelry, and Playboy models and movie stars paid to hang out with him.<sup>267</sup> Over time, he also used the IOLTA account at Shearman's to buy extremely high-end properties and fund the filming of *The Wolf of Wall Street*.<sup>268</sup>

Finally, the only kleptocrat in the world who competes with Low for the most outrageous bonanzas of spending dirty money is Teodorin, the co-star of *American Kleptocracy*.<sup>269</sup> Teodorin had two U.S. lawyers, Michael Berger and George Nagler, both well aware that Teodorin's money came from corruption, but they nevertheless helped him set up shell companies and siphon money through attorney-client, law office, and other third-party conduit accounts at six U.S. banks over four years, according to a major Senate PSI investigation of foreign corruption in 2010.<sup>270</sup> The lawyers' routine developed into a familiar pattern at each bank.<sup>271</sup> First, the lawyer

would incorporate a shell company secretly owned and controlled by Teodorin, keeping his name off the company's documents.<sup>272</sup> Then, the lawyer would walk into the bank and open at least two checking accounts: one in the name of Teodorin's secret shell company (with the lawyer pretending that he himself solely owned and controlled the company) and one in the name of the law firm (an attorney-client trust account that moves clients' money without divulging their name, sometimes taking the form of an IOLTA).<sup>273</sup> Teodorin would wire money—typically \$200,000 every month or so—from Equatorial Guinea to the law firm's attorney-client account, after which the lawyer would pass the money along to the shell company account, and voilà, the foreign kleptocrat would have his very own U.S. checking account, with his role and the source of funds kept hidden from the bank.<sup>274</sup> Teodorin wrote checks to pay legions of staff, fund parties that would last for days, settle parking tickets, treat himself to Rolexes and bespoke suits, buy dresses and jewelry for girlfriends, and meet any other expenses of klepto life.<sup>275</sup> Other autocrats similarly use lawyers to find and hire private security firms to surveil and intimidate potential witnesses or pay them hush money.<sup>276</sup> Over time, bank AML compliance officers monitoring the abnormal transaction activity secretly conducted by Teodorin would grow skittish and start asking questions.<sup>277</sup> His lawyer would spin lies, like once pretending the financial subterfuge was meant to help one of his clients pay a female employee without the client's wife knowing about it.<sup>278</sup> Eventually, the bank would close the accounts after uncovering wire transfers from Equatorial Guinea or spending by Teodorin.<sup>279</sup> At that point, the lawyer would simply start from square one at an entirely different bank (although the conspirators would reuse the same shell company), ideally a smaller bank with weaker AML controls so that the ruse could go on for a longer period before having to uproot again to yet another bank.<sup>280</sup>

## Recommendation

Preparing a legal and political effort to regulate lawyers requires first reviewing the chronology of the nearly quarter-century contest between the legal profession and AML authorities (see timeline page), a veritable war of attrition that has generally been won by a powerful subset of private sector lawyers who have used their control over the gatekeepers task force within the American Bar Association (ABA) to stave off regulation.

# Cold War between the ABA and the FATF

ABA CREATES A TASK FORCE ON GATEKEEPER REGULATIONS

1997

AML REGULATIONS FOR LAWYERS DISCUSSED BY THE EU AND FATF

HOUSE OF DELEGATES VOTES AGAINST COMPELLED DISCLOSURE

1998

G8 AGREES TO REQUIRE SARS FROM LAWYERS AND OTHERS

ABA SUBMITS COMMENT CRITICIZING THE FATF'S CONSULTATION PROCESS

1999

9/11 RENEWS URGENCY AROUND FINANCIAL SECURITY ISSUES

FATF-ABA CONSULTATIONS OVER AML GUIDANCE FOR LAWYERS

2000

EU'S 2ND AML DIRECTIVE COVERS DNFBPS, INCLUDING LAWYERS

AMSTERDAM MEETING: CONSULTATIONS BEGIN IN EARNEST

2001

FATF PUBLISHES CONSULTATION PAPER ON DNFBP STANDARDS

LETTERS FROM ABA ET AL. REQUESTING FACE-TO-FACE MEETINGS

2002

FATF ISSUES REVISED AML STANDARDS TO INCLUDE DNFBPS

LONDON MEETING: ABA EMPHASIZES DIFFERENCES VS. BANKS

2003

U.K. COURT OF APPEALS UPHOLDS AML LAW FOR LAWYERS

BERN MEETING: THE FATF PRESENTS EVIDENCE OF BAD ACTIVITY

2004

THE FATF ASSESSES THE U.S. TO BE NON-COMPLIANT ON DNFBPS

PARIS MEETING: AGREED TO LANGUAGE ON SARS AND TCSPS

2005

EU COURT OF JUSTICE UPHOLDS BELGIAN AML LAW FOR LAWYERS

LONDON MEETING: DISAGREEMENT OVER MANDATORY KYC

2006

U.S. SENATE INTRODUCES BILL TO IMPOSE AML RULES ON TCSPS

OTTAWA MEETING: AGREED ON BENEFICIAL OWNERSHIP LANGUAGE

2007

THE FATF APPROVES 41-PAGE AML GUIDANCE FOR LAWYERS

ABA ISSUES VOLUNTARY GOOD AML PRACTICES TO AVOID TCSP LAW

2008

EU COURT OF HUMAN RIGHTS UPHOLDS FRENCH AML LAW

ABA OPPOSES TCSP LEGISLATION EVEN THOUGH IT EXEMPTS LAWYERS

2009

CANADIAN SUPREME COURT OVERTURNS AML LAW FOR LAWYERS

ABA OPPOSES BENEFICIAL OWNERSHIP BILL THAT DOES NOT EVEN REGULATE LAWYERS

2010

THE FATF ASSESSES THE U.S. TO STILL BE NON-COMPLIANT ON DNFBPS

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

2021

THE FATF ISSUES UPDATED 97-PAGE AML GUIDANCE FOR LAWYERS

International efforts to regulate lawyers and other enablers started in 1997, with the European Union coordinating responses to organized crime and the FATF tracking how criminals responded to the increasing enactment of AML rules for bankers.<sup>281</sup> In 1999, the G8 agreed to require suspicious activity reporting by “lawyers, accountants, company formation agents, auditors, and other financial intermediaries.”<sup>282</sup> The FATF created a gatekeepers task force to guide implementation, an effort that took on greater urgency after 9/11.<sup>283</sup> In May 2002, the FATF published a proposal to cover those sectors named by the G8, plus casinos, real estate agents, dealers in high-value goods (such as art, gold, and luxury vehicles), notaries, and investment advisors.<sup>284</sup> The proposal’s discussion of lawyers warned that law firms’ client accounts—protected by attorney-client privilege—are commonly abused by money launderers.<sup>285</sup> It laid out options to impose AML obligations on lawyers, but only when they engaged in financial transactions on behalf of clients, noting the need to respect the confidentiality of attorney-client legal advice.<sup>286</sup>

The private sector associations representing enabler professions in different countries have responded to FATF standards with varying degrees of cooperation, with the most strident opponent in the world being the ABA. In February 2002, the ABA established its own task force on gatekeeper regulations and the legal profession.<sup>287</sup> Rather than engaging on the substance of the FATF’s proposal, the ABA submitted a public comment criticizing the FATF for not having consulted them sooner about “the alleged problems” and failing to understand “the roles and work of the legal profession and the importance of access by all members of the public to justice.”<sup>288</sup>

Even though detailed FATF standards for lawyers had not yet been developed—let alone proposed as rules in the United States—the ABA took a preemptive rear-guard action to fight any new U.S. rules, basing its opposition on the principle of protecting attorney-client privilege. In February 2003, the ABA’s House of Delegates policymaking body voted to make it official ABA policy to “[oppose] any law or regulation that, while taking action to combat money laundering or terrorist financing, would compel lawyers to disclose confidential information to government officials or otherwise compromise the lawyer-client relationship or the independence of the bar.”<sup>289</sup>

In June 2003, the FATF formally adopted a revision to its standards recommending AML obligations for designated non-financial businesses and professionals (DNFBPs), which included lawyers while also stipulating again that they “are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.”<sup>290</sup> The ABA cried foul that the FATF had not met specially with them, only relying on the ABA’s public comment.<sup>291</sup> FinCEN on the other hand welcomed the prospect of rules for lawyers, saying Treasury “does not believe [AML regulation of] attorneys...raises issues of, or poses obligations inconsistent with, the attorney-client privilege.”<sup>292</sup> But despite all that momentum toward regulating lawyers, the U.S. government never moved forward, and in 2006, the FATF found the United States non-compliant on standards for lawyers and other DNFBPs.<sup>293</sup>

The following year brought a *détente*, with the ABA and similar associations of legal professionals from other countries sitting down with the FATF over a half-dozen negotiating sessions that culminated in 41 pages of mutually agreed guidance about how lawyers should watch for dirty money and how governments should make it mandatory.<sup>294</sup> The ABA claimed it won concessions in some of the language, like the fact that the guidance does not elaborate upon the need for SAR reporting and notes that some countries are not complying with it, even though the guidance also plainly states that the SAR recommendation remains in place as a separate standard and is indeed required of lawyers.<sup>295</sup> However, as we will see, those textual subtleties would later turn out to be hooks for the ABA to stretch key points of the guidance into its own preferred interpretations.

In keeping with the FATF’s standards, the mutually agreed guidance for lawyers recommends making it mandatory to do customer due diligence and keep records (along with a requirement to file SARs when money laundering is suspected) only when lawyers “prepare for and carry out certain specified activities for their clients, namely:

- a) Buying and selling of real estate;
- b) Managing of client money, securities or other assets;
- c) Management of bank, savings or securities accounts;



- d) Organization of contributions for the creation, operation or management of companies; and
- e) Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.”<sup>296</sup>

In other words, when lawyers facilitate financial activity for their clients, they need to do AML checks and report suspicious activity. They can avoid AML obligations by keeping their hands off their clients’ money and instead just provide legal advice. The FATF notes that legal advice tends to be protected by attorney-client privilege (as determined by national laws), which should not be infringed upon by AML rules.<sup>297</sup>

**“ Lawyers should be allowed to handle their clients’ money or avoid having to look for dirty money, but not both.”**

Over the past decade, acceptance of the FATF’s standard for lawyers has become a widespread international consensus, adopted by more than 90 percent of countries, including throughout the EU and all of the G7 except for the United States and Canada.<sup>298</sup> When professional associations for lawyers sued the governments of France, Belgium, and the United Kingdom on grounds of AML duties for lawyers violating attorney-client privilege—and thus infringing upon clients’ rights to a fair trial—the legal industry claimants consistently lost.<sup>299</sup> In these three landmark rulings, judges across the European Court of Justice, the European Court of Human Rights, and the U.K. Court of Appeal all sided with AML authorities that attorney-client privilege only protects information that lawyers obtain when providing legal advice around judicial proceedings, not when conducting financial transactions on behalf of clients.<sup>300</sup> The one exception to this consensus has been Canada, where lawyers’ suits have had more success because of that country’s rather absolutist constitutional principle of an independent bar (rather than the more common tradition of lawyers also having some public interest role, although even Canadian courts left room for lawmakers to try again with more protections for claims of privilege).<sup>301</sup> These legal battles will offer important lessons on how to regulate lawyers in the United States, because the continued guerilla tactics of reform opponents within the ABA—from misleading communications to deceptive processes—suggest that they will not pull any punches in their fight against regulation.

It turned out that the ABA’s task force on gatekeeper regulations was never meant to support any rules whatsoever for lawyers. Quite the opposite, they were pursuing a strategy to minimize both the scope of FATF guidance and the likelihood of Congress transposing those standards into law. The centerpiece of the ABA’s strategy was its own version of voluntary good AML practices, which it said “conform with the general tenets of [the FATF guidance], but at the same time are attuned to the unique nature of the attorney-client relationship and the business realities of a global economy.”<sup>302</sup>

By taking the pen on its own document, the ABA was able to pretend it was simply providing a more detailed roadmap for “practical application” of the FATF guidance, while in truth the ABA sprinkled in its own preferences that the FATF refused to include.<sup>303</sup> Sometimes the ABA called out its own perspectives in “practice pointer” boxes, but in other instances it selectively reproduced FATF language or inserted its own points within the text.<sup>304</sup> For example, when lawyers identify risk of suspicious transactions, the FATF says the response mechanism should be filing a SAR, whereas the ABA instead points to its own separate ethical rule that lawyers *may* withdraw from representation of clients who persist in using the lawyer’s services to commit crimes.<sup>305</sup> As another example, whereas the FATF says lawyers should identify the beneficial owner of a client, the ABA emphasizes that lawyers have discretion around how much diligence to conduct, depending on the risks, and the ABA added its own opinion that usually the identification of beneficial owners is not worth the “cost, time, and effort to undertake such an analysis.”<sup>306</sup>

More importantly, the ABA’s voluntary good practices were a political ploy to preempt federal legislation imposing mandatory rules on lawyers. In 2008, the ABA was worried about a bill introduced by Senators Levin, Obama, and Coleman that would add company formation agents to the BSA, imposing AML obligations on anyone involved, which would include many lawyers.<sup>307</sup> To convince its members to support the adoption of voluntary AML guidance, the ABA disclosed that their purpose was to “obviate the need for Congress to enact legislation designed to impose a rules-based system on U.S. lawyers.”<sup>308</sup> The ABA also used the fact that it had held discussions with Bush administration officials in the Treasury Department to suggest that Treasury supported an ABA-led approach.<sup>309</sup> By the time Treasury

spoke for itself in an official statement in 2010 (under President Obama), it was more ambivalent, saying it “welcomes this...useful step [but] looks forward to... implementation of effective policies and procedures.”<sup>310</sup> Treasury also calls lawyers a most concerning sector among gatekeepers, warning especially about abuse of IOLTAs.<sup>311</sup> The FATF similarly says voluntary guidance should be bolstered by enforceable rules, warning that in the United States it is “not clear that lawyers comply with the [ABA’s] best practice guidelines as they are not enforceable.”<sup>312</sup> In 2016, the FATF found that the United States remains non-compliant on DNFBP standards, despite a concerted behind-the-scenes effort by the ABA to insert itself into the evaluation process and push back on critical assessments through engagements with Treasury.<sup>313</sup>

But by that time, reform opponents within the ABA were on safer ground politically, because the Republican Party had taken control of the House of Representatives and would consistently thwart any limitations to financial anonymity. Beneficial ownership reform only passed in the House after the 2018 midterms, when the Democratic Party took back the majority. The ABA was the only major interest group that never supported beneficial ownership reform (even the Chamber of Commerce took a neutral stance and eventually became supportive, while other groups like the NFIB were actually fronts for conservative dark money interests).<sup>314</sup> The ABA also opposed legislation that would have regulated company formation agents, even though it explicitly exempted lawyers.<sup>315</sup>

The ABA’s blanket opposition to major AML legislation has been based on its 2003 vote in the House of Delegates to oppose compelled disclosure of privileged information that clients share with attorneys.<sup>316</sup> But beneficial ownership reform would not have compelled lawyer disclosures. And as we have seen, FATF standards for regulating lawyers explicitly exempt information that countries determine should be subject to attorney-client privilege, and most judicial systems have accepted the way the FATF standards are scoped (only applying to lawyers if and when they “prepare for and carry out [five specified types of financial transactions] for their clients”).<sup>317</sup>

A notable Harvard Law School professor was puzzled by “the flawed and flimsy basis for the American Bar Association’s opposition to anonymous company re-

form,” which is at odds with the ABA’s “many members with a strong interest in strengthening law enforcement, as well as others who, like their financial industry clients, would support measures that facilitate more effective due diligence, if only out of self-interest.”<sup>318</sup> So the professor asked around the U.S. legal community and found that the ABA’s opposition “is based on an aggressive over-reading of a 15-year-old [2003] policy—a policy that many ABA members and ABA committees oppose but have not yet been able to change, due to the ABA’s cumbersome procedures and the resistance of a few influential factions within the organization.”<sup>319</sup>

As for “the motives and intentions of the subset of ABA members who are currently doing their best to thwart efforts to get the ABA to reconsider its opposition,” the professor suggested that they are making money by “represent[ing] very wealthy, very shady characters, and help these clients set up complex financial and legal structures to shield their assets and identities.”<sup>320</sup>

As an alternative motive for the ABA’s opposition, others point to the legal profession’s long history of resisting any regulation driven by external authorities, whether the rules come from the U.S. government or international standard setters.<sup>321</sup> Proponents of this explanation cite sociologists who track how established professional cultures such as legal practitioners “claim that their specialized training and ethics code warrant their deciding how best to deliver their services and to protect the public’s interest.”<sup>322</sup>

This quarter-century backstory (see timeline page) shows that regulating lawyers will require fierce competition with powerful elements of the ABA, so reformers need to be prepared with strong legal and political strategies.

Congressional legislation—and eventually, FinCEN regulations—should be written under the presumption that the ABA will sue (supported by dark money interests that anonymously fund flotillas of amicus briefs and use fast-lane litigation through the shadow docket to get partisan decisions at the Supreme Court).<sup>323</sup> Whereas most types of financial institutions listed in the BSA simply name the sector (like “private banker” or “insurance company”), some sectors have statutory qualifications, like casinos only being subject to regulations if they have a license and more than \$1 million of annual gaming revenues.<sup>324</sup> Lawyers should be similarly qualified as being regulated as financial institutions

only if and when they become “involved in financial activity or related administrative activity on behalf of another person.” That scope would be in line with both the FATF standard and EU AML directives.<sup>325</sup> In the U.S. constitutional context, that relatively narrow statutory language would strengthen the law against challenges based on the Sixth Amendment’s guarantee of a fair trial with the assistance of counsel.<sup>326</sup> Lawmakers should also use floor speeches and a sense of congress to clarify expectations that Treasury will craft regulations that avoid infringing upon attorney-client privilege by carefully and clearly drawing the line where legal advice stops and financial facilitation starts. This measured approach would help secure support from centrist senators while keeping with the FATF’s approach of giving lawyers two options: Either they facilitate financial activity on behalf of clients (and do full AML checks and submit SARs) or they stick to just providing confidential attorney-client legal advice (with no need for AML and SAR duties).

The political strategy should draw from an advocacy tactic that worked to neutralize opponents to beneficial ownership transparency, which is to go into a given special interest organization to divide and conquer it from within, finding internal factions willing to foment dissension and fight on the inside in favor of organizational support for reform. For example, the key to getting the Chamber of Commerce to stop opposing beneficial ownership reform was having the banks and large corporations (industries that support reform and are leading Chamber members) go to the Chamber’s leadership and tell them to back off.<sup>327</sup> Similarly, the most active members of ABA’s House of Delegates are liberals, so if Biden and leading Democrats in Congress start pushing hard to regulate enablers, it is possible that the House of Delegates could soften or eventually even flip its stance against any AML regulations. Getting a voteable policy decision to the House of Delegates (at their annual meeting held every August) would take time and require strong champions within the ABA.<sup>328</sup> There is substantial support for AML reform within the Civil Rights and Social Justice Section (particularly among the human rights advocates, given how malign actors abuse anonymity) and the Business Law Section (particularly the banking lawyers, who have to deal with AML compliance for their clients, so they find it unfair that other lawyers do not have to).<sup>329</sup> The problem is that the gatekeepers task force sits within the ABA’s section of criminal defense lawyers, is heavily influenced by the Real

Property, Trust and Estate Law Section, and has several other members who oppose regulation or are affiliated with the NFIB (warning about “zealous lawmakers and government bureaucrats”).<sup>330</sup>

Lawyers are the most important type of enabler to regulate, but the inability to do so over the past quarter-century shows that it will only happen if the Biden administration is willing to make this its biggest fight against special interests, a cornerstone of Biden’s legacy of combatting corruption and kleptocracy.

## 5. Trust and company service providers

About 2 million legal entities are created each year in the United States.<sup>331</sup> For half, the individual incorporating the entity files the paperwork directly with the state, providing a name and address.<sup>332</sup> The other half are formed through the assistance of an intermediary known as a trust and company service provider (TCSP).<sup>333</sup> TCSPs can be the person’s lawyer, their accountant, or a representative of a standalone company providing incorporation services for a small fee.<sup>334</sup> In addition to helping set up the company (by serving as a “company formation agent”), for an additional fee most TCSPs will let customers list the TCSP’s name and address as the “registered agent” for the entity (trustee or nominee services), allowing the beneficial owner to remain anonymous.<sup>335</sup> They also offer methods of looking like an established business, like providing a seemingly legitimate office address or selling “shelf companies” that were formed years ago.

***“ U.S. TCSPs are the most likely in the world to ignore red flags and help shady customers.”***

Beneficial ownership data on U.S. companies will become accessible to law enforcement and national security agencies through FinCEN’s forthcoming registry. But there are three reasons why that will not be enough to spot dirty money flowing through U.S. entities without also regulating TCSPs. First, while the beneficial ownership registry will cover companies, it will probably not cover all trusts, foundations, and partnerships, because the law limits the registry to entities that are “created by the filing of a document with a secretary of state or a similar office” under state law (which will exclude most trusts, for example, unless FinCEN interprets the law really aggressively by considering public



notaries “a similar office,” so even more anonymous money can be expected to shift into trusts as corporate transparency develops).<sup>336</sup> Second, more than just identifying beneficial owners, making TCSPs establish AML programs would mean they have to do thoughtful diligence on customers and transactions to assess whether bad actors might be scheming to hide dirty money, in which case the TCSP must alert FinCEN by issuing a SAR. Third, regulating TCSPs is needed for the United States to come into compliance with FATF standards and catch up with the rest of the world.<sup>337</sup>

Given their unregulated status at the federal level, it is unsurprising that TCSPs based in the United States are the most likely in the world to ignore red flags and help shady customers. Academic researchers impersonating would-be money launderers, corrupt officials, and terrorist financiers sent emails to 3,773 TCSPs in 182 countries asking what identification documents would be needed to set up a shell company.<sup>338</sup> Almost half of the U.S.-based TCSPs who replied required *no identification whatsoever*, which remarkably made the United States the second easiest country in the world to create an untraceable shell company through a TCSP (surpassed only by Kenya).<sup>339</sup> In a country ranking that measures how often TCSPs asked for *notarized identification* (which is the FATF standard), the United States ranked dead last in the world, with only 10 of 1,722 U.S. TCSPs asking for certified documentation.<sup>340</sup> Another alarming finding was that dropping hints of corruption—like mentioning that the wealthy owner is a government procurement official in a highly corrupt country and confidentiality is essential—made U.S.-based TCSPs significantly *less* likely to turn down the customer or insist on documentation.<sup>341</sup> The researchers also sometimes mentioned risks of terrorist financing, which one U.S. TCSP pointed out before naming his price, “[Y]our stated purpose could well be a front for funding terrorism...[I]f you wanted a functioning and useful Florida corporation you’d need someone here to put their name on it, set up bank accounts, etc. I wouldn’t even consider doing that for less than 5k a month.”<sup>342</sup>

TCSPs are also problematic in other developed countries, including some that have legal obligations on the books that are not enforced well, like in the United Kingdom. The most notorious TCSP in London, Formations House, is located at the prestigious address of 29 Harley Street (a street known for more than a century as the office space of Britain’s best private doctors).<sup>343</sup>

Formations House charges £95 for a standard company, which could be based anywhere from Delaware to the Seychelles.<sup>344</sup> But for a monthly fee, they will also allow a customer to pretend that 29 Harley Street is their corporate headquarters, with a receptionist answering the phone in the company’s name and forwarding mail that arrives there.<sup>345</sup> Thousands of companies are registered at 29 Harley Street, even though the building is just a normal-sized urban house where Formations House is just one of nine tenants.<sup>346</sup> In reality, the address is a front for a back-office operation run by a family in Pakistan that claims to have created more than 10 million companies around the world.<sup>347</sup> An astonishing leak of Formation House’s internal records revealed that its customers have included a corrupt African dictator, a notorious Ukrainian kleptocrat, a sanctioned Iranian oil firm, Italian mafia associates, a Swedish Hell’s Angels boss, and various international fraudsters.<sup>348</sup> And this is just one of at least 22,626 poorly supervised TCSPs in Britain.<sup>349</sup> Another example is A1 Company Services, which was used by Paul Manafort to create shell companies with addresses that are shared by some 16,551 other companies around the world.<sup>350</sup>

## Recommendation

Technically, U.S.-based TCSPs are governed under state law, but the 50 states are not doing any better at regulating and supervising them than the U.K. government. The GAO found that in practice, “Most states do little to oversee these agents and do not verify information about them. Further, states generally do not require agents to collect information on company ownership or management or to verify the information they collect.”<sup>351</sup> FinCEN similarly concluded that “states do not appear to impose effective accountability safeguards on company formation agents and similar service providers.”<sup>352</sup>

Without any real regulator for U.S. TCSPs, FinCEN will have to dedicate significant resources toward compliance and enforcement of this sector, which would be justifiable given how central corporate anonymity is toward FinCEN’s mission, particularly now that it is responsible for beneficial ownership transparency. This is yet another example of what FinCEN could do with a much bigger budget, but with greater appropriations should also come greater statutory authorities and expectations of results, including full and effective AML regulations for TCSPs.

To impose AML obligations on the three main TCSP subsectors, Congress could amend the BSA to add “a trust or company service provider, including (i) a person involved in forming a corporation, limited liability company, trust, foundation, partnership, or other similar entity or arrangement; (ii) a person involved in acting as, or arranging for another person to act as, a registered agent, trustee, or nominee to be a shareholder, officer, director, secretary, partner, signatory, or other similar position in relation to a person or arrangement; (iii) a person involved in providing a registered office, address, or other similar service for a person or arrangement; or (iv) any other person providing trust or company services, as defined by the Secretary of the Treasury.”<sup>353</sup>

In addition to standalone TCSPs, this would include many lawyers and accountants. That is, in addition to the regulations recommended for their respective professions in sections four and six, respectively, lawyers and accountants should—just like any other person—be subject to rules for TCSPs if and when they perform the TCSP activities enumerated in the previous paragraph. As with a lawyer who chooses to get involved with financial transactions on behalf of their clients, anyone who chooses to form legal entities or provide services that could be used to hide who owns and controls entities should be regulated as a financial institution.

## 6. Accountants

When it comes to large criminal enterprises with sophisticated methods of laundering money and moving it across borders, the accountants often keep the deepest secrets. The FATF has found that accountants do not get caught up in financial crimes as often as lawyers and TCSPs.<sup>354</sup> However, when accountants are involved, the crimes are bigger and the accountants usually know exactly what is going on.<sup>355</sup> Their complicity is needed because accounting services are integral for orchestrating major financial crimes.<sup>356</sup> That shows why Al Capone was brought down by testimony from his accountant (after a six-year tax fraud investigation led by a forensic accountant at Treasury) and why prosecutors are currently pressuring Trump’s lifelong accounting executive to cooperate (alleging a 15-year scheme to evade taxes).<sup>357</sup>

The business of laundering money was started by gangster-accountant Meyer Lansky, who was known as the “mob’s accountant” because he worked for New York’s

top mafia bosses.<sup>358</sup> The potentially most powerful mobster in the world today, Semion Mogilevich, is known as the “brainy don” for his financial acumen, and he has previously used prominent U.S. accounting firms to audit companies involved in his fraud schemes.<sup>359</sup> A mastermind of drug trafficking of the FARC—Colombia’s largest rebel group—is known only as “Contador” (Accountant), because he is the chief financier and money launderer for the cartels.<sup>360</sup> Ihor Kolomoisky employed a roster of accountants to help launder money out of his bank in Ukraine and through shell companies in Cyprus and other jurisdictions and all the way into assets in the U.S. Midwest.<sup>361</sup>

The first American sent to prison in connection with the Panama Papers was a Massachusetts-based accountant who spent decades helping wealthy Americans evade taxes.<sup>362</sup> With assistance from Mossack Fonseca, the accountant conspired with his clients to hide their assets and income from the IRS.<sup>363</sup> Their accounting tactics included concealing their beneficial ownership of offshore shell companies, setting up bank accounts for those shell companies (with the accountant himself submitting the fraudulent paperwork), covertly repatriating laundered money back into the United States by reporting to the IRS fictitious company sales that never occurred, and more sophisticated schemes masterminded by the accountant.<sup>364</sup>

***“ When it comes to large criminal enterprises with sophisticated methods of laundering money and moving it across borders, the accountants often keep the deepest secrets.”***

However, the most detailed known case with implications for international politics and national security centers around Africa’s richest woman, a kleptocrat who used accountants and “big four” accounting firms—especially PwC—to steal, launder, and hide money.<sup>365</sup>

Isabel dos Santos amassed at least \$3.5 billion through insider deals (from telecom licenses and diamond-mining rights), preferential loans, and public contracts ordered by her father, who ruled Angola from 1979 to 2017.<sup>366</sup> The only seemingly honest job Santos ever had was in her first two years after college, as an accountant at a firm that would later become PwC, so she knows how to utilize accountants as enablers.<sup>367</sup>

Santos hired one former accountant from PwC to run her business empire's finances, which included standing in for Santos at board meetings, serving as director at more than a dozen of her companies, securing bank loans, and orchestrating other financial structures that required shuttling between secrecy jurisdictions.<sup>368</sup> And Santos hired another senior executive away from PwC's Angola office to be CFO of the state oil company that Santos ran.<sup>369</sup> When the accountants Santos employed said they needed more "human resources and specific know-how," they contracted with PwC to advise on a restructuring to make the state oil company more profitable, collaborating with a group of consultants and lawyers who went so far as to draft the relevant presidential decrees.<sup>370</sup> Santos would then loot the state oil company by selling its most lucrative joint venture to her husband's Swiss company and wiring massive payments to a Dubai company controlled by an associate.<sup>371</sup>

Even while PwC was making money providing tax advice to her husband and consulting on the corrupt oil dealings, the accounting firm—PwC's Malta office—was also hired by Santos to audit both her sprawling network of shell companies and the state oil company.<sup>372</sup> PwC did work for at least 20 companies across five countries owned by Santos and her close associates.<sup>373</sup> Internal emails would later reveal that PwC accountants noticed that there was no paper trail around millions of dollars in loans funneled into the Maltese companies.<sup>374</sup> When PwC once named the Angolan government and Santos's husband as the beneficial owners in a draft financial statement it prepared for a Maltese company, one of Santos's executives told PwC to remove the owners' names, which PwC did without asking any questions.<sup>375</sup>

The other three accounting firms that constitute the "big four" also did work for companies tied to Santos.<sup>376</sup> For example, KPMG consulted (alongside PwC) on lucrative public infrastructure projects partly financed by Chinese banks and built by Chinese state-owned companies, while KPMG also audited at least two companies Santos owned in the country.<sup>377</sup> Western banks including Citigroup, Barclays, Deutsche, ING, and Banco Santander stopped doing business with Santos around the time of public reporting on her corruption in 2013, but PwC and some other accounting firms continued working for her up until the ICIJ's Luanda Leaks in 2020.<sup>378</sup>

## Recommendation

Like lawyers, accountants should face AML obligations when they act as TCSPs (under the separate statutory authority for TCSPs recommended in section five) and when they handle clients' money. In the case of accountants, financial transactions they might facilitate on behalf of clients include wiring money, making deposits and withdrawals, exchanging foreign currency, cutting checks, or buying and selling stock—all of which need AML scrutiny.<sup>379</sup>

But unlike with lawyers, AML rules for accountants should also cover more traditional accounting services beyond TCSP activities and financial transactions, including auditing or preparing financial statements and providing tax or financial advice.<sup>380</sup>

Compared to lawyers, broader rules for accountants are justified by their core business being naturally closer to traditional financial activity and thus highly relevant to FinCEN's work around criminal, tax, regulatory, and national security matters. Moreover, the issue of confidentiality between accountants and their clients is more like bankers' customer relationships (which do not justify a particularly narrow regulatory scope) than the more constitutionally sensitive matter of attorney-client privilege. Finally, broad regulation of the accounting sector is needed for the United States to catch up to international best practices.<sup>381</sup>

In addition to conducting TCSP activity and financial transactions, some types of accounting services present greater risks, such as providing financial or tax advice, facilitating property dealings, and making introductions to financial institutions.<sup>382</sup> Other accounting services—such as preparing, reviewing, and auditing financial statements—also require AML regulations, because they can be exploited by bad actors like Isabel dos Santos, but a risk-based AML regime would allocate less resources toward those services.<sup>383</sup> Accountants are also well positioned to contribute more toward some AML needs—like identification of customers' beneficial ownership and comparison to data in FinCEN's beneficial ownership registry—than others.<sup>384</sup> FinCEN will have to write regulations establishing minimum standards for AML programs that would be effective for U.S. accountants, differentiating between various lines of business and emphasizing certain aspects like beneficial ownership checks. To do this well, FinCEN should



lean on the FATF's guidance for accountants and collaborate with the American Institute of Certified Public Accountants.<sup>385</sup> But for now, Congress could mandate AML rules by simply adding “accountant and accounting firm” to the BSA, without any of the qualifications or definitional caveats needed for lawyers and TCSPs.

## 7. Covert PR and marketing firms

Over the past year, right when the United States and other governments were poised to approve emergency use authorizations for Covid-19 vaccines, an unknown funder based in Moscow targeted the respective countries with disinformation against the new vaccines.<sup>386</sup> It started in late 2020, with an operation targeting audiences mostly in India and Latin America with lies about the AstraZeneca vaccine (claiming it would turn people into chimpanzees).<sup>387</sup> In May 2021, when the U.S. Food and Drug Administration and similar regulators in other countries were discussing approval of the Pfizer vaccine for adolescents, Russian the operation purported to reveal hacked data that was manipulated to suggest that the Pfizer vaccine is lethal.<sup>388</sup> It is unclear how the document was obtained by the disinformation operation, which was run mostly by people in Russia who used talking points that resemble how the Russian government promotes its own vaccine.<sup>389</sup>

To obscure the origin of both the money and the message, the Russians set up a digital marketing company called AdNow, which was headquartered in Moscow but also had a British arm called Fazze with a registered address in London.<sup>390</sup> After the purportedly hacked 12-page document was uploaded to Reddit, Medium, and other forums, Fazze sent emails in stilted English and other languages to influencers who had millions of followers on YouTube, Facebook, Instagram, and TikTok, offering to pay them €2,000 to share the specified anti-vax disinformation.<sup>391</sup> Fazze introduced itself as a U.K.-based marketing firm acting for a client who wanted to remain anonymous.<sup>392</sup> Fazze told the influencers not to mention anything about the sponsorship, pretending they were just providing free advice driven solely by concern for their audience.<sup>393</sup> Influencers in India and Brazil appear to have participated in the plot, while those in Germany and France publicly blew the whistle.<sup>394</sup> Fazze's director in England claims the campaign was a joint venture between him, a Russian man he knows, and another person whose identity he does not know.<sup>395</sup>

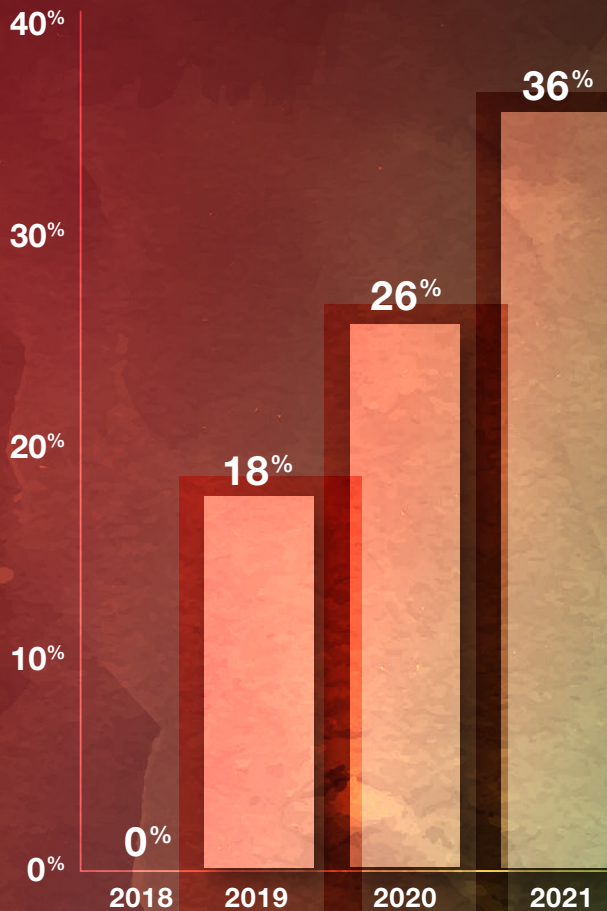
This is just the latest case of a disinformation-for-hire industry that has been quietly booming over the past two years, the latest tactic in a game of “cat and mouse” playing out between purveyors of malign influence and those seeking to identify them.<sup>396</sup> Within a couple years after the 2016 election, Facebook—sometimes assisted by tips from the FBI or cybersecurity firms—started imposing costs on perpetrators of disinformation through “naming and shaming,” publicly attributing the bad actors behind accounts removed for engaging in coordinated inauthentic behavior. As these takedowns got underway throughout 2018, Facebook attributed many disinformation campaigns to state sponsors such as Russian military intelligence, Iranian state media, and the Myanmar military.<sup>397</sup> But by 2019, that trend toward transparency took a step backward, because Facebook's investigations started hitting dead ends in the form of black (as in “black operations” that are meant to be secret and unattributable) PR and marketing agencies. Facebook's first takedown attributable to a truly commercial entity (as opposed to an entity like the Internet Research Agency, which functions more like a black arm of a government than a business seeking profits from many customers) was its January 2019 takedown of Twinmark Media Enterprises, a digital marketing group in the Philippines.<sup>398</sup> That first case was followed throughout 2019 by takedowns of an Indian IT firm, an Israeli commercial entity, marketing firms in Egypt and the United Arab Emirates, a Ukrainian PR firm, marketing firms in the U.A.E., Nigeria, and Egypt, and an advertising agency in Georgia.<sup>399</sup> An additional 14 networks were taken down in 2020, including two cases detailed below that show the growing role of U.S.-based companies and political actors. By 2021, the portion of takedowns attributed to commercial entities reached more than one in three (see chart). A recent study by researchers at Oxford University found more than 65 companies located in more than 80 countries offering computational propaganda and disinformation services on social media.<sup>400</sup>

**“ The disinformation-for-hire industry has been quietly booming over the past two years.”**

It makes sense that Facebook's first takedown of a black PR firm was in the Philippines, because that country offers the clearest cautionary tale about how rapidly this growing industry can pollute a national information environment.<sup>401</sup> In 2016, Rodrigo Duterte was elect-



## Portion of Annual Facebook Takedowns Attributable to a Commercial Entity



Includes Facebook takedowns of coordinated inauthentic behavior (CIB) attributed to PR, marketing, advertising, media, commercial, and IT companies, as a share of all annual Facebook CIB takedowns. Source: Author's tabulation of Facebook CIB reports.

ed by amassing a vast army of paid and unpaid social media trolls—possibly alongside assistance from Cambridge Analytica—whose manipulative narratives were coordinated by the campaign, from fake endorsements to vicious attacks.<sup>402</sup> Once in power, Duterte ordered the government to funnel money through companies like Twinmark Media Enterprises to pay for “patriotic trolling,” harshly smearing and intimidating perceived opponents such as opposition parties, human rights activists, minority populations, and journalists.<sup>403</sup> Feeling they had to “fight fire with fire,” Duterte’s political opponents, who once decried his usage of paid disinformation, started adopting the same tactics.<sup>404</sup> They tried to catch up by hiring black PR and marketing firms, which has not helped them win elections, but has accelerated the deterioration of the country’s democratic processes.<sup>405</sup>

As of the Philippines’ 2019 election cycle, most political campaigns all the way down to the village level now have both official social media pages (with positive messages focused on policies) and underground covert operations of black PR (with fake accounts spewing libelous disinformation about opponents).<sup>406</sup> An academic study showed how Filipino candidates enjoy “plausible deniability” through several layers of insulation between themselves and their black PR operations, which might be run by a troll farm (often in a different city) “who reports to a PR company, who reports to the candidates’ relative or close friend, who may or may not report to the central social media team, who in turn may or may not report to the candidate.”<sup>407</sup> Beyond politics, PR trolls are now also widely employed by Filipino celebrities, companies, or anyone else in the public eye, often battling an opposing black PR firm hired to tarnish their image.<sup>408</sup> Even mainstream PR and marketing firms that mostly provide above-board advice and services are increasingly offering black PR services (which by definition are always covert and deniable, and they are usually also negative and manipulative, otherwise they would not need to be secret) because this line of business has become so lucrative and widely expected of all competing Filipino PR firms.<sup>409</sup>

PR and marketing firms are not subject to FATF standards or AML rules in most jurisdictions. That is because rather than serving as an intermediary obscuring the source of potentially suspicious money, they usually represent the end of a spending chain (just paying their own employees), selling their expert services such

as writing press releases, speeches, and newsletters. But given how disinformation is disreputable work that is only effective if its source remains anonymous or at least deniable, what these black PR and marketing outfits really offer is financial secrecy. Only the name of the PR or marketing firm—rather than their customer—is seen by the person ultimately being paid to post the disinformation, whether that is Facebook as it sells advertisements, an influencer not being told who the client is, or a troll farm or junk news website fulfilling big orders placed by the black PR company for its secret client.<sup>410</sup> That layer of secrecy shields the beneficial owner’s identity from the loose lips of influencers, the prying eyes of investigative journalists who take jobs at troll farms just to reveal them, the publication of disclosures on social media ad archives, or the radar of U.S. law enforcement trying to combat malign foreign influence.

Two separate cases revealed in September 2020 demonstrate how U.S.-based communications firms and political funders are getting into the business of disinformation for hire, creating an opening for U.S. regulators to show the world how to address this rapidly growing threat to national security.

First, CLS Strategies is a Washington, DC-based strategic communications firm whose clients have included more than ten Latin American governments and presidential candidates.<sup>411</sup> In August 2020, Facebook took down a network of fake accounts and pages that CLS used to drive support for two of its clients—the political opposition in Venezuela and the interim government in Bolivia—among domestic populations in those countries by posing as politically engaged locals.<sup>412</sup> The Stanford Internet Observatory analyzed the context and tactics of this set of cases, showing how even some ostensible proponents of democracy are increasingly turning to black PR outfits like CLS to fight back online against autocrats, a tactic that usually just normalizes disinformation to the detriment of democracy, like in the Philippines.<sup>413</sup>

In Venezuela, as Nicolás Maduro slid from elected president to entrenched dictator—overseeing fraudulent elections that international observers call a “farce”—one factor that helped Maduro remain in power was his government becoming a major force on social media.<sup>414</sup> In response, Maduro’s political opponents retained CLS Strategies starting in 2015 to promote its candidates by pretending to be anti-Maduro Venezuelans.<sup>415</sup> Be-

cause U.S. PR and marketing firms have limited disclosure requirements (unless they are acting as U.S. lobbyists, foreign agents, or political spenders), the main way to guess who hires them is to analyze who they are campaigning for or against. Stanford did this analysis, which pointed to a particular faction within the opposition, an attribution that only became apparent in 2020 when the accounts secretly managed by CLS took one side following a split between opposition politicians (sharply criticizing its former ally, Juan Guaidó, with unsubstantiated claims).<sup>416</sup> That is, political opponents of an anti-American dictator ended up using a company in D.C. to sling disinformation at the leading fellow pro-democracy opponent, making democracy in Venezuela feel as unattainable as ever.

In Bolivia, when President Evo Morales rigged the actual vote count in the 2019 election, it triggered so much public furor that few even noticed the news that Morales also brought ten Russians employed by Rosatom (which the Bolivian government was paying \$300 million to build a nuclear center) to support his messaging platform and run “black PR campaigns” against his critics.<sup>417</sup> Those critics finally came into power after Morales was deposed, and they quickly started spending at least \$90,000 of government money to pay CLS Strategies to run their own black PR campaign against Morales.<sup>418</sup> When the then-interim president reneged on her pledge not to run for election herself, CLS set up fake accounts and pages campaigning for the interim president (sometimes falsely presenting themselves as fact-checking outlets, labeling stories that were true but critical “fake news”).<sup>419</sup> That is, the government used taxpayer resources to pay U.S. PR professionals to pretend to be Bolivians campaigning for the incumbent and spreading disinformation.

Second, and separate from CLS, in September 2020, Facebook, Instagram, and Twitter took down at least 600 accounts and pages managed by a pro-Trump domestic troll farm located in Arizona.<sup>420</sup> The covert operation was run by a Phoenix-based digital marketing firm called Rally Forge, the highest-compensated contractor of Turning Point Action, which in turn was a 501(c)(4) affiliated with Turning Point USA, a conservative youth group organized as a 501(c)(3).<sup>421</sup> That is, Turning Point USA’s political affiliate contracted with a closely linked U.S. marketing firm to hire teenagers to write pro-Trump replies on social media.<sup>422</sup> They spent \$1.2 million on Facebook and Instagram ads to

amplify their content, making no mention of Turning Point as the funder and controller of the astroturfing campaign.<sup>423</sup>

***“ The information environment in which U.S. democracy operates is already degrading toward the situations plaguing the the Philippines, Venezuela, and Bolivia.”***

Back in 2016, content from Turning Point USA was amplified by Russia’s Internet Research Agency.<sup>424</sup> What this case shows is that in 2018 and 2020, Turning Point hired a U.S.-based “marketing partner” to build their own troll farm to target American voters with disinformation.<sup>425</sup> They used a combination of real accounts, fake accounts (with profile pictures generated by AI and Bitmojis), and “thinly veiled personas” (whose names varied slightly from real people).<sup>426</sup> Most of what they did was reply to posts in order to project a mirage of widespread support for their political narratives.<sup>427</sup> Rally Forge gave the trolls access to a shared online document and schooled them in ways to post as much of the content as possible while evading the platforms’ automated detection triggers (e.g., limiting the number of times they post the same exact language, editing the beginning and ending of snippets to differentiate posts slightly, etc.).<sup>428</sup> Their messages included pro-Trump and anti-Biden political views, as well as related false claims like the CDC inflating Covid-19 data and mail-in ballots being fraudulent.<sup>429</sup> Rally Forge also created a Facebook page called “Navajos for Trump” and took out prominent ads in the Navajo Times newspaper under the name of the group, which does not appear to exist or have any affiliation with actual Navajos.<sup>430</sup> In another page taken from the Russian playbook, Rally Forge sought to split Democratic voters by taking out Facebook ads promoting Green party candidates, pretending to be a liberal organization that turned out to be non-existent.<sup>431</sup>

Separate from media operations meant to influence important societal outcomes like elections or vaccinations, some covert PR and private intelligence firms also provide services meant to influence internet search results to tarnish the reputation of certain individuals. Ben Rhodes, a close foreign policy advisor of President Obama, shares in his recent book that his literary agent expressed concern that “[Rhodes’s] Google is a dumpster fire” of attacks on his honesty, intelligence,

and character.<sup>432</sup> Rhodes got a free consultation from a PR service—which turned out to be too expensive for him—that cleans up people’s online reputations over a period of months by clicking on good stories to teach Google’s algorithm to rank positive internet content more highly than negative content.<sup>433</sup> As soon as the consultant looked closely at Rhodes’s profile, he could tell that someone was being paid to worsen the search results.<sup>434</sup> Rhodes notes that there was no way of telling whether the covert operation was funded by his opponents in conservative politics, the U.S. government, the Israeli government, or anyone else.<sup>435</sup> And if U.S. law enforcement wanted to see who was behind an operation like that, they would not have any natural leads or disclosures to compel, given the covert nature of U.S. covert PR and marketing firms.

The information environment in which U.S. democracy operates is already degrading toward the situations plaguing the Philippines, Venezuela, and Bolivia. Those countries show that it only takes a couple of years to reach a point of public discourse becoming a hellish Potemkin village of black PR and marketing firms waging covert information warfare against each other for undisclosed clients, drowning out the voices of real people and destroying the public’s ability to discern which opinions are genuine. From the current juncture, all it would take is a single election cycle in which both sides decide their only hope is to play dirty. But the good news is that we are not entirely there yet, and the U.S. government still has a chance to deter black PR by creating a legal requirement that these firms conduct diligence on their ultimate customers, keep records, and report suspicious activity to law enforcement.

## **Recommendation**

Imposing AML and CDD obligations on black PR and marketing firms will be controversial to some, such as politicians who are aligned with former president Trump in decrying the self-imposed policies of social media platforms as infringements upon free speech. For this reason, this proposal is listed last among the four horsemen, as it is not an issue that Treasury should attempt to tackle without strong political support from Congress, like through legislation amending the BSA.

The argument that government regulations risk infringing upon First Amendment rights would be stronger if the rules were meant to prohibit an activity or compel public disclosures. In fact, the United States already has

some laws that take those stronger steps. For example, in its consumer protection mission (enforcing the statutory prohibition against unfair and deceptive acts and practices), the Federal Trade Commission (FTC) takes actions against PR firms misrepresenting either that paid product endorsements are independent consumer opinions or that commercial ads are independent journalistic content.<sup>436</sup> And with regards to social media manipulation, the FTC polices YouTube influencers who fail to disclose their financial interests in product endorsements and PR firms trafficking in fake LinkedIn followers.<sup>437</sup> Making black PR firms impose basic internal checks for dirty money and securely share information with law enforcement through well-regulated channels that are subject to judicial review is a far less invasive requirement.

With AML rules in place, the next time a malign influence operation—to sway an election, discourage vaccination, foment an insurrection, etc.—can only be attributed to a U.S.-based PR or marketing firm, U.S. law enforcement would have a legal pathway to expeditiously identify the ultimate customer. The PR or marketing firm would be obliged to identify their customers and keep records. The firm might realize their customer is funded by a Russian oligarch and file a suspicious activity report. Or law enforcement could proactively obtain the firm's records—identifying the customer—through a court-ordered subpoena.

To focus legislation on that kind of compelling national security interest, the statutory text should be limited in scope. It should only apply to persons engaged in the business of public relations, marketing, communications, or other similar services in such a manner as to “provide another person anonymity or deniability.” That is, AML rules should be circumscribed to only cover firms involved in black ops, because that is the type of activity that is most likely to launder malign actors' identities and money, thwart attribution efforts, and otherwise threaten national security.



# Stage III: Exemptions to Repeal

In the likely event that Congress fails to deliver the overwhelming show of political support (ideally by amending the BSA) needed to regulate the four horse-men, FinCEN should allocate more resources toward repealing regulatory exemptions enjoyed by sectors already named in the BSA.

As background, when the Patriot Act was enacted with swift and unstoppable political momentum after 9/11, it required financial institutions to establish AML programs, which set off a frenzy of lobbying by special interest groups asking Treasury to grant exemptions. The big banks were not able to get exempted, both because of their centrality to the financial system and their concentration in a relatively limited number of cities, which limits their political power. By contrast, real estate agents and auto dealerships have locations in every single congressional district, so the political pressure to exempt these and some other groups was overwhelming. Those sectors and eight others were included in a list of “temporary exemptions” issued by Treasury in 2002 (see exhibit).<sup>438</sup> Treasury claimed it had to first oversee

the AML programs established by banks and money services businesses before it would get to the rest later.<sup>439</sup> Two decades later, these exemptions remain in place.

With financial secrecy again a top national security threat—this time because it enables corruption rather than terrorism—now is the time to repeal the most dangerous regulatory exemptions, starting with the markets for real estate and luxury vehicles. But even though this can be done without any new authorities from Congress, FinCEN will still need support to take on powerful special interests that have eluded regulation for decades, such as realtors and auto dealers. In addition to increased budgetary resources, FinCEN will need strong backing from the president, the Treasury secretary, and top White House officials.

One last sector with regulatory gaps that pose new national security challenges is already generally regulated by FinCEN: money services businesses. Empowered by broad statutory authorization, FinCEN has worked hard in recent years to include cryptocurrency service

## Ten "Temporary Exemptions" Have Been in Place for Two Decades



Monetary Offices, Treasury

§ 103.170

### Exempted anti-money laundering programs for certain financial institutions.

(a) *Exempt financial institutions.* Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) An agency of the United States Government, or of a State or local government, carrying out a duty or power of a business described in 31 U.S.C. 5312(a)(2); and

(b) *Temporary exemption for certain financial institutions.* (1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

- (i) Pawnbroker;
- (ii) Loan or finance company;
- (iii) Travel agency;
- (iv) Telegraph company;
- (v) Seller of vehicles, including automobiles, airplanes, and boats;
- (vi) Person involved in real estate closings and settlements;
- (vii) Private banker;
- (viii) Commodity pool operator;
- (ix) Commodity trading advisor; or
- (x) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in §103.11(c)) that is not subject to regulation by a Federal functional regulator (as defined in §103.120(a)(2)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

providers in this sector—efforts that must continue and evolve to address new vulnerabilities exploited in ransomware attacks, election interference, and other emerging threat vectors.

## 8. Real estate agents, escrow agents, and real estate lawyers

If FinCEN had to choose just one industry to regulate among the ten that are named in the BSA and exempted by regulations, it should be “persons involved in real estate closings and settlements.”<sup>440</sup> That should mean not only title insurers (the lowest hanging fruit within the real estate industry, as discussed in section three), but also other professionals, starting with real estate agents, escrow agents, and real estate lawyers. Real estate agents in particular (including brokers, realtors, salespeople, or other similar professionals) have unique proximity to buyers and sellers that positions them to know the most about the ultimate customer, understand the purpose of the transaction, and detect schemes to hide the source, ownership, location, or control of dirty money. The need to regulate realtors, escrow agents, and real estate lawyers can be seen in the following three examples, respectively involving Trump, Kolomoisky, and Teodorin.

First, most of the public information about wealthy Russians buying luxury condominiums in Trump’s properties has come from the loose lips of real estate agents and similar non-bank intermediaries. USA Today was told by one broker for Trump World Tower (which opened in 2001 near the United Nations, not to be confused with Trump Tower on Fifth Avenue) that she sold 65 units to her “contacts in Moscow.”<sup>441</sup> Bloomberg News heard from another sales agent that a third of the units on the very top floors were sold to individuals or LLCs connected to Russia or neighboring states.<sup>442</sup> Bloomberg also learned that a Ukrainian-born figure with alleged ties to the Russian mafia personally issued mortgages to suspicious buyers including a politician in Ukraine’s pro-Russia Party of Regions (while also engaging in other highly unusual financial transactions, like selling Trump 200 televisions, although an FBI investigation did not produce any money laundering charges).<sup>443</sup> Separately from Trump World Tower, Reuters found that at least 63 individuals with Russian passports or addresses bought properties across seven Trump-branded luxury towers in south Florida.<sup>444</sup> The developer who built the towers told Bloomberg that there were actually 200 Russian buyers among the 2,000

units, while a local salesman working for the development company told the Washington Post it was closer to 500 Russians.<sup>445</sup> The exclusive sales agents for three of the Florida towers—sold disproportionately to Russian elites and mobsters, from Gazprom executives and government ministers to the head of a criminal group in Rostov-on-Don and members of Russian-American organized crime groups—was an Uzbek immigrant who arrived in the United States as a cultural attaché and was a suspected organized crime figure.<sup>446</sup>

In addition to buyers enriching sellers, the opacity of the U.S. real estate market presents opportunities for undisclosed benefactors to funnel dirty money through corporate intermediaries to various recipients, even those not contributing any capital of their own, like Trump licensing his brand name to a property development. Starting in the early 2000s, Trump received a financial lifeline through a newly formed company called Bayrock, which marketed itself as a property developer and located its offices one floor below Trump Organization headquarters in Trump Tower.<sup>447</sup> Bayrock funded the development of Trump SoHo, giving Trump an 18 percent equity stake and millions in annual management fees, even though Trump contributed nothing other than the right to use his name.<sup>448</sup> Such license agreements can remain even more hidden than property ownership, as even those details had to be unearthed by reporters because Trump has never disclosed the terms.<sup>449</sup> Bayrock was run by Felix Sater, a twice-convicted Trump associate connected to the top levels of both Russian intelligence (GRU) and Russian organized crime (Semion Mogilevich).<sup>450</sup> The source of funds was a tightly held secret (with Trump himself claiming under oath, “I never really understood who owned Bayrock”).<sup>451</sup> However, a former employee claimed in court that Bayrock was a front for “hidden interests in Russia and Kazakhstan,” getting all the money it needed from the cash accounts of a chromium refinery owned by notorious Kazakh metals tycoons known as “the trio” (whose businesses are organized as Eurasian Natural Resources Corporation or ENRC).<sup>452</sup> In 2007, Bayrock received \$50 million from an Icelandic financial company called FL Group—itsself owned by an obscure web of companies rumored to be tied to the Kremlin—in exchange for a controlling stake in the projects Bayrock developed.<sup>453</sup> When a competing Icelandic banker associated with Putin tried to outflank FL Group and make his own investment in Bayrock, Sater confided in an associate that he turned that one away in favor of FL

Group, because FL Group was even “closer to Putin.”<sup>454</sup> In 2008, Don Jr. let it slip at a real estate conference that “certainly with our project in SoHo...we see a lot of money pouring in from Russia.”<sup>455</sup>

The investigation by BuzzFeed which revealed that most of the condos in Trump SoHo were bought with cash by shell companies also found that more than half of the secretive sales were handled by one real estate lawyer, Martin Jajan.<sup>456</sup> While Jajan’s small law office is located in a Trump property, he represents buyers and openly admits that he often never even meets them.<sup>457</sup> He also says that 99 percent of the time the buyer has already funneled the money out of their home country—to an offshore secrecy jurisdiction—and the main service they need from Jajan is for him to set up an anonymous corporate vehicle to hold their property.<sup>458</sup> Jajan also lists himself as the agent of the shell company and signs deeds of transfer, sometimes even apparently crossing out Moscow addresses with a pen and writing in the address of his own Manhattan law office, Jajan PLLC.<sup>459</sup> Finally, Jajan helps shady foreign clients secretly move their money through his law firm’s escrow account. For example, three units were reportedly bought by a former Kazakh energy minister with more than \$3 million he allegedly looted from a city where he served as mayor before fleeing to Switzerland.<sup>460</sup> To launder the proceeds of his corruption into the United States, the oligarch funneled it in the names of his children through the escrow account of Jajan PLLC.<sup>461</sup> Another Manhattan real estate lawyer, whose clients include “heads of state,” openly admitted to BuzzFeed that he does not ask questions: “I don’t know where the money comes from. I don’t ask where the money comes from. If they’re trying to move money to hide it, I’m the last person they’re going to tell about it. Unlike securities brokers, we do not have a know-your-customer rule.”<sup>462</sup> Moreover, the involvement of lawyers in the due diligence process is even more extensive in the commercial real estate sector.<sup>463</sup>

Separate from Bayrock and SoHo, the essence of Trump’s business model over the past two decades has been monetizing his unusual willingness to license his brand name to anyone with deep pockets, no matter how shady the characters or dubious their ultimate source of wealth. In Toronto, Canada, Trump worked with a Russian-born billionaire with family ties to organized crime and funding sources (including the sale of a steel mill in eastern Ukraine) unlocked by an apparent

\$100 million kickback to the Kremlin, as well as a \$300 million loan from an Austrian bank (Raiffeisen) tied to Russia’s ruling elite.<sup>464</sup> In Baku, Azerbaijan, Trump’s partners were oligarchs financially entangled with (and seemingly laundering money for) Iran’s Revolutionary Guard and described by U.S. diplomats as “notoriously corrupt even for Azerbaijan,” according to public reports that were easily accessible to the hundreds of professionals around the world working on the project and visibly corroborated by oddities like contractors being paid in duffel bags of cash.<sup>465</sup> In Batumi, Georgia, the inexperienced development company that paid Trump and invited him to the country was owned by a Kazakh oligarch closely allied with Putin and funded by a bank enmeshed in self-dealing and money laundering scandals.<sup>466</sup> In Panama City, Trump’s partner—a Lebanese importer-exporter—had no experience in real estate, so he had to bring in a Columbian construction company, a broker who used to be a Brazilian car salesman and would later be charged with laundering drug money, and salesmen allegedly linked to organized crime in the former Soviet Union.<sup>467</sup> Corruption investigations also surround real estate partners Trump has worked with in Brazil, India, Indonesia, and elsewhere.<sup>468</sup> None of these deals are known to have been thoroughly probed by U.S. law enforcement, which is flying blind without due diligence and reporting requirements by real estate professionals.

**“ The single most important real estate subsector to regulate is real estate agents, including brokers and realtors.”**

Beyond Trump, a second case study shows the need to extend regulations to cover *commercial* real estate professionals: the U.S.-based network of Ukrainian oligarch-warlord Ihor Kolomoisky, described by Casey Michel in *American Kleptocracy*.<sup>469</sup> Kolomoisky allegedly employs contract killers and thugs in balaclavas in Ukraine to raid companies and menace anyone impeding his plunder (including openly threatening the central bank governor and probably burning down her house and hitting her with a car in London).<sup>470</sup> But instead of killer goons, his Miami office employs real estate professionals to hide his stolen money in one of the world’s only markets capable of quietly and securely absorbing billions of dollars: commercial office buildings.

The American front men representing Kolomoisky’s interests in property acquisitions were connections



made through an international Orthodox Jewish organization.<sup>471</sup> But they knew full well that their money laundering operation for a deadly foreign oligarch was anything but religious. A leader of the Miami office admitted to realtors that the money linked directly to a bank owned by a homicidal Ukrainian oligarch.<sup>472</sup> Another American involved in the network admitted to Michel, “As far as I could tell...it was dirty money...all a washing machine scheme.”<sup>473</sup>

In addition to court filings and other documentation, Michel’s reporting is informed by the recollections of brokers and realtors who were willing to work with Kolomoisky’s network despite finding it to be odd at best. A Cleveland broker said, “It became pretty obvious that something was not completely right...To be frank, it looked like money laundering.”<sup>474</sup> Another American familiar with the operation called it “questionable,” citing “a lot of shady stuff,” like Kolomoisky’s buyers not doing any diligence on the properties, repeatedly overpaying, and writing multi-million dollar personal checks to avoid the scrutiny of bankers.<sup>475</sup> But these real estate professionals had no obligation to ask where the money came from or share their suspicions with law enforcement, so they did not.<sup>476</sup>

Finally, Teodorin Obiang—the kleptocratic heir apparent of Equatorial Guinea—used realtors, escrow agents, and lawyers to secretly buy a \$30 million beach house in Malibu, according to the 2010 Senate PSI investigation.<sup>477</sup> Teodorin’s most notorious attorney, Michael Berger, introduced him to Neal Baddin, a Coldwell Banker real estate agent who Berger knew could be trusted to handle a “delicate” transaction after signing a confidentiality agreement.<sup>478</sup> Teodorin also enlisted his other lawyer, George Nagler, who like Berger, was well aware of the suspect origins of Teodorin’s money.<sup>479</sup> Baddin probably had suspicions too, given that he refused to list his name as the buyer’s agent in the multiple listing service, which would have provided valuable free advertising so long as the transaction was above board, given that it was by far his biggest sale ever and the listing would have attracted more big business.<sup>480</sup>

To get the \$30 million to the sellers through the U.S. financial system without anyone asking where the money came from, Teodorin needed to bring in one more intermediary to serve as a layer of insulation against probing bankers who are required to identify their own customers but not their customers’ customers. Usually,

the purpose of an escrow service is to hold money until certain conditions are met (like signing over a title), essentially allowing the buyer and seller to rely on the escrow agent rather than having to trust each other. But in cases like this, the escrow agent also sells anonymity by stepping in as the customer to be scrutinized by the bank, which in this case was Wachovia.

Teodorin initially layered his money through a couple of additional escrow accounts that made his funds look like they were coming from within the United States. One of these accounts was at West Coast Escrow, which was affiliated with Coldwell Banker.<sup>481</sup> The other was an escrow account in the name of Sidley Austin, a U.S. law firm used by Teodorin.<sup>482</sup> Those intermediaries, in turn, passed the money on to the final escrow account, which First American Title Company opened at Wachovia.<sup>483</sup> After funneling money through those extra U.S. escrow intermediaries for the first few transfers, Teodorin started wiring money directly from Equatorial Guinea to the escrow account at Wachovia.<sup>484</sup> Even though Wachovia considers Equatorial Guinea a high-risk country, the only diligence the bank did was on its own customer, First American, as well as a lookup to ensure that Teodorin was not sanctioned by Treasury.<sup>485</sup> This loophole would no longer be possible if Treasury were to impose AML obligations on escrow agents like First American and real estate lawyers like Michael Berger, George Nagler, Sidley Austin, and others involved.

## Recommendation

After picking the lowest hanging fruit by permanently requiring title insurers to collect and report beneficial ownership data nationwide—as recommended in section two—FinCEN should initiate a rulemaking process to broadly make “persons involved in real estate closings and settlements” establish full AML programs, repealing the exemption that has been in place since 2002.

This more comprehensive rule should include title insurers. FinCEN should also leave in place the limited expansion to insurance industry regulations recommended in section two, making title insurers obtain and report data on beneficial ownership. As with GTOs, that will help centralize data on who owns U.S. real estate in one place without FinCEN or law enforcement having to take the time to cross-tabulate the national beneficial ownership registry with county-level real estate records, while also providing data on property-owning entities that will not be included in the registry. But that rule



does not make title insurers establish full AML programs (evaluating the purposes and risks of transactions rather than just sucking up and reporting data), which is important for risk-based AML.

The single most important real estate subsector to regulate—and the one most actively recommended in FATF assessments of U.S. real estate rules—is real estate agents, including brokers and realtors.<sup>486</sup> Their unique proximity to buyers and sellers strongly positions them to know who the customers are and what they might be up to, which is why all the leaks about Trump and Kolo-moisky’s secret dealings came from real estate agents (as opposed to, say, title insurers). All-cash buyers can usually forego title insurance, which Treasury warns is a way of avoiding GTO disclosures and a reason for a more comprehensive solution.<sup>487</sup> However, real estate agents will also bring some challenges around capacity for implementation. There are more than 3 million people with active real estate licenses in the United States, 95 percent of whom work independently (not as an employee of any company that could have a compliance department) and half do not have a college degree.<sup>488</sup> Properly regulating this sector is mission-critical, so FinCEN will have to dedicate substantial time, attention, and manpower to lay the political groundwork on Capitol Hill (where the industry will try to buy allies to fight against Treasury), work with groups like the National Association of Realtors (NAR), build upon the voluntary guidelines of NAR and guidance set by FATF, provide extensive opportunities for public comment and implementation, and dedicate far more compliance and engagement resources to real estate stakeholders.<sup>489</sup> The entire process may well take a couple years to be finalized, so FinCEN would have to start soon to be done by the end of Biden’s four-year term.

This regulatory rule also must cover escrow agents and real estate lawyers, as demonstrated by the cases involving Teodorin’s Malibu home and Trump SoHo. With regards to real estate lawyers, if Congress adds lawyers (not limited to real estate) to the BSA before FinCEN regulates the real estate market, that separate rulemaking process should include real estate lawyers (among other lawyers) and there would not be much more to do in the real estate regulations. But assuming lawyers are not explicitly listed in the BSA, FinCEN has suggested before (back in 2003, when it was soliciting comments on how to scope real estate regulations) that a reasonable interpretation of “persons *involved* in real estate

closings and settlements” could “cover participants other than those who actually *conduct*” the transaction, such as “one or more attorneys, who represent the purchaser or the seller.”<sup>490</sup> FinCEN went on to declare that “attorneys often play a key role in real estate closings and settlements and thus merit consideration,” and “FinCEN...does not believe that [regulatory] requirements to attorneys in connection with activities relating to real estate closings or settlements raises issues of, or poses obligations inconsistent with, the attorney-client privilege.”<sup>491</sup>

Beyond those essential four subsectors—title insurers, real estate agents, escrow agents, and real estate lawyers—FinCEN should also consider what might be considered high-hanging fruit: real estate subsectors that may not be top AML priorities, but FinCEN may still have compelling reasons to believe that they often get abused by money launderers, are positioned to identify suspicious conduct, and are sufficiently sophisticated to make regulation feasible. When FinCEN reviewed SARs describing a dozen types of businesses related to commercial real estate, 75 percent of the SARs involved one of just two types of companies: property management companies and real estate investment companies.<sup>492</sup> The cases of oligarchs in the former Soviet Union apparently laundering money through Trump-branded residential or hotel development projects suggests that real estate development companies should be regulated as well. Another recent analysis of 56 cases over the past five years similarly found that while the most frequent real estate enablers are lawyers, realtors, title insurers, and escrow agents, the next three most commonly exploited subsectors are real estate investment companies, real estate development companies, and property management companies.<sup>493</sup> FinCEN should consider either regulating all these subsectors at once or waiting to see how the real estate market responds to covering the four essential low-hanging fruit before tackling the other three.

Finally, as a completely separate regulatory priority on the broader topic of real estate professionals, while non-bank residential mortgage lenders and originators technically face U.S. AML obligations, the FATF and the IMF have been warning that the rules are not getting through to the private sector.<sup>494</sup> The FATF sat down with several of these businesses and was taken aback by how they were unaware of their regulatory obligations (especially involving due diligence of foreign politicians),

lacked a basic understanding of money laundering risks and their role in addressing them, and did not issue many SARs (and even those they did issue were mostly about mortgage fraud and were triggered by technical compliance rules rather than thoughtful risk assessments).<sup>495</sup> FinCEN should launch a review of this sector and develop a strategy to improve its compliance, probably starting with clearer guidance before building up to stronger enforcement actions.

## 9. Luxury vehicle dealers

After real estate, the second most important enabler sector that has been identified by AML laws since 1988 and exempted from Patriot Act obligations by Treasury regulations since 2002 is “sellers of vehicles, including automobiles, airplanes, and boats.”<sup>496</sup> To see how stolen money can buy all three of those vehicle types—land, air, and sea—we return one last time to *American Kleptocracy* and the most showy and shameless kleptocrat of all, Teodorin Obiang, the secret owner of entire fleets of supercars, private jets, and yachts.<sup>497</sup>

First, Teodorin spent more than \$200 million on 50 extremely high-end cars.<sup>498</sup> Eleven were seized by police in Paris, where he was infamous for speeding and crashing cars.<sup>499</sup> Seemingly inclined to funnel as much dirty money as possible into automotive purchases, Teodorin would at times buy a new car every week or two, eventually adding up to 32 in California, some requiring storage at a local automotive museum.<sup>500</sup> The 2010 Senate PSI investigation presented checkbook entries for one of Teodorin’s U.S. shell companies—for which he was the sole signatory—filled with lines like “Maserati BVH,” “Ferrari,” “Ferrari (Illegible),” or “Pay off 2005 Lamborghini Roadster,” etc.<sup>501</sup> Teodorin was at one point regarded as one of the top luxury car buyers in America and a well-known customer at the auto dealerships in Beverly Hills.<sup>502</sup> However, the dealers were under no regulatory compunction to ask where he really was or how his shell company was funded, so they just accepted the endless windfall of dirty money.<sup>503</sup>

**“ Teodorin funneled the money he stole in Equatorial Guinea into luxury vehicles on land, air, and sea.”**

Second, Teodorin tried twice to buy Gulfstream jets, failing in 2005 before succeeding in 2006, transactions that impart three lessons about how regulations should

be scoped.<sup>504</sup> The 2005 attempt flowed through the escrow account of a U.S. law firm, Sidley Austin.<sup>505</sup> For reasons that remain unclear, negotiations between Teodorin and Gulfstream collapsed, after which it took four months for Teodorin to get his money back.<sup>506</sup> Sidley Austin only accepted the wire transfer from Gulfstream (to Sidley Austin’s attorney-client account at Citibank on Teodorin’s behalf) after Sidley Austin obtained a letter from the Justice Department giving the law firm the green light to move money for Teodorin—the last time Teodorin ever used Sidley Austin.<sup>507</sup> And then Societe General refused to accept the money (for Teodorin’s personal bank account in Equatorial Guinea) until the bank obtained a similar letter of permission from the Justice Department.<sup>508</sup> It showed how law firms, like banks, are positioned to help the U.S. government police aircraft transactions, a helpful role that FinCEN should make formal and mandatory through AML compliance. The second attempt almost failed too when the U.S. escrow agent (which also doubles as a law firm, McAfee & Taft, based in Oklahoma, where the aircraft was registered) refused to complete the transaction because Teodorin would not send information verifying the source of the \$38.5 million.<sup>509</sup> Unfortunately, Teodorin was able to then just switch to an alternative Oklahoma-based escrow provider, Insured Aircraft Title Services, Inc. (which doubles as a title insurer), a company that was happy to take his dirty money without asking any questions.<sup>510</sup> This shows the need to regulate U.S. escrow agents and title insurers (not just lawyers and dealers) engaged in aircraft sales. The final lesson is that the first seller was a manufacturer and the second was an existing owner in the secondary market, showing that dealings with both types of sellers should be covered by Treasury regulations.

Third, Teodorin ordered designs in 2011 for what would have been the second most expensive yacht in the world, at \$380 million, and then ended up instead buying a different yacht for \$120 million in 2014.<sup>511</sup> He also bought racing boats capable of speeds up to 200 miles per hour from a dealer in Fort Meyers, Florida.<sup>512</sup> With a few strokes of luck breaking the way of U.S. investigators, the speedboat transactions ended up providing a crucial lead that exemplifies how much information—which would be highly useful for FinCEN—echoes around halls of companies selling luxury vehicles.<sup>513</sup> Back when the Justice Department wanted to make an example out of Teodorin but it was still a cold case without any leads, the main investigator rummaged through the evidence

and found a canceled check made out to a boat trailer that happened to be located near his office.<sup>514</sup> When he drove up and asked the manager about the check, the investigator was told it was for “the prince...from Africa” who commissioned three boats built by another company in Florida.<sup>515</sup> When the investigator paid a visit to that boat company, he struck up conversation about the “prince” with a woman who worked there, who casually mentioned, “You know, he got the glove.”<sup>516</sup> With Julien’s auction house having covered up the paper trail, the fact that Teodorin had bought millions in Michael Jackson memorabilia—including the “Bad” Tour crystal glove—was a well-kept secret, except that Teodorin’s assistant once bragged about it to the staff at the boat company.<sup>517</sup>

## Recommendation

Treasury should issue a rule revoking the regulatory exemption to the Patriot Act for “sellers of vehicles, including automobiles, airplanes, and boats.” As with real estate, the rules should initially cover at least four sub-sectors that see information about the financial flows, while also considering rules for companies that build the assets. That is, FinCEN’s rule for high-end vehicles should impose an obligation to establish an AML program on title insurers, dealerships or other agents of buyers or sellers, escrow agents handling funds for vehicle sales, and lawyers engaged in vehicle sales, while also considering how and when to cover manufacturers of high-end vehicles.

With strong support within the administration to stand up to lobbyists for auto dealers and lawyers, FinCEN would have all the political backing and legal authorization it needs to regulate this sector. While Treasury’s 2002 regulatory exemption shortened the sector description to “*sellers of vehicles ...*,” the BSA uses the slightly broader term of “a business *engaged* in vehicle sales ...”<sup>518</sup> Just like the difference FinCEN has noted between those “involved” in real estate versus “conducting” the transaction, businesses “engaged” in vehicle sales could include all the enablers noted above (without impinging upon attorney-client privilege).<sup>519</sup>

## 10. Crypto and other money services businesses

Last but not least, in addition to repealing regulatory exemptions to Patriot Act obligations, one last sector of the U.S. financial system suffers from substantial security

vulnerabilities that could be addressed by FinCEN without any new statutory authorities: money services businesses (MSBs) that are built on new technologies and produce regulatory gaps exploited by malign actors.

As background, MSBs are non-bank businesses that either transmit money (such as Western Union and PayPal) or issue, redeem, or cash various forms of money (like checks, traveler’s checks, money orders, or foreign currencies).<sup>520</sup> MSBs are named as financial institutions under the BSA and are required to maintain AML programs reasonably designed to catch dirty money.<sup>521</sup>

**“ Over the past decade, no class of financial innovation has kept FinCEN busier than cryptocurrencies.”**

While this definition of an MSB sounds like a boring backwater of the financial system, the pace at which money services technologies evolve and malign actors adapt make this a space where financial regulators expend considerable energy keeping up. Over the past decade, no class of financial innovation has kept FinCEN busier than cryptocurrencies. This rapidly growing market is particularly important for national security, because FinCEN has found that at least some 12 percent of cryptocurrency flows look like dirty or dangerous money, including funding for ransomware, election interference, terrorism, weapons proliferation, sanctions evasion, and other crimes and threats.<sup>522</sup> Like the previously mentioned “cat and mouse” game of bad actors circumventing the institutional scrutiny of disinformation, the main purpose of cryptocurrencies—even for innocent users—is to avoid the power of centralized authorities like governments and banks, so FinCEN has had to chase the development of cryptocurrency markets with new rules bringing them into the regulatory ambit.

FinCEN’s first and most fundamental move to regulate cryptocurrencies was in 2011, when it revised its definition of money transmission to include cryptocurrency services.<sup>523</sup> With that and subsequent guidance, AML obligations like those imposed upon banks and traditional MSBs (such as Western Union) were extended to cover most cryptocurrency business models, including peer-to-peer exchangers, hosted wallet providers, owner-operators of crypto ATMs and DApps, and anonymizing service providers (like mixers and tumblers).<sup>524</sup> Moreover, this extension of AML obliga-

# Rule Proposed in Oct. 2020 Would Reduce the Travel Rule Threshold



68006

Federal Register / Vol. 85, No. 208 / Tuesday, October 27, 2020 / Proposed Rules

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Parts 1010 and 1020

[Docket No. FINCEN-2020-0002 ; RIN 1506-AB41]

#### **Threshold for the Requirement To Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status**

**AGENCY:** Board of Governors of the Federal Reserve System (“Board”); Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Board and FinCEN (collectively, the “Agencies”) are issuing this proposed rule to modify the threshold in the rule implementing the Bank Secrecy Act (“BSA”) requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The proposed modification would reduce this threshold from \$3,000 to \$250 for funds transfers and transmittals of funds that begin or end outside the United States. FinCEN is likewise proposing to reduce from \$3,000 to \$250 the

threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on funds transfers and transmittals of funds that begin or end outside the United States. The Agencies are also proposing to clarify the meaning of “money” as used in these same rules to ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency (“CVC”), which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further propose to clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

tions applies to anyone who provides the relevant services, regardless of their legal structure or underlying technology, so under certain conditions FinCEN’s rules can cover non-crypto businesses (like video game companies offering in-game currencies or internet casinos exchanging crypto with online gamblers).<sup>525</sup> To the chagrin of many libertarians and anarchists who hope these services will help them escape the clutches of government overlords, setting up a customer account typically requires uploading scans of government-issued identification and proof of residence—information that MSBs feed into their risk-based AML compliance programs, keep on file, and report to the government as needed.<sup>526</sup>

There are still ways of getting around these AML rules for crypto and other MSBs—gaps that grow as people seek financial anonymity and new monetary pathways develop—and that is where FinCEN focuses its policy work, including a couple regulations proposed in late 2020.

For example, in October 2020, FinCEN proposed reducing the threshold that triggers the “travel rule” (see exhibit).<sup>527</sup> Currently, financial institutions like banks and MSBs have to record certain information that must appear on wire transfers (or other transfers and transmittals) of \$3,000 or more, and then pass the information along to other financial institutions in the payment chain (so the information “travels” with the money,

making it harder to launder).<sup>528</sup> FinCEN proposes reducing the threshold to \$250 for cross-border payments, given evidence that small-dollar remittances are used in most terrorism and fentanyl cases.<sup>529</sup> For example, the only case of the Islamic State sending thousands of dollars or more into the United States to fund an attempted terrorist attack on U.S. soil included a \$1,000 transfer through Western Union from someone in Egypt to someone at a convenience store in Maryland, along with five payments through PayPal.<sup>530</sup> Going across the border in the other direction, a Bosnian-American man in Missouri collected money through Western Union and PayPal from people throughout the Bosnian-American community who wanted to fund an Islamic State fighter in Syria, receiving or sending 25 payments in amounts that were between the current recordkeeping threshold of \$3,000 and the new threshold FinCEN is considering of \$250.<sup>531</sup> The FBI learned about those cases through confidential informants rather than financial reporting, given that the \$3,000 threshold is too high. FinCEN’s proposed rule would also reiterate that cryptocurrency is covered by the travel rule.<sup>532</sup>

A more complicated challenge involves decentralized ways of storing and transferring cryptocurrency, such as software that users host themselves on their own computer or phone. Compared to wallets that are hosted by a business entity or sitting on an exchange, these



“unhosted” wallets are more secure from hacks by cyber thieves or probing by law enforcement. The problem is that this private insulation is also abused by bad actors, such as ransomware perpetrators. The Justice Department has conducted many seizures—worth hundreds of millions of dollars—of cryptocurrency held in unhosted wallets and used for criminal activity.<sup>533</sup> A recent example was the recovery of \$2.3 million of the \$4.3 million that Colonial Pipeline paid in ransom.<sup>534</sup> These seizures only seem to be possible because federal agents plant human spies inside hacking groups or the U.S. government manages to hack into the devices or networks where private keys are stored.<sup>535</sup> U.S. national security agencies should not be limited to that kind of hit-or-miss tradecraft to follow the money in unhosted wallets.

Because unhosted wallets are not controlled by business entities that could be designated as MSBs, FinCEN would have to be creative to collect more data on them. In December 2020, FinCEN proposed a rule that would impose a new obligation on banks and MSBs, which are already required to collect information about their own customers, but not counterparties their customers deal with (unless it is part of their investigation into suspicious activity).<sup>536</sup> Under the new rule (see exhibit), banks and MSBs would also have to automatically collect (even if not known to be suspicious) the name and physical address of anyone behind an unhosted wallet

with whom their customers exchange more than \$3,000 (and report to FinCEN if it exceeds \$10,000).<sup>537</sup> In addition to unhosted wallets, the rule would also apply to wallets hosted in North Korea, Iran, or Burma.<sup>538</sup> The main risk associated with this policy crackdown would be that it could push transactions with unhosted wallets offshore, where it would be much harder for the U.S. government to retrieve information from cryptocurrency service providers. Instead of issuing a domestic subpoena, law enforcement would have to work through the MLAT process, which often takes a few years and thus borders on being useless for any real-time horizon.

Lastly in the realm of MSBs, U.S. regulators and law enforcement have noticed malign actors increasingly exploiting internet-enabled regulatory gaps in the payments system, such as third-party service providers stepping in as intermediaries between banks and their merchant customers.<sup>539</sup> Often falling outside the definitions of regulated sectors, these entities provide third-party services such as payment processing, check consolidation, and vault cash.<sup>540</sup> Whereas traditional payments companies and the retailers they work with are physically located in the United States and have regular relationships with the same big banks, these third parties and the businesses they serve often avoid physical locations in the United States or the scrutiny of U.S.-regulated financial institutions.<sup>541</sup> These practices are particularly common among telemarketing, pre-

## Rule Proposed in Dec. 2020 Would Shine Light on Unhosted Wallets



83840

Federal Register / Vol. 85, No. 247 / Wednesday, December 23, 2020 / Proposed Rules

### DEPARTMENT OF THE TREASURY

#### Financial Crimes Enforcement Network

#### 31 CFR Parts 1010, 1020, and 1022

RIN 1506-AB47

#### Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is issuing this notice of proposed rulemaking to seek public comments on a proposal to require banks and money service businesses (“MSBs”) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (“CVC”) or digital assets with legal tender status (“legal tender digital assets” or “LTDA”) held in unhosted wallets (as defined below), or held in wallets hosted in a jurisdiction identified by FinCEN. FinCEN is proposing to adopt these requirements pursuant to the Bank Secrecy Act

(“BSA”). To effectuate certain of these proposed requirements, FinCEN proposes to prescribe by regulation that CVC and LTDA are “monetary instruments” for purposes of the BSA. However, FinCEN is not proposing to modify the regulatory definition of “monetary instruments” or otherwise alter existing BSA regulatory requirements applicable to “monetary instruments” in FinCEN’s regulations, including the existing currency transaction reporting (“CTR”) requirement and the existing transportation of currency or monetary instruments reporting requirement.

paid travel, pornography, internet gaming, and other shady businesses operating over the phone and internet.<sup>542</sup> And this can become a national security threat, as demonstrated by Allied Wallet, the company that helped the United Arab Emirates funnel money to the 2016 campaign of Hillary Clinton and claims to have done the same for foreign powers supporting Trump.<sup>543</sup>

## Recommendation

FinCEN should continue sealing up cracks in the MSB industry, particularly around cryptocurrency service providers.

First, FinCEN should finalize the two rules it proposed in late 2020: reducing the travel rule threshold from \$3,000 to \$250 (and clarifying that it applies to cryptocurrency) and compelling reporting around cryptocurrency wallets that are unhosted or hosted in North Korea, Iran, or Burma.<sup>544</sup>

Second, FinCEN should work with the Treasury and State departments to ramp up diplomatic efforts to harmonize cryptocurrency standards and implementation globally. While the two rules recommended above should not be delayed until there is a more comprehensive and effective global regime, they would work much better if synchronized with international regulatory efforts. For example, the travel rule comes into conflict with data protection standards in some jurisdictions, while collecting counterparty information about unhosted wallets risks pushing that activity into jurisdictions that lack similar reporting requirements. Treasury will have to take the lead on getting the FATF to update its standards in line with these new U.S. regulatory enhancements. Bilateral engagements will also be needed with both big financial centers and countries that host problematic activity but are not as bad as North Korea, Iran, and Burma. Treasury should also work with DOJ, State, and the National Security Council on improving the MLAT process. All of these harmonization and implementation efforts will also have to be coordinated with U.S. cybersecurity experts and the private sector.

Finally, FinCEN should conduct a comprehensive review of third-party service providers, potentially like the 2019 review of rules for cryptocurrency service providers that consolidated previously issued regulations and applied them to common crypto business models. In addition to payment processing, check consolidation, and vault cash, this review should examine risky

cryptocurrency service providers such as mixers, gambling services, and services in high-risk jurisdictions.<sup>545</sup> If the review shows that some third-party service providers posing substantial risks are not covered by MSB rules, FinCEN should move toward regulating them by either amending its MSB definitions (as it did in 2011) or invoking the Treasury secretary's authority to identify a business as a financial institution subject to AML rules if its activities are "similar to, related to, or a substitute for" the activities of a financial institution such as an MSB (a statutory authority Treasury has suggested it could use to regulate third-party service providers).<sup>546</sup>

# Conclusion

Senior officials at the White House and FinCEN seem to understand that regulating non-bank enablers is the top reform needed to make good on Biden's commitment to fight corruption as a matter of national security.<sup>547</sup> Experts and lawmakers agree that Treasury should impose rules on the U.S. professionals who enable threats of kleptocracy, malign finance, and homegrown autocracy.<sup>548</sup> Now it is time for implementation.

The first stage of a historic regulatory rollout should cover investment advisors, title insurers, and art dealers, which Treasury should announce in time for the December 2021 Summit for Democracy. At the same time, Congress should move toward legislation imposing AML obligations on all ten sectors of enablers covered in this report.

If those initial steps successfully develop into overwhelming political momentum, Treasury should announce at the late-2022 Summit for Democracy that it

will be regulating the four horsemen of non-bank dirty money: lawyers, TCSPs, accountants, and covert PR firms.

Otherwise, Treasury should only establish long-term projects to eventually regulate those four sectors and instead focus its attention throughout the rest of the Biden administration on repealing exemptions for real estate professionals, luxury vehicle sellers, and certain money services businesses.

Regulating enablers comprehensively would end the days of the United States being an international pariah in its eager acceptance of dirty money. It would prove that democracies can deliver against crooked foes and entrenched private interests. It would be a legacy national security accomplishment of the Biden administration. And it would give Americans the clean economy that is essential for security, prosperity, and liberty.



# Appendix I: Recommendations for FinCEN

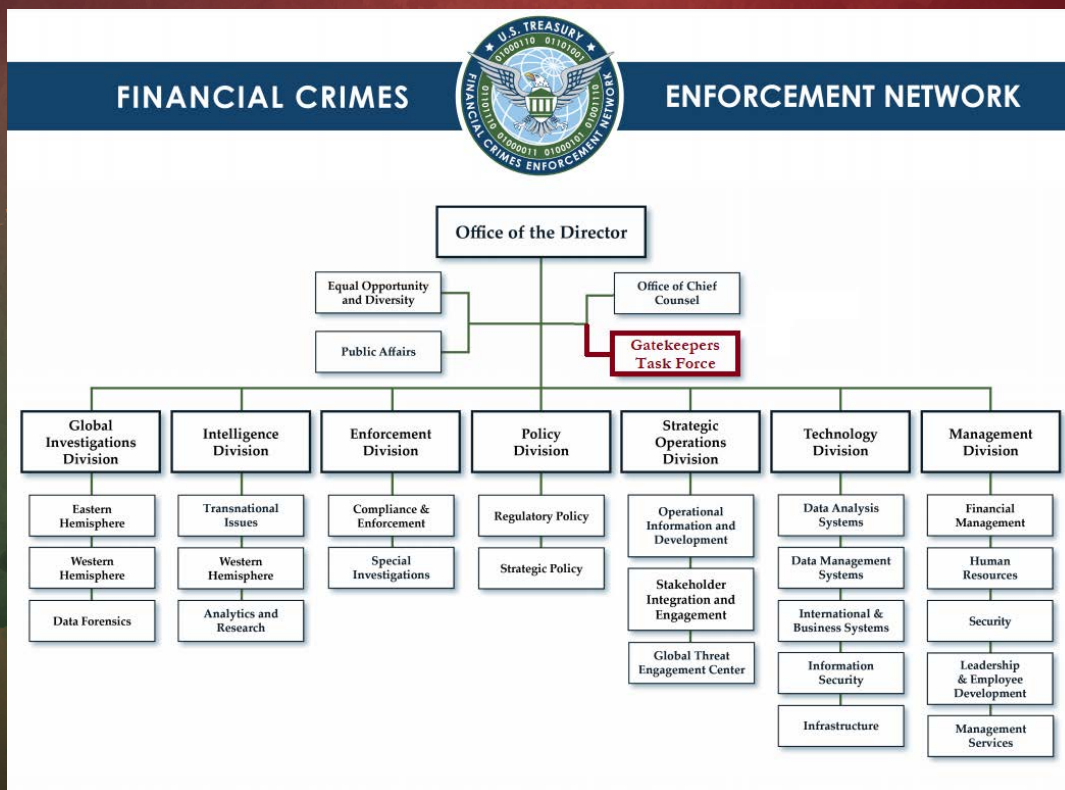
## In time for the December 2021 Summit for Democracy

**National strategy:** Develop a national strategy for regulating professionals who can enable corruption, which should start as a non-public internal U.S. government policy planning document for which this report could potentially provide some initial substantive guideposts. Prominently include this strategy in Biden’s Anti-Corruption Strategy, which is due within 200 days of the June 3, 2021 issuance of NSSM-1.<sup>549</sup> At the December 9–10 Summit for Democracy, use an official side event or a major public speech by a senior Treasury official to summarize the national strategy to regulate enablers and unveil the initial steps listed below. At the same time, publish further details in Treasury’s next publication of a National Strategy for Combating Terrorist and Other Illicit Financing, which will be drafted by Treasury’s Office of Terrorist Financing and Financial Crimes and is due by January 31, 2022. Use these public disclosures to (1) explain how the national strategy for regulating enablers is grounded in Biden’s elevation of

countering corruption as a core national security interest, (2) use law enforcement data and potentially some declassified cases to illustrate the threat landscape, (3) provide public guidance around methods of concealing corruption proceeds and red flags financial institutions should watch for, (4) identify top vulnerabilities and policy priorities in terms of specific sectors, (5) telegraph a planned regulatory agenda, and (6) call for complementary congressional action.

**Task force:** Establish a small task force within FinCEN to coordinate the expansion of AML regulations to cover professional enablers. Call it the “Gatekeepers Task Force,” because “gatekeeper” is a term for enablers that is widely used and preferred by private industry, which would help position FinCEN for more constructive dialogue with stakeholders. The task force would be responsible for working across FinCEN and with other stakeholders to develop, communicate, and carry out the national strategy (see organizational chart). This would involve close coordination with divisions of FinCEN, including:

## A FinCEN Gatekeepers Task Force Should Work Across the Bureau



- *Policy*: Strategize and eventually write the regulations
- *Intelligence*: Hear the financial and legal advice that enablers provide to their clients and conduct analyses of emerging schemes and structures
- *Global Investigations*: Build cases that would help address vulnerabilities
- *Strategic Operations*: Lay the groundwork for regulation with stakeholders at home and partners abroad
- *Public Affairs*: Make the case for reform

The task force would also involve coordinating with stakeholders outside FinCEN, including:

- *Main Treasury*: Update and maintain support from top Treasury leadership
- *National Security Council*: Prepare summit deliverables and strategize around implementation
- *Congress*: Advocate for legislative authorities, political support, and budgetary resources
- *Civil society*: Solicit views on priorities
- *Private professional associations*: Understand potentially important economic interests and impediments to implementation

In order to command the attention of and strongly influence all these busy experts and vested interests, the task force should report directly to and visibly retain the faith of a senior official such as the FinCEN Director, while top Treasury officials should also closely track and support the work.

**Shell companies**: Finalize a rule implementing regulations for a beneficial ownership registry that is fit for national security purposes.<sup>550</sup> This would entail broadly scoping the entities and information covered by the reporting obligations, limiting exemptions to companies that already disclose ownership, verifying information for accuracy, and broadly ensuring timely and easy access to the database.

**Antiquities dealers**: Finalize the mandated rule to impose AML obligations on the antiquities market. The

statute covers “a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities, subject to regulations prescribed by the Secretary.”<sup>551</sup> Use this flexible statutory language to write regulations that also cover dealers, custodians, galleries, auction houses, and museums.

**Private equity and hedge funds**: Update and finalize the rule proposed in 2015 to make investment advisors establish AML programs.<sup>552</sup> Expand the 2015 draft rule to also cover advisors managing less than \$100 million and those solely advising venture capital funds, family offices, rural funds, single-state funds, and overseas advisors with fewer than 15 U.S. clients. Expand the rule to include know your customer and customer due diligence requirements.

**Real estate title insurers**: Introduce a new rule imposing on U.S. title insurance companies the obligations they currently face under GTOs to collect beneficial ownership data and remit it to FinCEN. Compared to GTOs, the new rule should be permanent, nationwide, not limited to any value thresholds, also cover commercial properties (not just residential), also cover the seller’s identify (not just the buyer’s), and adopt the broader definition of a beneficial owner under the new law mandating an ownership registry.

**Art dealers**: In the study of the art market statutorily mandated by December 27, 2021, conclude that U.S. dealers, advisors, consultants, custodians, galleries, auction houses, or museums trading in works of art, collectibles, or antiques worth at least \$10,000 should be subject to AML regulations. In either the study or an accompanying statement, announce that FinCEN will be initiating a regulatory rulemaking process.

## Next set of priorities if political support is very strong

**Lawyers**: Work with Congress, the White House, DOJ, and civil society to advance an initiative—ideally but not necessarily including legislation to amend the BSA—to impose AML duties on lawyers, law firms, and notaries involved in financial activity or related administrative activity on behalf of another person. Participate actively in an advocacy campaign to divide and conquer powerful factions of opposition within the American Bar Association.

**Trust and company service providers:** Work with Congress to advance an initiative to impose AML obligations on U.S. TCSPs, including company formation agents, trustee or nominee service providers, and providers of registered offices or addresses.

**Accountants:** Work with Congress to advance an initiative to impose AML obligations on U.S. accountants and accounting firms. Work with civil society and industry representatives to start planning regulations establishing minimum AML standards for different business lines while emphasizing useful information that accountants are well-placed to scrutinize (like beneficial ownership).

**Covert PR and marketing firms:** Work with Congress to advance an initiative to impose AML obligations on persons engaged in the business of public relations, marketing, communications, or other similar services if and when they provide another person anonymity or deniability.

## Next set of priorities in the absence of very strong political support

**Four Horsemen:** Task one or two full-time staffers to each of the four sectors for which stronger political support is needed. For each sector, coordinate a long-term project to prepare for future regulations by tracking malign activity, working within Treasury to develop plans for future rules, and advocating for support on Capitol Hill and with allied factions within interest groups

**Real estate professionals:** Initiate a rulemaking process to make “persons involved in real estate closings and settlements” establish full AML programs. At a minimum, cover title insurers, real estate agents, escrow agents, and real estate lawyers. Also consider covering—now or in the future—property management companies, real estate investment companies, and real estate development companies. Launch a review of non-bank residential mortgage lenders and originators and develop a strategy to improve their compliance, starting with clearer guidance and building up to stronger enforcement actions.

**Luxury vehicle dealers:** Initiate a rulemaking process to impose AML obligations on “businesses engaged in vehicle sales.” At a minimum, cover title insurers, dealerships or other agents of buyers or sellers, escrow agents handling funds for vehicle sales, and lawyers engaged

in vehicle sales. Also consider covering—now or in the future—manufacturers of high-end vehicles.

**Crypto and other money services businesses:** Continue sealing up cracks in the MSB industry by reducing the travel rule threshold from \$3,000 to \$250 (and clarifying that it applies to cryptocurrency), compelling reporting around cryptocurrency wallets that are unhosted (or hosted in North Korea, Iran, or Burma), redoubling diplomatic efforts to harmonize cryptocurrency standards and implementation globally, and conducting a comprehensive review of third-party service providers in need of AML regulations.<sup>553</sup>



# Appendix II: Recommendations for the White House and Treasury Leadership

**Summit for Democracy—U.S. Reforms:** Work with FinCEN and Treasury leadership to develop the six actions described in Appendix 1: overall mission launch, strong regulations for beneficial ownership and the antiquities market, and announcing plans to regulate investment advisors, title insurers, and the art market. Ensure these policies are prominently included in the presidential study due within 200 days of the issuance of NSSM-1, and ensure they are ready to be announced in time for the December 2021 summit.<sup>554</sup> Plan an official summit side event on financial transparency for Treasury to unveil the six steps above, framed as a national security mission to combat corruption.

**Summit for Democracy—Canada and Australia:** Work with Treasury and the State Department to inform the Canadians and Australians that the United States will strive over the next couple years to come into compliance with FATF standards on professional enablers. Urge Canada and Australia to do the same—announcing their own initial steps at the December 2021 Summit for Democracy—so they are not left as the only two developed countries that will be non-compliant with the FATF’s DNFBP standards.

**Resources for FinCEN:** Work with congressional appropriators to substantially increase FinCEN’s budget in fiscal year 2022. Encourage lawmakers to treat the administration’s request for a \$64 million increase (a 50 percent increase to new level of \$191 million) as the bare minimum.<sup>555</sup> Consider advocating for doubling FinCEN’s budget to \$254 million.<sup>556</sup>

**Pressure on Treasury and FinCEN to implement:** Prominently include the entire campaign to regulate enablers laid out in this report (starting with the six summit deliverables but also extending to stages two and three) in the presidential study due within 200 days of the issuance of NSSM-1.<sup>557</sup> Use the NSC’s Anti-Corruption IPC to keep this comprehensive and ambitious agenda on track. Create a dedicated Enablers Sub-IPC to follow up on any implementation issues.

**Political leadership:** The president, the Treasury secretary, and other top administration officials should work visibly and intensively with key lawmakers, civil soci-

ety, and allied factions within interest groups to lead a sweeping campaign to regulate enablers as a national security imperative.

**Support for legislation:** Work with allies in Congress and key groups like the Caucus against Foreign Corruption and Kleptocracy to build support for the legislation described in Appendix 3.<sup>558</sup> Actively support the legislative process by publicly framing the national security rationale for regulating enablers, issuing statements of administration policy backing the legislation, and privately pressuring key lawmakers to demonstrate their support.

# Appendix III: Recommendations for Congress

**Hold public hearings on enablers:** Hold open hearings on the national security threat posed by the unregulated status of U.S. professional enablers, potentially through the Caucus against Foreign Corruption and Kleptocracy, the Helsinki Commission, the House Financial Services Committee, and the Senate Banking Committee.

**Appropriations for FinCEN:** Substantially increase FinCEN's budget in fiscal year 2022. Treat the administration's request for a \$64 million increase (a 50 percent increase to new level of \$191 million) as the bare minimum. Consider doubling FinCEN's budget to \$254 million.<sup>559</sup>

**New sectors for the BSA:** Add the following six types of financial institutions to the Bank Secrecy Act.

- *Investment advisor:* a person engaged in the business of providing investment advice for compensation
- *Art dealer:* a person engaged in the trade in works of art, antiques, or collectibles, including a dealer, advisor, consultant, custodian, gallery, auction house, museum, or any other person who engages as a business in the solicitation or the sale of works of art, antiques, or collectibles
- *Lawyer:* an attorney, law firm, or notary involved in financial activity or related administrative activity on behalf of another person
- *TCSP:* a trust or company service provider, including (i) a person involved in forming a corporation, limited liability company, trust, foundation, partnership, or other similar entity or arrangement; (ii) a person involved in acting as, or arranging for another person to act as, a registered agent, trustee, or nominee to be a shareholder, officer, director, secretary, partner, signatory, or other similar position in relation to a person or arrangement; (iii) a person involved in providing a registered office, address, or other similar service for a person or arrangement; or (iv) any other person providing trust or company services, as the Secretary of the Treasury may prescribe by regulation

- *Accountant:* a certified public accountant or public accounting firm
- *Covert PR:* a person engaged in the business of public relations, marketing, communications, or other similar services in such a manner as to provide another person anonymity or deniability
- *Third-party payment service provider:* a person engaged in the business of providing third-party payment services, including payment processing, check consolidation, cash vault services, or other similar services designated by the Secretary of the Treasury

**Regulatory exemptions to the Patriot Act to be revoked:**

Repeal section 103.170 of title 31, Code of Federal Regulations (relating to exemptions for certain financial institutions). Require the Secretary of the Treasury to issue one or more rules no later than December 31, 2024 to require all financial institutions (as defined in section 5312(a)(2) of title 31, United States Code) that have not already done so to establish anti-money laundering programs, identify and verify their accountholders, and file suspicious activity reports under section 5318 (g), (h), (i), and (l) of title 31, United States Code.

**Task force and gatekeepers strategy:** Require the Secretary of the Treasury to establish a task force to (i) develop an ambitious, comprehensive, and multi-year U.S. government strategy to impose anti-money laundering safeguards on all necessary gatekeeper professions, and (ii) advance the regulatory rulemakings mandated above. Amend Section 262 of the Countering America's Adversaries Through Sanctions Act (Pub. L. No. 115-44) by adding a paragraph at the end requiring Treasury to publish a gatekeepers strategy, including a description of efforts to impose anti-money laundering safeguards on all necessary gatekeeper professions, including art dealers, investment advisors, real estate professionals, lawyers, accountants, trust or company service providers, public relations professionals, dealers of luxury vehicles, money service businesses, and other similar professions.

***Title insurers:*** Require the Secretary of the Treasury to promulgate a rule requiring a domestic title insurance company to obtain, maintain, and report to the Secretary information on the beneficial owners of entities that purchase or sell residential or commercial real estate in transactions in which the domestic title insurance company is involved. Use the definition of beneficial ownership enacted in the recent NDAA.

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