

Overview Report: Luxury Goods

A. Scope of Overview Report

1. This overview report provides background information in respect of the regulation of luxury good markets in British Columbia and the risk of money laundering in those markets. It begins with an introductory review of a 2017 report *Tainted Treasures: Money Laundering Risks in Luxury Markets*,¹ produced by Transparency International. It then examines five specific luxury good markets in greater detail.

B. Money Laundering and Luxury Goods

2. In its 2017 report *Tainted Treasures: Money Laundering Risks in Luxury Markets*, Transparency International identified the market for luxury goods as particularly vulnerable to money laundering. The report attributed this risk to certain features of luxury good markets:²

Several characteristics of the luxury sector itself indicate heightened risks of money laundering. Some high-value goods such as jewellery, precious stones, art and luxury accessories are easily transportable. Others, such as luxury real estate and super-yachts are often associated with the use of anonymous shell companies or intermediaries to purchase and manage these assets, which pose particular money laundering risks. To these risks are added the traditions of discretion and confidentiality, which are present across virtually all luxury sectors, and represent a major money laundering risk.

3. Transparency International suggests that anti-money laundering (“**AML**”) measures in luxury goods markets are underdeveloped at the international, national and industry levels. At the international level, the report indicates that the FATF recommendations do not adequately cover luxury good markets, with markets for goods including “personal luxury items, art, and luxury transport (from cars to private jets and super-yachts) [falling] largely outside their scope.”³ Nationally, the report suggests that

¹ Max Heywood, *Tainted Treasures: Money Laundering Risks in Luxury Markets* (2017: Transparency International) attached as Appendix “A” [*Tainted Treasures*].

² *Tainted Treasures*, *supra* note 1 at 3.

³ *Tainted Treasures*, *supra* note 1 at 6.

legal and regulatory oversight of luxury goods markets is poor in leading luxury markets and that compliance with Financial Action Task Force (“**FATF**”) standards for non-financial professionals low.⁴ At the industry level, the report notes that while private sector businesses are well-positioned to execute effective AML regimes - given the importance of long-term relationships with clients and strict control over distribution channels - compliance with reporting and due diligence requirements is “remarkably low.”⁵

4. To address these shortcomings, the report makes four recommendations - two aimed at government, one at “leading global companies in each luxury sector” and one at the FATF:

a. Government

- i. Those countries that host the largest luxury markets in particular, such as China, France, Germany, Italy, Japan, the US and the UK, should strengthen legislation to ensure dealers in high-value goods and in specific luxury sectors that are considered high-risk have customer due diligence and reporting requirements that meet best practice international standards.
- ii. Governments should ensure luxury sectors have a designated competent authority charged with oversight and regulation. The competent authorities should have the mandate, resources and independence necessary to effectively carry out their oversight duties, which would include having the ability to sanction non-compliant businesses.

b. “Leading global companies in each luxury sector”

- i. Leading brands and luxury multinationals should establish effective customer due diligence and reporting systems in their retail and customer service chains. These should also be established in countries where they are not yet legally required, in line with the public commitments to ethical behaviour and integrity already made by many companies.

⁴ *Tainted Treasures*, *supra* note 1 at 6.

⁵ *Tainted Treasures*, *supra* note 1 at 6-7.

c. FATF

- i. As the international standard-setter against money laundering, the FATF should strengthen its recommendations to ensure high-value luxury sectors are adequately covered by global standards. Specifically, the FATF should consider revising Recommendation 22, which establishes the sectors considered Designated Non-Financial Business and Professions. In addition, high-value sectors should be required to take a risk-based approach to customer due diligence, in place of a threshold-based approach which applies only to cash transactions.

5. The report singles out several luxury goods markets, including:

- a. The art market;
- b. Super-yachts;
- c. Precious stones and jewels;
- d. Personal items; and
- e. Real estate.

6. Real estate will be addressed as a separate topic by the Commission, and so is not considered in this overview report. The remaining markets listed above are discussed in more detail below. Vehicles, a focus of Peter German's *Dirty Money: Part 2*⁶ report, which are not addressed as a separate topic in the Transparency International report, are also considered.

C. Vehicles

7. The sale of vehicles in British Columbia is governed by *Motor Dealer Act*⁷ and the regulations to that Act. The Act is administered in part by the Vehicle Sales Authority

⁶ Peter M. German, Q.C., Ph.D., *Dirty Money – Part 2: Turning the Tide – An independent review of Money Laundering in the B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019.

⁷ R.S.B.C. 1996, c. 316.

of British Columbia. The Act and Regulations do not draw a distinction between “luxury” and other vehicles.

8. Motor Vehicle Dealers are not reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

i. Motor Dealer Act and Motor Dealer Act Regulation

9. The sale of new and used vehicles in British Columbia is governed by the *Motor Dealer Act* and the *Motor Dealer Act Regulation*.⁸ The Act provides for the appointment of a Registrar of Motor Dealers (“**Registrar**”) and establishes a registration regime for those engaged in the sale of motor vehicles.

ii. Registration

10. Section 3(1) of the Act prohibits any person from “carry[ing] on business as a motor dealer” unless they have registered under the Act, among other conditions. Contravention of s. 3 is an offence under the Act.⁹

11. Under s. 5 of the Act, the Registrar may refuse registration or refuse to renew registration or, if a person is already registered under the Act, may cancel the registration or suspend the registration “for a period of time and subject to conditions the Registrar considers necessary” if:

[T]he financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the Registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered.

⁸ B.C. Reg. 447/78.

⁹ s. 35(2).

iii. Salesperson Licensing

12. Section 13.1 of the Act prohibits motor dealers from employing or engaging any salesperson unless that person is licensed as a salesperson under the regulations.

13. Licensing of salespersons is provided for under the *Salesperson Licensing Regulation*.¹⁰

14. Section 2 of the Regulation prohibits anyone from acting as a salesperson if not licensed. Section 3 permits individuals to apply to be licensed as a salesperson.

15. Section 5 empowers the authority to refuse to licence an individual as a salesperson “if the authority considers, having regard to the conduct of the applicant, that it would not be in the public interest for the applicant to be licensed.” Section 6 of the Regulation sets out the conditions that may be imposed by the authority on a licensee.

16. A salesperson’s license may be revoked or suspended under s. 7 of the Regulation “if the authority considers, having regard to the conduct of the licensee, that it would not be in the public interest for the licensee to continue to be licensed.”

iv. Code of Conduct

17. Section 33(2) of the *Motor Dealer Act Regulation* sets out a code of conduct applicable to both registrants and licensees. It provides, among other things, that a licensee or registrant, in the course of business:

- (a) must act with honesty and integrity,

¹⁰ B.C. Reg. 202/2017.

...

- (e) must not make false or misleading representations with respect to any amount charged in respect of a consumer transaction,
- (f) must not adversely affect the reputation of the authority, a licensee, a registrant or the Registrar,
- (g) must not intimidate a consumer,
- (h) must safeguard records in respect of a consumer that are in the possession or control of the licensee or registrant, and
- (i) must not aid, abet or cause a person to contravene
 - (i) the Act or the regulations under the Act,
 - (ii) the *Business Practices and Consumer Protection Act* or the regulations under that Act,
 - (iii) any other law of British Columbia or of another jurisdiction,
 - (iv) a condition of registration, or
 - (v) a condition of a licence authorized under the regulations.

v. Complaints to the Registrar

18. Part 3 of the Act governs complaints to the Registrar in respect of motor dealers. Following receipt of a complaint, the Registrar is authorized by s. 25 of the Act to seek information respecting the complaint from the motor dealer and to inspect the business premises of the motor dealer. The motor dealer who is the subject of the complaint is obliged to provide the Registrar with any information requested by the Registrar in writing, provided the request indicates the nature of the complaint.¹¹ The motor dealer is also obligated to permit the Registrar to enter his or her business premises “to make an inspection with respect to the complaint” at “any reasonable time during normal business hours.”¹²

¹¹ s. 25(1).

¹² s. 25(3).

Undertakings

19. Section 26.01 of the Act authorizes the Registrar to accept a written undertaking from a person if the Registrar “has reason to believe that a person is contravening, is about to contravene or has contravened this Act or the regulations.”

20. Section 26.01(2) sets out the terms and conditions that may attach to an undertaking accepted by the Registrar under subsection 1.

Compliance Orders

21. Section 26.02 of the Act authorizes the Registrar to make compliance orders. After a person is given an opportunity to be heard, the Registrar may order the person to comply with the Act or regulations if the Registrar is “satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.”

22. Among other things, a compliance order may require that a person stop engaging in or not engage in a particular act or practice.

Administrative Penalties

23. Section 26.04 authorizes the Registrar to impose administrative penalties. After providing a person with an opportunity to be heard, the Registrar may impose an administrative penalty on a person if the person has contravened:

- (a) a prescribed provision of the Act or regulations,¹³
- (b) a condition of a licence authorized under the regulations,
- (c) a property freezing order,
- (d) an undertaking, or

¹³ Prescribed provisions for this purpose are identified in s. 32 of the *Motor Vehicle Dealer Act Regulation*.

(e) a compliance order.

24. Administrative penalties may also be imposed on the officers, directors or agents of a corporation if the officer, director or agent authorized, permitted or acquiesced in a contravention, whether or not an administrative penalty was imposed on the corporation itself.¹⁴

25. The maximum penalty that may be imposed on an individual in respect of the operation of a business that, at the time the penalty was imposed, was owned and operated by that individual is \$100,000. The maximum penalty that may be imposed on any other individual is \$50,000.¹⁵

26. The maximum penalty that may be imposed on a corporation in respect of the operation of a business that, at the time the administrative penalty was imposed, was operated by the corporation is also \$100,000.¹⁶

vi. The Motor Dealer Council and Vehicle Sales Authority of British Columbia

27. The Motor Dealer Council of British Columbia (“**MDC**”) was incorporated under the Society Act in July 2003. The Council has operated under the name “Vehicle Sales Authority” (“**VSA**”) since 2007.¹⁷

¹⁴ s. 26.04(5).

¹⁵ s. 26.05.

¹⁶ s. 26.05(2).

¹⁷ “What is the history of the VSA” (2020), online: *Motor Vehicle Sales Authority of British Columbia* <<https://mvsabc.com/>>. *Crown Autobody and Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 at para. 25.

28. Section 24.1(1) of the Act permits the responsible minister to enter into an agreement with the MDC to administer provisions of the Act and regulations. Section 24.1(2) specifies the elements must be included within any such agreement.

29. Where the Minister and the MDC/VSA have entered into such an agreement, s. 24.2 authorizes the Lieutenant-Governor in Council to delegate to the MDC/VSA, by way of regulation, “the administration of any of the provisions of this Act and the regulations, including any power, function or duty of the minister or Registrar, except the power to make regulations.”

30. On March 24, 2004, the Minister of Small Business and Economic Development entered into such an agreement with the MDC/VSAI (the “**Delegation Agreement**”).¹⁸ By way of the *Motor Dealer Delegation Regulation*, B.C. Reg. 129/2004, administration of the following was delegated to the MDC/VSA:

- a. *Motor Dealer Act*;
- b. *Motor Dealer Act Regulation*;
- c. *Motor Dealer Consignment Sales Regulation*;
- d. *Motor Dealer Customer Compensation Fund Regulation*;
- e. *Salesperson Licensing Regulation*.

31. The primary function of the MDC/VSA under the Delegation Agreement is consumer protection. Paragraph 1 of the Delegation Agreement, titled “Background to

¹⁸ Administrative agreement between Her Majesty the Queen in right of the Province of British Columbia (the “Crown”), as represented by the Minister responsible for the *Motor Dealer Act* (the “Minister”) and The Motor Dealer Council of British Columbia, a society incorporated under the laws of British Columbia (the “MDC”) RE: *Motor Dealer Act Delegated Administrative Authority*, March 24, 2002 <<https://mvsabc.com/v1/wp-content/uploads/2015/02/Signed-Administrative-Agreement-Motor-Dealer-Council-and-the-BC-Crown.pdf>>.

this Agreement” emphasizes that the purpose of the delegation was “to more effectively maintain and enhance consumer protection and consumer confidence within the Motor Dealer industry.” Similarly, paragraph 6 of the Delegation Agreement, titled “Responsibility for Consumer Protection” provides that “the primary responsibility of the [Motor Dealer Council] under this Agreement is to maintain and enhance consumer protection and consumer confidence within the Motor Dealer industry.”

32. Paragraph 7 of the Delegation Agreement identifies the “core business functions” delegated to the MDC/VSA, including:

- a. Registration and licensing within the Motor Dealer industry by a Registrar of Motor Dealers;
- b. Inspection and investigation of Motor Dealers for compliance with the Act and its regulations, and other consumer protection statutes on behalf of the Registrar;
- c. Provision of information and assistance, including the voluntary and impartial mediation of disputes, to consumers and Motor Dealers regarding their rights and responsibilities under the Act and any other applicable consumer protection statutes;
- d. Consumer education initiatives that provide information verbally, in printed materials, and via the Internet, to raise consumer awareness of their rights and responsibilities when purchasing or leasing vehicles;
- e. Motor Dealer industry education initiatives that provide information verbally, in printed materials, and via the Internet, to help ensure a fair marketplace and to inform licensees and applicants for licence about requirements of licensees; and
- f. Administration of the Motor Dealer Customer Compensation Fund pursuant to the Act.

33. Paragraph 8 outlines the roles of the Minister and the MDC/VSAI under the Delegation Agreement:

- a. The Minister will work collaboratively and make reasonable efforts to consult with the Authority in respect of current and proposed government

legislation, regulation, directives, or policy that may have a direct impact upon the Authority's administration of the Act.

- b. The Minister may, where the Minister deems appropriate:
 - i. recommend amendments to the Act and regulations under the Act to the Lieutenant Governor in Council;
 - ii. conduct policy, legislative, and regulatory reviews related to the Act and to the delegated administration of the Act;
 - iii. conduct performance, governance, accountability or financial reviews of the Authority after giving reasonable notice where feasible;
 - iv. consult with the Authority on communication strategies for critical or ongoing issues;
 - v. assist the Authority in establishing or maintaining working relationships with 3rd parties where those relationships are necessary for the Authority's administration of the Act;
 - vi. require that the Authority provide a financial report at any time, after giving reasonable notice where feasible; and
 - vii. refer to the Board any matter relating to the administration of the Act.
- c. In order to achieve the agreed consumer protection and other public interest outcomes, the Authority will:
 - i. exercise its authority and perform its duties to the extent granted or imposed by the Delegation Regulation in accordance with law, this Agreement and the Act;
 - ii. meet its responsibility for consumer protection while seeking to ensure a fair, safe, informed, and efficient marketplace for the Motor Dealer industry;
 - iii. increase consumer protection through timely access to a complaint resolution process for consumer disputes that will provide for redress and enforcement of standards;
 - iv. enhance consumer confidence by providing registration and licensing within the Motor Dealer industry and establishing qualifications and standards of conduct;
 - v. promote consumer awareness through public education;

- vi. recommend to the Minister legislative or regulatory change regarding the administration of the Act, as it deems appropriate;
- vii. provide the Minister with a financial report at any time when required to do so by the Minister;
- viii. provide the Minister with timely and reliable information and advice on matters of public interest relating to the Motor Dealer industry; and
- ix. advise or report to the Minister on any matter the Minister may refer to the Board relating to the delegated administration.

34. In the MDC/VSA's Strategic Outlook & Annual Business Plan for 2019/20, the MDC/VSA indicated that it may have a role to play in combating money laundering in the vehicle sales industry. In discussing the development of a strategic plan for the MDC/VSA for 2020-2023, the report indicated that:

While executing [the 2020-2023 strategic] plan, the VSA will continue scanning our operating environment to determine the relevance of emerging trends we believe will impact the focus for this fiscal year, allowing us to pivot in one or more areas to address the changing needs of the environment in which we operate. Current factors we are monitoring include:

- 1. The role the VSA could potentially play in ensuring sound anti-money laundering practices exist within our regulatory framework.

...

D. Jewellery and Precious Metals and Stones

35. The market for precious stones and jewels is identified as a sector vulnerable to money laundering in Transparency International's *Tainted Treasures* report. The report describes the risk of money laundering in this sector as follows:¹⁹

¹⁹ *Tainted Treasures*, *supra* note 1 at 14.

Precious metals and stones have long been identified as a particularly vulnerable sector to money laundering, as trade in this sector is characterised by a “high value to mass ratio”, meaning that, for instance, a million dollars' worth of diamonds can be carried across borders illegally with relative ease.

Research carried out by the FATF on diamond trading found that, “diamonds are also used as a form of currency”, which poses a significant money laundering risk. Precious minerals can also be used in trade-based money laundering schemes, in which through price manipulation or false invoices for fictitious sales, precious minerals can be used as a cover for laundering illicit funds. Due to all these factors, locations that have large precious stone and metals marketplaces would be particularly at risk.

36. As indicated in the above passage, money laundering in the jewellery, precious metal and stone sector has also been the subject of FATF reports. These reports will be discussed below along with jewellers' reporting requirements under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (“**PCMLTFA**”) and the obligations of jewellers who are members of the Canadian Jewellers Association.

37. This sector was also identified as one at high risk of money laundering in Canada's 2015 *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*.²⁰ The report described the risk in this sector in the following terms:

There are a large number of [Dealers in Precious Metals and Stones (“**DPMS**”)] located across Canada, from very large to very small dealers, that are highly accessible to domestic clients and, in some cases, international clients (e.g., through online sales). DPMS conduct a large volume of business in high-value commodities that are vulnerable to money laundering and terrorist financing. DPMS have largely transactional relationships with their clients and there are opportunities for clients to

²⁰ Appendix B to Exhibit 3: Overview Reports: Canada Reports.

conduct cash transactions with a high degree of anonymity. It is also believed that the client profile includes high-risk clients, notably those in vulnerable businesses or professions. The DPMS is a highly accessible sector where there are high-risk clients who can purchase high-value commodities for cash relatively anonymously.²¹

38. Further discussion of this threat and the methods of money laundering observed in this sector were discussed later in the report:²²

Precious metals and stones are valuable commodities which can be easily concealed, exchanged and transported. Proceeds of crime can be placed, layered and integrated into the financial system through the purchase and sale of precious metals and stones. However, an individual who purchases precious metals and stones for subsequent resale is ultimately left with cash or other monetary instruments that could require additional transactions through another regulated sector.

That said, precious metals, precious stones and jewels are easily transportable, highly liquid and a highly concentrated bearer form of wealth. They serve as international mediums of exchange and can be converted into cash anywhere in the world. In addition, precious metals, especially gold, silver and platinum, have a readily and actively traded market, and can be melted into various forms, thereby obliterating refinery marks and leaving them virtually untraceable.

The main ML methods identified are as follows:

- Purchase of precious metals and jewellery with the proceeds of crime and subsequent sale;
- Use of DPMS sector businesses as fronts to launder proceeds of crime;
- Use of accounts held with precious metal dealers for laundering the proceeds of crime;
- Assisting the purchase or anonymizing the purchase or sale of precious metals and jewellery;

²¹ Appendix B to Exhibit 3: Overview Report: Canada Reports at 41.

²² Appendix B to Exhibit 3: Overview Report: Canada Reports at 54.

- Use of international jurisdictions and entities to purchase and sell precious metals and jewellery acquired with the proceeds of crime; and
- Use of precious metals to purchase illicit goods (e.g., drugs).

i. *Regulation of the Jewellery, Precious Metal and Stone Sector in Canada and British Columbia*

39. Dealers in precious metals and stones are reporting entities under the *PCMLTFA*. There are no licensing requirements in British Columbia specific to the portion of this sector covered by the *PCMLTFA*.²³

40. There is legislation, primarily at the federal level, that governs this sector. However, this legislation does not establish an overarching regulatory regime or licensing framework. Aside from the applicable provisions of the *PCMLTFA*, this legislation is not intended to address, and has little relevance to money laundering.

Legislation governing the Canadian jewellery, precious metal and stone sector includes:

a. *The Export and Import of Rough Diamonds Act*, S.C. 2002, c. 25

The Export and Import of Rough Diamonds Act implements the Kimberley Process Certification Scheme in Canada. The Kimberley Process is an international initiative aimed at stemming the flow of “conflict diamonds.”²⁴ It provides for the issuance of certificates authorizing the export of rough diamonds from Canada provided certain conditions are met, including those related to the source of the diamonds and establishes conditions that must be met to lawfully import rough diamonds into Canada.²⁵

b. *The Precious Metals Marking Act*, R.S.C. 1985, c. P-19

The Precious Metals Marking Act prescribes uniform methods of marking precious metal articles made in whole or in part of gold, silver, platinum

²³ Canadian Jewellers Association, *ibid* at 2.

²⁴ Natural Resources Canada, “Kimberley Process for Rough Diamonds” (2018) online: *Government of Canada* <<https://www.nrcan.gc.ca/mining-materials/resources/kimberley-process-rough-diamonds/8222>>.

²⁵ Sections 9 -15

and palladium and prohibits markings that do not truly and correctly indicate the quality of the precious metal content.

ii. FATF Reports

41. The FATF has released two reports related to money laundering in the jewellery, precious metal and stone sectors. These are:

- a. October 2013 - *Money Laundering and Terrorist Financing through Trade in Diamonds*;²⁶ and
- b. July 2015 - *Money Laundering/Terrorist Financing Risks and Vulnerabilities Associated with Gold*.

October 2013 - Money Laundering and Terrorist Financing through Trade in Diamonds

42. This report was produced through a joint initiative of the FATF and the Egmont Group. It was commissioned for two principle reasons:²⁷

- a. None of the FATF, Egmont Group or any regional bodies, such as the Asia Pacific Group had ever conducted an in-depth research of the diamond trade and its exposure to ML/TF risk.
- b. During the last ten to fifteen years, Egmont and FATF delegations noted a number of indications that the diamonds trade was being exploited for ML/TF purposes.

43. The report indicates that the diamond trade is highly vulnerable to money laundering. It attributes this vulnerability to several features of diamonds and the diamond trade beginning at page 44 of the report. The report goes on to identify ten “issues for consideration” as means of mitigating the risk of money laundering in the diamond trade, beginning at page 136 of the report.

²⁶ Appendix XX to Exhibit 4: Overview Report: FATF Records.

²⁷ Appendix WW to Exhibit 4: Overview Report: FATF Records [App. WW, Ex. 4].

44. As part of the research underlying this report, the FATF and the Egmont Group analyzed case studies submitted by national financial intelligence units and law enforcement or identified through open-source research. Among the 64 case studies considered were several involving Canadian examples of money laundering through the diamond trade, including the following:

- a. **Case Study #1:** This case involved an organised criminal group that distributed drugs and controlled several low level (street-level) drug dealers. The higher placed distributor would distribute drugs to the street-level dealer and receive diamonds, gemstones and jewellery as payment, as well as cash. Likewise, the street-level drug dealer traded drugs for diamond jewellery and then traded up to the higher placed drug dealer for more drugs and debt payments. The higher placed drug distributor would then sell the diamonds and jewellery at small incremental amounts (CAD 3 000-CAD 8 000) to the jewellery market (jewellers) and in return would receive payment by way of cheque. The drug distributor also received high end jewellery (watches) instead of payment for the illicit jewellery.
- b. **Case Study #4:** This case involved a drug dealer/producer who sold drugs and traded drugs for collectively over USD1 million in stolen and purchased jewellery. The drug dealer who had strong industry, commodity and market knowledge sold the least valuable (scrap) jewellery as scrap to jewellery stores and bullion dealers. Jewellery that had some aesthetic or residual market value above the component parts was sold as estate jewellery to jewellers. In return, the drug dealer received cash, gold and silver bars and coins and diamond jewellery. The drug dealer used some of the proceeds of crime from the sale of drugs and sale of jewellery obtained through trade for drugs to purchase specific diamond jewellery and gemstones items (jade) as a mean to store wealth. The drug dealer used appraisals to define the value of jewellery that was stored as wealth and to help negotiate fair prices for the resale of the jewellery to the market.
- c. **Cast Study #6:** A case of non-Kimberley Process rough diamonds smuggled into Canada, then the diamonds were smuggled to a foreign jurisdiction to be cut and polished (as Canada has few independent diamond cutters) and then the diamonds were sent legally back to Canada as they were now cut and polished and no longer subject to Kimberley Process protocols (this case

engaged the rough diamond production and diamond cutting sector of the industry).

- d. **Case Study #13:** This is a case where fraud was the predicate offence. The criminals had jewellery industry contacts at the wholesale level. To launder the proceeds of crime they purchased CAD 1 000 000 + of diamonds that were then re-sold back to the jewellery market and also to the general public through the internet. They did not mark up the value of the diamonds for retail purposes instead sold them to retail customers at wholesale prices and therefore moved them quickly. The diamonds were all in a size and quality class that are the most desirable and resulted a quick turn over of the diamonds. The money received from the sale of the diamonds was wired direct to their bank from the various sales locations
- e. **Case Study #35:** This case involves a drug courier/trafficker who was found carrying CAD 40 000 worth of drug money. The courier's cash bag also contained a quantity of diamond jewellery and loose sapphire gemstones that collectively were valued at CAD 60 000. The jewellery had been appraised by a third party. The appraisal value listed the jewellery for its cash value if it were sold as wholesale (just below wholesale). (Aside for the appraisal obtained, the jewellery trade is not as yet being engaged in this case as the diamonds/gemstones is being used between criminals as an alternate currency).

July 2015 - Money Laundering/Terrorist Financing Risks and Vulnerabilities Associated with Gold

45. This report was the product of a joint research project undertaken by the FATF and the Asia/Pacific Group on Money Laundering. The perceived need for the project arose from the apparent displacement of money laundering and terrorist-financing activity from the formal financial sector to the gold market as regulators and law enforcement strengthened barriers to money laundering in the financial industry.²⁸ The report is based on original research conducted through surveys and the analysis of case

²⁸ App. WW, Ex. 4, *supra* note 28 at 3.

studies provided by law enforcement agencies as well as a review of existing literature.²⁹

46. Gold is identified in the report as particularly vulnerable to money laundering due to two characteristics of the market for the precious metal - the prevalence of cash and the anonymity of the gold market.³⁰

47. In discussing the gold market as a “cash intensive” economic sector, the report focuses on “cash-for-gold” businesses and the attraction they hold for organized crime groups:³¹

The regulatory characteristics of the gold market in a number of countries make it attractive for organised crime groups to own cash-for-gold businesses in order to place and integrate illicit proceeds. Given the limited level of industry oversight and licencing requirements, cash-for-gold businesses have the potential to provide criminal groups with a continuous supply of untraceable gold commodities from various sources. Furthermore, this supply is purchased at below market cost, directly from the general public—who do not have to prove that they own the second-hand gold presented for sale.

The high-volume, low value transactions conducted through these cash-intensive businesses can be easily falsified or co-mingled with the proceeds of crime, while the purchased gold can be used to make untraceable gold-based payments for illicit goods and services. Because much of the recycled material is purchased in cash, large numbers of transactions are undertaken anonymously.

Individuals who have a need to launder cash, especially those involved in organised crime, are very willing to participate in the cash-for-gold business because there is a high propensity to make a profit and in most jurisdictions there is little governance or oversight of this type of activity. People with no

²⁹ App. WW, Ex. 4, *supra* note 28 at 4-5.

³⁰ App. WW, Ex. 4, *supra* note 28 at 6.

³¹ App. WW, Ex. 4, *supra* note 28 at 6.

criminal history are also prepared to undertake this activity even if they suspect that the underlying purpose of the activity is [money laundering].

Trade in recycled gold, both legal and illegal, requires little start-up capital and therefore operations can be very itinerant, opening and closing with little difficulty. This adds to the difficulty for regulators to monitor these activities.

48. Similarly, the report emphasizes that the anonymity of transactions may attract criminal organizations to the gold market. It explains that:³²

[M]any transactions involving gold occur anonymously, with little to no record identifying the seller, or purchaser, of gold. This means that law enforcement agencies have little to assist them to identify what the source of the gold is or the identity of the person who sold it. It may be difficult to refute false claims about the source of gold due to the challenges in correctly identifying gold.

49. Alongside these two factors, the report points to a number of additional features of gold and the gold market that increase their vulnerability to money laundering - and their attractiveness to criminal organizations and money launderers. These include:

- a. Gold's capacity to act as a medium of exchange and an alternative to cash, making it useful as a means of settling debts and distributing the proceeds of crime;³³
- b. Gold is viewed as a stable asset that provides reliable returns;³⁴
- c. Gold is easily traded and easily smuggled.³⁵

50. In addition to discussing the vulnerability of the gold market to money laundering, the report also provides a number of case studies from jurisdictions around the world, identifying how money laundering may occur through the gold trade.

³² App. WW, Ex. 4, *supra* note 28 at 8.

³³ App. WW, Ex. 4, *supra* note 28 at 9.

³⁴ App. WW, Ex. 4, *supra* note 28 at 11.

³⁵ App. WW, Ex. 4, *supra* note 28 at 12.

iii. Canadian Jewellers Association

51. Founded in 1918, the Canadian Jewellers Association (“**CJA**”) is a national trade association for the Canadian Jewellery industry.³⁶ Membership in the CJA is voluntary. The CJA currently has over 1200 members, including jewellery retailers, suppliers and manufacturers.³⁷

52. The CJA’s mission statement, as published on its website, is:

The CJA has been the voice of the Canadian jewellery industry since 1918. The CJA provides leadership and education to promote the adoption of best practices and information sharing among all its members. CJA represents the interests of its members and the Canadian jewellery industry to promote fair and equitable consideration by all levels of government. It assists its members to afford services, information and technologies that support the integrity, security and profitability of their businesses, creating consumer trust and respect for the Canadian jewellery industry.

53. The CJA has produced a Code of Ethics and written Standards of Conduct to which members are expected to adhere. The CJA’s 13-point Code of Ethics is as follows:³⁸

- a. Maintain the highest level of personal integrity, honesty and business ethics.
- b. Comply with all laws and government regulations as they apply to the Canadian jewellery and watch industry.
- c. Provide quality products and services.
- d. Follow business practices that do not mislead or deceive clients.
- e. Provide knowledgeable and competent expertise, and undertake to maintain current professional education and training.

³⁶ Canadian Jewellers Association, “Canadian Jewellers Association” (online) *canadianjewellers.com* <<https://www.canadianjewellers.com/about-cja/>>.

³⁷ *CJA Submissions*, *supra* note 23 at 7.

³⁸ Canadian Jewellers Association, “Code of Ethics” (online) *canadianjewellers.com* <<https://www.canadianjewellers.com/jeweller/about-cja/code-ethics/>>.

- f. Accurately describe the true quality, nature and authenticity of products offered for sale.
- g. Care for the property of consumers with prudence and respect.
- h. Establish and fulfill a reasonable guarantee and/or service policy regarding products and services, and clearly communicate this to clients.
- i. Hold in strict confidence all information regarding customers.
- j. Refrain from all forms of copyright and trademark infringement.
- k. Support international best business practices with respect to the environment.
- l. Support the fair treatment, well-being and dignity of individuals at all levels of the jewellery industry, both domestically and internationally.
- m. Abide by and support the Constitution and objectives of the Canadian Jewellers Association, including this Code of Ethics and the CJA Standards of Professional Conduct.

54. The CJA Standards of Conduct are divided into five thematic sections - Appraisals; Diamonds, Gemstones and Pearls; Precious Metals; Business and Marketing Practices; and CJA Logo Standards. Within the “Business and Marketing Practices” section, paragraphs 1 and 2 engage directly with the issue of money laundering in the jewellery industry. These paragraphs provide that:

- 1. Members should comply with all Anti-Money Laundering Acts, Regulations and Guidance documents and have a compliance strategy in place within their operations.
- 2. Members should refer to the CJA Anti-Money Laundering Compliance Kit, to assist them in complying with regulations outlined by FINTRAC.

55. The CJA made submissions to the House of Commons Standing Committee on Finance as part of the Committee’s review of the PCMLTFA in 2018. As part of its submissions, the CJA asserted that the risk of money laundering in the Canadian jewellery market is low. This position was based on several features of this market,

including the absence in Canada of a tradition of the use of gold and diamonds as a secondary currency, that the Canadian jewellery market is relatively small, and that Canada is not a significant diamond trading centre.³⁹ The CJA suggested that Canada has an onerous AML compliance regime for dealers in precious metals and stones, relative to other countries.⁴⁰

56. The CJA recommended that AML compliance requirements be relaxed for some dealers in precious metals and stones, and that requirements for other luxury good retailers be enhanced in order to “level the playing field.” The CJA made the following four recommendations:

- a. To level the playing field all luxury product dealers (i.e. cars, boats, art) should be required to report large cash transactions to FINTRAC.
- b. At the very least DPMS that fall into a lower risk category should be allowed to have a simplified Compliance Regime.
- c. Exempt DPMSs from a compliance regime if they do not engage in cash transactions above the reporting threshold (as in the UK) thus eliminate an unnecessary compliance burden on a low risk sector.
- d. Auction houses should be captured under the regulations.

E. Fine Art

57. The *Tainted Treasures* report identifies fine art as a luxury good market vulnerable to money laundering. The report describes the risk of money laundering in this sector in the following terms:

High-profile economists, US prosecutors and academics have all called for greater regulation of the global art market due to its money laundering and tax evasion risks. Major risk factors include the traditions of confidentiality

³⁹ CJA Submissions, *supra* note 23 at 2-3.

⁴⁰ CJA Submissions, *supra* note 23 at 3.

and discretion in the art world, and that works of art can be both high-value and easily transportable. A report by consultancy firm Deloitte identifies several additional money laundering risks in the luxury art sector, such as the common use of foreign or offshore accounts and the use of intermediaries to carry out transactions, for example through telephone or online auctions.

i. Regulation of the Fine Art Market in Canada and British Columbia

58. The sale of fine art in Canada and British Columbia is lightly regulated. Art dealers are not reporting entities under the *PCMLTFA*. There are no generally applicable licensing or registration requirements for art dealers in British Columbia.

59. The federal government has enacted the *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51 to give effect to Canada's obligations under the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.⁴¹ The Act establishes a regulatory regime intended to control the export of cultural property with significance to Canada's national heritage and to curb the trade in illegally obtained cultural property. It is not intended to address the use of fine art to launder money.⁴²

ii. Academic Literature

60. While the fine art market has attracted little attention from the FATF, money laundering in this sector has received some consideration in academic literature. Like *Tainted Treasures*, this literature identifies fine art and the art market as being

⁴¹ Can TS 1978/33.

⁴² Fausto Martin De Sanctis, *Money Laundering through Art: A criminal justice perspective* (Cham, Switzerland: Springer, 2013) at 18.

particularly vulnerable to money laundering.⁴³ The literature attributes this vulnerability to a number of characteristics of the sector:

- a. The market for fine art is largely unregulated in most jurisdictions, meaning that transactions, including those conducted in cash, typically go unreported and dealers in artwork are not subject to licensing requirements or mandatory qualifications;⁴⁴
- b. Artwork is easily stored and easily transported and can increase in value rapidly, making it an attractive investment;⁴⁵
- c. Artwork is expensive and its value hard to authenticate. These features make it an attractive vehicle for trade-based money laundering as the value of artwork can be manipulated with little risk of detection by customs officials unlikely to have the training necessary to verify valuations;⁴⁶
- d. The art market has traditionally emphasized anonymity and confidentiality, with transactions conducted in secret commonplace. Sales of artwork can be easily conducted in 'free ports' such as those in Switzerland, Luxembourg, Hong Kong, and Singapore, further obscuring transactions.⁴⁷

iii. Anti-Money Laundering Initiatives in the Art Sector Internationally and in Other Jurisdictions

61. While the fine art market in British Columbia remains largely unregulated, steps have been taken internationally and in other jurisdictions to address the vulnerability of this sector to money laundering.

⁴³ De Sanctis, *ibid* at 56; Saskia Hufnagel & Colin King, "Anti-Money Laundering Regulation and the Art Market" (2019) 40:1 Legal Studies (Society of Legal Scholars) at 4; Hannah Purkey, "The Art of Money Laundering" (2010) 22:1 Florida International Law Journal at 112.

⁴⁴ De Sanctis, *ibid* at 56.

⁴⁵ De Sanctis, *ibid* at 56.

⁴⁶ Katie L. Steiner, "Dealing with Laundering in the Swiss Art Market: New Legislation and its Threats" (2017) 49:1-2 Case Western Reserve Journal of International Trade Law at 360; Purkey, *supra* note 44 at 127.

⁴⁷ Hufnagel & King, *supra* note 44 at 4.

2012 - Basel Art Trade Guidelines

62. In 2012, the Basel Institute on Governance issued its *Basel Art Trade Guidelines*,⁴⁸ which were presented as an attempt to encourage self-regulation within the art market “before national legislators step in.”⁴⁹ The guidelines were intended to apply to “all art market stakeholders who are involved in the sale of art objects as professionals”⁵⁰ and were intended to prevent the misuse of the art trade for money laundering. The guidelines were re-issued in 2018.

63. The guidelines set out “standards for art market operators”, divided into four sections: The identification of buyer and seller; due diligence before sale; source of funds; after-sale responsibility; and conflict management. The guidelines are attached as Appendix “B”.

64. In 2018, the Basel Institute on Governance issues its *Basel Art Trade Anti-Money Laundering Principles*⁵¹ to complement the guidelines. These principles are attached as Appendix “C”.

65. Transparency International reports that the guidelines have been met with limited enthusiasm within in the industry:⁵²

[A] 2012 working paper found that ‘the art trade has shown a pronounced lack of interest’ in dealing with the proposed guidelines. A letter sent out to key

⁴⁸ Basel Institute on Governance, *Basel Art Trade Guidelines* (Basel: Basel Institute on Governance, 2018). https://www.baselgovernance.org/sites/default/files/2019-06/190613_WP_12.pdf. [*Basel Art Trade Guidelines*]

⁴⁹ *Basel Art Trade Guidelines*, *ibid* at 8.

⁵⁰ *Basel Art Trade Guidelines*, *ibid* at 13.

⁵¹ Basel Institute on Governance, *Basel Art Trade Anti-Money Laundering Principles* (Basel: Basel Institute on Governance, 2018).

⁵² *Tainted Treasures*, *supra* note 1 at 11.

representatives of the art trade industry was ‘met with reservation and outright refusal to engage.’

2017 - Responsible Art Market Initiative Guidelines on Combatting Money Laundering and Terrorist Financing

66. Similar guidelines were issued by the Responsible Art Market Initiative (“**RAM**”) in 2017.⁵³ The RAM Guidelines are attached as Appendix “D”. The RAM guidelines include a list of red flags for money laundering and terrorist financing in the art market. The list of red flags is attached as Appendix “E”.⁵⁴

2020 - United States Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations Report

67. On July 27, 2020, the United States Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations released a staff report titled *The Art Industry and U.S. Policies that Undermine Sanctions* which, in part, addresses the risk of money laundering in the American art industry. A copy of this report is attached as Appendix “F”.

iv. Art Dealers Association of Canada

68. The Art Dealers Association of Canada (“**ADAC**”) is a not-for-profit organization founded in 1966. It describes itself in the following terms on its website:

Our Association is the largest representation of major private commercial galleries in Canada, and our dealers represent the country’s leading artists and deal in works of all periods and media. The ADAC maintains a high standard of connoisseurship and adherence to ethical practice within the profession.

⁵³ Responsible Art Market Initiative, *Guidelines on Combatting Money Laundering and Terrorist Financing*, 2017 <<http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing/>>.

⁵⁴ Responsible Art Market Initiative, *Red Flags: Money laundering and terrorist financing risks*, 2017 <http://responsibleartmarket.org/wp/wp-content/uploads/2017/01/RED-FLAG-LISTS_web.pdf>.

Members are selected for their knowledge and scholarship in their respective fields of expertise.

69. In response to a request for records and a meeting with ADAC leadership, the Commission received a letter dated January 21, 2010, advising that ADAC had “spoken with current and past Board members and it seems that the subject of money laundering is not one that has been discussed by us as an organization.” A copy of the letter received from ADAC is attached as Appendix “G”.

70. Responsive to one of the requests made by Commission Counsel, ADAC also provided a copy of its Code of Ethics. The ADAC Code of Ethics is attached as Appendix “H”.

F. Yachts

71. The *Tainted Treasures* report identifies “super-yachts” as a luxury good market vulnerable to money laundering. It describes this vulnerability in the following passage:⁵⁵

According to industry publications, 392 super-yachts were sold worldwide in 2015, a record since the 2008 financial crisis. A 100-metre super-yacht costs an estimated US\$275 million on average, with additional millions in yearly operating costs; for instance an average of US\$1.4 million for crew salaries alone.

Leading jurisdictions of “established and emerging super-yacht wealth” include countries with a high risk of public sector corruption such as Indonesia, Kazakhstan, Kuwait, Russia, Thailand and Turkey. In 2014 Bloomberg reported that, “the proportion of yachts measuring more than 40 meters owned by Russians has more than doubled over the past five years to about 8 percent of the global fleet”.

⁵⁵ *Tainted Treasures*, *supra* note 1 at 12.

Super-yachts are often registered in secrecy jurisdictions and in countries offering “flags of convenience” such as Belize, the British Virgin Islands, the Cayman Islands, the Marshall Islands and the United Arab Emirates, which have poor financial transparency standards, minimal taxation and low regulations, in particular on labour standards.

72. Money laundering in the yacht market has not been the subject of analysis by the FATF, nor has it featured prominently in the academic literature.

- i. Yacht dealers are not subject to reporting and record-keeping requirements under the PCMLTFA. British Columbia Yacht Brokers Association

73. The British Columbia Yacht Brokers Association (“**BCYBA**”) is a society incorporated under the *Societies Act* with the following purposes:

- a. To unite those engaged in the yacht brokerage business for the purpose of promoting cooperation and professionalism through its members.
- b. To promote and maintain a high standard of conduct in the transacting of the yacht brokerage business.
- c. To instill into the boating public a greater confidence in yacht brokers.
- d. To encourage a greater interest in the welfare and safety of the boating public.

74. On June 18, 2020, the BCYBA approved its “Anti-Money Laundering Practice Policy.” The policy is attached as Appendix “I”. References to the policy are also found in the BCYBA Code of Ethics, which is attached as Appendix ‘J’.

G. Luxury Clothing and Apparel

75. In its *Tainted Treasures* report, Transparency International identifies “Personal Luxury Items” as an economic sector vulnerable to money laundering.⁵⁶

⁵⁶ *Tainted Treasures*, *supra* note 1 at 16.

76. It describes the money laundering risk associated with this market in the following terms:

Designer apparel and footwear as well as bags and accessories represent an important part of the luxury goods market, with 48 of the top 100 luxury goods companies operating in these sectors. Prices for luxury items can reach extraordinary amounts, for instance in 2012 the Louis Vuitton Kusama bag was retailing at US\$133,430.

A 2014 risk report on the luxury goods sector found that 56 per cent of respondents in the industry cited bribery, corruption, fraud and money laundering as factors that caused them the most concern. Respondents acknowledged that the globalised nature of the sector had increased the levels of risk.

77. Dealers in luxury clothing and apparel are not reporting entities under the *PCMLTFA*.

Appendix A

Transparency International, *Tainted Treasures: Money Laundering in Luxury Markets*,
2017

TAINTED TREASURES
MONEY LAUNDERING RISKS
IN LUXURY MARKETS

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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Author: Max Heywood

Research assistance: Jessica Ebrard

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GLOSSARY

Beneficial Owner: the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates.

Competent Authority: Person or organization that has the legally delegated or invested authority, capacity, or power to perform a designated function.

Customer Due Diligence (or Know Your Customer): a set of money laundering measures normally mandated by law which are employed by banks and other financial services to document the true identity of a customer/client and his or her source of wealth to make sure it is legitimate.

Enhanced Due Diligence: the term used to refer to Know Your Customer money laundering measures that include validation and documentation by third parties and applies to situations where higher risk clients and politically exposed persons, such as senior politicians, are concerned.

Financial Action Task Force (FATF): an inter-governmental body established in 1989. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

FATF Recommendations: the internationally endorsed global standards against money laundering and terrorist financing.

Grand Corruption: the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished.

Money laundering: the process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make them appear legal.

Politically Exposed Person (PEP): individuals who hold or held a prominent public function, such as the head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials. The term often includes their relatives and close associates.

Risk-based approach: A risk-based approach means that countries, competent authorities, and banks identify, assess, and understand the money laundering and terrorist financing risk to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk.

Suspicious Activity Report (SAR): a piece of information which alerts law enforcement that certain client/customer activity is in some way suspicious and might indicate money laundering or terrorist financing.

EXECUTIVE SUMMARY

From Ukraine¹ to Tunisia² and Brazil³, large-scale cases of grand corruption in recent years have involved the acquisition of luxury property, vehicles and goods.

This report examines the risk of luxury goods and assets being used to launder the proceeds of corruption, including in the art world and the marketplaces for super-yachts, precious stones and jewels, high-end apparel and accessories, and real estate.

In theory, businesses operating in the luxury sector should be well placed to prevent money laundering, as they are highly aware of the reputational risks to their brands and often seek to establish long-term relationships with their customers, which should make it easy to carry out due diligence. However, the available data suggests that compliance by high-value retailers with due diligence and reporting obligations is remarkably low. For instance, across jurisdictions luxury sector suppliers seldom act on any concerns about possible money laundering by filing suspicious activity reports (SARs).

Legislation and policy to prevent money laundering in the luxury sector also have weaknesses. Based on an assessment of existing sources such as regulatory reports and sector-specific studies, this scoping report finds that, while there is some variation across countries, current levels of oversight and enforcement by authorities are limited in leading luxury markets including China, France, Germany, Italy, Japan, the UK and the US.

Several characteristics of the luxury sector itself indicate heightened risks of money laundering. Some high-value goods such as jewellery, precious stones, art and luxury accessories are easily transportable. Others, such as luxury real estate and super-yachts have been associated with the use of anonymous shell companies or intermediaries to purchase and manage these assets, which are significant red flags. To these risks are added the traditions of discretion and confidentiality, which are present across virtually all luxury sectors, and represent a major money laundering risk.

From fixing the gaps in international standards and national legislation to increasing the number of suspicious reports being submitted to authorities by luxury sector businesses, much remains to be done to reduce the scope for individuals using the proceeds of corruption to acquire and enjoy high-value goods and property, and to use these assets as a vehicle for laundering their ill-gotten gains.

RECOMMENDATIONS

Governments

- Those countries that host the largest luxury markets in particular, such as China, France, Germany, Italy, Japan, the US and the UK, should strengthen legislation to ensure dealers in high-value goods and in specific luxury sectors that are considered high-risk have customer **due diligence and reporting requirements that meet best practice international standards**.
- Governments should ensure luxury sectors have a **designated competent authority charged with oversight and regulation**. The competent authorities should have the

¹ See: www.telegraph.co.uk/news/worldnews/europe/ukraine/10656023/In-pictures-Inside-the-palace-Yanukovich-didnt-want-Ukraine-to-see.html

² See: www.washingtonpost.com/wp-dyn/content/article/2011/01/28/AR2011012801921.html

³ See: www.infobae.com/2015/07/16/1742077-cajas-fuertes-millones-reales-ferraris-y-lamborghinis-detras-del-escandalo-petrobras/

mandate, resources and independence necessary to effectively carry out their oversight duties, which would include having the ability to sanction non-compliant businesses.

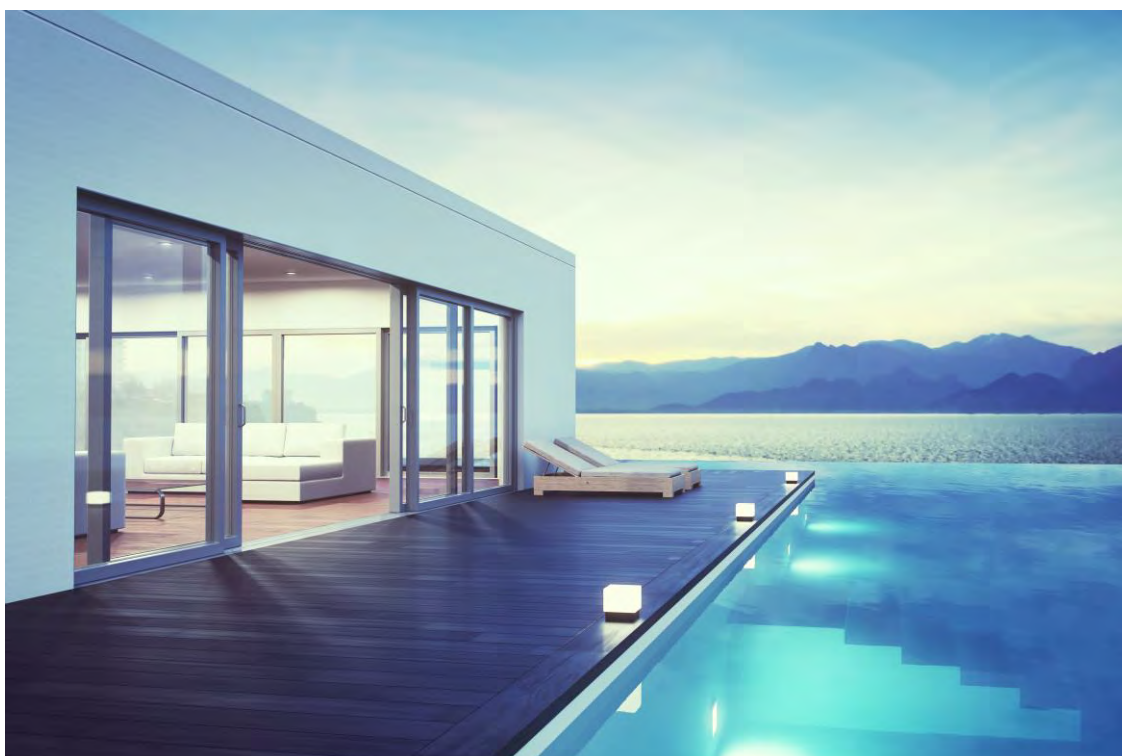
Leading global companies in each luxury sector

- Leading brands and luxury multinationals should **establish effective customer due diligence and reporting systems** in their retail and customer service chains. These should also be established in countries where they are not yet legally required, in line with the public commitments to ethical behaviour and integrity already made by many companies.

The Financial Action Task Force (FATF)

- As the international standard-setter against money laundering, the FATF should **strengthen its recommendations to ensure high-value luxury sectors** are adequately covered by global standards. Specifically, the FATF should consider revising Recommendation 22, which establishes the sectors considered Designated Non-Financial Business and Professions. In addition, high-value sectors should be required to take a risk-based approach to customer due diligence, in place of a threshold-based approach which applies only to cash transactions.

To inform the process of revising Recommendation 22, the FATF should also commission and publish a Methods and Trends report on money laundering risks and vulnerabilities in high-value goods sectors.



Luxury real estate: a particularly attractive target for money launderers. [Photo: iStock/imaginima]

INTRODUCTION

In December 2016, the Dutch authorities seized super-yacht *Ebony Shine*, worth an estimated US\$120 million.⁴ This was just a month after the Swiss authorities had seized 11 of the world's most expensive cars, including a rare sports car worth US\$2.8 million.⁵ All of these high-value items were reportedly owned by Teodorin Obiang, the vice-president of Equatorial Guinea, one of the poorest countries in the world.

Obiang, also the son of President Teodoro Obiang, has been charged by French authorities with corruption, money laundering and embezzlement of public funds.⁶ These latest seizures came more than six years after a US Senate report found that Obiang Jr had moved millions into the US through shell companies in the early 2000s, using them to buy real estate and a range of luxury items.⁷

This is not an isolated case. Across the world, from Ukraine⁸ to Tunisia,⁹ to Brazil¹⁰ large-scale cases of corruption persistently involve the acquisition of luxury property, vehicles and goods. Luxury goods¹¹ can serve as badges of wealth, becoming a highly desirable consumption target,¹² and they can also be used as bribes.¹³

For individuals engaged in corruption schemes, the luxury sector is significantly attractive as a vehicle to launder illicit funds. Luxury goods, super yachts and stately homes located at upmarket addresses can also bestow credibility on the corrupt, providing a sheen of legitimacy to people who benefit from stolen wealth.

It is estimated that the global luxury market exceeded €1 trillion in 2015.¹⁴ The luxury car market grew by 8 per cent compared to 2014 and is valued at over €405 billion, while luxury hospitality grew by 7 per cent, reaching a market value of €176 billion.¹⁵

Despite its seemingly obvious role in laundering the money of corrupt individuals, our findings suggest that **anti-money laundering legislation, policy and practice in the luxury sector are still underdeveloped**. Systemic weaknesses can be found across all areas ranging from international anti-money laundering standards, through national legislation and regulatory oversight, to compliance by individual luxury goods retailers. Although there are no estimates of the amounts

⁴ See: <http://qz.com/860194/equatorial-guineas-teodorin-obiang-has-had-his-luxury-yacht-seized-in-the-netherlands/>

⁵ See: <http://qz.com/827859/bugatti-ferrari-and-koenigegg-one-were-among-seized-cars-of-equatorial-guineas-vp-obiang/>

⁶ See: www.france24.com/en/20160907-son-equatorial-guinea-leader-teodorin-obiang-faces-french-trial-graft-charges

⁷ See: www.hsgac.senate.gov/subcommittees/investigations/hearings/keeping-foreign-corruption-out-of-the-united-states-four-case-histories

⁸ See: www.telegraph.co.uk/news/worldnews/europe/ukraine/10656023/In-pictures-Inside-the-palace-Yanukovich-didnt-want-Ukraine-to-see.html

⁹ See: www.washingtonpost.com/wp-dyn/content/article/2011/01/28/AR2011012801921.html

¹⁰ See: www.infobae.com/2015/07/16/1742077-cajas-fuertes-millones-reales-ferraris-y-lamborghini-detras-del-escandalo-petrobras/

¹¹ Luxury goods can broadly be defined as “products and services not essential to basic needs, for which demand rises more than proportionally than a rise in income”. See: www.blog.kpmgafrica.com/luxury-goods-in-africa-a-maturing-sector/

¹² Transparency International UK, *Don't look won't find: Weaknesses in the supervision of the UK's anti-money laundering rules* (London: TI UK, November 2015). www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/

¹³ In China, for example, researchers drawing on detailed import data have found evidence of a “Swiss watch cycle”, in which imports of Swiss watches rose during political leadership transitions, when thousands of lucrative government positions became available to be “bought”. See: <http://xiaohuanlan.weebly.com/uploads/1/9/1/3/19133549/watch-1.8-empirical-xl.pdf>

¹⁴ Claudia D'Arpizio, Federica Levato, Daniele Zito and Joëlle de Montgolfier, *Luxury goods worldwide market study* (Milan: Bain and Co., 2015), p.5. www.bain.com/Images/BAIN_REPORT_Global_Luxury_2015.pdf

¹⁵ *Ibid.*, p.6.

being laundered through luxury sectors, this review of existing policy and media reports finds multiple factors pointing to the high risks of money laundering in these markets¹⁶.

From international standards to national legislation

The weaknesses in oversight of the luxury market start with the international standards against money laundering – the Financial Action Task Force (FATF) recommendations.¹⁷ While the FATF standards set out anti-money laundering recommendations for both financial and non-financial businesses and professions, these do not fully cover all relevant luxury sectors, focusing mainly on real estate and precious metals and stones. Major luxury sectors such as personal luxury items, art, and luxury transport (from cars to private jets and super-yachts) fall largely outside their scope.

In addition, for the precious metals and stones sectors, the FATF recommendations only apply to cash-based transactions above a minimum threshold. This threshold-based approach moves away from the risk-based approach that requires businesses and authorities to understand the money laundering risks in their sectors, and is central to effective prevention.¹⁸

At the same time, **national legislation and regulatory oversight** of luxury good sectors are generally poor, with few countries explicitly including vehicles, aircraft and boats,¹⁹ for example, under the sectors that need to comply with anti-money laundering obligations. Across the 34 OECD countries compliance in law with FATF standards for all non-financial professions was rated as between “non-compliant” and “partially compliant” on average by a 2014 OECD report.²⁰

In 2015, Transparency International found the luxury goods sector in 10 of the G20 members is not required by law to identify the beneficial ownership details of customers.²¹ These include top luxury markets such as China, Italy, and the US as well as countries such as Australia and Canada where media reports, official assessments and civil society analysis point to a high risk of money laundering in sectors such as high-end real estate.²² In other countries such as the UK and Germany, anti-money laundering legislation contains broad definitions, such as “dealers in high-value goods”, which would theoretically include luxury goods dealers under the sectors that have to comply with due diligence and reporting obligations. However, the practical implementation of these laws is limited.

Private businesses in the luxury sector

The luxury sector should be uniquely well placed to carry out effective due diligence on its clients, as its business model is to a significant extent based on knowing the customer; an essential principle for any anti-money laundering system. Articles in luxury trade publications emphasize the importance of cultivating long-term relationships with clients, for instance gathering data on each

¹⁶ Please refer to methodological note at the end of this report

¹⁷ FATF 40 Recommendations. www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc

¹⁸ FATF, *Guidance for a risk based approach: The banking sector* (Paris: FATF, 2014). www.fatf-gafi.org/publications/fatfrecommendations/documents/risk-based-approach-banking-sector.html

¹⁹ Countries with legislation that does (in some cases partially) cover these sectors include Argentina, the British Virgin Islands, the Cayman Islands, Mexico, the Netherlands and the US.

²⁰ OECD, *Illicit financial flows from developing countries: Measuring OECD responses* (Paris: OECD, 2014).

www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf

²¹ Transparency International, *Just for show? Reviewing G20 promises on beneficial ownership* (Transparency International, 2015). www.transparency.org/whatwedo/publication/just_for_show_g20_promises

²² See: www.news.com.au/finance/real-estate/buying/where-chinese-billions-pouring-into-australian-real-estate-really-come-from/news-story/6a6c5a741f618039c2342f81bd03f933; www.cbc.ca/news/canada/british-columbia/fintrac-realtors-realestate-vancouver-1.3497796

individual to tailor future offers, linked to key events such as birthdays.²³ Customer retention rates are estimated at up to 30 per cent for top-tier brands.²⁴ In addition, luxury firms maintain strict control over their distribution channels; for example selecting a limited number of retail points in each city to ensure their exclusivity is not diluted.

Both these factors – knowing the customer and controlling distribution channels – should place the luxury sector in a position to implement customer due diligence throughout production and retail chains with relative ease. Although in some sub-sectors such as luxury accessories, due diligence requirements may be complicated by the growth in international luxury tourism, in others such as customised aircraft or super-yachts there is little doubt that the identity of the buyer is usually known to the supplier.

However, the available data suggests that compliance by high-value retailers with due diligence and reporting obligations is remarkably low. For instance, across jurisdictions luxury sector suppliers seldom act on any concerns about possible money laundering by filing suspicious activity reports (SARs). In the UK high-value dealers submitted just 135 SARs between October 2014 and September 2015, representing 0.04 per cent of the total amount of SARs submitted in that period.²⁵ In Antwerp, the largest diamond exchange in the world, no suspicious activity reports by the precious stones sub-sector had been filed up to 2014²⁶, despite this market being identified as having a high money laundering risk.

Several characteristics of the luxury sector itself indicate heightened risks of money laundering. Some high-value goods such as jewellery, precious stones, art and luxury accessories are easily transportable. Others, such as luxury real estate and super-yachts are often associated with the use of anonymous shell companies or intermediaries to purchase and manage these assets, which pose particular money laundering risks²⁷. To these risks are added the traditions of discretion and confidentiality, which are present across virtually all luxury sectors, and represent a major money laundering risk.

Improving practice

Changing the culture and practices in the luxury sector will require a significant and sustained effort by many actors. International bodies, in particular the FATF, need to strengthen international standards and produce supporting materials, such as guiding documents to assist governments and the private sector. Governments need to take action to strengthen legislative compliance with international standards.

Competent authorities need to be designated to oversee luxury markets, and these need to have the mandate, resources, and capacity to carry out their roles effectively. Effective oversight requires action in multiple areas such as carrying out sector-wide risk assessments, coordinating relevant

²³ See: www.mycustomer.com/service/management/what-can-luxury-brands-teach-us-about-customer-service-and-after-care

²⁴ See: <http://luxurysociety.com/articles/2012/10/10-retail-strategies-for-luxury-brands-to-improve-crm>

²⁵ National Crime Agency, *Suspicious activity reports: Annual report 2015* (London: NCA, 2015).

www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file

²⁶ FATF, *Anti-money laundering and counter-terrorist financing measures: Belgium: Mutual Evaluation Report* (Paris: FATF, 2015). www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf

²⁷ FATF, *Specific Risk Factors in Laundering the Proceeds of Corruption* (Paris: FATF 2012). <http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf>

state authorities such as financial intelligence units and tax authorities, performing on-site inspections, and implementing sanctions on businesses where necessary.

Luxury brands also have a duty and responsibility to change their compliance practices – from their employees working on the sale floors to their C-suite staff.

Focus of this report

In this context, what is the role of the producers and dealers in the luxury sector, and the authorities who oversee them? Over the last three decades, international bodies have developed a standard set of anti-money laundering measures.²⁸ These include customer due diligence and record-keeping by businesses; enhanced due diligence for politically exposed persons (PEPs); reporting of suspicious transactions to relevant authorities; and effective oversight by competent regulatory authorities. To what extent are these measures in place in the luxury goods sectors?

This scoping report first examines **emblematic luxury goods sectors**, from fashion accessories and jewels to luxury real estate and super-yachts, and assesses the risks of money laundering associated with each one to the extent the available data allow. Based on a review of publicly available sources such as publications by industry bodies, annual reports of leading companies, media reports, and risk assessments carried out by consulting firms, it also assesses the levels of awareness of and compliance with anti-money laundering obligations in these sectors.

It then looks at **global standards** and the **role of national authorities** in implementing them, drawing on FATF country reports, official anti-money laundering country risk assessments, and civil society briefings, with a particular focus on the major luxury markets such as China, France, Germany, Italy, Japan, the US and the UK. How strong is national level legislation against anti-money laundering in leading luxury goods markets? How effective is regulatory oversight and enforcement of applicable laws?

THE LUXURY SECTOR: RISK FACTORS

The main markets for luxury goods are in developed countries, with the top five consumer markets being in the US, Japan, France, Italy and China, which together represent over 50 per cent of the global market, followed by the UK and Germany in sixth and seventh place.²⁹ The luxury goods market records above-average profit, with a net profit margin of 12 per cent in 2012 compared with 8.2 per cent for consumer products companies.³⁰

However, it is the emerging markets that are largely driving the growth in luxury goods sales, in particular in the Middle East and Africa.³¹ For example, the luxury retail market is reported to be booming in Portugal thanks to a rising influx of the Angolan elite. In April 2013, Filipa Pinto-Coelho, marketing director for Gucci in Portugal, declared a substantial growth of Angolan costumers in 2012–2013. She estimated this growth to be around 90 per cent, making up 58 per cent of the total market share of Gucci sales in Portugal.³² Yet in Angola, 43.4 per cent of the population lives in

²⁸ FATF 40 Recommendations.

²⁹ See: www.slideshare.net/Euromonitor/state-of-the-luxury-goods-market-in-2014

³⁰ Deloitte, *Global powers of luxury goods: In the hands of the consumer* (London: Deloitte, 2014).

www2.deloitte.com/content/dam/Deloitte/ch/Documents/consumer-business/ch-cb-en-global-powers-of-luxury-goods-2014.pdf

³¹ See: www.usfashionindustry.com/resources/euromonitor-international-industry-analysis/2454-euromonitor-international-luxury-market-outlook-for-2016

³² See: www.theafricareport.com/Southern-Africa/trend-hunter-angolan-shoppers-rescue-lisbons-luxury-retailers.html

poverty on less than US\$1.45 a day,³³ and the political class is allegedly engaging in wholesale plundering of state resources. Angola scores just 15 out of 100 on Transparency International's Corruption Perceptions Index.³⁴

Another example is Nigeria, which is one of the world's fastest growing luxury goods markets, where more than a half of the population lives on less than US\$1.45 a day.³⁵ Nigeria scores 26 out of 100 on Transparency International's Corruption Perceptions Index.³⁶ In 2013, it was the second-fastest growing market in the world for champagne, becoming one of the top 20 champagne markets in the world.³⁷ In Lagos's wealthiest district, Victoria Island, luxury shops such as Ermenegildo Zegna, Porsche and Hugo Boss have blossomed,³⁸ alongside a wide variety of jewellery shops.

Beyond the notorious and emblematic grand corruption cases in recent decades, such as those of Yanukovich in Ukraine³⁹ and Ben Ali in Tunisia,⁴⁰ different sources point to the luxury goods market as an attractive sector for corruption and laundering the proceeds of ill-gotten gains. In the UK alone, it is estimated that £100 billion (€115 million) a year of illicit money from abroad finds its way into the country, and is often spent on high-end homes and property, as well as other luxury goods.⁴¹ Following an anti-corruption drive in China in 2013, luxury goods imports to the country fell by 13.3 per cent over the seven months following the reforms,⁴² while a luxury goods fair in Macau had to be cancelled.⁴³ A 2014 briefing on the global luxury goods sector by the consultancy Deloitte stated that, "...the [Chinese] government's recent crackdown on corruption has resulted in a sharp drop in official gift giving. Going forward, this could have a negative impact on the luxury market".⁴⁴

Ben Ali's collection

Zine al-Abidine Ben Ali was the president of Tunisia for 23 years. It is not clear how much money Ben Ali and his entourage held abroad when the president was forced out of office in January 2011, but according to a March 2014 report issued under the auspices of the World Bank, 220 companies were allegedly owned by Ben Ali and his relatives – and they were allegedly earning 21 per cent of all the country's private sector profits between 1996 and 2010.⁴⁵

In December 2012, luxury assets including high-performance cars, yachts, fine art, jewellery, and palaces belonging to Ben Ali and his wife, Leila Trabelsi, were auctioned.⁴⁶ It is believed that roughly 12,000 items, including 22 luxury vehicles, reported to include a Lamborghini, a Bentley, an armoured Cadillac, and a Maybach town car,⁴⁷ as well as hundreds of pieces of jewellery, ornate clocks, watches and paintings were among the auctioned items.⁴⁸ Suits belonging to Ben Ali went for an average of €3,000 each, while coats belonging to Trabelsi went up to €4,000.⁴⁹

Officials declared that auctioning Ben Ali's family's luxury assets has brought US\$500 million (€442 million) to the state's coffers since 2011.⁵⁰

³³ According to UNICEF's data 2007-2011: www.unicef.org/infobycountry/angola_statistics.html

³⁴ See: http://www.transparency.org/news/feature/corruption_perceptions_index_2016

⁴⁵ Bob Rijkers, Caroline Freund and Antonio Nucifora, *All in the family – State capture in Tunisia*, Policy Research Paper 6810, World Bank, March 2014. www.wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/03/25/000158349_20140325092905/Rendered/PDF/WPS6810.pdf; cited in Financial Times. www.ft.com/cms/s/0/f90e2ac0-a302-11e3-ba21-00144feab7de.html#axzz2x5H1wMtuBusiness (subscription required).

⁴⁶ See: www.csmonitor.com/World/Middle-East/2012/1226/Tunisia-seeks-gold-in-former-dictator-s-assets

⁴⁷ See: www.telegraph.co.uk/news/newstoppers/howaboutthat/9763437/Tunisia-auctions-Ben-Alis-luxuries.html; www.businessinsider.com/tunisia-auctions-ben-alis-cars-for-funds-2012-12?IR=T

⁴⁸ See: www.bloomberg.com/news/articles/2012-12-24/tunisia-offers-luxury-cars-as-ben-ali-s-assets-go-to-auction (subscription required).

A major area of investment for luxury goods producers is the marketing and public relations needed to create and sustain a luxury brand. Customers are not only paying for the physical item, as the retail price can be multiple times the production cost, but rather are aspiring to the intangible social and psychological benefits associated with the brand⁵¹. Luxury industry reports identify reputation as a luxury goods company's greatest asset, but also note that this makes them particularly susceptible to risk.⁵² Luxury brands could be particularly susceptible to public campaigns drawing negative attention to their business practices where they are found to be linked to or facilitate the laundering of illicit funds.

LUXURY SUB-SECTORS: RISK FACTORS IN FOCUS

Drawing on publicly available information, this section summarises the main risk factors for money laundering in leading luxury sub-sectors. Despite data limitations, an initial picture emerges of a high risk of money laundering, coupled with overall low awareness and lack of effective supervision.

The art market

The global art market in 2015 was estimated to be worth US\$63 billion.⁵³ In the same year, sales at auctions reached US\$29.9 billion.⁵⁴ The major art markets are in the US (43 per cent), the UK (21 per cent) and China (19 per cent), followed by France, Germany and Switzerland.⁵⁵

High-profile economists,⁵⁶ US prosecutors⁵⁷ and academics⁵⁸ have all called for greater regulation of the global art market due to its money laundering and tax evasion risks. Major risk factors include

³⁹ See: www.telegraph.co.uk/news/worldnews/europe/ukraine/10656023/In-pictures-Inside-the-palace-Yanukovich-didnt-want-Ukraine-to-see.html

⁴⁰ See: www.washingtonpost.com/wp-dyn/content/article/2011/01/28/AR2011012801921.html

⁴¹ See: www.independent.co.uk/news/business/news/police-lack-resources-to-carry-out-money-laundering-investigations-10309052.html

⁴² See: http://aida.wss.yale.edu/~nq3/NANCYS_Yale_Website/resources/papers/QianWen_20150102.pdf

⁴³ See: www.bbc.com/news/world-asia-china-32246080

⁴⁴ Deloitte, Global powers, 2014.

⁴⁵ Bob Rijkers, Caroline Freund and Antonio Nucifora, *All in the family – State capture in Tunisia*, Policy Research Paper 6810, World Bank, March 2014. www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/03/25/000158349_20140325092905/Rendered/PDF/WPS6810.pdf; cited in Financial Times. www.ft.com/cms/s/0/f90e2ac0-a302-11e3-ba21-00144feab7de.html#axzz2x5H1wMtuBusiness (subscription required).

⁴⁶ See: www.csmonitor.com/World/Middle-East/2012/1226/Tunisia-seeks-gold-in-former-dictator-s-assets

⁴⁷ See: www.telegraph.co.uk/news/newstopping/howaboutthat/9763437/Tunisia-auctions-Ben-Ali-luxuries.html;

www.businessinsider.com/tunisia-auctions-ben-alis-cars-for-funds-2012-12?IR=T

⁴⁸ See: www.bloomberg.com/news/articles/2012-12-24/tunisia-offers-luxury-cars-as-ben-ali-s-assets-go-to-auction

(subscription required).

⁴⁹ See: www.france24.com/en/20121222-tunisia-auction-ben-ali-treasures

⁵⁰ See: <http://english.alarabiya.net/en/business/economy/2016/02/10/Tunisia-makes-500-million-from-ousted-president-s-assets-.html>

⁵¹ See: <http://www.epictions.com/blog/content-marketing/content-marketing-examples-luxury-brands> "Luxury brands are largely about selling the idea of exclusivity. Their appeal lies in the illusory idea of superiority that comes from possession."

⁵² Ace European, *Emerging risks for the European luxury goods industry to watch* (London: Ace, 2014).

www2.chubb.com/UK-EN/_Assets/documents/luxury-goods-report-june-2014-lr.pdf

⁵³ TEFAF Art Market report. <https://news.artnet.com/market/tefaf-2016-art-market-report-443615>

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ See: www.theglobeandmail.com/report-on-business/international-business/european-business/economists-urge-tighter-regulations-to-curb-money-laundering-in-art-market/article26217852/

⁵⁷ See: www.independent.co.uk/arts-entertainment/art/news/secret-world-of-multimillion-pound-art-deals-faces-us-inquiry-into-allegations-of-money-laundering-a6921781.html

⁵⁸ See: www.swissinfo.ch/eng/opaque-art_art--the-new-frontier-in-the-fight-against-money-laundering/41461526

the traditions of confidentiality and discretion in the art world, and that works of art can be both high-value and easily transportable. A report by consultancy firm Deloitte identifies several additional money laundering risks in the luxury art sector, such as the common use of foreign or offshore accounts and the use of intermediaries to carry out transactions, for example through telephone or online auctions.⁵⁹

In 2015, an assessment on money laundering risks prepared by a Swiss government taskforce noted that, “While the most important economic and financial sectors have become subject to stronger anti-money laundering regulations, lawmakers have paid surprisingly little attention to the art market, also in Switzerland”.⁶⁰ The Panama Papers also revealed numerous cases of high-value art being held through anonymous shell companies to disguise their true owners.⁶¹

In recent years, the growth in large storage spaces in transit zones (often located near or in an airport), known as Freeports, has created new spaces for luxury art transactions to be carried out in complete secrecy. Originally created to temporarily host goods in transit from one country to another, the Freeport concept has undergone a major upgrade. Freeports in Geneva, Singapore and Luxembourg now offer a wide range of services, coupled with extreme security measures.⁶² Not least among their attractions is that during their stay inside the Freeport – which in practice can last for decades – objects go untaxed. Once inside the warehouse, art “can be sold privately and anonymously to other buyers”, without necessarily leaving the premises following the transaction.⁶³

Despite awareness of the risks of money laundering⁶⁴, commitment to anti-money laundering within the art sector seems to be limited. The Basel Institute of Governance has proposed guidelines that could be the basis for self-regulation in the sector.⁶⁵ However, a 2012 working paper found that “the art trade has shown a pronounced lack of interest” in dealing with the proposed guidelines. A letter sent out to key representatives of the art trade industry was “met with reservation and outright refusal to engage”.⁶⁶

In 2013, a representative of the Art Dealers Association of America told the New York Times that money laundering “is not an industry wide problem and really does not pertain to us”.⁶⁷ In the UK, auction houses filed just 15 suspicious reports (0.004 per cent of the national total) in the year to September 2014, and there were no known cases of regulatory enforcement involving auction houses or art dealers.⁶⁸

In early 2017 the Responsible Art Market initiative, a group whose founders include leading auction houses and the Geneva Freeport⁶⁹, published guidelines on combatting money laundering and

⁵⁹ Deloitte, *About the need of forensic and anti-money laundering services for art market professionals* (London: Deloitte, 2014). www2.deloitte.com/content/dam/Deloitte/lu/Documents/risk/lu-forensic-aml-art-market.pdf

⁶⁰ See: www.news.admin.ch/NSBSubscriber/message/attachments/42572.pdf p.114 (in German).

⁶¹ See: <https://panamapapers.icij.org/20160407-art-secrecy-offshore.html>

⁶² See: www.newyorker.com/magazine/2016/02/08/the-bouvier-affair

⁶³ See: www.theglobeandmail.com/report-on-business/international-business/european-business/economists-urge-tighter-regulations-to-curb-money-laundering-in-art-market/article26217852/

⁶⁴ Alexia Timmermans, *Ethics of Art Dealers and Auction Houses*, Sotheby's Institute of Art, (London: Timmermans, 2016). https://sothebysinstitute.academia.edu/Departments/Art_Business/Documents “The art world has evolved into a multi-billion-dollar industry, in which the lack of transparency and the predominant absence of enforceable laws and regulations, represent a fertile climate for controversial, unethical practices.” (page 1)

⁶⁵ See: www.baselgovernance.org/sites/collective.localhost/files/publications/basel_art_trade_guidelines.pdf

⁶⁶ Ibid.

⁶⁷ See: www.nytimes.com/2013/05/13/arts/design/art-proves-attractive-refuge-for-money-launderers.html?_r=0

⁶⁸ Transparency International UK, *Don't look won't find*, 2015.

⁶⁹ See: <http://paolopileggi.com/up/ram/wp/organisation/>

terrorist financing.⁷⁰ These voluntary guidelines have no legal effect⁷¹ and do not include a monitoring and enforcement mechanism⁷² to ensure art market professionals actually follow them.⁷³



The Panama Papers uncovered the real owners of a number of super-yachts held through anonymous shell companies. [Photo: iStock/1001nights]

Super-yachts

According to industry publications, 392 super-yachts were sold worldwide in 2015,⁷⁴ a record since the 2008 financial crisis. A 100-metre super-yacht costs an estimated US\$275 million on average, with additional millions in yearly operating costs; for instance an average of US\$1.4 million for crew salaries alone.⁷⁵

Leading jurisdictions of “established and emerging super-yacht wealth”⁷⁶ include countries with a high risk of public sector corruption such as Indonesia, Kazakhstan, Kuwait, Russia, Thailand and Turkey.⁷⁷ In 2014 Bloomberg reported that, “the proportion of yachts measuring more than 40

⁷⁰ See: <http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing/>

⁷¹ See: <http://responsibleartmarket.org/art-market-guidelines/>

⁷² See: <http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing/>

⁷³ See: <https://www.antiquetrade gazette.com/news/2017/geneva-art-trade-to-crack-down-on-money-laundering-with-new-guidelines/>

⁷⁴ See: www.boatinternational.com/yacht-market-intelligence/superyacht-industry-data/superyacht-sales-data/superyachts-sold-in-2015--29145

⁷⁵ See: www.towergateinsurance.co.uk/boat-insurance/the-cost-of-maintaining-a-super-yacht

⁷⁶ See: www.superyachtnews.com/business/19145/high-risk-lending-jurisdictions-are-a-plentiful-source-of-wealth.html

⁷⁷ See for example Transparency International’s Corruption Perceptions Index: www.transparency.org/cpi2015

meters owned by Russians has more than doubled over the past five years to about 8 percent of the global fleet”.⁷⁸

Super-yachts are often registered in secrecy jurisdictions and in countries offering “flags of convenience” such as Belize, the British Virgin Islands, the Cayman Islands, the Marshall Islands and the United Arab Emirates,⁷⁹ which have poor financial transparency standards, minimal taxation and low regulations, in particular on labour standards.⁸⁰

In 2012, the *New York Times* found that, “A Cayman Islands incorporation costs \$5,000 to \$7,000, but with that flag, a European can buy a \$2 million yacht built in Italy and completely avoid value-added tax. A one-year Marshall Islands yacht registry costs \$2,200 and can be done online in a day, according to the islands’ Web site”.⁸¹ The Panama Papers revelations also uncovered the real owners of a number of mega-yachts registered to anonymous shell companies, including the former prime minister of Qatar,⁸² and a Nigerian oil tycoon whose assets have since been frozen by the Lagos High Court.⁸³

The main shipyards supplying luxury yachts are located in Italy, Germany, the Netherlands, the UK and the US. Due to the extensive involvement of buyers in the customised design process, there is little doubt that the identity of the ultimate beneficial owner of the vessel is usually known to the shipyard.⁸⁴

On the other hand, mentions of secrecy, discretion⁸⁵ and confidentiality⁸⁶ abound on super-yacht websites. For example, referring to the largest yacht in the world, the 180m long Azzam (built by German shipyard Lürssen), an industry publication says, “Not much is known about this behemoth of a yacht other than the specs and that her interior is in a relaxed French Empire style, but it is rumoured to have been built for the a member of the royal family of Abu Dhabi of the United Arab Emirates”.⁸⁷

There have been concrete attempts to buy super-yachts with suspected proceeds of corruption. In just one example, in addition to having a yacht seized by Dutch authorities (see introduction), in 2011 Teodorin Obiang Jr, son of the president of Equatorial Guinea, tried to order a yacht worth US\$380 million from German company Kusch. The order was only cancelled after Global Witness uncovered and publicised it.⁸⁸

Regulatory reports in leading producer countries such as Germany, Italy and the UK rarely mention the sector, and there is little evidence of effective supervision and enforcement by authorities. In the Netherlands, home to large super-yacht shipyards such as Heesen and Feadship, dealers in vessels and boats are required to report any suspicious transactions to the authorities. However, of the 40,959 suspicious transaction reports the Dutch authorities received in 2015, only three (0.01 per cent of the total) came from dealers in vessels and boats.⁸⁹

⁷⁸ See: www.bloomberg.com/news/articles/2014-09-25/super-yacht-pedlars-in-monaco-fret-russia-sanctions-ending-party

⁷⁹ See the Tax Justice Network’s Financial Secrecy Index: <http://financialsecrecyindex.com/>

⁸⁰ See: www.newstatesman.com/politics/business/2016/01/lost-outlaw-seas-dangerous-treatment-staff-superyachts

⁸¹ See: www.nytimes.com/2012/04/19/business/global/amid-a-tax-crackdown-a-search-for-a-safe-port.html?_r=1

⁸² See: www.forbes.com/sites/chloesorvino/2016/04/13/panama-papers-leak-helps-show-that-qatars-former-prime-minister-is-a-billionaire/#492762d025ee

⁸³ See: <http://megayachtnews.com/2016/07/galactica-star-panama-papers/>

⁸⁴ See for example: www.feadship.nl/en/story/the-pursuit-of-dreams/your-dreams

⁸⁵ See: www.eliteyacht.com

⁸⁶ See: www.sainttropez-yachtcharter.com

⁸⁷ See: www.boatinternational.com/yachts/the-register/top-200-largest-yachts--25027?page=20

⁸⁸ See: www.globalwitness.org/en/archive/son-equatorial-guineas-dictator-plans-one-worlds-most-expensive-yachts/

⁸⁹ FIU the Netherlands, Annual report 2015: see appendix 1 at: www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/fiu_jaaroverzicht_2015_eng.pdf

Awareness of anti-money laundering and anti-corruption measures within the sector seem to be poor. The International Superyacht Society has proposed a brief series of Business Principles,⁹⁰ which make no specific mention of corruption, bribery or money laundering, and do not include basic elements of good practice in anti-corruption principles, such as establishing a code of conduct, policies and procedures, training and guidance or internal controls.⁹¹

In the UK, the yachting industry response to a proposed anti-money laundering regulation in 2014 was to claim that the measure was “potentially fatal” and that the sector “faced ruin”.⁹² The proposed ruling, which would have required boat brokers to become accredited in order to open client accounts with banks, was ultimately reversed following pressure by the Association of Brokers and Yacht Agents.⁹³

Precious stones and jewels

The global gems and jewellery market is expected to reach a market value of US\$292 billion by the end of 2019.⁹⁴

Precious metals and stones have long been identified as a particularly vulnerable sector to money laundering, as trade in this sector is characterised by a “high value to mass ratio”, meaning that, for instance, a million dollars' worth of diamonds can be carried across borders illegally with relative ease.⁹⁵

Research carried out by the FATF on diamond trading found that, “diamonds are also used as a form of currency”, which poses a significant money laundering risk.⁹⁶ Precious minerals can also be used in trade-based money laundering schemes,⁹⁷ in which through price manipulation or false invoices for fictitious sales, precious minerals can be used as a cover for laundering illicit funds.⁹⁸ Due to all these factors, locations that have large precious stone and metals marketplaces would be particularly at risk.

A case in point is Antwerp, which hosts the largest diamond exchange in the world. The 1,850 registered diamond businesses in the city trade an estimated 80 per cent of the world's rough diamonds and 50 per cent of its polished diamonds each year, generating an annual turnover of €42 billion.⁹⁹ Despite the diamond sector being identified as posing a significant laundering risk, in 2015 a FATF report found “virtually no Suspicious Transaction Reports” from diamond traders in Belgium.¹⁰⁰ The report also noted that the number of prosecutions involving precious metals and diamonds is “not commensurate with the level of risk cited by the Belgian authorities”.

⁹⁰ See: www.superyachtsociety.org/docs/5181SR%20ISS%20Business%20Principles_EU_2.pdf

⁹¹ See: https://issuu.com/transparencyinternational/docs/business_principles_web_final

⁹² See: www.mby.com/news/boat-brokers-spared-potentially-fatal-fca-ruling-41256#s8f0JT0756i2D74v.99

⁹³ See: www.yachtingmonthly.com/news/money-laundering-regs-threatened-brokers-444

⁹⁴ See: www.prnewswire.com/news-releases/global-gems-and-jewellery-market-2015-2019-300198009.html

⁹⁵ FATF, *Money laundering and terrorist financing through trade in diamonds* (Paris: FATF, 2013), p.10. www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf.

⁹⁶ *Ibid.* p.10.

⁹⁷ FATF, *Trade based money laundering* (Paris: FATF, 2006). www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html

⁹⁸ IMF, *Implementing AML/CFT measures in the precious minerals sector: Preventing crime while increasing revenue* (Washington DC: IMF, 2014). www.imf.org/external/pubs/ft/tnm/2014/tnm1401a.pdf

⁹⁹ See: www.awdc.be/sites/awdc/files/Antwerp%20Diamond%20Masterplan%20-%20Project%202020.pdf

¹⁰⁰ FATF, *Anti-money laundering and counter-terrorist financing measures: Belgium: Mutual Evaluation Report* (Paris: FATF, 2015). www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf



Dealers in precious stones and jewels typically have limited oversight by authorities. [Photo: iStock/zysman]

In some countries such as the US, authorities¹⁰¹ have issued regulations requiring dealers in precious metals, stones, and jewels to establish anti-money laundering programmes.¹⁰² The most recent information available via FATF country reports points to low levels of effective oversight and compliance in the sector:

- **Norway** “has no designated competent authority for AML/CFT monitoring and supervision of...dealers in precious metals and stones”, despite having an estimated 500 dealers in the country.¹⁰³
- In **Malaysia**, dealers in precious metals and stones have “very low awareness of AML/CFT obligations and measures”. Additionally, requirements for dealers in precious metals and stones in East Malaysia (Sabah and Sarawak) only apply to those dealers registered as companies, meaning that 345 of the 1,600 dealers in this region are outside the scope of the legislation. The FATF report finds that “little information is held by the authorities about the sector and its risks”.¹⁰⁴
- **Spain** has over 2,500 dealers in precious metals and stones, of which 53 comprise over 50 per cent of sector activity. However, of the 3,058 suspicious transaction reports received by

¹⁰¹ FinCEN: www.fincen.gov/sites/default/files/shared/antimoneylaundering060305.pdf

¹⁰² Department of the Treasury Financial Crimes Enforcement Network, *Guidance for dealers, including certain retailers, of precious metals, precious stones, or jewels, on conducting a risk assessment of their foreign suppliers*, 10 March 2008.

¹⁰³ FATF, *Anti-money laundering and counter-terrorist financing measures: Norway: Mutual Evaluation Report* (Paris: FATF, 2014), p.95. www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Norway-2014.pdf

¹⁰⁴ FATF, *Anti-money laundering and counter-terrorist financing measures: Malaysia: Mutual Evaluation Report* (Paris: FATF, 2015). www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Malaysia-2015.pdf

authorities in 2012 (the most recent year for which data are available) just 20 came from jewellers.¹⁰⁵

- In **Switzerland**, dealers in precious stones only have to comply with legal anti-money laundering obligations when they receive cash payments of more than CHF 100,000 Swiss Francs (€91,340).¹⁰⁶

Personal luxury items

The global market for personal luxury items was estimated at €250 billion in 2015,¹⁰⁷ with the market close to evenly split across the accessories, apparel, watches and jewellery, and perfume and cosmetics segments (see Table 1). The main consumer markets are in the US, Japan, China, Italy and France.¹⁰⁸ Demand generated by tourists in these countries is increasing; in Japan for instance, 6 per cent of demand growth comes from tourists.¹⁰⁹

Designer apparel and footwear as well as bags and accessories represent an important part of the luxury goods market, with 48 of the top 100 luxury goods companies operating in these sectors.¹¹⁰ Prices for luxury items can reach extraordinary amounts, for instance in 2012 the Louis Vuitton Kusama bag was retailing at US\$133,430.¹¹¹

Table 1. Market value by personal luxury market segment

PERSONAL LUXURY MARKET SEGMENT	MARKET VALUE IN BILLION EURO	% OF TOTAL MARKET
Accessories	65	29%
Apparel	56	25%
Watches and jewellery	49	22%
Perfume and cosmetics	45	20%
Other	8	4%
Total	223	100.0%

Source: Kering 2014 reference document¹¹²

A 2014 risk report on the luxury goods sector found that 56 per cent of respondents in the industry cited bribery, corruption, fraud and money laundering as factors that caused them the most concern.

¹⁰⁵FATF, *Anti-money laundering and counter-terrorist financing measures: Spain: Mutual Evaluation Report* (Paris: FATF, 2014), p.98. www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf

¹⁰⁶FATF, *Anti-money laundering and counter-terrorist financing measures: Switzerland: Mutual Evaluation Report* (Paris: FATF, 2016), p.29. <http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>

¹⁰⁷Kering, *Financial document* (Paris: Kering, 2015), p.19. www.kering.com/sites/default/files/document/kering_2015_financial_document.pdf

¹⁰⁸See: www.statista.com/statistics/245645/leading-personal-luxury-goods-markets-by-country/

¹⁰⁹See: www.consultancy.uk/news/2803/global-luxury-market-worth-224-billion-top-20-brands

¹¹⁰Deloitte, *Global powers of luxury goods 2015: Engaging the future luxury consumer* (London: Deloitte, 2015).

www2.deloitte.com/content/dam/Deloitte/global/Documents/Consumer-Business/gx-cb-global-power-of-luxury-web.pdf

¹¹¹See: http://luxurylaunches.com/fashion/louis_vuitton_pumpkin_minaudiere_by_yayoi_kusama_unveiled_at_selfridges.php

¹¹²Kering, *Reference document* (Paris: Kering 2014).

www.kering.com/sites/default/files/document/kering_ddr_2014_va.pdf

Respondents acknowledged that the globalised nature of the sector had increased the levels of risk.¹¹³

As mentioned above, an important part of consumers are tourists, and therefore in addition to the weak due diligence processes from luxury brands, the lack of effective controls at borders increases money laundering and tax evasion risks.

The risk factors include the use of luxury items to corrupt government officials. In the 2014 annual report by multinational Kering this link was explicitly made; Kering is the owner of leading luxury brands including Gucci and Balenciaga. Referring to flat growth in the Chinese luxury goods market in 2014, the report explains: "This slowdown was partly due to the tightening of anti-corruption measures in Mainland China, as the government wishes a 'moralization' of Chinese society".¹¹⁴

No instances of suspicious activity reports or sanctions for anti-money laundering regarding personal luxury producers or dealers could be found in regulatory reports. The annual report of the Swiss Watch Federation has a strong focus on the fight against counterfeiting and the protection of trademarks yet makes no mention of corruption or money laundering risks.¹¹⁵



Luxury items can be used to bribe government officials. [Photo: iStock/Krylov1991]

¹¹³ Cited in Transparency International UK, *Don't look won't find*, 2015.

¹¹⁴ Kering, 2014, p.20.

¹¹⁵ Federation of the Swiss Watch Industry, *Annual report 2014* (Bienne: Federation of the Swiss Watch Industry, 2015). www.fhs.ch/file/6/Annual_report_2014_web.pdf

Real estate

The high-end real estate sector is particularly vulnerable to money laundering, in part due to its capital intensive nature: properties can be bought and then resold with very little risk of capital loss.¹¹⁶ Research by Transparency International UK has found that 75 per cent of properties whose owners are under investigation for corruption in the UK made use of offshore corporate secrecy (shell companies) to hide their identities. Overall, 36,342 London properties totalling 2.25 square miles (5.8 square kilometres) are held by offshore haven companies.¹¹⁷

This problem is not unique to the UK. Luxury property in the US state of New York is also extensively owned through anonymous shell companies.¹¹⁸ According to official sources, the majority of real estate purchases of at least US\$1 million in the US state of Florida's Miami-Dade and Broward counties are made through shell companies.¹¹⁹ In Germany, official assessments have also found low awareness of money laundering risks in the real estate sector (see country section below).

In Canada, the Financial Transactions and Reports Analysis Centre (FINTRAC) found dozens of instances of real estate firms in Vancouver that were not following record-keeping practices, had failed to identify clients and complete due diligence procedures, and did not properly assess risk.¹²⁰ Transparency International Canada also found that 29 of the 100 most valuable residential properties in Vancouver are owned through shell companies.¹²¹ Prices in Vancouver's luxury home market increased by 25 per cent in 2015, a higher increase than observed in 100 other major real estate markets.¹²²

For more detail on money laundering risks in the real estate market, please also see recent analysis by Transparency International looking at Australia, Canada, the UK and the US¹²³.

¹¹⁶ Transparency International UK, *Corruption on your doorstep: How corrupt capital is used to buy property in the UK* (London: TI UK, March 2015). www.transparency.org.uk/publications/corruption-on-your-doorstep/

¹¹⁷ Ibid.

¹¹⁸ See: www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?action=click&contentCollection=N.Y.%20%2F%20Region&module=Kicker®ion=Header&pgtype=article

¹¹⁹ See: www.reuters.com/article/us-usa-corruption-realestate-idUSKCN0UR2LM20160113

¹²⁰ See: www.cbc.ca/news/canada/british-columbia/fintrac-realtors-realestate-vancouver-1.3497796

¹²¹ See: www.cbc.ca/news/business/transparency-home-ownership-1.3889013

¹²² Knight Frank, *The wealth report: The global perspective on prime property and investment* (London: Knight Frank, 2016). <http://content.knightfrank.com/research/83/documents/en/wealth-report-2016-3579.pdf>

¹²³ Transparency International, *Doors Wide Open: Corruption and Real Estate in Key Markets* (Berlin: Transparency International, 2017). www.transparency.org



Teodorin Obiang's Malibu mansion, viewed from Google Earth. [Photo: 2014 Google Map data]

LUXURY SECTOR ANTI-MONEY LAUNDERING: FROM GLOBAL STANDARDS TO PRIVATE COMPLIANCE

The global anti-money laundering system broadly consists of four components, moving from the international level to the level of individual companies and private sector associations:

- International standards, with the most relevant being the FATF standards
- National-level compliance with international standards (in law)
- National oversight and enforcement by authorities (practical effectiveness)
- Private sector legal compliance with due diligence and reporting requirements, and private sector risk management going beyond compliance with the aim of improving implementation of processes

Strong legislation that meets global standards is essential. Businesses are highly unlikely to carry out due diligence on their customers without being legally required to do so. However, it is just the first step. Effective compliance requires oversight and enforcement by regulatory authorities, which need to have the powers, resources and capacity to carry out their roles.

It must also be recognised that in countries where due diligence requirements are relatively recent, even a well-appointed authority will need a number of years to support the creation of a culture of compliance within a sector. From awareness raising and training for industry bodies and their members, to on-site visits and sanctions for non-compliance, changing the approach to anti-money laundering across an entire industry takes time and sustained investment.

International standards: The FATF Recommendations and the G20 beneficial ownership principles

The Financial Action Task Force (FATF) was established in 1989 as an inter-governmental body with the goal of combating money laundering in the financial system. Over 180 jurisdictions around the world have committed to its 40 Recommendations, which are also used by the International Monetary Fund to assess its members' readiness to combat money laundering.¹²⁴

The main anti-money laundering areas covered by the FATF Recommendations include:

- Preventive measures: customer due diligence, record-keeping and enhanced due diligence for Politically Exposed Persons (PEPs). These should apply to both financial institutions and to selected non-financial businesses and professions such as law, accounting and real estate.
- Reporting of suspicious transactions
- Identification of the real owner of companies and trusts – technically known as the beneficial ownership of legal persons and arrangements
- Regulation and supervision
- Operational and law enforcement
- International cooperation¹²⁵

Members of the FATF and its regional bodies are evaluated on their compliance with the standards, and reports on the results are made public.

The main luxury sub-sectors covered under the FATF framework are real estate and precious stones and metals. Both of these are classified as non-financial businesses and professions together with lawyers, accountants, notaries and casinos. For these non-financial businesses, the same due diligence and reporting standards as for the financial sector apply.

The FATF standards do not make specific reference to dealers in high-value goods, nor do they mention luxury sectors such as art, luxury transport including yachts and private aircraft, or high-end fashion accessories and apparel.

Businesses and professionals operating in the precious metals and stones sub-sector have a legal obligation to carry out customer due diligence and file suspicious transaction reports only when

¹²⁴ See: www.imf.org/external/NP/rosc/rosc.aspx

¹²⁵ FATF Recommendations.

engaged in cash transactions above US\$15,000.¹²⁶ The focus on cash payments means that common payment methods such as debit and credit cards, which can be issued by banks in countries with weak anti-money laundering regimes, are not covered.¹²⁷ A threshold-based approach also does not align with the risk-based approach recommended by the FATF for other financial and non-financial sectors, which requires businesses to identify, assess and understand the money laundering risk to which they are exposed, and take mitigation measures accordingly.¹²⁸

As noted above, there have been multiple instances of anonymous shell companies being used to hide the identity of customers in the luxury sector. International standards which specifically aim to reduce the abuse of corporate ownership include the High-Level Principles on Beneficial Ownership transparency, adopted by the Group of 20 (G20) leaders at the Brisbane summit in November 2014. In July 2015, Transparency International published a technical guide¹²⁹ that outlines in detail how governments can ensure their legal framework is in line with each of the 10 G20 principles to more effectively tackle money laundering.¹³⁰

National-level legislation: limited implementation of global standards

While the strength of national anti-money laundering legislation varies across countries, overall average compliance with FATF standards has been found to be poor.¹³¹

An IMF review of the evaluations of FATF members' implementation between 2004 and 2011, noted that "compliance with the Anti-Money Laundering/Combating of Financing Terrorism (AML/CFT) standard is low", with only 12 per cent full compliance with the recommendations across all available countries, and nearly one in four being non-compliant.¹³² On average, the study found that just over one in 10 countries complies with the FATF recommendations for non-financial businesses and professions,¹³³ highlighting "significantly low compliance" with recommendations pertaining to customer due diligence measures.¹³⁴

A 2014 overview produced by the OECD, also drawing on FATF country reports, found significant variation in average compliance scores of the 36 OECD members across the various areas of anti-money laundering assessed. Average scores for the non-financial sectors, as well as for key areas such as due diligence on Politically Exposed Persons, regulation and supervision, reporting of suspicious transactions, and transparency in beneficial ownership in OECD member countries were found to be low.¹³⁵

¹²⁶ FATF Recommendations, see sections on Designated Non-Financial Businesses and Professions (DNFBPs) and interpretive note p.81. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

¹²⁷ Transparency International UK, *Don't look won't find*, 2015.

¹²⁸ See: <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/risk-based-approach-banking-sector.html>

¹²⁹ Transparency International, *Technical Guide: Implementing the G20 Beneficial Ownership Principles* (Berlin: Transparency International, 2015).

http://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles

¹³⁰ Transparency International, *Just for Show? Reviewing G20 Promises on Beneficial Ownership* (Berlin: Transparency International, 2015). http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

¹³¹ Based on findings after the third round of mutual evaluations done under FATF: www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc%28fatf_releasedate%29

¹³² IMF, *Compliance with the AML/CFT International Standard: Lessons from a cross-country analysis*, IMF Working Paper, (Washington DC: IMF, 2011), p.6. www.imf.org/external/pubs/ft/wp/2011/wp11177.pdf

¹³³ *Ibid.*, p.11.

¹³⁴ *Ibid.*, p.12 (22.1 per cent).

¹³⁵ OECD, 2014, p. 27 to p. 29.

As regards the implementation of the G20 beneficial ownership principles, meanwhile, in 2015 Transparency International found that the majority of G20 members fell into the “average” category, with three countries scored as “strong” and only one country (the UK) scoring “very strong” overall.¹³⁶

Anti-money laundering in leading luxury markets

To assess how the seven largest markets for luxury – China, France, Germany, Italy, Japan, the UK and the US – are performing on anti-money laundering, Transparency International looked at the strength of relevant legislation and its effective implementation, drawing on available secondary evidence including FATF country reports, academic papers, and annual reports by oversight authorities.¹³⁷

We find low levels of effective supervision and enforcement in the luxury sectors in all seven countries, while in China, Japan and the US significant legislative weaknesses remain.

Anti-money laundering overview: non-financial sectors and luxury goods dealers
Seven largest luxury markets worldwide

COUNTRY	FATF RATINGS: NON-FINANCIAL SECTORS	BENEFICIAL OWNERSHIP TRANSPARENCY SCORE: NON-FINANCIAL SECTORS	ARE DEALERS IN LUXURY GOODS REQUIRED BY LAW TO IDENTIFY THE BENEFICIAL OWNER OF THE CUSTOMER?	# SUSPICIOUS ACTIVITY REPORTS FILED BY NON-FINANCIAL SECTOR
China	Customer due diligence: non-compliant (FATF Recommendation 12); Reporting obligations: non-compliant (FATF Recommendation 16); Regulation and supervision: non-compliant (FATF R. 24).	8%	no	n/a
France	Customer due diligence: partially compliant (FATF R.12); Reporting obligations: partially compliant (FATF R.16); Regulation and supervision: non-compliant (FATF R.24).	88%	yes	2,447 SARs from non-financial sectors; 6.6% of total (2014)
Germany	Customer due diligence: non-compliant (FATF R.12); Reporting obligations: non-compliant (FATF R.16); Regulation and supervision: non-compliant (FATF R.24).	88%	yes	245 SARs from non-financial sectors; 1.0% of total (2014)
Italy*	Customer Due Diligence: largely compliant (FATF R.22); Other measures: largely compliant (FATF R.23);	85%	yes	2,390 SARs from non-financial operators and

¹³⁶ Transparency International, *Just for Show? Reviewing G20 Promises on Beneficial Ownership* (Berlin: Transparency International, 2015). http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

¹³⁷ Please see “Focus of this report” section above for more details on the sources used for this report.

	Supervision: largely compliant (FATF R.28).			professionals; 1.9% of total (2014)
Japan	Customer Due Diligence: non-compliant (FATF R.12); Reporting obligations: partially compliant (FATF R.16); Regulation and supervision: partially compliant (FATF R.24).	50%	no	10,734 SARs from non-financial sectors; 2.8% of total (2014)
UK	Customer Due Diligence: partially compliant (FATF R.12); Reporting obligations: largely compliant (FATF R.16); Regulation and supervision: partially compliant (FATF R.24).	77%	yes	17,848 SARs received from non-financial sectors; 4.7% of total (October 2014 to September 2015)
US*	Customer Due Diligence: non-compliant (FATF R.22); Other measures: non-compliant (FATF R.23); Supervision: non-compliant (FATF R.28).	8%	no	n/a

*Assessed by FATF using updated 2012 methodology

Sources: Most recently available FATF Mutual Evaluation Reports for China (2007); France (2011); Germany (2010); Italy (2016); Japan (2008); UK: (2007); US (2016). Transparency International, 2015. SAR data from most recently available annual reports of Financial Intelligence Units in France, Germany, Italy, Japan and UK.

China

Numerous sources point to the use of luxury goods and artwork to pay bribes in China. Research has found a significant inverse correlation between imports of luxury goods and anti-corruption measures in the country.¹³⁸ Unusually high prices for Chinese art at auctions – including a 1946 ink painting that sold for US\$65 million in 2011¹³⁹ – have been directly linked to suspicions of corruption and money laundering.¹⁴⁰ In 2013 the *New York Times* noted that the Chinese art market had become “a breeding ground for corruption” in which business officials use art to bribe public officials.¹⁴¹

China was rated as non-compliant by the FATF¹⁴² in 2007 on anti-money laundering measures for the non-financial businesses and professions.¹⁴³ The FATF found that very limited customer identification and record-keeping requirements were applied by non-financial sectors, including dealers in precious metals and stones, and that, “Reporting obligations have not been extended to any of the [non-financial] sectors”. Most non-financial sectors were not required in law to establish

¹³⁸ Nancy Qian and Jaya Wen, The Impact of Xi Jinping’s anti-corruption campaign on luxury imports in China (2015). http://aida.wss.yale.edu/~nq3/NANCYS_Yale_Website/resources/papers/QianWen_20150403.pdf

¹³⁹ See: www.nytimes.com/projects/2013/china-art-fraud/

¹⁴⁰ See: www.scmp.com/business/money/wealth/article/1409498/china-art-auctions-great-money-laundry

¹⁴¹ See: www.nytimes.com/projects/2013/china-art-fraud/

¹⁴² FATF, *First Mutual Evaluation Report on anti-money laundering and combating the financing of terrorism: People’s Republic of China* (Paris: FATF/GAFI, 2007). www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20China%20full.pdf

¹⁴³ FATF Recommendations 12, 16 and 24 refer to DNFBSs under the Recommendations used for the 3rd evaluation round. In 2012 and prior to the 4th evaluation round which started in 2014, the FATF Recommendations were updated and the numbering has changed.

internal anti-money laundering control programmes, nor were they supervised or monitored for compliance.

By 2012, a FATF follow-up report found “some progress in addressing the deficiencies identified” relative to non-financial sectors, but it said that China “has not yet brought the level of compliance with these Recommendations up to a sufficient level”. For instance, China “has not yet amended its legislation to strengthen the [customer due diligence] and record keeping requirements applicable” to dealers in precious metals and stones, nor had it yet established requirements for internal control programmes.¹⁴⁴ In 2015, Transparency International rated China’s compliance with G20 standards on beneficial ownership at only 8 per cent for the non-financial sectors.¹⁴⁵

A 2016 US State Department report on money laundering notes that in China “valuable assets, such as real estate, art and gold” are used for laundering criminal proceeds. The State Department report confirms that customer due diligence rules currently apply to a limited group of sectors in China. These sectors are primarily financial and do not include any luxury goods sectors, with the exception of auto finance companies.¹⁴⁶ The People’s Bank of China received 17.7 million suspicious transaction reports in 2014, but no further breakdown by sector of this aggregate number could be found.¹⁴⁷

France

According to Euromonitor data, France’s luxury goods industry depends on tourists for more than a half of its €16 billion in revenues.¹⁴⁸ Sectors with due diligence obligations and suspicious reporting requirements in France include real estate brokers, dealers in high-value goods, auctioneers and auction houses.¹⁴⁹

While Transparency International gave France an 88 per cent score on beneficial ownership in non-financial sectors in 2015,¹⁵⁰ in its 2011 evaluation the FATF rated France as “partially compliant” regarding customer due diligence and suspicious reporting in non-financial sectors.¹⁵¹ The assessment found a need for French authorities to promote knowledge and comprehension of the FATF Recommendations in the real estate sector, as well as among dealers in jewellery and precious stones.¹⁵²

The annual report of the French Financial Intelligence Unit (TRACFIN)¹⁵³ for 2014 notes a substantial increase in the number of SARs submitted that year. For non-financial sectors, the number of suspicious activity reports rose from 1,691 reports in 2011 to 2,447 in 2014, an increase of 44.7 per cent. Nevertheless, SARs from non-financial sectors represented just 6.6 per cent of the

¹⁴⁴ FATF, *Mutual Evaluation 8th follow-up report: Anti-money laundering and combating the financing of terrorism: China* (Paris: FATF, 2012). www.fatf-gafi.org/media/fatf/documents/reports/mer/Follow%20Up%20MER%20China.pdf

¹⁴⁵ Transparency International, 2015.

¹⁴⁶ US Department of State, *International narcotics control strategy report Volume II: Money laundering and financial crimes* (Washington DC, US State Department, 2016). www.state.gov/documents/organization/253983.pdf

¹⁴⁷ See:

www.pbc.gov.cn/eportal/fileDir/image_public/UserFiles/english/upload/File/%E4%BA%BA%E6%B0%91%E9%93%B6%E8%A1%8C2014%E8%8B%B1%E6%96%87%E5%B9%B4%E6%8A%A56.15%E5%AE%9A%E7%A8%BF%EF%BC%89.pdf

¹⁴⁸ Cited by Deloitte, *Global powers*, 2014.

¹⁴⁹ US Department of State, 2016.

¹⁵⁰ Transparency International, 2015.

¹⁵¹ FATF, *Mutual Evaluation Report: Lutte contre le blanchiment de capitaux et le financement du terrorisme:*

France (Paris: FATF, 2011), p.647. www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20France%20ful.pdf

¹⁵² *Ibid.*, p.8.

¹⁵³ TRACFIN, *Annual Report 2014* (Paris : TRACFIN 2014).

http://www.economie.gouv.fr/files/rapport_tracfin2014_tome1_en.pdf Traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) is a service of the French Ministry of Finance.

total number submitted in 2014. Just 29 suspicious reports came from real estate professionals, with a decrease of 46.3 per cent relative to the previous year: from 54 in 2013 to 29 in 2014.

The next FATF assessment of France will take place in the year 2020.

Germany

An estimated 100 billion euro is laundered in Germany every year. According to a 2016 study commissioned by the German Finance Ministry, the majority of these transactions involve property, cars, artworks, yachts and other luxury items.¹⁵⁴

In 2010, the FATF rated Germany as non-compliant in its anti-money laundering measures for non-financial businesses and professions. By 2014, a FATF follow-up report¹⁵⁵ found substantial progress in translating the FATF standards into legislation. Designated non-financial businesses are now legally required to adopt risk-based due diligence procedures to identify PEPs, and also to file suspicious transaction reports where disclosure by contracting partners is insufficient.

However, despite the establishment of a legal framework for supervision of the real estate and precious stones and metals sectors, in 2014 the FATF expressed “concerns with regard to its effective implementation”.¹⁵⁶ For example, the German authorities provided no information to the FATF on levels of compliance with customer due diligence obligations in the precious metals and stones sector.¹⁵⁷

Although luxury goods sectors are not explicitly named in the German anti-money laundering regulation, “persons dealing in goods” and real estate agents are among the sectors it covers. In 2015, Transparency International scored Germany 88 per cent on its implementation of the G20 beneficial ownership principles for non-financial businesses and professions.¹⁵⁸

An assessment of money laundering risks in the real estate sector carried out for the German Financial Intelligence Unit concluded that “sensitivity” and knowledge around the issue of money laundering is “lacking” among real estate dealers. It noted that in 2010 there were just 292 suspicious transaction reports from the sector – 2.6 per cent of the total – despite 22 billion euro worth of transactions in the real estate market in that year.¹⁵⁹

The general trend of low suspicious reporting from non-financial sectors continued in 2014. Of the 24,054 suspicious transaction reports received by authorities, just 149 (0.6 per cent) came from “persons commercially trading in goods”, and 245 from non-financial sectors overall.¹⁶⁰ German authorities carried out 1,691 on-site inspections in 2013 for real estate agents, and 1,309 for traders in high-value goods. No information was included in the most recent FATF report on the outcomes and follow-up actions resulting from these on-site visits.¹⁶¹

Authorities in the German states (*Länder*) have an important supervisory role for anti-money laundering, and in 2014 the FATF noted the increasing relevance given to money laundering by these sub-national authorities. However, it also observed that the number of public employees dedicated to anti-money laundering supervision varies considerably from one *Land* to next, raising

¹⁵⁴ See: www.dw.com/en/money-laundering-in-germany-far-bigger-than-thought/a-19205873

¹⁵⁵ FATF, *3rd Follow up report: Mutual Evaluation: Germany* (Paris: FATF, 2014). www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Germany-2014.pdf

¹⁵⁶ FATF, *Germany*, 2014.

¹⁵⁷ *Ibid.*

¹⁵⁸ Transparency International, 2015.

¹⁵⁹ Geldwäsche im Immobiliensektor in Deutschland, Bundeskriminalamt.

¹⁶⁰ See:

www.bka.de/SharedDocs/Downloads/EN/Publications/AnnualReportsAndSituationAssessments/FIU/fiuJahresbericht2014Englisch.pdf?__blob=publicationFile&v=1

¹⁶¹ FATF, *Germany*, 2014.

the question of the capacity for effective supervision; in particular in Bavaria, North Rhine-Westphalia, and Hesse.¹⁶² The German Finance Ministry has admitted a lack of appropriate anti-money laundering measures at the regional level.¹⁶³

Italy

In its 2015 evaluation, the FATF rated Italy as “largely compliant” with the legislative recommendations for non-financial sectors.¹⁶⁴ Dealers in jewellery and gold, as well as real estate agents have to comply with anti-money laundering requirements according to Italy’s Anti-Money Laundering Law and related regulation. Article 10(2) of this law also includes a mention of “precious objects”, which according to the FATF is interpreted by case law “in the widest possible way”,¹⁶⁵ and therefore should cover luxury goods sectors. Similar analysis of national legislation carried out by Transparency International in 2015 gives Italy a positive score of 85 per cent for the non-financial professions and sectors.¹⁶⁶

However, on effective implementation, the FATF found that, “the understanding of money-laundering risks within the [non-financial] sectors is very mixed” and that “with the exception of...auditors, [non-financial businesses] are not subject to administrative sanctions for failure to perform Customer Due Diligence”. In addition, with regard to suspicious transaction reports, non-financial businesses “except notaries, send very few reports”.¹⁶⁷

The Italian Financial Intelligence Unit’s 2014 annual report¹⁶⁸ confirms this finding; noting that, “The number of reports sent by professionals and non-financial operators remains very small both in absolute terms and in relation to the potential”. In that year, 47 suspicious reports were submitted by gold traders, manufacturers and dealers in precious stones and metals, and 48 by “other non-financial operators”, together representing just 0.14 per cent of the over 70,000 reports received by the authorities.

Japan

Japan is the second largest luxury goods market in the world after the United States.¹⁶⁹ In law, real estate agents and professionals have customer due diligence and suspicious reporting requirements, as do dealers in precious metals and stones.¹⁷⁰

In June 2014, however, the FATF expressed concern about Japan’s “continued failure to remedy the numerous and serious deficiencies” it had identified in a previous 2008 report, including “the lack of satisfactory customer due diligence requirements and other obligations in the area of preventive measures applicable to the financial and non-financial sectors”.¹⁷¹ As a response to pressure from the FATF, in November 2014 Japan adopted amended anti-money laundering legislation, which

¹⁶² Ibid.

¹⁶³ See: www.dw.com/en/money-laundering-in-germany-far-bigger-than-thought/a-19205873

¹⁶⁴ Under the updated FATF Recommendations these are numbers 22, 23 and 28. Italy is among the first countries to have been evaluated using the updated methodology.

¹⁶⁵ FATF, *Anti-money laundering and counter-terrorist financing measures: Italy: Mutual Evaluation Report* (Paris: FATF, 2016). www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf

¹⁶⁶ Transparency International, 2015.

¹⁶⁷ FATF, *Italy*, 2016.

¹⁶⁸ Banca d’Italia, *Annual report Financial Intelligence Unit* (Rome: Banca d’Italia, 2015).

https://uif.bancaditalia.it/pubblicazioni/rapporto-annuale/2015/annual-report-2014.pdf?language_id=1

¹⁶⁹ According to data from Euromonitor cited by Deloitte, *Global powers*, 2014.

¹⁷⁰ United States Department of State, 2016.

¹⁷¹ See: www.fatf-gafi.org/publications/mutualevaluations/documents/japan-aml-cft-deficiencies.html

aimed to address the weaknesses identified. Transparency International's 2015 analysis of national legislation gives Japan a score of 50 per cent for the non-financial professions and sectors.¹⁷²

The 2014 annual report of Japan's Financial Intelligence Unit¹⁷³ notes that the real estate industry has set up a council to raise awareness and share information on money laundering in the sector. The Japan Jewellery Association also posts information related to money laundering risks on its website and holds workshops for jewellers.¹⁷⁴

These efforts do not yet seem to have translated into increased compliance by the sectors. In 2014, the Japanese authorities received 377,513 suspicious transaction reports (STRs), a 280 per cent increase compared to 2005. While, according to media reports, organized crime syndicates were buying real estate at auctions around the country¹⁷⁵, real estate agents submitted just one suspicious transaction report (0.0003 per cent of the total) in 2014, down from a high of 21 in 2010. Meanwhile, dealers in precious metals and stones submitted five STRs (0.0013 per cent of the total), down from 28 in 2012.¹⁷⁶ The next FATF evaluation is due in 2019.

United Kingdom

In the UK, a 2015 national risk assessment of money laundering included a section on high-value dealers, which found that, "as a result of weak levels of compliance the sector can be vulnerable to being used for money laundering/terrorist financing".¹⁷⁷

A Transparency International UK overview of the performance of anti-money laundering supervisory authorities supported this finding, noting that available evidence pointed to a "general lack of awareness of AML obligations" in the luxury goods sectors, together with "lack of information from the supervisor".¹⁷⁸ While the tax authority HMRC (Her Majesty's Revenue and Customs) is tasked with supervising a broad range of sectors, including real estate agents, high-value dealers and auction houses, it has not displayed sufficient capacity for that supervision to be effective. For example, in 2014–2015, the overall fines for money laundering breaches across all these sectors was only £768,000.¹⁷⁹

In 2016 the US State Department also noted "significant intelligence gaps" on the part of UK authorities, "in particular in relation to 'high-end' money laundering".¹⁸⁰

Other indicators of lax supervision of the luxury goods sector identified by Transparency International UK include:

- No dedicated annual anti-money laundering reports for the luxury goods sector
- No thematic reports on anti-money laundering compliance within the sector
- No public record of enforcement against individual luxury goods retailers

¹⁷² Transparency International, 2015.

¹⁷³ Japan Financial Intelligence Centre, *Annual report 2014* (Tokyo: JAFIC, 2014).

www.npa.go.jp/sosikihanzai/jafic/en/nenzihokoku_e/data/jafic_2014e.pdf

¹⁷⁴ Ibid.

¹⁷⁵ See: <http://japanpropertycentral.com/2013/01/yakuza-snagging-properties-at-public-auctions/>

¹⁷⁶ Japan Financial Intelligence Centre, *Annual report 2014* (Tokyo: JAFIC, 2014).

www.npa.go.jp/sosikihanzai/jafic/en/nenzihokoku_e/data/jafic_2014e.pdf

¹⁷⁷ HM Treasury and Home Office, *UK national risk assessment of money laundering and terrorist financing* (London: Treasury and Home Office, 2015).

www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf

¹⁷⁸ Transparency International UK, *Don't look won't find*, 2015.

¹⁷⁹ Ibid.

¹⁸⁰ US Department of State, 2016.

In the year to September 2014, high-value dealers had made only 331 suspicious activity reports, 0.09 per cent of the total. In addition, “only 179 suspicious transactions were reported by estate agents in 2013/14, and just 15 suspicious cases were reported through art and auction houses”.¹⁸¹

United States

The United States is the largest luxury market in the world.¹⁸² Under US legislation the list of sectors with reporting obligations includes several luxury sectors, such as dealers in precious metals, stones or jewels; businesses engaged in vehicle sales including automobile, aeroplane and boat sales; and persons involved in real estate closings and settlements.¹⁸³

However, its most recent FATF Mutual Evaluation Report found that only casinos and dealers in precious metals and stones are specifically covered by requirements under the Banking Secrecy Act, rating the US as non-compliant on anti-money laundering measures taken in non-financial sectors.¹⁸⁴

A significant weakness in the US anti-money laundering regulatory framework is that key sectors including the real estate industry and sellers of vehicles were granted a temporary exemption under the Patriot Act 2002 for the implementation of anti-money laundering programmes.¹⁸⁵ Under the exemption, these sectors are not required to carry out background checks on the source of purchase funds or determine the ultimate (“beneficial”) owner.

In 2015 the New York Times, in its Towers of Secrecy series,¹⁸⁶ exposed how wealthy individuals from outside the United States use real estate to hide corruptly acquired funds. Using anonymous shell companies to hide their identity, they were able to acquire thousands of square feet of prime Manhattan property.¹⁸⁷ In addition, according to data analysed by the New York Times,¹⁸⁸ across the country shell companies made nearly a half of the residential purchases of over US\$5 million.

Following requests by civil society organisations for stronger due diligence requirements in the real estate sector,¹⁸⁹ in January 2016 the US regulator FinCEN introduced measures requiring the identification of the beneficial owner of companies buying real estate in Miami-Dade county and

¹⁸¹ Transparency International UK, *Don't look won't find*, 2015.

¹⁸² See: www.cnn.com/2015/12/31/the-worlds-biggest-luxury-markets-in-2015.html?slide=11

¹⁸³ See: www.ffiec.gov/bsa_aml_infobase/pages_manual/regulations/31USC5312.htm#31USC5312a2

¹⁸⁴ FATF, *Anti-money laundering and counter-terrorist financing measures: United States: Mutual Evaluation Report* (Paris: FATF, 2016). www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf

¹⁸⁵ See:

www.transparency.org/news/pressrelease/u.s.treasury.must.close.loopholes.to.stem.the.flow.of.proceeds.of.for.eign; www.hsgac.senate.gov/subcommittees/investigations/hearings/-keeping-foreign-corruption-out-of-the-united-states-four-case-histories

¹⁸⁶ See: www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?action=click&contentCollection=N.Y.%20%2F%20Region&module=Kicker®ion=Header&pgtype=article

¹⁸⁷ See:

www.transparency.org/news/pressrelease/u.s.treasury.must.close.loopholes.to.stem.the.flow.of.proceeds.of.for.eign

¹⁸⁸ See: www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?rref=collection%2Fnewseventcollection%2Fshell-company-towers-of-secrecy-real-estate&action=click&contentCollection=us®ion=rank&module=package&version=highlights&contentPlacement=1&pgtype=collection&r=0

¹⁸⁹ See: www.transparency-usa.org/wp-content/uploads/2016/03/FinalLettertoFinCEN-1.pdf

Manhattan,¹⁹⁰ a requirement later extended to six metropolitan areas.¹⁹¹ This measure was immediately identified as a “threat” to the luxury home market by the real estate sector.¹⁹²

In 2015, Transparency International rated the US translation of G20 beneficial ownership principles in non-financial sectors into national legislation as “very weak” with a score of just 8 per cent.¹⁹³

CONCLUSION

Billions of dollars of purchases of luxury items like houses, yachts, watches and more are made each year. But despite the very real risk of money being laundered through these sales, there is little evidence that authorities are watching, or that luxury businesses are doing enough to reduce this risk.

The luxury sector has at least two major differences compared to other non-financial businesses and professions which are at risk of facilitating money-laundering, such as law or accounting.

First, luxury goods and assets can themselves be used as means of payment in the setting up of corrupt deals. As noted above, for example, luxury watches and works of art have been identified as a preferred method of bribing public officials.

Second, the desire to own luxury items can be a primary motivation for corrupt behaviour. While the psychological motivation of individuals engaged in corruption is an under-researched field, the behaviour of kleptocrats who amass multiple luxury properties and items in a short period of time suggests owning these goods was one of the goals of the corrupt activity. The same does not apply to other high-risk business sectors; few if any corrupt deals have, for example, the ultimate goal of paying accounting fees.

The unique characteristics of luxury sectors lend added urgency to the need to address the multiple money laundering vulnerabilities identified in this report. While recent large-scale revelations such as the Panama Papers have increased the levels of media and policy attention to overall risks of money-laundering, much remains to be done to tackle the challenges specific to high-value goods and assets. It is hoped this report contributes to the nascent discussion about the anti-money laundering responsibilities of the private businesses operating in the luxury sectors, and those of the authorities charged with their oversight.

¹⁹⁰ See: www.fincen.gov/news/news-releases/fincen-takes-aim-real-estate-secrecy-manhattan-and-miami

¹⁹¹ See: www.fincen.gov/news/news-releases/fincen-expands-reach-real-estate-geographic-targeting-orders-beyond-manhattan

¹⁹² See: www.bloomberg.com/news/articles/2016-01-14/luxury-home-market-seen-threatened-by-transparency-in-nyc-miami

¹⁹³ Transparency International, 2015.

METHODOLOGICAL NOTE

This scoping report builds on a 2015 review of relevant international standards regarding the luxury goods sector, produced by Corruption Watch South Africa. Desk research was carried out between March and May of 2016, with findings being updated in January and February of 2017.

Country overviews in this report are drawn from publicly available policy analysis, in particular FATF country assessments and reports by national oversight authorities. Sector overviews are drawn from publicly available media reports, academic papers, and assessments by consultancy firms.

Limitations include that there have been no in-depth assessments of the luxury sector from an anti-money laundering policy perspective to date, and the scarcity of primary and secondary data regarding the anti-money laundering efforts of both authorities and private sector companies. In addition, FATF carries out assessments (Mutual Evaluations) of its member countries following a multi-year cycle. Baseline FATF assessments – known as Mutual Evaluation Reports – are carried out every seven to 10 years. For countries under follow-up review, publication of data can be more frequent. Overall the intervals between data for a particular country becoming available through reports by FATF and its regional bodies can vary between one and 10 years.

Transparency International
International Secretariat
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200

Fax: +49 30 34 70 39 12

ti@transparency.org

www.transparency.org

blog.transparency.org

[facebook.com/transparencyinternational](https://www.facebook.com/transparencyinternational)

twitter.com/anticorruption

Appendix B

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Basel Art Trade Guidelines



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Thomas Christ, Claudia von Selle,
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Responsibility for the views expressed and for any errors of fact or judgment rests with the author alone.
Basel Institute on Governance, Steinring 60, 4051 Basel, Switzerland

www.baselgovernance.org
info@baselgovernance.org

Basel Art Trade Guidelines

Basel Institute on Governance

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1. Introduction

At first glance the global art trade, with an annual turnover of 30 to 40 billion Euros, seems comparable to other sectors of the global economy. Most of its typical activities, such as buying, selling and placing objects of art, are generally regulated by national commercial, civil and criminal legislation, applied and interpreted by local courts.

On closer inspection, however, certain characteristics emerge that are peculiar to the art trade. They are also crucial for the adequate understanding and appreciation of this sector's increased susceptibility to illegal activity.

- The art trade is an extremely diverse market area bringing together a wide range of highly diverse players. One half of the trade is dominated by a few auction houses, while the other half is an open playing field for a myriad of art-dealers. These in turn are organised in a variety of trade associations and subscribe to a great range of different ethical standards.
- The art trade largely operates independently of the financial markets and the fluctuations of share prices, yet displays comparable characteristics by exposing its trade objects to often dramatic and sometimes inexplicable changes in value.
- Akin to the real estate sector, the art trade has the reputation of a 'refuge de valeur', which means that the more tightly the international financial sector is regulated and controlled, the more copiously funds flow into the art world.
- In comparison with other trade sectors, the art market faces a higher risk of exposure to dubious trade practices. This is due to the volume of illegal or legally questionable transactions, which is noticeably higher in this sector than in other globally active markets. Far more serious than shady dealings in a legal grey area, the sector's shadow economy encompasses issues ranging from looted art, professional counterfeiting and fake certificates to the use of art sales for the purpose of money laundering.

However, the main difference between the art trade and neighbouring markets is found in the necessity to subject almost every transaction to two questions. Firstly: 'Is the ownership of an art object up for sale traceable (provenance of the object)?'; secondly: 'Are the buyers and their sources of funds identifiable (provenance of the funds)?' While the latter question has in the last few years increasingly been dealt with by the enactment of anti-money laundering legislation in a growing number of countries, the former still puts professional art dealers in a tight spot due to the conflicting priorities of transparency and discretion. If a dealer cannot prove the authenticity of an object beyond any doubt he should either retire from the transaction or disclose the identity of the vendor. However, the vendor may have very good and legitimate reasons why he/she does not want his/her identity as owner or heir of a given art collection to be known to the general public.

Some auction houses have addressed the looming reputational risks associated with this dilemma by subjecting themselves to a variety of workable in-house rules and guidelines. However, as a result of this unilateral approach, a transaction refused on such grounds by one house may well be picked up later by a competitor who feels committed to different business standards. In particular, it is the formulation of non-disclosure agreements (and their legal exceptions) between agent and vendor that is a notorious bone of contention for lawyers and art dealers alike.

In this context, the need for collective action in the art market has repeatedly been emphasized at various art trade conferences. A so-called 'self-regulation initiative' has the advantage of pre-empting and potentially influencing formal regulation that is increasingly likely to be introduced in view of the general tightening of regulatory frameworks in related matters.

However, a breakthrough beyond joint statements of intent has not been achieved so far, let alone the formulation of universally agreed upon guidelines such as those proposed in this working paper. Productive initial discussions with some key representatives of the art trade have taken place with

the assistance of the Basel Institute on Governance. They have revealed that there is still a gap to bridge between stakeholders' deeper insights and their actual commitment to addressing the problem. There seems to be a tendency to discredit the pressure towards better regulation of the arts sector as mere media hype. This is, of course, a fallacy. One that the industry itself will hopefully be able to address from within, before national legislators step in; or before the whole sector slides into dubious market behaviour whilst dealing with questionable objects and thus loses its reputation as a respectable business sector.

2. Existing Guidelines and Regulations

After the 'Hague Conventions' of 1907 und 1954 ousted the looting and destruction of cultural properties in armed conflicts, the UNESCO Convention of 1970 regulated their illicit import, export or transfer of ownership at an inter-governmental level.

1993 European Commission Directive 93/7 on the return of cultural objects

1995 UNIDROIT Convention on stolen or illegally exported cultural objects

Internationally binding agreements have been slow to translate into national law. Consequently, the variety of non-binding guidelines is so great that only a selection can be presented below:

1986 Code of Ethics for Museums (ICOM), revised in 2004

1998 Washington Principles on Nazi-looted Art, followed by the Terezin Declaration in 2009

1999 UNESCO International Code of Ethics for Dealers in Cultural Property

2007 Recommendations on the trade of cultural objects on the internet by INTERPOL, UNESCO und ICOM

There are, furthermore, the ethics rules established by a variety of international trade associations such as:

Antique Tribal Art Dealers Association (ATADA): Trade Practices and Guarantee, Article X, Amended Bylaws of the Antique Tribal Art Dealers Association, Inc. (1997, amended 2007)

Association of Art Museum Directors (AAMD): New Report on Acquisition of Archaeological Materials and Ancient Art Issued by Association of Art Museum Directors (2008)

Association of Art Museum Directors (AAMD): Art Museums

and the Identification and Restitution of Works Stolen by the Nazis (2007) - Position Paper (Not Guidelines)

College Art Association (CAA): A Code of Ethics for Art Historians and Guidelines for the Professional Practice of Art History (1995)

College Art Association (CAA): CAA Statement on the Importance of Documenting the Historical Context of Objects and Sites (2004)

Confederation internationale des negociants en oeuvres d'art (CINOA): International Support and Guidelines (1987, amended 1998 and 2005)

International Association of Dealers in Ancient Art (IADAA): Code of Ethics and Practice

Museums Association (MA): Code of Ethics for Museums: Ethical principles for all who work or govern museums in the UK (2002)

World Archaeological Congress (WAC): First Code of Ethics (1990)

Ethical rules have furthermore been established by national arts dealers' and museums' trade associations such as:

British Art Market Federation (BAMF): Principles of Conduct of the UK Art Market Adopted by the British Art Market Federation (2000)

German Museum Association: Code of Ethics

J. Paul Getty Museum: Acquisitions Policy for the J. Paul Getty Museum (2006)

Metropolitan Museum of Art (MMA): Collections Management Policy (2008)

Society for American Archaeology (SAA): Principles of Archaeological Ethics (1996)

Swiss Association of Dealers in Arts and Antiques (SADDA):
Code of Ethics

At a national level, most countries nowadays have their own
legislation governing the illegal export of cultural goods.

3. A Proposal for Global Guidelines

These guidelines, the ‘Basel Art Trade Guidelines’ have been devised by the Basel Institute on Governance on the basis and as a result of what has been discussed among the key market players who participated at the Art Trade meetings held in Basel and New York in 2010. The guidelines that were issued in 2012 were meant as a first draft and a proposal to be discussed further and open to modification that the participants might have deemed necessary or more appropriate. The guidelines have been re-issued in 2018 as a final document and this version remains unchanged from the original. The guidelines consider in particular the already existing legal obligations of the art market participants, e.g. with regard to the questions of disclosure regulations and non-disclosure agreements. In art dealing the matter of disclosure and discretion belongs to the most sensitive challenges. The starting point for the creation of guidelines was therefore to be in line with national legal requirements and simultaneously to respect the requirements of a globally functioning art market. Finally the guidelines also offer a proposal on implementation procedures on the basis of experience in other industries. In this sense the guidelines reflect, harmonize and summarize the status quo and hence provide a common platform for self-regulation which the art market participants can develop if necessary.

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A. Preamble

The purpose of the Basel Art Trade Guidelines (BAT Guidelines) is to support the art market in its efficient and fair functioning. Art market participants are required to respect applicable laws and to adopt business practices that are not only ethical but also safeguard and promote the reputation and integrity of the art market as a whole.

The following Guidelines are understood to be applicable to all art market participants and aim to provide practical guidance for the sale of art objects.

Finding a definition of ‘the art market’ is difficult because today’s market is wide ranging in scope and covers not only art and antiquities but also a whole array of collectible objects. As a consequence, the various participants in this market are very diverse.

The art market has various very characteristic attributes that make it attractive but also vulnerable. These include its insider aspects and the hierarchy of knowledge and status, as well as the fact that art market participants can assume the multiple roles of auctioneers, dealers and collectors which, in other markets, would involve conflicts of interest. Furthermore, access to readily available information that directly affects market value and pricing patterns (for example the number of pieces available) is both unstructured and opaque. The art trade market is therefore susceptible to illicit practices and money laundering despite the existence of laws, international frameworks and soft law efforts to combat these crimes.

In this context, many international art market stakeholders have developed internal guidelines and compliance programmes to ensure lawful and ethical business practices, in particular to prevent corruption and minimise risks in their business activities. The adherence to such compliance programmes is difficult if competitors do not conduct their business according to the same high standards and instead engage in illicit behaviour.

Collective self regulatory action by market operators, designed to ensure that best practices are observed throughout the market, is the most efficient way to combat unethical business practices and will result in a level playing field and fair competition for all.

On the one hand the BAT guidelines propose due diligence requirements for contractual partners (namely seller and auction house or art dealer and buyer). On the other hand, they offer a guarantee of equal competitive conditions to participating market operators. Observance of the BAT Guidelines will mean that a competitive advantage can no longer be gained by disregarding due diligence obligations. These Guidelines therefore contribute to the creation of fair trade in what is currently a highly irrational and obscure market.

It is in the interests of all art market participants to adopt and implement these guidelines. Precisely because an art market operator may adopt interchangeable roles, proper due diligence conducted as a seller will likely benefit that same operator when acting as a buyer.

These Guidelines do not seek to replace existing initiatives but rely on art market operators’ full compliance with applicable national legislation, international conventions and relevant Codes of Ethics such as the IADAA, ICOM CINOA, CAA-Codes and others. These various instruments are, however, of limited application and effect as their respective scope will cover only certain countries, specific operators and at the same time often lack mechanism of enforcement and sanctioning. The overarching scope of the BAT Guidelines thus complements the existing range of standards and instruments and provides consistency and a level playing field to all participants.

B. Scope of the rules

1. Art market operators

Art market operators include, for example auction houses, galleries, museums, art fairs, experts, insurers, conservators, curators and restorers. Despite being subject to different regulations, they all face similar risks with regard to the provenance of the art object and the source of funds. As art market operators can assume different roles – for example when an art gallery or museum acts as either seller, buyer or intermediary – it is in their own interest to implement similar practices for all market operators. These Guidelines therefore apply to and address all art market stakeholders who are involved in the sale of art objects as professionals.

2. Objects of the market

For the purposes of these Guidelines the art market is understood to be the trade of art objects. What constitutes an art objects is explained by the following two definitions of ‘art objects’ and ‘collectable objects’:

2.1. Art objects

According to international law art objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science.

2.2. Collectable objects

In addition to and going beyond this definition the BAT Guidelines also cover collectable objects, which are all objects handled by art market operators, or which, due to their unique selling and pricing pattern/condition, are usually dealt with by the same market participants.

C. Standards for art market operators

3. The identification of seller and buyer

3.1. Principle

Identifying the seller reduces the risks resulting from any ambiguity regarding provenance, illicit trade and forbidden exportation. Identifying the buyer reduces the risks of money laundering and illicit enrichment and serves to preserve the records on provenance of the art object. The art market operator therefore has to ensure full identification and documentation of the seller and the buyer (‘know your customers’ rule).

3.2. Balancing Interests

Some sellers and buyers may have reasonable grounds to prefer to remain anonymous to third parties (discretion) while the need to ensure clarity on the provenance of art objects and funds has to be adequately addressed (disclosure). In practice, this means that if the art market operator knows, or has reasonable suspicion to believe that the other party to a transaction is, in fact, acting on behalf of someone else (e.g. another buyer or seller), the art market operator must establish the identity of the true beneficial owner and the capacity in which the counterparty is representing this beneficiary. This identification of the beneficial owner should take place even if the identity is to ultimately remain unknown to third parties. It is essential to combine due diligence with a balanced disclosure and discretion approach at different levels as follows:

3.2.1. Disclosure

The identity of the seller and the buyer must be known to each other, and to all intermediaries involved, including to third parties with a legitimate legal interest. Such a legitimate legal interest exists if a third party has a commercially justifiable or reasonable entitlement to the defined value of the object or to the object itself. Where such disclosure is granted, the third party may

communicate the identity of the seller only in connection with the said third party's legitimate legal interest, and must confirm this in writing to the market operator before any such disclosure is made.

In general, the rules for the disclosure of the buyer's or seller's identities are in accordance with the applicable anti money laundering laws and regulations.

3.2.2. Non-disclosure to third parties

Non-disclosure agreements should be avoided, but may be admissible when explicitly requested by the seller or the buyer. A request for non-disclosure to third parties can be granted if a market participant presents justifiable or reasonable grounds, such as the necessary and legally defensible protection of his privacy. A justifiable interest will not be recognised if the reason for non-disclosure serves to circumvent applicable laws. Such non-disclosure requests only lead to enhanced due diligence obligations (see 4.4.1.). The art market operator acting for a seller who requests non-disclosure must provide a purchase back guarantee or equivalent and inform the latter about the possible consequences of non-disclosure.

3.2.3. Disclosure procedures towards third parties

These Guidelines propose that even where non-disclosure has been requested the identity of the seller or buyer has to be communicated by the market operator to third parties with a legitimate legal interest using the following procedure: The market operator communicates the request for disclosure to the concerned party (seller/buyer) granting a reasonable time for response. If the latter opposes such a disclosure request explicitly and with a legitimate reason, the final decision will be determined by the Advisory Board (see 9.2.2) which will seek to balance the various interests at stake (in camera procedure). If the Advisory Board grants disclosure, the third party may communicate the identity of the seller/owner only in connection with the said third party's legitimate legal interest, and this must be confirmed in writing to the market operator before any such disclosure is made.

4. Due Diligence before sale

4.1. Due diligence

Due diligence before sale is crucial to establishing transparency on provenance, including rights of disposal, third party rights, authenticity and, finally, the price of the art object. The identification of the art object is verified through due diligence and determines the commitments the seller has to the buyer, and the responsibilities of the art market operator in concluding the operation. In general, an art market operator's best efforts should be at least equal to the due diligence endeavours he would undertake when acting for his own account and responsibility (*diligentia quam in suis*).

4.2. Best efforts due diligence

4.2.1. Principle

An undisputed and uninterrupted provenance history and proven authenticity of the art object is the aim in all transactions. In adopting and implementing these standards, art market operators commit to undertaking best efforts in conducting due diligence when preparing for selling, as described in the following:

4.2.2. Research and evidence

The market players will invest sufficient time to research reasonable provenance and authenticity before finalising selling procedures. The art market operator acting on behalf of the seller is obliged to undertake provenance and authenticity research, making such efforts as are commercially reasonable and providing information on the art object as well as its former owners. He is therefore obliged to use all sources of information which are, or can be, made available using justifiable and reasonable efforts. In particular, this includes:

- obtaining the provenance history of the object;
- requesting identification information from the seller,

- establishing credibility and plausibility references relating to the seller,
- referring to publicly available databases and listings relating to the parties to the transaction and the art object respectively;
- obtaining any relevant and available legal documents, witness declarations, expert opinions as the case may be, and
- checking the restoration history as appropriate and presenting circumstantial evidence when no direct documentation is available.

The market operator's obligations to obtain the evidence described above should be in proportion to the market value or the cultural/historical/religious importance of the object in question.

4.2.3. Conflict of interest

An expert's opinion is invalid if the professional independence of the expert is in doubt. This is the case if the terms dictating his financial remuneration prevent the expert from fully disclosing relevant information (for example because of a success fee). At the request of the art market operator, the art expert will disclose his commercial or financial relationship with the seller, the buyer, the art dealer or the auction house.

4.3. Incomplete Provenance

Being in possession of an art object does not in itself provide sufficient evidence of ownership and the rights of disposal. In the absence of valid objections it is, however, reasonable to suppose that the possessor enjoys full ownership of the art object. In these and other cases where full evidence on the provenance of the art object could not be procured, but sufficient indications of legitimacy are available, the art object can still be sold,

but only with full disclosure of the seller's identity and the respective findings.

4.4. Enhanced due diligence

The art market operator must initiate enhanced due diligence if the seller requests non-disclosure of his identity to third parties or if the provenance or the authenticity of the art object itself raises serious doubts. Enhanced due diligence involves, at least, the following efforts: Obtaining additional independent expertise, consulting expert committees and gathering second/further opinions, checking of additional databases, registers and listings, professional background check on the seller, research on previous art trade activities involving the seller (possibly facilitated by the other participants in this initiative), and information requests to relevant law enforcement authorities. The claim that the above procedure would incur unreasonable expenses has no legal basis under these circumstances.

4.4.1. The cost of enhanced due diligence

Art market operators will inform the seller in advance that enhanced due diligence will take place as a result of the request for information to remain undisclosed, and will inform the seller of the procedure as well as the expenses incurred. The costs of increased due diligence will be borne by the seller.

4.4.2. Residual doubts

4.4.2.1. Unclear provenance

Should the enhanced due diligence procedure yield insufficient or inconsistent information (non liquet), the art market operator should propose to the seller full disclosure of these findings to the buyer and to provide a purchase back guarantee or its equivalent, to address the possible consequences of the unclear provenance. Should the seller refuse such disclosure and guarantee, the market operator will abstain from providing his services.

4.4.2.2. Doubtful provenance

Should the enhanced due diligence or similar third party information lead to serious doubts or well founded suspicion that the art object was stolen, illegally imported or otherwise illicitly obtained, the art market operator must inform the appropriate local authorities. In such a case, the object in question has to be held in trust/ custody by the art market operator until the respective law enforcement agency gives further instructions. The sellers of such 'objects of doubtful provenance' have to be informed by the operator regarding the potential opening of procedures and the operator's cooperation with the respective authorities.

5. Source of funds**5.1. Principle**

The art market operator will endeavour to deal only with buyers whose source of funds can be established to be legitimate. To meet this obligation, the art market operator should undertake adequate and reasonable measures to establish the origins of the funds involved in the transaction. Such efforts could include obtaining an appropriate certification from a reputable financial institution regulated for anti-money laundering purposes in the country where the art market operator is located.

5.2. Cash payments

In general, transfers in cash are to be discouraged altogether. Where they take place and if they exceed EUR 15 000 (or the equivalent in any other currency), the art market operator should conduct enhanced due diligence on the buyer.

5.3. Beneficial owner of the Funds

If the buyer is a domiciliary company, or acting as an intermediary or otherwise on behalf of a third party, the art market operator must establish the identification of the ultimate beneficial owner of the funds.

Where the source of funds gives rise to grounded suspicions of money laundering and in the absence of a

plausible explanation, the art market operator must report those suspicions to the appropriate authorities. The art object may then be subject to legal orders, as required by local laws and regulations, and the transaction may be blocked.

The art market operator must establish record retention requirements for all documents relating to transactions involving art objects. The documents must be retained for a minimum of five years.

6. After-sale responsibility**6.1. Principle**

The after-sale responsibility of the art market operator is directly proportional to the level of disclosure and due diligence exercised in the operation. The greater the level of disclosure and due diligence by the art market operator the lesser the responsibility after sale.

6.2.1. Limited responsibility

If the identity of the seller and the buyer is disclosed (see 3 above), and due diligence duties have been properly observed (see 4 above), the art market operator will only be liable for those deeds that he is usually responsible for in the conduct of his own dealings (*diligentia quam in suis*; see 4.1.).

6.2.2. Strict responsibility

If the seller's identity is not disclosed, or the market operator otherwise breaches his due diligence obligations, he will be liable to the buyer also in cases of unclear provenance or unresolved questions regarding the genuineness of the art object, provided the buyer acquired the object of art according to applicable laws and free of any legal impediments.

7. Conflict management

As disputes about art objects typically involve weighty economic interests, or arise through political, historical or cultural conflict, a non-judicial settlement of such cases is usually more appropriate and successful.

Besides seeking remedies from conventional courts, the BAT Guidelines recommend taking recourse to out-of-court settlements, which include various Alternative Dispute Resolution (ADR) proceedings, such as:

- Arbitration
- Mediation
- Recourse to a Dispute Board (within ADR Proceedings)
- Adjudication

All signatory art market operators will receive a list of available ADR proceedings in conflict resolution. Umbrella cooperation agreements will be signed between the competent international and national institutions and the Advisory Board or the respective art dealers association, thus allowing the signatory art market operators to rely on and refer to a pool of experts when considering ADR proceedings.

The signatory art dealers' associations in cooperation with the Advisory Board will provide ad hoc guidance for the selection and application of appropriate ADR proceedings and will give general advice on conflict management.

D. Implementation

The proposed measures try to convert these Guidelines into a living document. The foreseen steps therefore have to be discussed, if necessary amended and agreed upon by the signatory parties.

8. Information and documentation

8.1. Information

In order to facilitate the implementation of the standards set out in these Guidelines, art market operators make a commitment that they will:

Publicly subscribe to the BAT Guidelines, either directly or through their respective art dealers association, and will report back on the measures undertaken to implement them.

All signatory parties will:

Publicly acknowledge their compliance with the BAT Guidelines, define internal measures to implement them or amend existing policies and procedures as may be necessary; retain all documentation that may be relevant to establishing the provenance of art objects in the future or to funds involved in transactions that have been either conducted or refused, for a minimum of five years starting from the date of receipt of such documentation.

8.2. Databases

The art market operators will establish two databases, namely: A database of art objects whose provenance could not be fully established; and a database of art objects whose provenance has been subject to a claim. These databases will be accessible to signatory parties, law enforcement officials and other authorities entitled to request such information.

9. Implementation action

Implementation of the BAT Guidelines involves:

9.1. Training programmes

The art market operators will engage in training

and awareness raising programmes to support the implementation and dissemination of these Guidelines throughout the art market. Training activities may involve peer-to-peer exchanges of information as well as specific training programmes organised for example, by art trade associations and their members/signatories. Awareness raising programmes should include all relevant media, public and private sector firms and take place worldwide.

9.2. Monitoring

9.2.1. Monitoring mechanism

The art market operators of this initiative will establish an independent monitoring mechanism to ensure compliance with the BAT Guidelines. Its main functions will be:

- to take the necessary steps towards the development of an auditing mechanism for art market operators committed to implementing the BAT Guidelines (i.e. through jury activities at international fairs);
- to create certification procedures through international art dealers associations;
- to control the effective use of the BAT Guidelines;
- to receive and address complaints of violations or non-compliance with the BAT Guidelines and impose sanctions for breaches of these Guidelines.

9.2.2. Advisory board

Elections for the eight members of the Advisory Board will be held every five years. The composition of the Advisory Board will be in proportion to the art market operators' professions and the details to be defined in rules governing these elections. The Advisory Board will be responsible for monitoring compliance with the BAT Guidelines. In carrying out its duties, the Advisory Board is not bound by instructions.

9.2.3. Sanctions

Sanctions may be recommended by the Advisory Board

and imposed by signatory art dealers association boards only after a hearing has been held. Sanctions may include a warning, loss of signatory association membership and/or, withdrawal of certification and will be proportionate to the gravity of the breach of the BAT Guidelines or the degree of culpability. A member of the Advisory Board is to be excluded from any decision to determine a sanction if the affected art market operator or a member of the Advisory Board expresses justifiable suspicion of bias or conflict of interest. Such an event generally arises if the Advisory Board member is either personally or economically linked to the affected art market operator or is a direct competitor. The discussion and decision as to whether a member of the Advisory Board will be excluded from proceedings under such circumstances, will take place in the absence of the said member.

The signatory art dealers' associations, in cooperation with the Advisory Board, will develop harmonised rules on sanction procedures, with the aim of fostering the successful implementation of these Guidelines.

9.3. The Advisory Board may transfer its decisions under this section (9.2) to an independent, non-partisan arbitrator who is bound by the rules of confidentiality.

9.4. Ethics Group

The signatory art dealers' associations in cooperation with the Advisory Board may establish an Ethics Group that will work to improve the BAT Guidelines, give opinions on cases of conflict at the request of the signatory parties, and represent the signatories on a political level.

10. Secretariat

10.1. Responsibilities

A secretariat will be set up in order to:

- coordinate the implementation and monitoring activities;

- support art market operators in the adaptation of their internal regulations and practices,
- compile a register of the art market operators who effectively implement the BAT Guidelines
- maintain and provide access to the expert pool; and
- provide assistance in the event of conflict and coordinate contacts with mediation and arbitration institutions.

10.2. Location and financing

The secretariat will be located at the Basel Institute on Governance in Basel, Switzerland. The secretariat will be financed by signatories to the BAT Guidelines.

E. Recommendation

The effective implementation of the BAT Guidelines will only be possible if there is considerable improvement in the accessibility to archives and better cooperation with respect to existing registers of lost art works. The signatory parties therefore recommend the concerned bodies to engage in constructive collaboration and to develop rules that facilitate research by third parties. As far as possible all research and access to public archives should be free of charge.

Basel Institute on Governance

The Basel Institute on Governance (www.baselgovernance.org) is an independent not-for-profit competence centre working around the world with the public and private sectors to counter corruption and other financial crimes and to improve the quality of governance. The Institute's areas of work comprise (i) recovering stolen assets through strategic case advice, technical assistance, and capacity building, and participating in international policy dialogue on standard setting in asset recovery; (ii) public governance, offering technical assistance to governments of developing and transition countries in their efforts to prevent corruption and strengthen the quality of their governance systems; and (iii) corporate governance, compliance, and anti-corruption Collective Action.

Governance of Art Trade

The art trade market is global, highly fragmented and complex, involving a great variety of operators. In light of this complexity, the current level of regulation and existing compliance efforts by individual operators has proven to be insufficient. With some competitors engaged in unethical or illegal behaviour, operating profitably while acting with integrity and ethics is increasingly difficult. As other industry sectors (e.g. the financial sector when faced with the challenge of effectively combating money laundering) have experienced, collective action by key market participants can be a highly effective way to systematically and comprehensively address such business practices and to ensure fair and efficient competition in a global market.

Working papers

In this working paper series the Basel Institute on Governance publishes reports by staff members and invited international experts, covering critical issues of governance theory and practice. For a list of publications, please visit www.baselgovernance.org.



Basel Institute on Governance
Steinenring 60
4051 Basel, Switzerland
www.baselgovernance.org
info@baselgovernance.org

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Appendix C

Basel Institute on Governance, *Basel Art Trade Anti-Money Laundering Principles*, 2018

Basel Art Trade Anti-Money Laundering Principles

Drafted June 2016. Issued January 2018

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Note: These Principles draw on the Basel Art Trade Guidelines originally issued in draft in 2012 and re-issued in 2018 without any material changes. This paper does not replace the Basel Art Trade Guidelines, but seeks to complement and set out in more detail the AML aspects of the 2012/2018 Guidelines.

Basel, June 2016. Date of issue: January 2018

Abbreviations

AML	Anti-Money Laundering and Counter Terrorism Financing
KYC	Know Your Customer
PEPs	Politically Exposed Persons

Introduction

1. The art trade is not immune to the risks of money laundering and the financing of terrorism (hereafter shortened to money laundering). Art Market Operators are at risk of being misused by persons seeking to launder the proceeds of criminal activity, thereby creating potentially serious reputational, legal and financial consequences for the art trade.¹
2. The risks of money laundering can be mitigated by implementing appropriate policies and procedures and by ensuring that employees understand their respective obligations.
3. It is acknowledged that the size of Art Market Operators varies widely.² As such, the measures taken by each Art Market Operator to avoid their involvement in criminal activity may vary, depending on the size, structure and the exposure of their business to money laundering risks.
4. The application of a risk based approach to determine the resources, measures and controls needed to mitigate those risks is regarded as an appropriate method to prevent and detect money laundering, and therefore an approach Art Market Operators may wish to consider when addressing this issue.
5. These principles do not seek to replace existing initiatives or any Art Market Operator's policies and procedures. Rather, they aim to contribute to a level playing field by providing Art Market Operators with a consistent method for applying a risk based approach to countering anti-money laundering (AML) risks in accordance with their particular exposure and risk profile.
6. The principles and their application rely on Art Market Operators' full compliance with applicable national legislation, international conventions and relevant internal Codes of Conduct, policies and procedures.

Scope

7. These principles are addressed principally to **Art Market Operators**, a term which includes all persons and entities that engage in the trade of art objects as well as intermediaries that are between the buyer and seller.
8. **Service industries** that support the trade in art objects and that are already subject to anti-money laundering laws and regulations (such as banks, insurance companies and lawyers) should identify their business involving the trade in art objects as higher risk as long as there are no internationally applicable standards.

¹ See for example the Art and Finance Report 2016 by Deloitte at <http://www2.deloitte.com/lu/en/pages/art-finance/articles/art-finance-report.html>.

² Small businesses may not have the resources to address money-laundering risks in the same way that large auction houses or major dealers and galleries will have, and may have a different risk exposure.

9. **Other service industries** that are not regulated for anti-money laundering purposes may wish to consider where these principles would be of use and applicable to their businesses.

AML Standards for Art Market Operators

10. In order to avoid being misused for money laundering, the Art Market Operator has to ensure it conducts business relationships only with those clients it can be reasonably sure are engaging in legitimate business.
11. Good practice in anti-money laundering (AML) suggests that Art Market Operators should implement a reasonably designed risk based approach by which they identify the criteria to measure potential money laundering risks. The identification of the money laundering risks of its clients, services and transactions will allow Art Market Operators to determine and implement proportionate measures and controls to mitigate these risks.
12. In practice the risk based approach will have to address the following three risk categories:
- a. Identity of the client (see section II on Know Your Customer (KYC) below);
 - b. Provenance of the art object (see section III on Provenance of the art object below); and,
 - c. Origin of the buyer's funds involved in the transaction (see section IV on Provenance of Funds below).

I. Applying a Risk Based Approach

13. The application of a risk based approach to address money laundering in the art market will require the Art Market Operator to establish its risk profile, taking account of the following, which is a non-exhaustive list:
- a. Countries where sales are conducted
 - b. Jurisdictions where the Art Market Operator obtains its inventory
 - c. Markets
 - d. Delivery channels
 - e. Services offered to clients
 - f. Types of transactions
 - g. Client profiles
 - h. The location of contracting parties
 - i. The source of funds
 - j. Financing methods
 - k. The value of the art objects; and,
 - l. Any other factors that the Art Market Operator may determine relevant when establishing its own risk profile which it will then use to develop appropriate measures to mitigate the AML risks of its business.

14. In implementing a risk based approach the Art Market Operator should:

- a. Address the design and implementation of controls to mitigate the assessed risks;
- b. Conduct regular training of staff on money laundering risks including their roles and responsibilities to prevent, detect and report suspicions and to whom they should report internally. Training of new staff members should take place within a reasonable timeframe and refresher training should be conducted as appropriate to make sure staff remain aware of new risks or changes to the risk profile of the Art Market Operator;
- c. Provide special training to person(s) designated to receive internal reports of money laundering suspicion so that they know how to handle reports and when to report them to the appropriate authorities;
- d. Monitor the effectiveness and implementation of the controls and make improvements where required;
- e. Periodically review and update the policies, procedures and risk profile;
- f. Maintain records that evidence the implementation of the approach; and
- g. Document fully and contemporaneously any deviations from the application of its risk based approach.

II. Know Your Customer (KYC)

15. The client is the person or entity with whom a contractual relationship is formed and refers to the buyer as well as the seller. Know Your Customer (KYC) requirements however go beyond the basic knowledge of buyer and seller as referred to in any contract between them. KYC should therefore cover any natural person who, as the ultimate beneficial owner, may operate through another natural person or a corporate structure as an intermediary.
16. Beneficial ownership, for reasons that may be legitimate or not, can be obscured behind multiple layers of such intermediaries (usually so-called shell companies, or offshore companies involving trusts, foundations or bearer share companies, mostly located in offshore jurisdictions).
17. The KYC requirement demands that the Art Market Operator looks through all these layers until one or other of the following is identified: natural person(s); a company that is listed in a publicly accessible register; a company listed on a public stock-exchange. The beneficial owner should therefore be seen as the true owner of an art object on whose behalf the Art Market Operator agrees to sell, or the ultimate buyer of the artworks to whom art objects are sold (see further under Identifying the ultimate beneficial owner below).
18. The Art Market Operator should also clarify to the client whether it is acting in respect of its own stock or as agent. This would include the disclosure of actual or potential conflicts of interest where the Art Market Operator is not operating in its own name, but through a company of which it is the sole owner or beneficiary or whereof it may be a partner or holder of a material interest.
19. Art Market Operators must maintain records of all these checks.

i. Identification of the persons involved in artwork transactions

20. The ‘contracting party’ is the person or entity with which the Art Market Operator forms a contractual relationship. This contracting party may not necessarily be the owner of the artwork and may be an individual, entity or acting on behalf of a third party.
21. Client identification must be carried out before entering into a business relationship.
22. Identification of an individual requires obtaining the name, date of birth, address and such further information that may be appropriate or required by law or regulation.
23. Client identity verification involves obtaining supporting evidence that reinforces the claim of identity. Verification of identity will depend on the type of business relationship, as follows:
 - **Natural persons:** identity will be verified on the basis of official identity papers or other reliable, independent source documents, data, or information as may be appropriate under the circumstances. (This means requesting identity papers along with a proof of residency).
 - **Corporations, partnerships, foundations:** identity will be verified on the basis of documentary evidence of due organization and existence. (This also means requesting and checking a document proving that such entity is allowed to acquire or sell an art object).
 - **Trusts:** identity will be verified on the basis of appropriate evidence of formation and existence or similar documentation. The identity of the trustees will be established and verified. (This also means requesting and checking a document to prove that such entity is allowed to acquire or sell an art object).
24. Identification documents, if used for verification purposes, must be current at the time of establishing the business relationship and copies of such documents must be obtained.

ii. Identifying the ultimate beneficial owner

25. The ultimate beneficial owner refers to the natural person who enjoys the benefit of ownership of an art object, asset, legal entity, bank account, wealth etc. It also refers to the natural person(s) on whose behalf the transaction is conducted.
26. If the Art Market Operator knows, or has reasonable grounds to believe that the counterparty to a transaction is acting on behalf of someone else, the Art Market Operator must establish the identity of the ultimate beneficial owner and the capacity in which the counterparty is representing the beneficiary. The Art Market Operator may treat the identification of the beneficial owner with strict confidentiality, but the Art Market Operator cannot avoid its responsibility by relying on representations made by the counterparty.
27. Where there are multiple beneficial owners, all those with 25% ownership and above should be identified. Identity will be verified to the satisfaction of the Art Market Operator on the basis of official identity papers or other reliable, independent source documents, data or information as may be appropriate under the circumstances. In the event verification is based on identity papers, copies of such identity papers should be obtained.

iii. Enhanced due diligence

28. In the context of client identification, the following are categories of persons that may require enhanced due diligence:
- Persons residing in and/or having funds sourced from countries identified by credible sources as having inadequate AML standards or representing high risk for crime and corruption.
 - Persons engaged in types of economic or business activities or sectors known to be susceptible to money laundering.
 - Certain categories of “Politically Exposed Persons” (which may/may not include so called domestic PEPs), referring to individuals holding or, as appropriate, having held, senior, prominent, or important public positions with substantial authority over policy, operations or the use or allocation of government-owned resources, such as senior government officials, senior executives of government corporations, senior politicians, important political party officials, etc., as well as their close family and close associates.
 - Persons who are not physically present (see below on “non face-to-face transactions”).
29. Senior management approval should be obtained before entering into a business relationship with a client subject to enhanced due diligence.
30. Enhanced due diligence can be costly and time consuming. Depending on an Art Market Operator’s individual risk exposure, different means for conducting enhanced due diligence may be appropriate, ranging from in-depth background checks possibly using specialised firms to internet searches using appropriate keywords and combinations words.

iv. Intermediaries

31. An intermediary in this context refers to any individual or entity that is paid a commission for its role in the sale or consignment of an art object to the Art Market Operator.
32. Due diligence should be carried out on all intermediaries that act for or on behalf of the Art Market Operator’s client. Where the intermediary is an entity of any kind, the identity of the ultimate beneficial owner as a natural person should be obtained and verified by a written statement confirming this information. Copies of appropriate documents identifying the intermediary should be requested and obtained.
33. Where an Art Market Operator engages an intermediary, a written agreement (such as an Introductory Commission Agreement), should be in place before any services are rendered.

v. Powers of Attorney

34. The Art Market Operator should assess the risk associated with a person holding a power of attorney, and document the authorization to liaise directly with the person conferring the power of attorney.

vi. Non face-to-face transactions

35. Business relationships that are conducted through the Internet, telephone or similar technology or are otherwise through non face-to-face interactions will need to be assessed by the Art Market Operator prior to transactions taking place, and in some circumstances enhanced due diligence may be appropriate for such relationships.

III. Provenance of the art object

i. Establishing the provenance history and authenticity

36. An undisputed and uninterrupted provenance history and proven authenticity of the art object is the ideal aim in all transactions. It is acknowledged however that this is not always feasible. The traceability of the art object should however be transparent such that the Art Market Operator can be reasonably sure that the known history of previous owners has been established as far as it is reasonably possible to do so. In addition, and here too applying a risk based approach, the Art Market Operator will also:
- a. Search on Interpol art database and request a Certificate from the Art Loss Register
 - b. Search databases of looted art
 - c. Obtain the provenance history of the art object requesting any archives and documentation from the owner (including documents such as invoice, loan agreement, insurance certificate)
 - d. Obtain any relevant and available legal documents, witness declarations, expert opinions even if the work is reproduced in the *catalogue raisonné* or any reputable art books. If possible, request a Certificate of Authenticity or a written confirmation from relevant artist committee or expert
 - e. Check all the exhibition catalogues where the art object has been exhibited and
 - f. Check the art object and note any signature, number, frame or labels on the back, and
 - g. Check the restoration history as appropriate and presenting circumstantial evidence when no direct documentation is available.

ii. Incomplete Provenance

37. Being in possession of an art object does not in itself provide sufficient evidence of ownership and the rights of disposal. In the absence of valid objections it is, however, reasonable to suppose that the possessor enjoys full ownership of the art object.
38. In these and other cases where full evidence on the provenance of the art object could not be procured, but sufficient indications of legitimacy are available, the art object can still be sold, but only with full disclosure of the respective findings and preferably by way of a sale at a public auction.

IV. Provenance of funds

39. The Art Market Operator should:
- Only accept payments from reputable financial institutions in countries that have implemented reasonable measure to address money laundering, countering the financing of terrorism and tax evasion;
 - Adopt a policy of not accepting payments from third parties; and,
 - Not accept cash or multiple cash payments for high value transactions.
40. If the buyer is a domiciliary company, or acting as an intermediary or otherwise on behalf of a third party, the Art Market Operator must establish the ultimate beneficial owner of the funds (the natural person).
41. Cash transfers are generally to be discouraged wherever possible. Where cash transactions are permitted and exceed EUR 10 000 (or equivalent local currency) or the amount specified in applicable legal and regulatory standards, the Art Market Operator should conduct enhanced due diligence on the buyer.

V. Suspicion of Money Laundering

42. Even with AML checks and controls there are still risks that an Art Market Operator will be misused for criminal purposes, and knowing that a transaction is being undertaken to disguise the proceeds of a crime or suspecting that a relationship or transaction is being established to enable money to be laundered is a crime in many jurisdictions. For these reasons it is important for Art Market Operators to understand and be able to identify risk indicators, also known as red flags.
43. Money laundering suspicions may be raised in many ways, and the following examples of red flags may indicate increased money laundering risks, the client:
- a. Is evasive or reluctant to provide adequate information relating to their identity or property or provides information which appears to be false;
 - b. Insists on paying in cash (perhaps with a de minimis limit) or anonymous credit or cash cards;
 - c. Asks detailed questions about procedures for reporting suspicious activity and/or financial matters to tax authorities;
 - d. Knowingly wishes to sell at an artificially low or inflated price;
 - e. Makes multiple low value cash payments for a single or connected transactions;
 - f. Suggests unusually complicated structures for achieving a purchase or sale;
 - g. Is a Politically Exposed Person (PEP) or closely connected to a PEP e.g. government officials or persons who hold a prominent public function;
 - h. Is known to be (or associated with) a person subject to criminal or regulatory investigation, prosecution or conviction;
 - i. Lives, operates or banks in a higher risk jurisdiction such as countries where drug trafficking, terrorism and/or corruption are prevalent or where tax and money laundering regulations are less stringent.³

³ Such as by consulting the Financial Action Task Force website: <http://www.fatf-gafi.org/>.

44. Where a red flag is raised, the Art Operator should seek further information to satisfy itself that it will not be engaging in, or otherwise supporting money laundering. If it is not possible to obtain sufficient information to address the money laundering risk, or otherwise mitigate the red flag, then it may be advisable for the Art Operator to decline the transaction or not enter into the business relationship in the first place.

VI. Reporting

45. Where the source of funds gives rise to grounded suspicions of money laundering and in the absence of plausible explanation, the Art Market Operator must report those suspicions to the appropriate authorities. The art object may be subject to legal orders as required by local law and the transaction may be blocked.

VII. Record Keeping

41. Art Market Operators should keep records of: clients' identification as well as documents obtained in connection with verification of identity and the results of enhanced due diligence searches; evidence of searches carried out in relation to the provenance of the art object; and, any deviations from the risk based approach. These records should be maintained for a prescribed period of time (typically at least 5 years from completion of the transaction or the end of the business relationship, though some countries require substantially longer than this).

Appendix D

Responsible Art Market Initiative, *Guidelines on Combatting Money Laundering and Terrorist Financing*, 2017

Guidelines on combatting Money Laundering and Terrorist Financing

Art Businesses should ensure the AML (Anti-money laundering) measures they adopt satisfy any legal obligations to which they are subject, and are adequate and appropriate to their business and the risk profile of their clients and the artworks they handle.

What are the aims of these Guidelines?

These Guidelines aim to:

- raise awareness in the art market of the threats and risks of money laundering and terrorist financing;
- provide a general framework and understanding of “risk based” anti-money laundering and terrorist financing measures, including the key elements of client, artwork and transaction due diligence;
- help Art Businesses:
 - implement “risk based” anti-money laundering and terrorist financing measures appropriate to the size and nature of their business;
 - identify “red flags” (indicators of suspicious activity) and take appropriate action in response.

Ultimately these Guidelines aim to facilitate transactions in artworks (rather than hinder them) by encouraging responsible practices by all art market participants.

In these Guidelines, we use the term “**AML**” to refer to measures designed at combating both money laundering and terrorist financing.

Who should follow these Guidelines?

These Guidelines are intended for anyone operating in the art market (“**Art Businesses**”). They are most relevant to those Art Businesses involved in transacting sales of artworks, including but not limited to:

- dealers,
- galleries,
- auction houses;
- art advisors, brokers and other intermediaries; and
- other professionals advising clients on transactions.

Art Businesses providing ancillary services (including but not limited to transport, storage, insurance, inspection and restoration), whilst not directly impacted, may choose to adopt all or some of these measures as a matter of best practice.

Context

Money laundering and terrorist financing are international concerns. They threaten the integrity of the international financial system and its markets, including the art market. As such they are a priority for the Financial Action Task Force^[1] and the United Nations Security Council^[2] who continue efforts to raise awareness of money laundering and terrorist financing threats and measures which can be adopted to combat them.

The art market can play its part in combatting money laundering and terrorist financing threats, by being aware of these risks and the methods and techniques used by criminals to disguise the illegal origin of their wealth or the illegal destination and purposes for which it is being used.

^[1] The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 which sets standards and promotes effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system.

[2] See for example United Nations Security Council Resolution 2199 (2015) <http://www.un.org/press/en/2015/sc11775.doc.htm> - underlining Member States' obligations to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages and from receiving donations.

What is Money Laundering and Terrorist Financing?

Money laundering is the process by which proceeds of crime are « cleaned » i.e. introduced into the legitimate economy to disguise their illicit origin, with notably the aim to prevent their confiscation by law enforcement authorities. To launder the proceeds of criminal activities, such as human trafficking, forced prostitution, drugs, extortion, corruption, white collar crime, armed robbery and theft, criminals use multiple economic operations to introduce these illicit funds into the financial system. Such operations include purchasing and selling currencies and investing in luxury items, real estate, art and similar high value items in attempts to disconnect the proceeds from the illicit activities by which they were acquired. Money launderers rely on anonymity and deception to cover their tracks, disguise the origin of their funds and hide the real purpose behind their business and transactions. Any person or entity involved in business operations aimed at laundering money can be charged with committing a criminal offense.

Terrorist financing refers to activities that provide funds or financial support to individual terrorists or terrorist groups enabling them to carry out their deadly actions. Even if such funds have a legitimate origin, the purpose for which they are used is illicit. Those seeking to finance terrorism resort to the same strategies, schemes and covert operations that money launderers employ to disguise the intended illicit purpose of the funds and anonymize the beneficiaries.

Money laundering and terrorist financing operations fuel crime and corruption. They cannot be carried out without the blind participation of professional intermediaries. Individuals and businesses who are unprepared, unaware or unwilling to be aware of the origin and/or the destination of the money and assets they handle, contribute to illicit proceeds infiltrating the global economy.

How is money laundered?

Money laundering typically involves the following three phases,

- Placement;
- Layering; and
- Integration

Depending on the techniques used, these phases can occur simultaneously or concurrently.

Placement

Placement describes the process by which money launderers introduce illegal profits (often in the form of cash) into the financial system. This can be done by breaking up large cash amounts into smaller less conspicuous sums that are then deposited into one or more bank accounts. The aim of the launderer at this stage is to:

- distance the illegally obtained cash from the source of its acquisition to avoid detection of the underlying criminal activity; and
- make the funds more liquid enabling them to be transferred or transformed into other financial assets (e.g. cheques, money orders etc.).

Layering

Layering is the process of hiding the illicit source and ownership of funds by using a complex system of transactions and transfers to create multiple layers between the illicit source and the funds. Once cash has been successfully placed into the financial system (see Placement above), launders engage in multiple complex transactions and transfers to disguise and confuse the audit trail and any criminal investigation. Examples of layering include:

- using multiple banks and accounts;
- using professional intermediaries to carry out transactions;
- converting cash into money orders, letters of credit, wire transfers, stocks, bonds;
- purchasing valueable assets such as art or jewelry;
- transferring money electronically in and out of the offshore bank accounts of bearer share shell companies;

- complex dealings with stock and commodities;

Integration

Integration is the final stage of the money laundering process whereby the laundered funds are re-introduced into the legitimate economy which the appearance of having derived from a legitimate source. At this stage it is very difficult to distinguish funds of a legal and illegal origin.

The art market

Certain features of the art market make it vulnerable to abuse by criminals seeking to launder the proceeds of crime or finance illegal activities. These include:

- High value goods;
- International market and networks;
- Common use of intermediaries or proxies for transactions;
- Common use of foreign / offshore structures and accounts;
- Culture of discretion. Buyer and Seller often unknown to each other;
- Buying an artwork, artefact or antiquity legitimises cash or funds and converts them into an asset that gains value and can be sold at a later date.

Art Businesses could unwittingly become involved in Money Laundering and/or Terrorist Financing schemes and techniques. They therefore need to be vigilant to Money Laundering, Terrorist Financing and illicit trafficking activities and adopt measures to counter them.

Consequences for Art Businesses

If an Art Business engages in a transaction, knowing or suspecting that a client's funds or property are the result of criminal activity, it could commit a money laundering or terrorist financing offence. The penalties are severe and may entail:

- criminal liability, including fines and imprisonment;
- reputational damage;
- restrictions imposed on the Art Business's ability to operate freely, for example the loss of operating licenses.

Adopting measures to detect and prevent Money Laundering and Terrorist Financing is important to identify and stop criminal and terrorist activity and to protect the reputation of Art Businesses and the art market.

Guideline 1- Do a risk assessment of your business and apply risk based measures

It is generally accepted that responsible AML measures for art transactions should be founded on a **"risk based" approach**. This means adopting AML processes, procedures and compliance controls based on the type and level of risk associated with your business.

A **risk based approach** includes the following **areas of enquiry**:

- Risk profile of the Art Business (see below);
- Client due diligence (see Guideline 3 - Know Your Clients (KYC) and establish their risk profiles - Check for client red flags);
- Artwork due diligence (see Guideline 4 - Research the artwork, its ownership and provenance - Check for artwork red flags);
- Transaction due diligence (see Guideline 5 - Know the background and purpose of transaction - Check for transaction red flags).

In addition, a **risk based approach** requires the Art Business to implement systematic reviews and controls, including:

- **Recording and documenting** information gathered (see Guideline 6 – Keep records);
- **Training staff** regularly on the risks, how to mitigate them and when and to whom to report suspicions (see Guideline 7 – Train staff and monitor processes and procedures);
- **Reviewing** the effectiveness and implementation of the controls and making improvements where necessary (see Guideline 7 – Train staff and monitor processes and procedures).

For further detail please see the Guidelines which follow.

Assessing risk

To determine the Money Laundering and Terrorist Financing risks to which it is exposed, an Art Business should consider the following questions:

- What AML measures has the Art Business already adopted?
- What types of transaction does the Art Business undertake?
- What information about clients is gathered and recorded?
- What due diligence on artworks is undertaken?
- What controls are in place regarding cash payments and checking the source of funds?
- What awareness of the risks exists amongst staff? What ongoing training is provided?
- Are processes and procedures reviewed regularly? Could improvements be made?

Guideline 2 - Know and comply with the laws where you are doing business and be alert to 'red flags'

Different national AML regimes have been adopted by countries around the globe. A single, harmonised, global legal regime does not exist.

Art Businesses will therefore need to be up to date with and comply with the legal requirements which apply to their activities in the countries where they operate.

The Country Guides section of these Guidelines provides basic information on the approach which certain countries have adopted to combat Money Laundering.

When making enquiries and conducting due diligence Art Businesses should be alert to indicators of suspicious activity ("**red flags**") (see Guidelines Client red flags, Artwork red flags, Transaction red flags and enhanced due diligence and appendices 1, 2 and 3). See the **Art Transaction Due Diligence Toolkit** for example due diligence checklists for art transactions.

Guideline 3 - Know Your Clients (KYC) and establish their risk profiles - Check for client red flags

Knowing your clients and being alert to red flags (indicators of suspicious activity) are at the heart of effective AML programs.

To establish the client's risk profile the Art Business will need to obtain information on the client and understand the purpose and intended nature of the transaction ("**Client Due Diligence**"). Understanding the client's source of wealth (i.e. how they made their money and/or acquired their art collection) can also help establish a client's risk profile. The client's risk profile will inform the applicability and level of ongoing monitoring of the transaction.

Who is a client?

A **client** is the person or entity with whom an Art Business forms a contractual relationship. In an art transaction, this could be the seller and/or the buyer of the artwork, or a broker or agent acting for either of them.

If the client is a company, trust or other corporate vehicle, in addition to establishing if the corporate vehicle carries out any trading activities or simply exists to hold assets, the Art Business will also want to identify the natural person(s) who control that entity ("**Beneficial Owner(s)**").

Art Businesses should endeavour to ensure they conduct business only with clients they can be reasonably sure are engaging in legitimate business. To meet this obligation, Art Businesses should implement adequate and reasonable measures to establish the identity of their clients and ensure the funds used to purchase artworks are provided by the buyer of the artwork and not by a third party.

Art Businesses should also carry out due diligence on the intermediaries (e.g. art advisors and/or brokers) acting for one of the parties to a transaction.

Identifying the client

Art Businesses should request documents to verify the client's identification information as follows:

- **Individuals:** Identity should be verified based on official identity papers (e.g. passport or national ID card) together with other reliable, independent source documents, data, or information as may be appropriate under the circumstances (e.g. copy of a bank statement or utility bill for proof of address).
- **Legal entities (e.g. companies, associations, partnerships, foundations, trusts):** Identity should be verified based on official documents proving these entities were properly formed and exist (e.g. certificate issued by the relevant company registry including details of directors, and shareholders, or partners as the case may be, and for trusts, the trust deed including details of the trustees, settlor(s) and beneficiaries).

The documents used to verify the client's identity must be current at the time of undertaking the due diligence and the Art Business should keep copies of the documents in line with any legal time periods or standard practice applying in the jurisdiction where it is carrying out business.

Identifying the beneficial owner

The "**Beneficial Owner**" refers to the natural person who enjoys the ultimate benefit of ownership of an artwork, asset, legal entity, bank account or wealth.

If the Art Business knows, or has reason to suspect that the client they are transacting with is acting on behalf of another individual or entity, the Art Business must use best efforts to establish:

- the identity of that other individual or entity, i.e. the Beneficial Owner; and
- the capacity in which the contracting client is representing the Beneficial Owner.

If the Beneficial Owner is a company or other form of legal entity, Art Businesses should make further enquiries to establish the individual with ultimate ownership or control of that entity^[1].

[1] European Member States are now required to hold beneficial ownership information for certain companies and trusts in central registers. Not all of these registers are accessible to the public so Art Businesses may not be able to use them for verification purposes.

Best efforts should be made to identify the Beneficial Owner even if the contracting client raises confidentiality concerns because of the reputational and other risks entailed if the Art Business is found to be involved in Money Laundering or Terrorist Financing schemes.

Art Businesses may also choose to include appropriate warranties and representations in their agreements with their clients to emphasise the importance of this point.

Client red flags

Examples of client red flags include, where the client is a “Politically Exposed Person”, an “offshore company”, or resident of a country on the [FATF watch list](#). Other examples of client red flags can be found in the Client [Red Flag List](#).

Practical measures Art Businesses can adopt to help identify client red flags may include (depending on the circumstances and resources available):

- Screening the names of clients, beneficial owners and intermediaries against PEP lists, sanctions lists, terrorist financing and other watch lists and similar information issued by government and international organisations from time to time;
- Media searches using the names of clients, beneficial owners and intermediaries and other appropriate keywords.

For existing clients, this due diligence should be updated when they enter into new transactions, in line with any legal requirements applying in the jurisdiction where the Art Business is operating.

Enhanced due diligence

If red flags are identified the Art Business will want to undertake enhanced due diligence to ensure the client’s activities do not raise any Money Laundering or Terrorist Financing concerns. Enhanced due diligence generally involves requesting and/or obtaining additional information or documentation. Please see the Client Red Flag List for guidance on the types of additional enquiries which could be pursued. In certain circumstances, the client’s reaction to such requests for additional information and/or documentation can be an indicator of risk.

The Art Business should document the enhanced due diligence it undertakes on its clients (for example by printing sanction list information and the results of keyword internet searches etc.). Art Businesses should keep all documents and data for a reasonable period in line with any legal time periods applying in the jurisdiction where it is carrying out business.

If “red flags” (indicators of suspicious activity or AML concerns) remain following the Art Business carrying out enhanced due diligence, the matter should be escalated within the Art Business to a member of senior management and/or the Art Business’ appointed AML officer (if it has one) to decide on next steps. See Guideline 8 *“If grounded suspicions exist, know how to act”* for further guidance.

Guideline 4 - Research the artwork, its ownership and provenance - Check for artwork red flags

An undisputed and uninterrupted provenance history and proven authenticity of the artwork is clearly the aim in all transactions. Depending on the nature and age of the artwork, realistically this may, or may not always be possible.

It is important to obtain and publish in any catalogue or sales document as much information as possible about the artwork, including any known provenance.^[1] In addition, and applying a risk based approach, the Art Business should check major databases of stolen and looted art and obtain any relevant and available legal documents, witness declarations, expert opinions as the case may be.

In applying a risk based approach to artwork due diligence as part of AML checks the Art Business will want to satisfy itself of the following:

- **Ownership** – In the absence of valid objections it is reasonable to suppose that the possessor of an artwork enjoys full ownership, but possession of itself is not a guarantee of ownership or rights of disposal. It is advisable for the Art Business to ask the seller to confirm if they are the owner of the artwork and if not, to identify the actual owner of the artwork. This will help the Art Business identify all its clients in a particular transaction, where, for example, an agent or broker is consigning a work for sale on behalf of the actual owner (see Guideline 3 *“Know Your Clients (KYC) and establish their risk profiles – Check for client red flags”*).
- **Provenance** – The Art Business will want to be reasonably sure that the known history of previous owners of the artwork has been established as far as it is reasonably possible to do so. For antiquities for example Art Businesses will want to be sure the objects have not been recently dug out of the ground or looted from their source country.

Documents which can be helpful in establishing ownership and provenance include; invoices, receipts, dated photographs, insurance records, valuations, official records, exhibition catalogues, invoices for restoration work, diaries, dated newspaper

articles, original signed and dated letters.

In addition to assisting with AML checks, provenance and ownership information when combined with a physical examination of the artwork and technical analysis and dating of materials used, plays an important role in helping to establish the authenticity of artworks.

[1] Typically, such information comprises the name of the artist or maker, the title of the work, known provenance, the number of parts/pieces, the presence of a signature, date and/or other inscription, the date of creation (if known), the country of creation/origin (if known), dimensions, materials and technique (e.g. oil on canvas, watercolor on paper, bronze sculpture, mixed media, video installation, etc.).

Artwork red flags

Certain types of artworks may require enhanced due diligence. See the Artwork Due Diligence Toolkit Explanatory Notes for examples. The Artwork [Red Flag List](#) which forms part of these Guidelines also contains examples of such Artwork “red flags” and suggestions of enhanced due diligence which could be carried out if any artwork “red flags” are identified.

Guideline 5 - Know the background and purpose of transaction - Check for transaction red flags

Understanding the background and purpose of the transaction can be helpful when combined with the client due diligence and client’s risk profile to inform the applicability and level of ongoing monitoring of the transaction which the Art Business should carry out.

Art Businesses should examine in particular:

- The purpose of the transaction;
- The form and structure of the transaction; and
- The source of funds.

Purpose of the transaction

The Art Business should examine the client’s background and purpose behind the contemplated transaction. For example, are the artworks being sold by the client consistent with what is known about the client’s collection? Is the level at which the client is selling or buying consistent with their past transactions and what is known about their professional activities and personal wealth? If not, the Art Business may want to ask the client for further information.

Form of the transaction

Art Businesses should also consider the form of the transaction, such as whether the transaction is taking place through intermediaries, face to face, entirely via the Internet, over the phone, or by any other similar non face to face means.

In some circumstances, depending on the nature, value and/or geographic location of the transaction, enhanced due diligence may be appropriate.

Source of funds

Art Businesses should pay particular attention to the source of funds used in a transaction.

Cash payments

Art Businesses should generally discourage cash payments wherever possible. The source of cash cannot be traced in the way that payments made through established banking systems can.

Accordingly, there can be no guarantee that the cash source is legitimate and clean.

Where Art Businesses accept cash they should keep the amounts small. The European Union has imposed a cash limit of EUR 10,000 per transaction or series of related transactions. Art Businesses should check the limits (if any) applying in the jurisdictions where they operate. See the Country Guides appended to these Guidelines for further details.

Art Businesses should not accept single or multiple cash payments for an artwork in excess of the legally imposed threshold. If there is no legal threshold, Art Businesses are advised to conduct enhanced due diligence on the buyer and the source of funds so that they are satisfied that no money laundering risk exists.

Third party payments

Art Businesses are encouraged to decline payments from a third party who is not their client and buyer of record. If there are legitimate reasons why it is justified for the Art Business to accept payment from a third party, before doing so the Art Business should conduct enhanced due diligence on both their buyer of record and the third party payer and only proceed with accepting the payment if satisfied that no Money Laundering or Terrorist Financing risk exists.

Payments from bank accounts located in non AML regulated jurisdictions

The preference for all transactions should be for the Art Business only to accept payments from reputable banks in jurisdictions subject to AML regulation and supervision. Such reputable banks and financial institutions are generally subject to a high degree of AML regulation. That said Art Businesses should remain vigilant and not rely entirely on the fact that banks and financial institutions will have carried out the necessary checks and verification to be satisfied that the source of funds is clean.

Art Businesses should be wary about accepting payments from bank accounts located in high risk or non-cooperative AML jurisdictions. To identify such jurisdictions Art Businesses are encouraged to consult the [list of “High Risk and Non-Cooperative Jurisdictions”](#) published by the Financial Action Task Force’s (FATF).

Title

Digital currencies are currencies with no physical form that are not controlled by a central bank. Examples of digital currencies include Bitcoins, Litecoins and Namecoins.

At the time of writing the use of digital currencies in art transactions is not common. Art Businesses are advised to act cautiously before accepting payments in digital currencies which are not controlled or regulated. It is an area which regulators continue to monitor.

Transaction red flags and enhanced due diligence

Any activity relating to a contemplated transaction that is not consistent with what is known about the client, and the client’s risk profile or which otherwise raises “red flags” should be the subject of enhanced due diligence by the Art Business.

See the Transaction [Red Flag List](#) for examples of transaction red flags and the enhanced due diligence which could be carried out in response. See also the Art Transaction Due Diligence Toolkit for example due diligence checklists for art transactions.

Guideline 6 - Keep records

It is important that Art Businesses maintain records of the due diligence checks they carry out and have systems in place for recording and storing the documentation and information they gather in the course of their due diligence and other enquiries.

Having a full record of the information and documentation available to the Art Business on a given date in relation to its clients, the artworks and transactions carried out, enables Art Businesses to:

- make informed and appropriate risk assessments of particular clients and transactions and determine if enhanced due diligence and enquiries are required;

- comply with any legal obligations to which they may be subject;
- identify “red flags” related to their clients, artworks and transactions and take appropriate action;
- determine if sufficient suspicions exist to justify declining the transaction and where appropriate report the situation to relevant law enforcement bodies;
- review their AML measures and controls and improve them where appropriate;
- comply with legal obligations to respond to requests for information and assistance from relevant law enforcement bodies.

Documenting “red flag” situations and the outcome of enhanced due diligence enquiries conducted as a result, assists Art Businesses in making important judgment calls about whether to proceed with a proposed transaction and /or file an AML report.

All documents issued by an Art Business in connection with a transaction (e.g. valuations, sale and purchase agreements, invoices, shipping documents, import / export declarations etc.) should be true, accurate and contemporaneous and represent the honestly held professional opinions of the Art Business. Art Businesses should refuse all requests from clients to alter, back date, falsify or otherwise provide incomplete or misleading documentation or information relating to a transaction. If there are legitimate reasons for altering a document (e.g. invoicing error etc.) the circumstances and justification should be fully documented and retained on file for future reference and audit.

Art Businesses should keep their records for the legally required period or where no legal requirement exists, in accordance with standard practice in the jurisdictions where they are operating. Depending on the jurisdiction, the period is typically anything between 5 to 10 years from completion of the transaction or the end of the business relationship. See the Country Guides appended to these Guidelines for further details.

Guideline 7 - Train staff and monitor processes and procedures

Staff should be trained on Money Laundering and Terrorist Financing risks regularly so they are clear about their roles and responsibilities to prevent, detect and report suspicions. They should know to whom they should report internally. The person(s) designated to receive such reports should know how to handle them and when to report them to the appropriate authorities.

Training of new staff members should take place as soon as reasonably practical after they join and refresher training should be conducted as appropriate to ensure staff remain aware of new risks or changes to the risk profile of the Art Business.

It is recommended that Art Businesses nominate someone within their organization to be responsible for managing and implementing the AML controls and measures which they put in place and to be the person to whom suspicions are reported. Art Businesses may set up an “AML reporting hotline” or encourage staff to use “whistleblowing hotlines” for AML reporting if they exist within the organisation.

Guideline 8 - If grounded suspicions exist, know how to act

Where the circumstances of a transaction give rise to grounded suspicions of Money Laundering or Terrorist Financing and in the absence of a plausible explanation or further documentation allaying those suspicions, Art Businesses should consider:

- refraining from entering into or completing the transaction; and/or
- reporting the suspicions to the appropriate authorities in the relevant jurisdiction, where an obligation to report exists.

See the Country Guides section of these Guidelines for basic information on the reporting requirements which certain countries have adopted to combat Money Laundering, including whether such reporting is mandatory.

- [Country Guide Switzerland](#)
- [Country Guide Luxembourg](#)

Glossary of terms / definitions and acronyms

Anti-Money Laundering (AML)	In these Guidelines, unless indicated otherwise, we use the term “Anti-Money Laundering” to refer to measures designed to combat both money laundering and terrorist financing.
Art Business	As defined in the Introduction, Section 4 of these Guidelines.
Beneficial Owner	As defined in Guideline 3 – Know Your Clients (KYC) and establish their risk profiles – Check for client red flags.
Client Due Diligence	See Know Your Client (KYC).
Financial Action Task Force (FATF)	An intergovernmental body tasked with examining money laundering techniques and trends, reviewing legislative and law enforcement actions relating to money laundering at the national and international levels, and issuing recommendations to combat money laundering and stem terrorist financing.
Know Your Client (KYC)	As explained in Guideline 3 – Know Your Clients (KYC) and establish their risk profiles – Check for client red flags.
Money laundering	As defined in the Introduction to these Guidelines.
Politically Exposed Persons (PEPs)	<p>Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.</p> <p>Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.</p> <p>International Organisation PEPs: Persons who are or have been entrusted with a prominent function by an international organisation i.e. members of senior management, including directors, deputy directors and members of the board or equivalent functions. The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories. Persons closely connected with such individuals are also considered PEPs</p>
Terrorist Financing	As defined in in the Introduction to these Guidelines.
Red flag	An indicator of suspicious activity.
Responsible Art Market Group (“RAM”)	As explained in the “ About Us ” page of this website

Downloads

Guidelines

- [Red Flag List](#)
- [Quick Reference Guide](#)
- [Full Guidelines \(original English version\)](#)
- [Full Guidelines \(Portuguese translation\)](#)

Country Guides

- [Argentina](#)
- [France](#)
- [Germany](#)
- [India](#)
- [Luxembourg](#)
- [Netherlands](#)
- [Russian Federation](#)

- Switzerland
 - United Kingdom
 - USA
-

Appendix E

Responsible Art Market Initiative, *Red Flags Money Laundering and Terrorist Financing Risks*, 2017

TRANSACTION RED FLAGS

Clients who knowingly wish to sell at an artificially low or inflated price

Clients who ask detailed questions about the Art Business' procedures for reporting suspicious activity and/or financial matters to tax authorities

Seller / Consignor is unable or unwilling to provide adequate proof of ownership for items that they are wishing to consign

Clients who suggest unusually complicated structures for achieving a purchase or sale

Buyers wishing to pay by a cheque drawn on a bank located outside the FATF jurisdictions <http://www.fatf-gafi.org/>

Buyers who arrange payments from a third party

Sellers who request sale proceeds to be paid to a third party

- Exercise enhanced due diligence over the transaction

- Exercise enhanced due diligence over the transaction; or
- If insufficient information is provided on the transaction, consider declining the transaction

- If there is a legitimate reason to consider accepting payment from a third party, request sufficient information and verified documentation to establish a legitimate link between the third party and the buyer. If not satisfied with the information and documentation provided, decline payment from the third party

- If there is a legitimate reason to consider paying a third party, request sufficient information and verified documentation to establish a legitimate link between the third party and the seller. If not satisfied with the information and documentation provided, decline to pay the third party

RAM

Responsible Art Market

The Responsible Art Market Initiative (RAM)

RAM's mission is: "To raise awareness amongst Art Businesses of risks faced by the art industry and provide practical guidance on establishing and implementing responsible practices to address those risks."

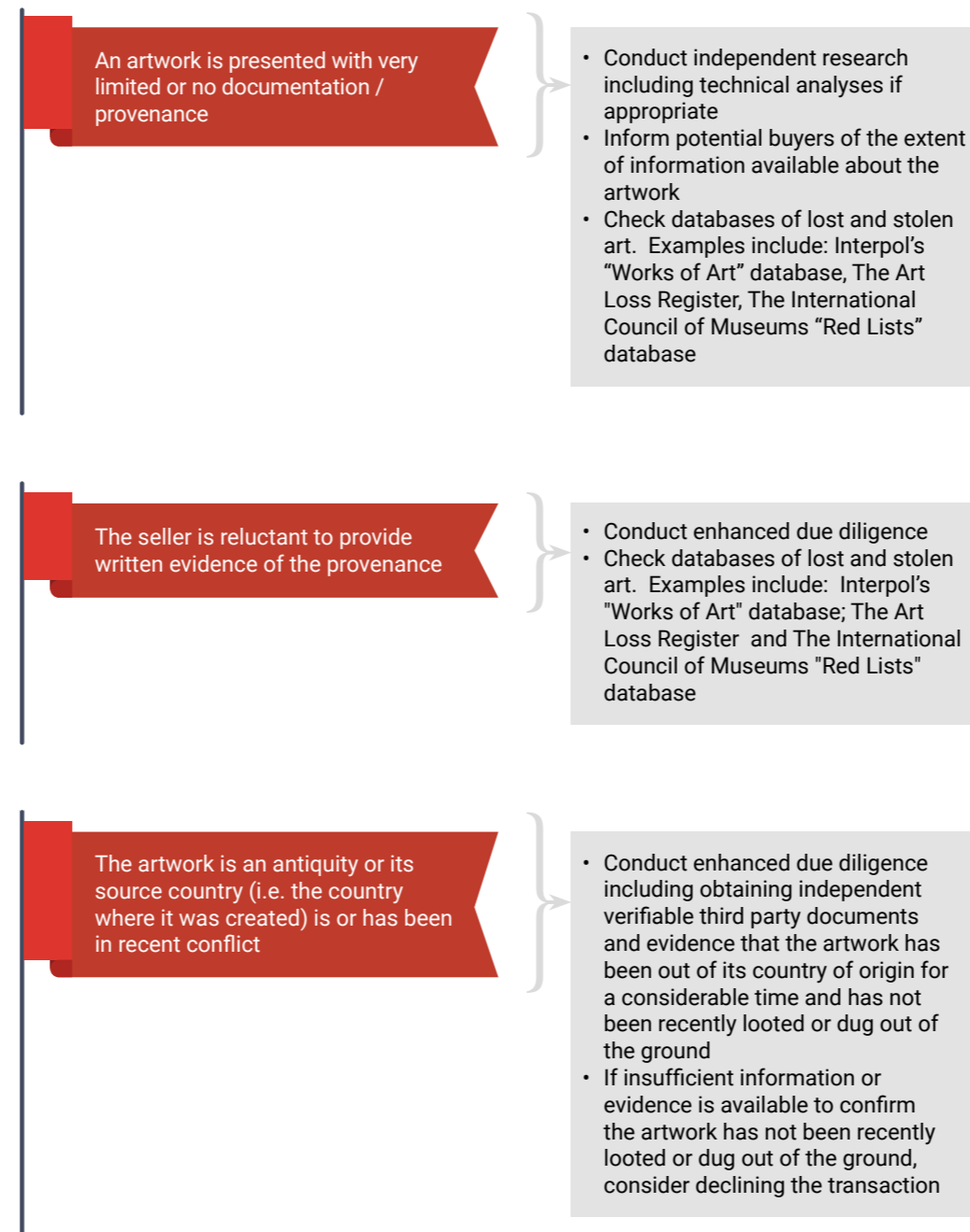
Red Flags Money laundering and terrorist financing risks

This document highlights some red flag situations which may indicate increased money laundering and terrorist financing risks and provides recommendations for dealing with them. If suspicions of money laundering or terrorist financing are not alleviated through enhanced due diligence, and in the absence of a plausible explanation or further documentation allaying those suspicions, Art Businesses should consider declining the transaction and reporting the suspicions to the appropriate authorities in the relevant jurisdiction where an obligation to report exists. Please refer to the full guidelines published on the RAM website www.responsibleartmarket.org for further details and practical guidance.

CLIENT RED FLAGS



ARTWORK RED FLAGS



TRANSACTION RED FLAGS



Appendix F

United States Senate Permanent Subcommittee on Investigations Committee on
Homeland Security and Governmental Affairs, *The Art Industry and U.S. Policies that
Undermine Sanctions, 2020*

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Rob Portman, Chairman
Tom Carper, Ranking Member

THE ART INDUSTRY AND U.S. POLICIES THAT UNDERMINE SANCTIONS

STAFF REPORT

**PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS**

UNITED STATES SENATE



THE ART INDUSTRY AND U.S. POLICES THAT UNDERMINE SANCTIONS

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THE ART INDUSTRY AND U.S. POLICIES THAT UNDERMINE SANCTIONS

I. EXECUTIVE SUMMARY

The United States government imposes economic sanctions on foreign adversaries in attempt to change their behavior. In theory, sanctions are simple. U.S. persons and companies are prohibited from doing business with sanctioned persons and entities. This prohibition should bar access to the world's largest economy. The United States imposes sanctions for a wide range of reasons. For example, the United States has imposed sanctions on Russia for election interference, human rights abuses, providing support to Venezuela and Syria, but mainly in response to Russia's invasion of Ukraine.

This report focuses, in particular, on a case study documenting how certain Russian oligarchs appear to have used transactions involving high-value art to evade sanctions imposed on them by the United States on March 20, 2014 in response to Russia's invasion of Ukraine and annexation of Crimea.

Specifically, the Subcommittee traced purchases of high-value art back to anonymous shell companies linked to sanctioned individuals Arkady and Boris Rotenberg, two Russian oligarchs, and Arkady's son, Igor. It appears the Rotenbergs continued actively participating in the U.S. art market by purchasing over \$18 million in art in the months following the imposition of sanctions on March 20, 2014. Shell companies linked to the Rotenbergs also transferred over \$120 million to Russia during a four-day window between President Obama's March 16, 2014 executive order stating that the U.S. would be sanctioning certain Russian individuals and the Treasury Department specifically naming the Rotenbergs as sanctioned on March 20, 2014. In addition, certain Rotenberg-linked shell companies continued transacting in the U.S. financial system long after Arkady and Boris Rotenberg were sanctioned. The Subcommittee determined these Rotenberg-linked shell companies engaged in over \$91 million in transactions post-sanctions.



*Arkady Rotenberg and Vladimir Putin
(Photo Credit: The New Yorker)*

While Russia-related sanctions, including those against the Rotenbergs, were set to expire in March 2020, President Trump extended them for another year. The effectiveness of these sanctions, however, is in question. To date, Russia has not withdrawn from Crimea and has even expanded its military operations in

surrounding waters. The Subcommittee sought to understand why the sanctions have not been more effective and, after reviewing a number of suspect transactions, launched a narrow investigation into high-value art. If wealthy Russian oligarchs can purchase millions in art for personal investment or enjoyment while under sanction, it follows that their businesses or hidden resources could also continue accessing the U.S. financial system.

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The Subcommittee’s investigation uncovered a complex set of facts involving shell companies with hidden owners, intermediaries who mask purchasers and sellers, and lax money laundering safeguards in the U.S. art industry.

The art industry is largely unregulated. The art industry is considered the largest, legal unregulated industry in the United States. Unlike financial institutions, the art industry is not subject to Bank Secrecy Act’s (“BSA”) requirements, which mandate detailed procedures to prevent money laundering and to verify a customer’s identity. While the BSA does not apply to art transactions by art dealers and auction houses, sanctions do. No U.S. person or entity is allowed to do business with a sanctioned individual or entity.

The art industry has been enjoying a boom. According to the 2019 Art Basel and UBS Global Art Market Report, world-wide art sales hit \$64.1 billion in 2019. That report found the United States was the world’s largest art market comprising 44 percent of global sales, or around \$28.3 billion. The art industry is generally divided into sales at public auctions and by private dealers. In 2019, sales at auction houses made up 42 percent of total art sales, while the remaining 58 percent of sales were through private dealers. The four biggest auction houses by sales—Sotheby’s, Christie’s, Phillips, and Bonhams—are selling art for sizeable amounts. In November 2017, Leonardo da Vinci’s *Salvator Mundi* sold at auction at Christie’s in New York for over \$450 million. In May 2019, Christie’s New York sold Jeff Koon’s *Rabbit* for over \$91 million, the highest price ever paid for a piece by a living artist. Even during the COVID-19 pandemic, an online auction at Sotheby’s brought in \$234.9 million in total sales, including \$84.55 million for *Triptych Inspired by the Oresteia of Aeschylus* by Francis Bacon. In turn, the auction houses report large annual sale numbers. Sotheby’s reported \$4.8 billion in sales for 2019, while Christie’s reported \$2.8 billion in sales for just the first six months of 2019.

Investors have taken notice. Deloitte’s 2019 Art and Finance Report noted that “artnet’s Index for Top 100 Artists produced an 8 percent Compound Annual Growth Rate between 2000 and 2018, compared with 3 percent for the S&P 500.” For example, Banksy’s *Devolved Parliament* sold at Sotheby’s in London on October

3, 2019 for around \$12.2 million; the artist's previous record for a painting sold at auction was \$1.87 million for *Keep It Spotless* in 2008.

Secrecy is pervasive in the art industry. While the art market is not regulated by the BSA, it is governed by unwritten rules. A large number of art sales happen through intermediaries referred to as “art advisors” who can represent both purchasers and sellers. In a typical transaction, a purchaser may not ask who owns the piece of art they are purchasing; the seller may not ask for whom it is being purchased or the origin of the money. And in general an art advisor would be reluctant to reveal the identity of their client for fear of being cut out of the deal and losing the business.

Auction houses have voluntary AML policies. Because the art industry is not subject to BSA requirements, when a piece of art is sold, there is no legal requirement for the selling party to confirm the identity of the buyer or that the buyer is not laundering money through the purchase. While the four biggest auction houses have voluntary anti-money laundering (“AML”) programs, the employees who facilitated art purchases in the Subcommittee's case study said they never asked the art advisor the identity of his client. Instead, the auction houses considered the art advisor the principal purchaser and performed any due diligence on the art advisor, even when it was well-known that the ultimate owner was someone else. With regard to the funds used to purchase art, the auction houses told the Subcommittee they rely on financial institutions to ensure the integrity of the funds, even though the auction houses interact directly with the buyer. But these voluntary AML policies are just for sales through the auction houses. As stated above, the majority of art sales are private transactions. A private dealer interviewed by the Subcommittee stated she had no written AML policies, tries to work with people she knows and trusts, looks for red flags, and relies on her gut. She also explained that her practices have significantly changed over the years and that she also relies on advice from AML lawyers.

Secrecy, anonymity, and a lack of regulation create an environment ripe for laundering money and evading sanctions.

Tracing the ownership of anonymous shell companies, including those involved in high-value art transactions, is difficult. That difficulty continues even though corporate secrecy suffered a blow in the spring of 2016 when the International Consortium of Investigative Journalists (“ICIJ”) shocked the world by releasing information on 214,488 offshore entities from the Panamanian law firm Mossack Fonseca (the “Panama Papers”). One email chain included among the Panama Papers and made public described links between nine offshore companies to the Rotenbergs. The email chain listed Boris Rotenberg as the ultimate beneficial owner (“UBO”) of Highland Ventures Group Limited (“Highland Ventures”) and Arkady Rotenberg's son Igor as the UBO of Highland Business

Group Limited (“Highland Business”). The email copied London-based attorney Mark Omelnitski, who used his firm the Markom Group to establish and maintain shell companies for the Rotenberg family.

The true ownership of the listed shell companies was not, however, as straightforward as the Panama Papers email chain suggested. For example, based on financial information reviewed by the Subcommittee during its investigation, Arkady Rotenberg appeared to be the UBO of Highland Ventures, not his brother Boris. That information included non-public wire transfers showing multi-million dollar transfers from a company owned by Arkady Rotenberg to Highland Ventures. In 2012 and 2013, that company—Milasi Engineering—transferred over \$124 million marked as annual dividends to Highland Ventures. The December 31, 2014 Financial Report for Milasi Engineering listed Arkady Rotenberg as its UBO, making it clear that Highland Ventures received its funding from a company owned by an individual the U.S. would later sanction. Milasi Engineering also held shares in Stroygazmontazh, a gas pipeline company sanctioned in April 2014 by the United States due to its ownership by Arkady Rotenberg.

Arkady Rotenberg transferred his business interests to his son, Igor. In July 2014, four months after the United States sanctioned Arkady, Mr. Omelnitski’s firm, the Markom Group, executed paperwork that appeared to transfer Arkady’s interest in Milasi Engineering to his son, Igor, who was not sanctioned at the time. Milasi Engineering was owned by two other holding companies. The Markom Group transferred the ownership of those two companies to Highland Ventures, which it asserted had always been owned by Igor. Therefore, from July 2014 to April 2018, when Igor was finally sanctioned by the United States, Milasi Engineering was owned on paper by an unsanctioned individual. A report by a bank investigator produced to the Subcommittee determined the transfer of Milasi Engineering from Arkady to Igor was done solely to evade sanctions, and the Markom Group “intentionally structured [the ownership of these shell companies] to be opaque in order to hide the identities of true beneficiaries.” In response, the bank closed all accounts associated with the Markom Group. This included closing accounts held by art advisor Gregory Baltser.

Art advisor Gregory Baltser facilitated purchases for the Rotenbergs. Intermediaries played a central role in the Rotenbergs’ art purchases in the United States. As previously explained, Mr. Omelnitski and his company, the Markom Group, established and maintained shell companies for the Rotenbergs to mask their identities. The Rotenbergs also employed art advisor Gregory Baltser, who facilitated the purchase and sale of high-value art both before and after sanctions without disclosing the names of his clients.

Mr. Baltser is a U.S. citizen, who must comply with U.S. sanctions laws, but his business is based in Moscow. Prior to sanctions, funds Mr. Baltser used to

purchase art linked to the Rotenbergs followed a unique and recognizable financial path: Mr. Baltser bid on specific artworks at auction, purchased the art, and then assigned the title to the art to a Belize company named Steamort Limited (“Steamort”). Steamort paid for the art using funds the Subcommittee traced back to Highland Business.

Mr. Baltser, however, was not the owner of Steamort; he had a contract with Steamort to serve as a consultant to purchase art on behalf of the company. A copy of that contract was produced to the Subcommittee by Christie’s. Both the contract and financial records showed that Steamort paid Mr. Baltser \$9,500 a month for his services. In total, between March 2010 and October 2018, financial records show Mr. Baltser received \$1,116,000 in fees for his consulting services under the Steamort Agreement.

Company documents obtained by the Subcommittee listed Steamort’s only director and shareholder as Jason Hughes. According to a report by ICIJ, Mr. Hughes was associated with over 200 other companies as a nominee director—an individual who masks the true UBO of a shell company.

The owner of Steamort remains unknown. In 2012, Christie’s questioned Mr. Baltser about who owned Steamort, and asserted that Mr. Baltser could no longer bid at auctions until he provided Steamort’s UBO. Initially, Mr. Baltser responded that he did not know who owned Steamort. When pressed and threatened with missing the opportunity to bid at an upcoming auction, Mr. Baltser verbally told Christie’s that Steamort was owned by “Luisa Brown.” Christie’s accepted this verbal assertion, conducted AML checks on Ms. Brown, found no derogatory information, and cleared Mr. Baltser to continue bidding at auctions. Mr. Baltser never provided any documentary evidence of Steamort’s ownership by Ms. Brown. The Subcommittee was unable to confirm if an individual named Luisa Brown was the UBO for Steamort, or if she even existed at all.

Mr. Baltser opened an auction agency and club in Moscow. In late 2012, Mr. Baltser announced he was planning to open BALTZER Auction Agency and Club. The agency would be located in Moscow and its members would be “the leading Moscow and Russian collectors – the active participants of auction biddings at many world marketplaces.” Mr. Baltser proposed to partner with both Christie’s and Sotheby’s. As part of the proposed agreement, Mr. Baltser stated that he would



BALTZER Auction Agency and Club (Photo Credit: BALTZER)

bid at auctions on behalf of his clients under an account in the name of BALTZER. This allowed Mr. Baltser to guarantee on his website that “we can give you complete anonymity.” Under the proposed agreement, Mr. Baltser pledged to conduct all AML and sanctions checks on his clients and provide an annual certification to the auction houses that no member of BALTZER was engaged in money laundering. Mr. Omelnitski served as BALTZER’s chief AML officer and represented Mr. Baltser in contract negotiations with the two auction houses. To be clear, Mr. Baltser put the same attorney who established and maintained shell companies to mask the Rotenbergs’ ownership in charge of his new venture’s AML compliance.

Christie’s partnered with BALTZER. Christie’s accepted Mr. Baltser’s proposal and signed the agreement with BALTZER on February 4, 2014. At the end of 2014, Mr. Omelnitski certified to Christie’s that “despite BALTZER having a significant number of Russian clients there were no transactions, which fall under recent sanctions against Russia.” Mr. Omelnitski failed to provide another such certification for the next three years, despite repeated requests from Christie’s to provide the annual certificate promised in the agreement. In 2018, Christie’s renegotiated its agreement with BALTZER to require client due diligence documents after each purchase.

A Sotheby’s employee identified Arkady and Boris Rotenberg as Mr. Baltser’s clients. Sotheby’s also considered Mr. Baltser’s business proposal, but ultimately declined. During negotiations, a Sotheby’s employee represented to Sotheby’s management that Mr. Baltser had told her that his clients included Russian oligarchs. In fact, she told Sotheby’s management that Mr. Baltser had identified Arkady and Boris Rotenberg as two of his clients (five months prior to U.S. sanctions). During her Subcommittee interview, however, the same Sotheby’s employee said Mr. Baltser had never told her that Arkady and Boris Rotenberg were his clients. Instead, she asserted she fabricated this information in an effort to convince Sotheby’s to accept BALTZER’s proposal. Despite declining the proposal, Sotheby’s continued to conduct business as usual with Mr. Baltser and his new company, BALTZER, and never questioned whether Arkady and Boris Rotenberg were his clients. The Subcommittee independently traced post-sanction purchases by BALTZER to shell companies linked to the Rotenbergs, suggesting the Sotheby’s employee was not truthful in her Subcommittee interview.

Mr. Baltser continued to purchase art with funds linked to the Rotenbergs even after March 2014 sanctions. Following the imposition of sanctions by the United States on Arkady and Boris Rotenberg in March 2014, the funds Mr. Baltser used to purchase works of art at auction houses continued to follow the same general financial path as before sanctions. By this time, BALTZER provided another layer of anonymity for the funds used to purchase art. After Mr. Baltser successfully bid at auction, funds were wired from Highland Ventures to Steamort,

just as they had arrived from Highland Business before sanctions. Steamort then wired funds to BALTZER, which paid the auction house and took title of the purchase. All four auction houses considered Mr. Baltser the principal purchaser, rather than an agent for a buyer, and never asked for whom he was purchasing the art. Any client due diligence was performed only on Mr. Baltser and not his undisclosed clients, satisfying the voluntary AML policies at the auction houses.

Highland Ventures purchased a painting through a private art dealer. The funds used to purchase René Magritte's *La Poitrine* for \$7.5 million in May 2014 through a private art dealer followed a different path. In this transaction, Highland Ventures took title to the painting and was listed on the invoice as the buyer. Anna Wilkes, an employee of Mr. Omelnitski's Markom Group, signed on behalf of Highland Ventures as its Director. The funds used to pay for the painting were wired to the private dealer from a company named Advantage Alliance. The Subcommittee traced those funds to a company called Senton Holdings. An investigation by a financial institution—produced to the Subcommittee—determined Senton Holdings was owned by Arkady Rotenberg, linking him through the chain of wire transfers to the purchase of the painting.

Art was shipped to Germany for storage. *La Poitrine*, like much of the art traced to companies linked to the Rotenbergs, was shipped to a storage facility in Germany called Hasenkamp. The Subcommittee contacted Hasenkamp and was told the art was originally stored there under the name Highland Business; no individual was named. Later, a company named Taide Connoisseur Selection took over the contract to store the art at Hasenkamp. The only individual named on Taide Connoisseur Selection's website was Mr. Omelnitski.

In August 2019, during the course of the Subcommittee's investigation, the Taide Connoisseur Selection account at Hasenkamp was closed and all art stored under the account was shipped to Moscow.

Art purchases linked to the Rotenberg shell companies totaled millions of dollars. In total, the Subcommittee traced funds for over \$18 million in art purchased in the United States from March 2014 to November 2014, both at auction houses and through private sales back to shell companies that appeared to be funded or owned by the Rotenbergs.

Sotheby's agreed to sell Brucke II for Mr. Baltser during the Subcommittee's investigation. Mr. Baltser also sold paintings owned by his clients. In late 2018, he attempted to sell Lyonel Feininger's *Brucke II*. *Brucke II* was originally purchased through Mr. Baltser on February 4, 2014 at an auction at Christie's in London. The painting later appeared on a list of 31 paintings sent to Christie's by a BALTZER employee, who stated that the list represented the collection of one of Mr. Baltser's clients. The Subcommittee traced 16 paintings on the list purchased in the United

States back to suspected Rotenberg shell companies. This suggests that all 31 paintings were owned by the Rotenbergs.

When Mr. Baltser attempted to sell *Brucke II* in late 2018, both Christie's and Sotheby's expressed interest in having the painting at their auctions. Ultimately, Mr. Baltser's client chose Sotheby's to sell *Brucke II* at auction in February 2019. At the time, the Subcommittee was actively investigating the auction house and Mr. Baltser. Sotheby's requested Mr. Baltser provide the name of the UBO of the painting, including whether that individual was currently sanctioned. Mr.



Lyonel Feininger's Brucke II (Photo Credit: Christie's)

Mr. Baltser said *Brucke II* had been resold since it was purchased at Christie's in February 2014 and now belonged to a company incorporated in the Marshall Islands and provided a Russian passport for the company's UBO. The Subcommittee asked Sotheby's to request the name of the February 2014 purchaser of the painting; Mr. Baltser declined to disclose the name of that purchaser due to a non-disclosure agreement. Sotheby's ultimately pulled the painting from the 2019 auction due to a lack of interest.

The Subcommittee asked to interview Mr. Baltser, but through his attorney, he declined the request and stated he was in Moscow and had no plans to return to the United States. Through his attorney, Mr. Baltser stated that: he has never represented or transacted with Arkady or Boris Rotenberg; Highland Business and Highland Ventures were not listed as sanctioned by the Treasury Department; and he did not have access to the Panama Papers.

A delay between the 2014 announcement and imposition of sanctions created a window to send U.S. dollars to Russia. On March 16, 2014, President Obama signed an executive order authorizing the Treasury Department to impose sanctions on individuals for Russia's annexation of Crimea. But the Treasury Department did not name the specific individuals sanctioned under the executive order until March 20, 2014. During this four-day window, Rotenberg-linked shell companies transferred over \$120 million through the United States to Russia. On March 18, 2014, Highland Ventures transferred over \$39.5 million from its account at The Pictet Group in Switzerland through the U.S. financial system to its account at Gazprombank in Moscow. That same day, Culloden Properties transferred over \$82

million from its Pictet Group account in Switzerland through the U.S. financial system to its account in Moscow at the Gazprombank. Both the Panama Papers and documents produced to a financial institution by the Markom Group—and subsequently provided to the Subcommittee—identify Boris Rotenberg as the owner of Culloden Properties.

Rotenberg-linked shell companies transacted in U.S. dollars post-sanctions. Shell companies linked to the Rotenbergs continued conducting transactions through the U.S. financial system even after the imposition of sanctions in March 2014. For example, including its art purchases, Highland Ventures was involved in transactions worth over \$16 million. Advantage Alliance was involved in transactions worth over \$29 million. And while the UBO of Steamort remains hidden, the company served as an intermediary between Rotenberg-linked shell companies and BALTZER in the purchase of art. Following the imposition of sanctions in March 2014, Steamort was a part of transactions totaling over \$22 million. In total, the Subcommittee identified over \$91 million in transactions by Rotenberg-linked shell companies after sanctions were imposed on the Rotenbergs in March 2014.

The Subcommittee's Investigation

The Subcommittee initiated its investigation after reviewing a number of suspicious transactions that appeared to involve art purchased through auction houses and private dealers. Funds used in these transactions originated at entities linked to the Rotenberg family through the Panama Papers and other public information. As part of its investigation, the Subcommittee reviewed over one million documents from the four major auction houses, a private art dealer, an independent public gallery, and seven financial institutions. The Subcommittee interviewed current and former employees of Sotheby's, Christie's, Phillips, and Bonhams. The Subcommittee also interviewed a private dealer based in New York and two art advisors located overseas who were all involved in the same multi-million dollar transaction. All entities cooperated with the Subcommittee's requests, except for Mr. Baltser. Through his attorney, Mr. Baltser declined to be interviewed by the Subcommittee and stated he was in Moscow with no plans to return to the United States.

FINDINGS OF FACT AND RECOMMENDATIONS

Findings of Fact

- (1) **The art market is the largest legal, unregulated market in the United States.** The art industry is not subject to the BSA and is not required under U.S. law to maintain AML and anti-terrorism financing controls for transactions. However, all U.S. persons and entities are prohibited from transacting with sanctioned individuals or entities as determined by the U.S. Treasury Department Office of Foreign Asset Control (“OFAC”).
- (2) **Sotheby’s, Christie’s, Phillips, and Bonhams all have voluntary AML controls in place.** Despite no legal requirement to do so, the four auction houses reviewed by the Subcommittee had established voluntary AML policies.
- (3) **Private art dealers are not subject to AML requirements.** One private dealer told the Subcommittee she had no written AML or sanctions policies and instead relied on her gut and worked with people she knew. She also explained that questioning the identity of the buyer and the source of funds in an art transaction was not done in the art industry, nor would the dealer for the purchaser want to provide that information. During an interview with the Subcommittee, she explained that her practices have changed over the years and that she relies on the advice of lawyers with expertise in AML and related areas and looks for potential red flags in transactions.
- (4) **The auction houses treated an art agent or dealer as the principal purchaser of art, even if they had reason to believe they were working with an undisclosed client.** This practice enables the auction house to perform due diligence on the art agent or dealer instead of identifying and evaluating the undisclosed client, creating a significant AML vulnerability.
- (5) **The United States sanctioned members of the Rotenberg family in March 2014.** On March 16, 2014, President Obama signed Executive Order 13661 imposing sanctions on Russia due to its annexation of Crimea. Arkady and Boris Rotenberg were among the Russian citizens specifically sanctioned on March 20, 2014 due to their close ties to Russian President Vladimir Putin, which included awards of large government contracts to companies they owned. The U.S. Treasury Department later sanctioned specific Rotenberg-owned companies (on April 28, 2014), Boris Rotenberg’s son Roman (on June 30, 2016), and Arkady Rotenberg’s son Igor (on April 6, 2018). Both Roman and Igor Rotenberg were sanctioned due to their financial ties to their sanctioned fathers.

- (6) Information released in 2016 from the law firm of Mossack Fonseca—known as the “Panama Papers”—linked the Rotenbergs to certain shell companies involved in high-value art purchases reviewed by the Subcommittee.** The Panama Papers included an email chain made public that listed nine shell companies in the British Virgin Islands (“BVI”) linked to Arkady, Boris, and Igor Rotenberg. That email copied attorney Mark Omelnitski and identified Igor Rotenberg as the UBO for Highland Business Group Limited (“Highland Business”) and Boris Rotenberg as the UBO for Highland Ventures Group Limited (“Highland Ventures”).
- (7) Mark Omelnitski is a London-based attorney linked to the Rotenbergs and art advisor Gregory Baltser.** Mr. Omelnitski—through his company the Markom Group—assisted the Rotenbergs in establishing and maintaining shell companies. He also assisted art advisor Gregory Baltser in establishing his art agency BALTZER in Moscow. In discussions Mr. Baltser had with Sotheby’s and Christie’s about partnering with BALTZER, Mr. Omelnitski served as Mr. Baltser’s attorney and also represented that he administered Mr. Baltser’s AML and sanctions policies as his Money Laundering Reporting Officer.
- (8) Both Highland Business and Highland Ventures received funding from companies linked to Arkady Rotenberg.** Highland Business received funding from Advantage Alliance Ltd (“Advantage Alliance”), which an internal bank investigation linked to Arkady Rotenberg. Highland Ventures received over \$124 million in funding from Milasi Engineering Limited. The 2014 Milasi Engineering Financial Statement listed Arkady Rotenberg as the ultimate beneficial owner of the company.
- (9) Gregory Baltser is a Moscow-based art advisor who facilitated art purchases linked to the Rotenbergs.** Mr. Baltser purchased art in the United States with funds that the Subcommittee traced back to Highland Business and Highland Ventures. Prior to the implementation of sanctions on Arkady and Boris Rotenberg in March 2014, the funds Mr. Baltser used to purchase certain art followed a pattern: Highland Business wired the funds to purchase the art to Steamort Ltd (“Steamort”). Steamort then wired the funds from its bank account in Estonia to the auction house and took title to the art.
- (10) Steamort’s UBO remains unknown.** In 2012, Christie’s questioned Mr. Baltser about the ownership of Steamort, a company formed in Belize. Mr. Baltser told Christie’s that he did not know and could not provide the name of the owner. After Christie’s threatened Mr. Baltser would be unable to bid at an auction unless he identified the owner of Steamort, Mr. Baltser told Christie’s the UBO for Steamort was “Luisa Brown.” Christie’s accepted this verbal assertion and cleared Mr. Baltser to bid in the auction. Mr. Baltser never

provided any documentation that Luisa Brown was the owner of Steamort. The Subcommittee was unable to determine Steamort's UBO or if Ms. Brown existed.

- (11) Mr. Baltser established a private art agency and club called BALTZER in Moscow in 2013.** Mr. Baltser used BALTZER to take title and purchase art for his clients. This change altered the payment pattern outlined above to include BALTZER as the entity paying the auction houses for art Mr. Baltser purchased. In addition, following the imposition of sanctions on the Rotenbergs by the United States in March 2014, the Subcommittee traced funds to purchase art to Highland Ventures. Highland Ventures would wire the funds to Steamort; Steamort would wire the funds to BALTZER; and BALTZER would wire funds to the auction house and take title for the art.
- (12) Christie's partnered with BALTZER, including allowing Mr. Omelnitski to conduct AML and sanctions checks on BALTZER clients.** In the February 2014 agreement, Christie's agreed to rely on BALTZER to conduct due diligence on clients and provide an annual AML compliance certification. Mr. Omelnitski provided the first AML compliance report in December 2014 and confirmed that no BALTZER clients were sanctioned. Mr. Omelnitski did not provide another report until October 2017 when he emailed the amounts associated with BALTZER art purchases; he provided no certification regarding AML or sanctions compliance. Christie's renegotiated the agreement in March 2018 and required BALTZER to produce customer due diligence to the auction house within 10 days of every purchase.
- (13) Sotheby's declined the BALTZER proposal, but continued business as usual.** While considering Mr. Baltser's proposal, the Sotheby's Baltser Account Representative told Sotheby's management that Mr. Baltser's clients included Russian oligarchs, specifically Arkady and Boris Rotenberg before they were sanctioned by the United States. During her Subcommittee interview, the Baltser Account Representative stated that Mr. Baltser never told her that Arkady and Boris Rotenberg were his clients. Instead, she fabricated this information to convince Sotheby's to agree to the proposal with BALTZER.
- (14) Despite having voluntary AML and sanctions policies, auction houses failed to ask basic questions of Mr. Baltser, including for whom he purchased art.** This allowed Mr. Baltser to continue to purchase art despite the imposition of sanctions by the United States on the Rotenbergs, completely undermining any action taken by the auction houses to block transactions by sanctioned individuals.

- (15) **Mr. Baltser purchased over \$18 million in art from May to November 2014 using funds traced to Rotenberg-linked shell companies.** These transactions included a \$7.5 million private sale of René Magritte’s *La Poitrine* in which Highland Ventures took title to the painting, and Advantage Alliance wired the purchasing funds. The Subcommittee traced those funds from Advantage Alliance to Senton Holdings Ltd, which one financial institution determined was owned by Arkady Rotenberg. An employee of Mr. Omelnitski’s signed the contract for sale on behalf of Highland Ventures.
- (16) **Mr. Baltser sought to sell art linked to the Rotenbergs.** In August 2015, an employee of BALTZER sent Christie’s a list of 31 artworks, including 16 works the Subcommittee linked to Rotenberg-related shell companies. The BALTZER employee indicated the 31 pieces belonged to the same collection and sought “any opportunities to promote these works or to make this collection more valuable.” That list included René Magritte’s *La Poitrine* and Lyonel Feininger’s *Brucke II*.
- (17) **In February 2019, Sotheby’s and Christie’s competed to sell Lyonel Feininger’s *Brucke II*; Sotheby’s was selected to sell the painting.** Both Sotheby’s and Christie’s provided enhanced deal terms to sell the painting at auction. Sotheby’s planned to auction the painting at its February 26, 2019 Modern Art Evening Sale in London. The painting was estimated to sell for between £4 million and £6 million. Prior to the auction, however, Sotheby’s stated it pulled the painting due to a lack of interest.
- (18) **When questioned by Sotheby’s, Mr. Baltser declined to provide the February 2014 purchaser of *Brucke II*.** *Brucke II* was purchased by Mr. Baltser on behalf of an undisclosed client at a Christie’s auction in February 2014. In April 2019, Sotheby’s asked Mr. Baltser to reveal the name of the February 2014 buyer. Mr. Baltser did not reveal the name, but asserted the February 2014 buyer no longer owned *Brucke II*. Instead, he stated the painting now belonged to a Marshall Islands company and provided a Russian passport for the UBO of the company.
- (19) **During the course of the Subcommittee’s investigation, Sotheby’s, Christie’s, and Phillips stopped transacting with Mr. Baltser and BALTZER.**
- (20) **Rotenberg-linked companies continued to move at least \$91 million through the U.S. financial system following the imposition of U.S. sanctions in March 2014.** The Subcommittee determined that companies linked to the Rotenbergs continued to have access to the U.S. dollar and the U.S. financial system despite the imposition of sanctions against Arkady and Boris Rotenberg.

RECOMMENDATIONS

- (1) **Congress should amend the Bank Secrecy Act to add businesses handling transactions involving high-value art.** The art industry is currently not subject to AML requirements under the BSA. The European Union recently required businesses handling art transactions valued at €10,000 or more to comply with AML laws, including verification of the identity of the seller, buyer, and UBO of the art.
- (2) **Congress should require the Treasury Department to collect beneficial ownership information for companies formed or registered to do business in the United States.** This information should be available to law enforcement for investigatory purposes. Beneficial owner information maintained by the Treasury Department should include appropriate privacy and security protections.
- (3) **When imposing sanctions on an individual, the Treasury Department should consider routinely imposing sanctions on the individual's immediate family members.** While the U.S. sanctioned Arkady and Boris Rotenberg in March 2014, for example, it did not sanction the brothers' children until later dates. The Treasury Department stated it imposed sanctions on Igor Rotenberg in 2018 because he "acquired significant assets from his father, Arkady Rotenberg, after OFAC designated [Arkady] in March 2014." This allowed Arkady and Boris Rotenberg to evade U.S. sanctions by transferring their interests in companies to their children while maintaining operational control.
- (4) **The Treasury Department should implement and announce sanctions concurrently.** While President Obama announced sanctions for Russia's annexation of Crimea on March 16, 2014, the Treasury Department did not officially impose sanctions on specific individuals and entities until March 20, 2014. During this four-day window, millions of dollars were transferred through the United States and back to Russia. The Treasury Department should take necessary actions to both announce and implement sanctions to avoid creating a window of opportunity for individuals to evade sanctions.
- (5) **The Treasury Department should lower or remove the ownership threshold for blocking companies owned by sanctioned individuals.** According to guidance by the Treasury Department, a company is blocked if it is majority owned by a sanctioned individual. If the sanctioned individual has a minority ownership in a company, that company is not blocked, even if the sanctioned individual owns 49 percent of the company.

- (6) **The Treasury Department should maximize its use of suspicious activity reports (“SARs”) filed by financial institutions.** Under the BSA, financial institutions are required to file SARs with the Treasury Department’s Financial Crimes Enforcement Network. These reports document financial transactions that appear to involve money laundering or terrorist financing, among other illicit activities. The Treasury Department should more effectively mine SARs for information related to Specially Designated Nationals and add these entities to the Specially Designated Nationals and Blocked Persons List or alert other financial institutions of the risks of transacting with the entities. This would increase the effectiveness of imposing sanctions.
- (7) **OFAC should issue comprehensive guidance on the steps auction houses and art dealers should take to ensure they are not doing business with sanctioned individuals or entities.** That guidance should clarify what steps auction houses and art dealers should take to determine whether a person is the principal seller or purchaser of art or is acting on behalf of an undisclosed client, and which person should be subject to a due diligence review.
- (8) **OFAC should issue guidance interpreting the informational exception to the International Emergency Economic Powers Act related to “artworks.”** That guidance should interpret the artworks exception narrowly to encompass matters with informational content, while excluding typical works of art such as paintings, etchings, and sculpture.

II. BACKGROUND

A. U.S. Sanctions Enforcement

Sanctions are a critical tool for combatting national security threats and advancing foreign policy objectives.¹ Sanctions as a U.S. foreign policy tool have grown in recent years, with presidents using sanctions to target terrorist organizations, punish foreign governments, and encourage adversaries to enter negotiations with the United States without resorting to military action.² In fact, during his first year in office, President Trump designated approximately 1,000 individuals and entities.³ This is triple the number listed by President Obama during his first year, and 30 percent more than his last year in office.⁴

1. The U.S. Treasury Department

In 1789, Congress established the Treasury Department (“Treasury” or the “Department”) to promote economic prosperity and ensure financial security.⁵ Treasury’s mission is to “maintain a strong economy and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combatting threats and protecting the integrity of the financial system, and manage the U.S. Government’s finances and resources effectively.”⁶ This multi-faceted mandate reflects its central role in the U.S. economic and financial system.⁷

A key part of the Department’s mission involves the implementation of economic sanctions against foreign actors and entities.⁸ Established in 2004, the Department’s Office of Terrorism and Financial Intelligence (“TFFI”) is responsible

¹ Jack Lew, Secretary, U.S. Dep’t of Treasury, Remarks on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace (Mar. 30, 2016), <https://www.treasury.gov/press-center/press-releases/pages/jl0398.aspx>.

² Kathy Gilsinan, *A Boom Time for U.S. Sanctions*, ATLANTIC (May 3, 2019), <https://www.theatlantic.com/politics/archive/2019/05/why-united-states-uses-sanctions-so-much/588625/>.

³ Carol Morello, *Trump administration’s use of sanctions draws concern*, WASH. POST (Aug. 5, 2018), https://www.washingtonpost.com/world/national-security/trump-administrations-use-of-sanctions-draws-concern/2018/08/05/36ec7dde-9402-11e8-a679-b09212fb69c2_story.html.

⁴ *Id.*

⁵ U.S. DEP’T OF TREASURY, *Act of Congress Establishing the Treasury Department*, <https://www.treasury.gov/about/history/Pages/act-congress.aspx>; U.S. DEP’T OF TREASURY, *Role of the Treasury*, <https://home.treasury.gov/about/general-information/role-of-the-treasury>.

⁶ U.S. DEP’T OF TREASURY, *Role of the Treasury*, <https://home.treasury.gov/about/general-information/role-of-the-treasury>.

⁷ *Id.*

⁸ *Id.*

for enforcing economic sanctions as well as developing policy, strategies, and guidance to combat terrorist funding.⁹

The Office of Foreign Assets Control (“OFAC”), a division of TFI, reports directly to the Undersecretary for Terrorism and Financial Crimes.¹⁰ OFAC’s sanction authority stems from “[p]residential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.”¹¹ Specific sanctions authorities include the Trading with the Enemy Act (“TWEA”), the International Emergency Economic Powers Act (“IEEPA”), and the Global Magnitsky Human Rights Accountability Act (“Magnitsky Act”) as described below. OFAC is the office specifically tasked with the administration and enforcement of economic and trade sanctions developed by the President.¹²

The sanction authority tied to presidential emergency power dates back to the TWEA, which prohibits transactions with enemy persons and powers.¹³ During the Cold War, TWEA was used “to block international financial transactions, seize U.S.-based assets held by foreign nationals, restrict exports, modify regulations to deter the hoarding of gold, limit foreign direct investment in U.S. companies, and impose tariffs on all imports into the United States.”¹⁴

Since its enactment in 1977, IEEPA has also served as an important sanction authority that the president may exercise “to deal with an unusual and extraordinary threat with respect to . . . a national emergency” that “has its source in whole or substantial part outside the United States.”¹⁵ IEEPA has been amended several times since its enactment, but the change most relevant to the art market is the “Berman Amendment” passed in 1988.¹⁶ This amendment exempted

⁹ 31 U.S.C. § 312.

¹⁰ *Id.*; U.S. DEPT OF TREASURY, *About: Terrorism and Financial Intelligence*, <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Terrorism-and-Financial-Intelligence.aspx>.

¹¹ *Id.*

¹² U.S. DEPT OF TREASURY, *Terrorism and Financial Intelligence: Office of Foreign Assets Control (OFAC)*, <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

¹³ Trading with the Enemy Act of 1917, Pub. L. No. 65-61, 40 Stat. 411, codified as amended at 50 U.S.C. § 4303 (2018).

¹⁴ CHRISTOPHER A. CASEY ET AL., CONG. RESEARCH SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE SUMMARY (2019), <https://www.crs.gov/reports/pdf/R45618>.

¹⁵ International Emergency Economic Powers Act of 1977, Pub. L. No. 95-459, 91 Stat. 1626, codified as amended at 50 U.S.C. § 1701 (2018).

¹⁶ Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107, codified at 50 U.S.C. § 1702 (2001); See Bruce Craig, *Sleeping with the Enemy? OFAC Rules and First Amendment Freedoms*, PERSPECTIVES ON HISTORY (May 1, 2004), <https://www.historians.org/publications-and-directories/perspectives-on-history/may-2004/sleeping-with-the-enemy-ofac-rules-and-first-amendment-freedoms>.

information and informational materials from presidential sanction authority under IEEPA and TWEA.¹⁷ The Berman amendment specifically exempted the authority to regulate or prohibit “publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and new wire feeds.”¹⁸

Additional sanctions authority available to the President is found in the Magnitsky Act.¹⁹ Passed in 2016, the law authorizes the President to impose sanctions on any foreign person “who is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights” committed against individuals seeking to expose corruption or promote human rights.²⁰ President Trump has used this authority to designate individuals for offenses including wrongful detention, the denial of medical treatment for detainees, and the expropriation of businesses for personal gain.²¹

OFAC implements its sanction authorities in ways “expected to generate the most impact in achieving [U.S.] national security and foreign policy goals.”²² In a 2017 hearing before the House Subcommittee on Monetary Policy, then-OFAC Director John Smith explained that “[w]hen deployed strategically and with precision, sanctions are a highly effective way of pressuring regimes and malign actors to change their behavior.”²³ Director Smith further asserted:

[B]y freezing the assets of illicit actors, cutting them off from the U.S. financial system, and restricting their ability to interface with the international financial system, the choice to them becomes clear: either modify your behavior or accept the isolation and negative economic effects of remaining on our financial blacklist.²⁴

In addition to sanctions, OFAC also designates individuals or entities as Specially Designated Nationals (“SDN”).²⁵ The SDN list contains the names of “individuals and companies owned or controlled by, or acting on behalf of, targeted

¹⁷ Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107, codified at 50 U.S.C. § 1702 (2001).

¹⁸ *Id.*

¹⁹ National Defense Authorization Act of 2017, Pub. L. No. 114-328, 130 Stat. 2000, codified at 22 U.S.C. § 2656.

²⁰ *Id.*

²¹ DIANNE E. RENNACK, CONG. RESEARCH SERV., IF10576, THE GLOBAL MAGNITSKY HUMAN RIGHTS ACCOUNTABILITY ACT (2018), <https://www.crs.gov/reports/pdf/IF10576>.

²² Press Release, U.S. Dep’t of Treasury, Testimony of John E. Smith, Director of the Office of Foreign Assets Control, (Nov. 30, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0226.aspx>.

²³ *Id.*

²⁴ *Id.*

²⁵ James Kostiw, *OFAC Launches New SDN Search Tool*, U.S. DEP’T OF TREASURY, (Mar. 13, 2013), <https://www.treasury.gov/connect/blog/Pages/OFAC-Launches-New-SDN-Search-Tool.aspx>.

countries.”²⁶ The list is not limited to state actors and contains non-country specific individuals, groups, and entities.²⁷ Currently, the list contains approximately 6,400 companies and individuals.²⁸

Persons can be added to the SDN list in several ways. In some cases, the President issues an executive order directing the Secretary of the Treasury, in consultation with the Secretary of State, to identify individuals or entities that should be added to the list.²⁹ In other cases, the President directly identifies individuals or entities to designate as SDNs.³⁰ Once on the list, U.S. persons and businesses are prohibited from obtaining goods, services, or technology from SDNs, or otherwise transacting with them.³¹ This prohibition extends to business conducted through third-party intermediaries.³² Indeed, “[i]nclusion on the SDN List generally prohibits U.S. banks from maintaining accounts for those listed and U.S persons could face civil or criminal penalties for engaging in business dealing with them.”³³

Under Treasury Department guidance, a sanctioned individual may own a minority interest in a company and still access the U.S. financial system. OFAC’s “50 percent rule,” states that “any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person.”³⁴ This is significant because an entity meeting this standard incurs SDN restrictions even if the entity itself is not named on the SDN list.³⁵

²⁶ U.S. DEPT OF TREASURY, *Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists*, (Jan. 21, 2020), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

²⁷ *Id.*

²⁸ U.S. DEPT OF TREASURY, *Basic Information on OFAC and Sanctions*, https://www.treasury.gov/resource-center/faqs/Sanctions/Documents/faq_all.html.

²⁹ Exec. Order No. 13,685, 79 Fed. Reg. 77,357 (Dec. 19, 2014); *See also* Exec. Order No. 13,662 31 C.F.R. § 589 (2014).

³⁰ Exec. Order No. 13,661 31 C.F.R. § 589 (2014).

³¹ U.S. person means “any United States citizen or alien admitted for permanent residence in the United States, and any corporation, partnership, or other organization organized under the law of the United States.” 22 U.S.C. § 6010; U.S. DEPT OF TREASURY, REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED (2014), https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

³² U.S. DEPT OF TREASURY, REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED (2014), https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

³³ James Kostiw, *OFAC Launches New SDN Search Tool*, U.S. DEPT OF TREASURY, (Mar. 13, 2013), <https://www.treasury.gov/connect/blog/Pages/OFAC-Launches-New-SDN-Search-Tool.aspx>.

³⁴ U.S. DEPT OF TREASURY, REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED (2014), https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

³⁵ *Id.*

2. Sanctions Following the Russian Federation's Invasion of Crimea

In 2014, President Obama issued a series of Executive Orders (“EO”) that authorized Treasury to sanction individuals, assets, and companies in the Russian Federation (“Russia”) following Russia’s annexation of Crimea. On March 6, 2014, President Obama issued EO 13660 instructing Treasury to sanction any individual who “[undermined] democratic processes and institutions in Ukraine.”³⁶ On March 16, 2014, President Obama authorized additional sanctions on “persons contributing to the situation in Ukraine” through EO 13661.³⁷ Under the authority of EO 13661, on March 20, 2014, Treasury designated 16 Russian government officials and four members of President Putin’s inner circle, which included Arkady and Boris Rotenberg.³⁸ The European Union imposed similar restrictions in response to what it perceived as Russia’s “deliberate destabilization of Ukraine.”³⁹

a. The Russian Invasion of Crimea

In early 2014, Russia invaded Crimea following a period of political turmoil in Ukraine.⁴⁰ This turmoil stemmed from Ukrainian President Viktor Yanukovich’s November 2013 refusal to sign a “political association and free trade agreement with the European Union.”⁴¹ By February 22, 2014, the Ukrainian parliament voted unanimously to remove President Yanukovich.⁴²

After his removal, Yanukovich fled to Russia.⁴³ Shortly thereafter, Moscow deployed forces to Crimea and declared the region as part of the Russian Federation.⁴⁴ This invasion was significant not only because of Crimea’s

³⁶ Exec. Order No. 13,660 31 C.F.R. § 589 (2014).

³⁷ Exec. Order No. 13,661 31 C.F.R. § 589 (2014).

³⁸ Press Release, U.S. Dep’t of Treasury, Treasury Sanctions Russian Officials, Members Of The Russian Leadership’s Inner Circle, And An Entity For Involvement In The Situation In Ukraine, (Mar. 20, 2014), <https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx>.

³⁸ *Id.*

³⁹ *EU restrictive measures in response to the crisis in Ukraine*, COUNCIL OF THE EUROPEAN UNION (Dec. 19, 2019), <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>.

⁴⁰ Steven Lee Myers & Ellen Barry, *Putin Reclaims Crimea for Russia and Bitterly Denounces the West*, N.Y. TIMES (Mar. 18, 2014), <https://www.nytimes.com/2014/03/19/world/europe/ukraine.html>.

⁴¹ Vladimir Isachenkov and Maria Danilova, *Roots and Consequences of Ukraine’s Violence*, ASSOCIATED PRESS (Feb. 20, 2013), https://web.archive.org/web/20140221000303/http://hosted.ap.org/dynamic/stories/E/EU_UKRAINE_NEWS_GUIDE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT.

⁴² William Booth, *Ukraine’s parliament votes to oust president; former prime minister is freed from prison*, WASH. POST (Feb. 22, 2014), https://www.washingtonpost.com/world/europe/ukraines-yanukovich-missing-as-protesters-take-control-of-presidential-residence-in-kiev/2014/02/22/802f7c6c-9bd2-11e3-ad71-e03637a299c0_story.html?utm_term=.af74a8230f13.

⁴³ Andrew E. Kramer, *Ukraine’s Ex-President Is Convicted of Treason*, N.Y. TIMES (Jan. 24, 2019), <https://www.nytimes.com/2019/01/24/world/europe/viktor-yanukovich-russia-ukraine-treason.html>.

⁴⁴ CORY WELT, CONG. RESEARCH SERV., R45008, UKRAINE: BACKGROUND, CONFLICT WITH RUSSIA, AND U.S. POLICY, 9 (2019), <https://www.crs.gov/reports/pdf/R45008>.

strategically important geographic location, but also because it “violated the terms of a diplomatic agreement to respect Ukraine’s borders, and placed Russia on a war footing with one of the few states in the post-Soviet world that has managed to hold free elections.”⁴⁵ The Crimean parliament then voted to secede from Ukraine and join Russia, scheduling a referendum for ten days later.⁴⁶ When the referendum was held, 97 percent voted in favor of secession.⁴⁷ Two days later, Russian President Vladimir Putin signed a treaty of accession with the new leaders of Crimea.⁴⁸ Putin delivered an address in conjunction with the signing, asserting that Crimea was a part of Russia and confirming his disregard for an international border that was recognized for 23 years.⁴⁹ The United States, European Union, and Ukraine refused to recognize the annexation.⁵⁰ While maintaining that the annexation was illegal, the Ukrainian government withdrew military personnel and their families from Crimea.⁵¹

Since that time, Russia “has significantly increased its military presence in Crimea and suppressed local dissent.”⁵² Ukrainian officials now estimate 30,000 Russian troops are stationed in the region.⁵³ During the Russian occupation, the Office of the United Nations High Commissioner for Human Rights “documented ‘multiple and grave’ human rights violations in Crimea and said that minority Crimean Tatars, who are generally opposed to Russia’s occupation, have been ‘particularly targeted.’”⁵⁴

⁴⁵ Catherine Boyle, *Crimea referendum: Why it’s so important*, CNBC (Mar. 14, 2014), <https://www.cnbc.com/2014/03/14/crimea-referendum-why-its-so-important.html>; Charles King, *Crimea, the Tinderbox*, N.Y. TIMES (Mar. 1, 2014), <https://www.nytimes.com/2014/03/03/opinion/crimea-the-tinderbox.html?searchResultPosition=4>.

⁴⁶ Alissa de Carbonnel & Luke Baker, *Crimea votes to join Russia, Obama orders sanctions*, REUTERS (Mar. 5, 2014), <https://www.reuters.com/article/us-ukraine-crisis/crimea-votes-to-join-russia-obama-orders-sanctions-idUSBREA1Q1E820140306>.

⁴⁷ Steven Lee Myers & Ellen Barry, *Putin Reclaims Crimea for Russia and Bitterly Denounces the West*, N.Y. TIMES (Mar. 18, 2014), <https://www.nytimes.com/2014/03/19/world/europe/ukraine.html?module=inline>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ David Herszenhorn & Andrew Kramer, *Ukraine Plans to Withdraw Troops From Russia-Occupied Crimea*, N.Y. TIMES (Mar. 19, 2014), <https://www.nytimes.com/2014/03/20/world/europe/crimea.html>.

⁵² CORY WELT, CONG. RESEARCH SERV., R45008, UKRAINE: BACKGROUND, CONFLICT WITH RUSSIA, AND U.S. POLICY, 9 (2019), <https://www.crs.gov/reports/pdf/R45008>.

⁵³ *Id.*

⁵⁴ *Id.* at 9–10.

b. U.S. and E.U. Sanctions Following the Invasion of Crimea

In response to Russia's invasion of Crimea, both the United States and the European Union imposed sanctions against several key Russian individuals.⁵⁵ Since these Crimea-related sanctions, the United States has imposed additional sanctions on Russia for a range of offenses, including human rights abuses, election interference, cyberattacks, weapons proliferation, trade with North Korea, support for the Syrian government, and use of a chemical weapon.⁵⁶ As of July 2020, the list of individuals and entities sanctioned by the U.S. government related to Russia's annexation of Crimea stood at 701.⁵⁷

On March 6, 2014, the United States imposed sanctions on Russia, when President Obama issued an executive order under IEEPA and announced coordinated sanctions with the United Kingdom in response to Russia's "violation of Ukraine's sovereignty and territorial integrity."⁵⁸ That EO 13660 did not specifically reference Russia by name, but it did target those whose "actions or policies...undermine democratic processes or institutions in Ukraine."⁵⁹ President Obama further noted that the planned referendum would violate the Ukrainian constitution, as well as international law, and noted that the Ukrainian government must be included in any discussion of Crimea's future.⁶⁰

Following Crimea's referendum, the White House issued a statement saying, "the international community will not recognize the results of a poll administered under threats of violence and intimidation from a Russian military intervention that violates international law."⁶¹ President Obama then signed EO 13661 on March 16, 2014, finding that Russia's deployment of military forces to Crimea undermined the "democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the

⁵⁵ Aleksandar Vasovic & Adrian Croft, *U.S., EU set sanctions as Putin recognizes Crimea "sovereignty"*, Reuters (Mar. 16, 2014), <https://www.reuters.com/article/us-ukraine-crisis/u-s-eu-set-sanctions-as-putin-recognizes-crimea-sovereignty-idUSBREA1Q1E820140317>.

⁵⁶ CORY WELT ET. AL, CONG. RESEARCH SERV., R45415, U.S. SANCTIONS ON RUSSIA, 7 (2020), <https://www.crs.gov/reports/pdf/R45415>.

⁵⁷ U.S. DEP'T OF TREASURY, *Sanctions List Search*, <https://sanctionssearch.ofac.treas.gov/>.

⁵⁸ Dan Roberts & Ian Traynor, *US and EU impose sanctions and warn Russia to relent in Ukraine standoff*, THE GUARDIAN (Mar. 6, 2014), <https://www.theguardian.com/world/2014/mar/06/us-eu-sanctions-obama-russia-ukraine-crimea>; See also U.S. DEP'T OF TREASURY, *Ukraine/Russia-Related Sanctions Program 3* (2016), <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine.pdf>.

⁵⁹ Exec. Order No. 13,660 31 C.F.R. § 589 (2014).

⁶⁰ Alissa de Carbonnel and Luke Baker, *Crimea votes to join Russia, Obama orders sanctions*, REUTERS (Mar. 5, 2014), <https://www.reuters.com/article/us-ukraine-crisis/crimea-votes-to-join-russia-obama-orders-sanctions-idUSBREA1Q1E820140306>.

⁶¹ Press Release, The White House, *Statement by the Press Secretary on Ukraine*, (March 16, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/03/16/statement-press-secretary-ukraine>.

misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.”⁶²

EO 13661 authorized sanctions against several specifically listed Russian government officials and instructed OFAC to identify additional individuals who “have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of a senior official of the Government of the Russian Federation.”⁶³ Pursuant to the order, on March 20, 2014, OFAC designated 16 Russian government officials and 4 members of President Putin’s inner circle, including Arkady and Boris Rotenberg.⁶⁴ President Obama later issued additional executive orders on March 20, 2014 and December 19, 2014, expanding the scope of the sanctions.⁶⁵

In addition to executive branch actions, Congress passed two laws sanctioning Russian individuals and entities in 2014: (1) Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act and (2) Ukraine Freedom Support Act.⁶⁶ These laws permitted sanctions against any person “the President determines has perpetrated, or is responsible for ordering, controlling, or otherwise directing, significant acts of violence or gross human rights abuses in Ukraine.”⁶⁷ They also included “potentially wide-reaching secondary sanctions against foreign individuals and entities that facilitate significant transactions for Russia sanctions designees, help them to evade sanctions, or make significant investments in certain oil projects in Russia.”⁶⁸

Like the United States, the European Union also issued economic sanctions against Russia for its invasion of Ukraine.⁶⁹ These restrictions included bans on “goods originating in Crimea . . . unless they have Ukrainian certificates,” and export prohibitions on “[g]oods and technology for the transport,

⁶² Exec. Order No. 13,661 31 C.F.R. § 589 (2014).

⁶³ *Id.*

⁶⁴ Press Release, U.S. Dep’t of Treasury, Treasury Sanctions Russian Officials, Members Of The Russian Leadership’s Inner Circle, And An Entity For Involvement In The Situation In Ukraine, (Mar. 20, 2014), <https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx>.

⁶⁵ Exec. Order No. 13,662, 31 C.F.R. § 589 (2014); Exec. Order No. 13,685, 79 Fed. Reg. 77,357 (Dec. 19, 2014).

⁶⁶ Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, Pub. L. No. 113-95, 22 U.S.C. §8901; Ukraine Freedom Support Act of 2014, Pub. L. No. 113-272, 22 U.S.C. § 8921.

⁶⁷ Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, Pub. L. No. 113-95, 22 U.S.C. §8901; CORY WELT ET. AL, CONG. RESEARCH SERV., R45415, U.S. SANCTIONS ON RUSSIA, 13 (2020), <https://www.crs.gov/reports/pdf/R45415>.

⁶⁸ CORY WELT ET. AL, CONG. RESEARCH SERV., R45415, U.S. SANCTIONS ON RUSSIA, 13 (2020), <https://www.crs.gov/reports/pdf/R45415>.

⁶⁹ *EU restrictive measures in response to the crisis in Ukraine*, COUNCIL OF THE EUROPEAN UNION (Dec. 19, 2019), <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>.

telecommunications and energy sectors.”⁷⁰ The European Union’s sanctions also froze the assets and imposed travel restrictions against persons who “undermined Ukraine’s territorial integrity, sovereignty, and independence.”⁷¹

c. U.S. Sanctions Targeting Russian Oligarchs

The U.S. and E.U. sanction regimes did not target the entire Russian economy.⁷² Instead, the sanctions designated key individuals, including several Russian oligarchs, and entities associated with important Russian policymakers.⁷³

The term “oligarch” was popularized during the privatization of the Russian economy following the collapse of the Soviet Union.⁷⁴ Oligarchs are individuals who used political power to obtain control over former state assets in industries like oil, gas, timber, aluminum, and other natural resources.⁷⁵ Oligarchs formally assumed control over former state-owned companies through government auctions and “loans for shares” schemes.⁷⁶ Russians reportedly began referring to privatization as “prikhvatizatsiya” or “grabification,” to describe a process whereby state authorities handed well-connected businesspersons and bankers control of previously government-controlled assets.⁷⁷

⁷⁰ *The EU non-recognition policy for Crimea and Sevastopol: Fact Sheet*, EUROPEAN UNION EXTERNAL ACTION (Dec. 12, 2017), https://eeas.europa.eu/headquarters/headquarters-Homepage/37464/eu-non-recognition-policy-crimea-and-sevastopol-fact-sheet_en.

⁷¹ *EU restrictive measures in response to the crisis in Ukraine*, COUNCIL OF THE EUROPEAN UNION (Dec. 19, 2019), <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>.

⁷² CORY WELT, CONG. RESEARCH SERV., R45008, UKRAINE: BACKGROUND, CONFLICT WITH RUSSIA, AND U.S. POLICY, 36 (2019), <https://www.crs.gov/reports/pdf/R45008>.

⁷³ *Id.*; Andrew Higgins, Oleg Matsnev, & Ivan Nechepurenko, *Meet the 7 Russian Oligarchs Hit by the New U.S. Sanctions*, N.Y. TIMES (Apr. 6, 2018), <https://www.nytimes.com/2018/04/06/world/europe/russian-oligarchs-sanctions.html>.

⁷⁴ Z. Byron Wolf, *Russia’s oligarchs are different from other billionaires*, CNN (Apr. 6, 2018), <https://www.cnn.com/2018/04/06/politics/oligarch-russia-billionaires-government-putin-sanctions/index.html>.

⁷⁵ *Id.*

⁷⁶ Adam Taylor, *How the 2003 Arrest of the Richest Man in Russia Changed Everything—And What Happens Next*, BUSINESS INSIDER (Oct. 24, 2013), <https://www.businessinsider.com/ten-years-after-mikhail-khodorkovskys-arrest-2013-10>. Under the “loans for shares” plan, Kremlin-favored banks would lend the government money in exchange for the opportunity to buy cheap shares in government assets. The banks would hold the shares in trust, giving the government the opportunity to repay the loan. In most cases, the banks would sell the shares within two years on the open market, creating windfall profits. Alessandra Stanley, *Russian Banking Scandal Poses Threat to Future of Privatization*, N.Y. TIMES (Jan. 28, 1996), <https://www.nytimes.com/1996/01/28/world/russian-banking-scandal-poses-threat-to-future-of-privatization.html?pagewanted=all&src=pm>.

⁷⁷ Alessandra Stanley, *Russian Banking Scandal Poses Threat to Future of Privatization*, N.Y. TIMES (Jan. 28, 1996), <https://www.nytimes.com/1996/01/28/world/russian-banking-scandal-poses-threat-to-future-of-privatization.html?pagewanted=all&src=pm>.

Following Vladimir Putin's election to the Russian presidency in 2000, existing power structures began to shift, facilitating the rise of a new generation of oligarchs.⁷⁸ Prior to becoming president, Putin promised to dismantle the existing class of oligarchs who prospered under his predecessor Boris Yeltsin.⁷⁹ In 2003, under Putin's direction, the government began to acquire some of Russia's wealthiest companies.⁸⁰ True to his word, Putin replaced the older generation of oligarchs with men from his inner circle and offered them valuable government contracts.⁸¹ Loopholes in Russian law used to limit competition enabled these oligarchs to "build themselves into the state system," as they continued to gain access to state contracts.⁸²

d. Arkady and Boris Rotenberg are Sanctioned by the United States

Brothers Arkady and Boris Rotenberg are among the oligarchs who have received billions of dollars from Putin-enabled government contracts.⁸³ Four days after President Obama's March 16, 2014 EO 13661 sanctioning "any individual or entity that is owned or controlled by, that has acted for or on behalf of, or that has provided material or other support to, a senior Russian government official," OFAC officially designated Arkady and Boris Rotenberg.⁸⁴ OFAC described Arkady and Boris Rotenberg as "members of the Russian leadership's inner circle."⁸⁵ This position made them both beneficiaries of a Russian economy that frequently enriched Putin loyalists.⁸⁶ That designation highlighted their close personal ties to President Putin. The Treasury announcement specifically stated:

⁷⁸ Andrew Meier, *Who Fears a Free Mikhail Khodorkovsky?*, N.Y. TIMES (Nov. 18, 2009), <https://www.nytimes.com/2009/11/22/magazine/22khodorkovsky-t.html>.

⁷⁹ Steven Meyers, Jo Becker & Jim Yardley, *Private Bank Fuels Fortunes of Putin's Inner Circle*, N. Y. TIMES (Sept. 27, 2014), <https://www.nytimes.com/2014/09/28/world/europe/it-pays-to-be-putins-friend-.html?module=inline>.

⁸⁰ Andrew Meier, *Who Fears a Free Mikhail Khodorkovsky?*, N.Y. Times (Nov. 18, 2009), <https://www.nytimes.com/2009/11/22/magazine/22khodorkovsky-t.html>.

⁸¹ Steven Meyers, Jo Becker & Jim Yardley, *Private Bank Fuels Fortunes of Putin's Inner Circle*, N. Y. TIMES (Sept. 27, 2014), <https://www.nytimes.com/2014/09/28/world/europe/it-pays-to-be-putins-friend-.html?module=inline>.

⁸² Joshua Yaffa, *Putin's Shadow Cabinet and The Bridge to Crimea*, NEW YORKER (May 22, 2017), <https://www.newyorker.com/magazine/2017/05/29/putins-shadow-cabinet-and-the-bridge-to-crimea>.

⁸³ *Id.*

⁸⁴ *Id.*; See also Exec. Order No. 13,661 31 C.F.R. § 589 (2014).

⁸⁵ Press Release, U.S. Dep't of Treasury, Treasury Sanctions Russian Officials, Members Of The Russian Leadership's Inner Circle, And An Entity For Involvement In The Situation In Ukraine, (Mar. 20, 2014), <https://www.treasury.gov/press-center/press-releases/pages/jl23331.aspx>.

⁸⁶ Steven Meyers, Jo Becker & Jim Yardley, *Private Bank Fuels Fortunes of Putin's Inner Circle*, N. Y. TIMES (Sept. 27, 2014), <https://www.nytimes.com/2014/09/28/world/europe/it-pays-to-be-putins-friend-.html?module=inline>.

Arkady Rotenberg and Boris Rotenberg have provided support to Putin's pet projects by receiving and executing high price contracts for the Sochi Olympic Games and state-controlled Gazprom. They have made billions of dollars in contracts for Gazprom and the Sochi Olympic Winter Olympics awarded to them by Putin. Both brothers have amassed enormous amounts of wealth during the years of Putin's rule in Russia. The Rotenberg brothers received approximately \$7 billion in contracts for the Sochi Olympic Games and their personal wealth has increased by \$2.5 billion the last two years alone.⁸⁷

Arkady Rotenberg directly benefited from the annexation of Crimea, including through his companies receiving multi-million dollar contracts to build the Kerch Bridge and a railway linking Russia to the annexed region of Ukraine.⁸⁸ The Treasury Department imposed additional sanctions on Rotenberg-related entities under EO 13661 on April 28, 2014.⁸⁹ These sanctions included the following entities:

InvestCapitalBank and **SMP Bank** [which] are controlled by Arkady and Boris Rotenberg who were designated on March 20, 2014 pursuant to E.O. 13661 for acting for or on behalf of or materially assisting, sponsoring, or providing financial, material or technological support for, or goods and services to or in support of, a senior official of the Government of the Russian Federation.

Stroygazmontazh (SGM Group) [which] is a gas pipeline construction company owned or controlled by Arkady Rotenberg. Rotenberg created SGM Group in 2008 after acquiring multiple Gazprom contractors.⁹⁰

On July 30, 2014, the European Union added Arkady Rotenberg to the E.U. sanctions list.⁹¹ In September 2014, Italy's financial law enforcement agency seized

⁸⁷ Press Release, U.S. Dep't of Treasury, Treasury Sanctions Russian Officials, Members Of The Russian Leadership's Inner Circle, And An Entity For Involvement In The Situation In Ukraine, (Mar. 20, 2014), <https://www.treasury.gov/press-center/press-releases/pages/jl23331.aspx>.

⁸⁸ *Id.*; see also Christopher Harress, *Moscow to Build Bridge From Russian Mainland to Crimea Across Kerch Strait*, INT'L BUS. TIMES (Jun. 30, 2015), <https://www.ibtimes.com/moscow-build-bridge-russian-mainland-crimea-across-kerch-strait-1990907>.

⁸⁹ Press Release, U.S. Dep't of the Treasury, Announcement of Additional Treasury Sanctions on Russian Government Officials and Entities (Apr. 28, 2014), <https://www.treasury.gov/press-center/press-releases/Pages/>.

⁹⁰ *Id.*

⁹¹ 2014 O.J. (L 226) 17, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:226:FULL&from=EN#page25>. As a Finnish citizen, Boris Rotenberg avoided inclusion on the European list. Anne Kauranen & Jussi Rosendahl, *Russian oligarch under U.S. sanctions files suit against Nordic banks*, REUTERS (Oct. 22, 2018), <https://www.reuters.com/article/us-finland-russia-sanctions/russian-oligarch-under-u-s-sanctions-files-suit-against-nordic-banks-idUSKCN1MW1AJ>.

almost \$40 million of Arkady Rotenberg’s assets, “including a luxury hotel in Rome and two villas in Sardinia.”⁹² Following the seizure, the Russian government endorsed legislation that would reimburse those whose overseas assets were seized by foreign authorities.⁹³ However, that legislation, known as “the Rotenberg law,” never became law.⁹⁴

i. Arkady Rotenberg

Arkady Rotenberg first met Vladimir Putin at the age of twelve, when they joined the same judo club.⁹⁵ After Arkady Rotenberg finished college, he worked as a judo trainer and continued to practice judo with Putin and others from the class.⁹⁶ Arkady Rotenberg then started a cooperative that organized sporting competitions and later became the general director of a professional judo club in St. Petersburg, where Putin served as vice-mayor of the city.⁹⁷ After Putin became President of Russia, Arkady and Boris Rotenberg invested in companies that serviced Gazprom, the major Russian gas company which is majority-owned by the Russian government.⁹⁸ The Rotenberg brothers also founded SMP Bank, which they used “to acquire stakes in construction, gas, and pipe companies.”⁹⁹

In 2008, Gazprom sold Arkady Rotenberg five construction and maintenance companies, which he merged into one company he named Stroigazmontazh (“SGM”). SGM became the chief contractor for Gazprom.¹⁰⁰ The company earned more than \$2 billion in revenue during its first year of operations.¹⁰¹ It handled construction work for the oil and gas industry, including onshore and offshore pipeline construction.¹⁰²

Three years later, in March 2011, Gazprom sold Gazprom Burenie to Milasi Engineering Limited (“Milasi Engineering”), a Cypriot company owned by Arkady

⁹² James Politi & Courtney Weaver, *Italy seizes Putin ally Arkady Rotenberg’s property assets*, FIN. TIMES (Sept. 23, 2014), <https://www.ft.com/content/f1293172-4340-11e4-be3f-00144feabdc0>; *See also Italy Freezes Assets of Sanctioned Russian Billionaire Arkady Rotenberg*, MOSCOW TIMES (Sept. 23, 2014), <https://themoscowtimes.com/articles/italy-freezes-assets-of-sanctioned-russian-billionaire-arkady-rotenberg-39683>.

⁹³ *Italy Freezes Assets of Sanctioned Russian Billionaire Arkady Rotenberg*, MOSCOW TIMES (Sept. 23, 2014), <https://themoscowtimes.com/articles/cabinet-wants-to-compensate-russian-victims-of-illegal-asset-seizures-abroad-40020>.

⁹⁴ Joshua Yaffa, *Putin’s Shadow Cabinet and The Bridge to Crimea*, NEW YORKER (May 22, 2017), <https://www.newyorker.com/magazine/2017/05/29/putins-shadow-cabinet-and-the-bridge-to-crimea>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *SMG Group of Companies*, STROYGAZMONTAZH, <http://www.ooosgm.com/company/structure/>.

Rotenberg.¹⁰³ Gazprom Burenie subsequently became Gazprom's main drilling contractor and is currently one of the largest drilling contractors in Russia.¹⁰⁴ Gazprom Burenie's operations focus on oil and gas wells construction, including drilling, geological exploration, well construction, well overhaul, and inactive well recovery services.¹⁰⁵

The Russian government awarded Gazprom Burenie and SGM several high-profile projects in Russia. For example, it contracted with SGM to build portions of the \$12 billion Nord Stream undersea gas pipeline; the Russian government paid the Arkady Rotenberg-controlled company a profit margin of 30 percent for its work on the project.¹⁰⁶ The Russian government also awarded SGM a contract to build a 110-mile gas pipeline around the Russian city of Sochi, as part of the Russian government's 2014 Winter Olympics construction program.¹⁰⁷ The gas pipeline cost five times its original budget.¹⁰⁸ One estimate stated that 15 percent of the total Olympics budget went to Rotenberg-led projects.¹⁰⁹ In defending his personal relationship with President Putin, Arkady Rotenberg has argued "unlike a lot of other people, I don't have the right to make a mistake."¹¹⁰ He has also asserted, "I have great respect for Putin and I consider him sent to our country from God."¹¹¹

Gazprom Burenie has also played an important role in the Russian energy industry. Between 1997 and 2013, Gazprom Burenie completed the construction of 3,669 wells, drilling through more than 7 million meters of rock.¹¹²

In January 2015, the Russian government announced that Arkady Rotenberg, through SGM, would build the bridge connecting the Russian-annexed

¹⁰³ GAZPROM, FINANCIAL REPORT 2011: REACHING NEW HORIZONS 58 (2011), <https://www.gazprom.com/f/posts/43/588793/financial-report-2011-eng.pdf>.

¹⁰⁴ *Company Profile: Gazprom Burenije, Russian Drilling Company*, GAZPROM BURENIYE, <https://www.burgaz.ru/landing/>.

¹⁰⁵ *Id.*

¹⁰⁶ Gleb Bryanski, *Putin's judo partner jumps in Russia's rich list*, REUTERS (Feb. 13, 2011), <https://www.reuters.com/article/russia-rich/putins-judo-partner-jumps-in-russias-rich-list-idUSLDE71C02X20110214>; Aviezer Tucker, *The New Power Map*, FOREIGN AFFAIRS (Dec. 19, 2012), <https://www.foreignaffairs.com/articles/north-america/2012-12-19/new-power-map>.

¹⁰⁷ Thomas Grove, *Special Report: Russia's \$50 billion Olympic gamble*, REUTERS (Feb. 21, 2013), <https://www.reuters.com/article/us-russia-sochi/special-report-russias-50-billion-olympic-gamble-idUSBRE91K04M20130221>; *Dzhubga-Lazarevskoe-Sochi gas pipeline*, STROYGAZMONTAZH, <http://www.ooosgm.com/projects/construction/gazprovod-dzhubga-lazarevskoe-sochi/>.

¹⁰⁸ Anna Pukas, *Sochi: Is it Russia's disaster Winter Olympics?*, EXPRESS (Feb. 3, 2014), <https://www.express.co.uk/news/world/457632/Sochi-Is-it-Russia-s-disaster-Winter-Olympics>.

¹⁰⁹ Neil MacFarquhar & Ivan Nechepurenko, *Putin's Bridge to Crimea May Carry More Symbolism Than Traffic*, N.Y. TIMES (Nov. 11, 2017), <https://www.nytimes.com/2017/11/11/world/europe/vladimir-putin-russia-crimea-bridge.html>.

¹¹⁰ Joshua Yaffa, *Putin's Shadow Cabinet and the Bridge to Crimea*, NEW YORKER (May 22, 2017), <https://www.newyorker.com/magazine/2017/05/29/putins-shadow-cabinet-and-the-bridge-to-crimea>.

¹¹¹ *Id.*

¹¹² *History of the Company*, GAZPROM BURENIE, <http://www.burgaz.ru/company/about/history/>.

Crimean Peninsula to the Russian mainland.¹¹³ In May 2018, the 12-mile bridge opened for traffic at a final cost of \$3.7 billion.¹¹⁴ According to news reports, the bridge opened six months ahead of schedule. The bridge reportedly can “carry up to 40,000 cars per day [and] its span is greater than that of Vasco da Gama in Portugal, previously the longest in Europe.”¹¹⁵ President Putin was on site to open the bridge to traffic.¹¹⁶

In September 2019, a news article stated that Gazprom had purchased 100 percent of SGM for 70 billion to 95 billion rubles, the equivalent of \$1.1 billion to \$1.5 billion.¹¹⁷

Forbes has estimated that Arkady Rotenberg is worth \$2.8 billion.¹¹⁸

ii. Boris Rotenberg

Boris Rotenberg is also a childhood friend of Vladimir Putin.¹¹⁹ Along with his brother Arkady, Boris Rotenberg and Putin have “sparred and trained in the same gym since they were teenagers in the 1960s.”¹²⁰ Their former judo coach, Anatoly Rakhin, commented on the friendship between the brothers and Putin saying, “[Putin] didn’t take the Petersburg boys to work with him because of their pretty eyes, but because he trusts people who are tried and true.”¹²¹

In 2001, Boris and Arkady Rotenberg founded SMP Bank.¹²² The brothers then used the bank to acquire interests in important industries such as construction, gas, and gas pipelines.¹²³ By the mid-2000s, these acquisitions allowed them to become one of Russia’s “main suppliers of large-diameter gas pipes.”¹²⁴

¹¹³ Joshua Yaffa, *Putin’s Shadow Cabinet and the Bridge to Crimea*, NEW YORKER (May 22, 2017), <https://www.newyorker.com/magazine/2017/05/29/putins-shadow-cabinet-and-the-bridge-to-crimea>.

¹¹⁴ Andre Roth, *Putin opens 12-mile bridge between Crimea and Russian mainland*, GUARDIAN (May 15, 2018), <https://www.theguardian.com/world/2018/may/15/putin-opens-bridge-between-crimea-and-russian-mainland>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Bne IntelliNews, *Russia’s Gazprom Buys Out its Biggest Subcontractor*, THE MOSCOW TIMES (Sept. 27, 2019), <https://www.themoscowtimes.com/2019/09/27/russias-gazprom-buys-out-its-biggest-subcontractor-a67475>.

¹¹⁸ *Real Time Net Worth, No. 877, Arkady Rotenberg*, FORBES, <https://www.forbes.com/profile/arkady-rotenberg/#671573b62baa>.

¹¹⁹ Simon Shuster, *Putin’s Powerful Friends Rally Around Russian President Despite Sanctions*, TIME (Mar. 27, 2014), <https://time.com/38632/putin-friends-rally-around-him/>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Joshua Yaffa, *Putin’s Shadow Cabinet and the Bridge to Crimea*, NEW YORKER (May 22, 2017), <https://www.newyorker.com/magazine/2017/05/29/putins-shadow-cabinet-and-the-bridge-to-crimea>.

¹²³ *Id.*

¹²⁴ *Id.*

When Boris Rotenberg’s ex-wife, Irene Lamber, was asked to comment on the business impact of Putin’s friendship with the Rotenberg brothers, she remarked, “[t]hey were friendly in childhood, and those relationships were never broken, so logically you can presume some sort of advice was given, at a minimum, and perhaps help here and there.”¹²⁵

Boris Rotenberg holds a Finnish passport and therefore “is not subject to European sanctions over Russia’s role in Ukraine.”¹²⁶ Boris Rotenberg secured Finnish citizenship after moving to the country with his ex-wife Irene in the late 1990s.¹²⁷ Although he is not directly subjected to the E.U.’s sanctions, several Nordic banks refused to process his payments because “European banks must comply with . . . U.S. sanctions in order to do business with American banks.”¹²⁸ In response, Boris Rotenberg filed a discrimination suit against Nordea, Danske Bank, Handelsbanken, and OP Bank for violation of “his right to equal treatment as an EU citizen.”¹²⁹ A Finnish court rejected the suit on January 13, 2020.¹³⁰

Forbes estimates that Boris Rotenberg’s net worth is \$1.2 billion.¹³¹

e. Roman and Igor Rotenberg are Sanctioned by the United States

On February 12, 2015, the *Wall Street Journal* reported that Arkady and Boris Rotenberg sold lucrative assets to their children in an apparent effort to avoid sanctions by the United States.¹³² The sales included Arkady selling his 79 percent stake in Gazprom Drilling LLC to his son Igor, and Boris’s sale of the Finnish

¹²⁵ *Id.*

¹²⁶ Anne Kauranen & Jussi Rosendahl, *Russian oligarch under U.S. sanctions files suit against Nordic banks*, REUTERS (Oct. 22, 2018), <https://www.reuters.com/article/us-finland-russia-sanctions/russian-oligarch-under-u-s-sanctions-files-suit-against-nordic-banks-idUSKCN1MW1AJ>.

¹²⁷ Joshua Yaffa, *Putin’s Shadow Cabinet and the Bridge to Crimea*, NEW YORKER (May 22, 2017), <https://www.newyorker.com/magazine/2017/05/29/putins-shadow-cabinet-and-the-bridge-to-crimea>.

¹²⁸ Anne Kauranen & Jussi Rosendahl, *Russian oligarch under U.S. sanctions files suit against Nordic banks*, REUTERS (Oct. 22, 2018), <https://www.reuters.com/article/us-finland-russia-sanctions/russian-oligarch-under-u-s-sanctions-files-suit-against-nordic-banks-idUSKCN1MW1AJ>.

¹²⁹ Anne Kauranen & Tarmo Virki, *Finnish court rejects Rotenberg’s suit against Nordic banks*, REUTERS (Jan. 13, 2020), <https://www.reuters.com/article/finland-russia-sanctions/finnish-court-rejects-rotenbergs-suit-against-nordic-banks-idUSL8N29I260>.

¹³⁰ *Id.*

¹³¹ *Real Time Net Worth, No. 1941, Boris Rotenberg*, FORBES (Feb. 26, 2020), <https://www.forbes.com/profile/boris-rotenberg/#49cf806c126a>.

¹³² Rachel Ensign, *Russian Asset Sales Muddy Sanction Compliance*, WALL ST. J. (Feb. 12, 2015), <https://www.wsj.com/articles/russian-asset-sales-muddy-sanction-compliance-1423784903>.

Langvik Congress Wellness Hotel to his son Roman.¹³³ The Rotenbergs described the sales as nothing more than a long-planned “generational change.”¹³⁴

i. Roman Rotenberg

In response to the transfers described above, on July 30, 2015, under EO 13661, OFAC added Roman Rotenberg to the list of sanctioned individuals.¹³⁵ A Treasury press release noted Roman Rotenberg was “linked to the provision of material support” to Boris Rotenberg.¹³⁶

ii. Igor Rotenberg

On April 6, 2018, three years after sanctioning Arkady and Boris Rotenberg, OFAC also sanctioned Arkady’s son Igor.¹³⁷ This round of sanctions targeted Russia’s so-called “golden youth” and also included sanctions against Putin’s son-in-law Kirill Shamalov.¹³⁸ Just prior to OFAC’s imposition of sanctions, *Forbes* included Igor Rotenberg on its list of 259 new billionaires.¹³⁹ OFAC’s announcement of the new sanctions credited Igor’s designation to his activities in the Russian energy sector, noting that Igor had acquired significant assets from his father post-sanctions.¹⁴⁰

From 2002 to 2003, Igor Rotenberg served as the deputy head “of the Property Department of the fuel and energy complex of the Ministry of Property and

¹³³ *Id.*; see also Bill Chappel, *U.S. Hits Russian Oligarchs And Officials With Sanctions Over Election Interference*, NPR (Apr. 6, 2018), <https://www.npr.org/sections/thetwo-way/2018/04/06/600083466/u-s-hits-russian-oligarchs-and-officials-with-sanctions-over-election-interferen>.

¹³⁴ Rachel Ensign, *Russian Asset Sales Muddy Sanction Compliance*, WALL ST. J. (Feb. 12, 2015), <https://www.wsj.com/articles/russian-asset-sales-muddy-sanction-compliance-1423784903>.

¹³⁵ Press Release, U.S. Dep’t of Treasury, Ukraine-related Designations; Sectoral Sanctions Identifications; Dote d’Ivoire Designation Removals; Issuance of an Important Crimea Sanctions Advisory, (Jul. 30, 2015), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20150730.aspx>.

¹³⁶ Press Release, U.S. Dep’t of Treasury, Treasury Sanctions Individuals and Entities Involved in Sanctions Evasion Related To Russia and Ukraine, (Jul. 30, 2015), <https://www.treasury.gov/press-center/press-releases/Pages/jl0133.aspx>.

¹³⁷ Press Release, U.S. Dep’t of Treasury, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity, (Apr. 6, 2018), <https://home.treasury.gov/news/press-releases/sm0338>.

¹³⁸ Anders Aslund, *With New Sanctions the US Treasury Goes after Putin’s Inner Circle*, ATLANTIC COUNCIL, (Apr. 6, 2018), <https://www.atlanticcouncil.org/blogs/new-atlanticist/with-new-sanctions-the-us-treasury-goes-after-putin-s-inner-circle/>.

¹³⁹ Chase Peterson-Withorn, *Meet the World’s 259 Newest Billionaires*, FORBES (Mar. 6, 2018), <https://www.forbes.com/sites/chasewithorn/2018/03/06/meet-the-worlds-259-newest-billionaires-francois-bettencourt-meyers-lynsi-snyder/#502c52683ee9>.

¹⁴⁰ Press Release, U.S. Dep’t of Treasury, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity, (Apr. 6, 2018), <https://home.treasury.gov/news/press-releases/sm0338>.

Land Relations” in Russia.¹⁴¹ In 2003, Igor Rotenberg was named head of property management and transportation at the Russian Ministry of State Property.¹⁴² In 2004, Igor Rotenberg was named vice-president of JSC Russian Railways, Russia’s state-owned railroad company.¹⁴³

Since 2006, Igor Rotenberg has served as Chairman of the Board of Directors for NPV Engineering.¹⁴⁴ NPV Engineering provides management and consulting services in Russia.¹⁴⁵ In 2010, Igor Rotenberg was named Chairman of Mosenergo, “the largest regional power generating company in the Russian Federation.”¹⁴⁶ He was also named chairman of Gazprom Burenie, the key construction company beneficially owned by his father.¹⁴⁷

After his placement on the U.S. sanctions list in 2014, Arkady Rotenberg reportedly transferred certain assets to his son Igor.¹⁴⁸ According to reports, Igor Rotenberg now owns “79 percent of drilling company Gazprom Burenie; 28 percent of road construction company Mostotrest; and 33 percent of TPS Real Estate Holding.”¹⁴⁹

Forbes estimates that Igor Rotenberg’s net worth is \$1.1 billion.¹⁵⁰

As explained below, despite the imposition of U.S. sanctions on Arkady and Boris Rotenberg in March 2014, Roman Rotenberg in July 2015, and Igor Rotenberg in April 2018, evidence suggests that the Rotenbergs continued to do business with some U.S. parties.

¹⁴¹ Yevgeny Gusev, *The Kings of State Procurement*, HENRY JACKSON SOC. 8 (May 2017), <http://henryjacksonsociety.org/wp-content/uploads/2018/06/1705-The-Kings-of-State-Procurement.pdf>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 8–9.

¹⁴⁵ Press Release, U.S. Dep’t of Treasury, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity, (Apr. 6, 2018), <https://home.treasury.gov/news/press-releases/sm0338>.

¹⁴⁶ *Arkady Rotenberg: We live in conditions of tough competition, but it doesn’t scare us*, INTERFAX (Oct. 30, 2014), <http://www.interfax.com/interview.asp?id=547794>; *About the Company*, MOSENERGO, <https://mosenergo.gazprom.com/about/>.

¹⁴⁷ *2018 Billionaires Net Worth, No. 1999, Igor Rotenberg*, FORBES (Mar. 6, 2018), <https://www.forbes.com/profile/igor-rotenberg/#393b87e51ef8>.

¹⁴⁸ Rachel Louise Ensign, *Russian Asset Sales Muddy Sanction Compliance*, WALL ST. J. (Feb. 12, 2015), <https://www.wsj.com/articles/russian-asset-sales-muddy-sanction-compliance-1423784903>.

¹⁴⁹ Stephen Grey & Elizabeth Piper, *Rising stars among children of Russia’s elite*, REUTERS (Nov. 10, 2015), <https://www.reuters.com/article/us-russia-capitalism-sons/rising-stars-among-children-of-russias-elite-idUSKCN0SZ1DP20151110>.

¹⁵⁰ *2018 Billionaires Net Worth, No. 1999 Igor Rotenberg*, FORBES (Mar. 6, 2018), <https://www.forbes.com/profile/igor-rotenberg/#393b87e51ef8>.

B. The Art Market

This section describes the global and U.S. art industry; the U.S. art industry's current exemption from legal safeguards aimed at stopping money laundering and corruption; and the role of shell companies in purchasing high-value art.

The modern global art market—and its U.S. component—has been enjoying a boom. However, critics assert the secrecy found in the art market attracts illicit activity and suspect funds.¹⁵¹ In 2019, global art sales reached \$64.1 billion.¹⁵² In addition, the art market has become a source of reliable return on investment.¹⁵³ One report found that since 2000, art has delivered average annual returns of 8.9 percent.¹⁵⁴ In 2019, 86 percent of surveyed wealth managers asserted that “they thought there was a convincing argument for including art in their wealth management service offering.”¹⁵⁵ Investors also purchase art to diversify portfolios, and some view individual pieces as financial instruments to be traded like stock.¹⁵⁶ Over the last several years, growth was most pronounced at the top end of the market, with works priced above \$10 million outperforming other parts of the market.¹⁵⁷

The art market is also now more accessible due to globalization and the internet.¹⁵⁸ These two factors have transformed the art market into an international industry with a customer base located around the world.¹⁵⁹ The

¹⁵¹ Samuel Rubinfeld, *Art World's Response to Money-Laundering Concerns Draws Critics*, WALL ST. J. (Feb. 27, 2017), <https://blogs.wsj.com/riskandcompliance/2017/02/27/art-worlds-response-to-money-laundering-concerns-draws-critics/>.

¹⁵² ART BASEL & UBS, *The Art Market 2020* 17 (2020), https://d2u3kfw92fzu7.cloudfront.net/The_Art_Market_2020-1.pdf; See also Daniel Grant, *As Art Collections Grow, So Do the Places That Stash Them*, N.Y. TIMES (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/business/art-storage.html>.

¹⁵³ Frederik Balfour, *Billionaire's Secrets on How to Make a Bundle in Art*, BLOOMBERG (May 7, 2018), <https://www.bloomberg.com/news/features/2018-05-07/top-collectors-reveal-the-secrets-of-how-to-invest-in-art>.

¹⁵⁴ *Id.*

¹⁵⁵ DELOITTE, *Art and Finance Report* 84 (6th ED. 2019), <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/artandfinance/lu-art-and-finance-report-2019.pdf>.

¹⁵⁶ Cynthia O'Murchu, *Art: A market laid bare*, FIN. TIMES (Apr. 7, 2015), <https://www.ft.com/content/a91a1608-d887-11e4-8a23-00144feab7de#axzz3WpTPQ6X2>; Michel Martin, *New Documentary Paints a Picture of the Contemporary Art Market Run Amok*, NPR (Nov. 4, 2018), <https://www.npr.org/2018/11/04/658920684/new-documentary-paints-a-picture-of-the-contemporary-art-market-run-amok>.

¹⁵⁷ Jeni Fulton, *Economist Dr. Clare McAndrew explains why the art market is rebounding*, ART BASEL, <https://www.artbasel.com/news/economist-dr-clare-mcandrew-explains-why-the-art-market-is-rebounding>.

¹⁵⁸ ART BASEL & UBS, *The Art Market 2020* 48 (2020), https://d2u3kfw92fzu7.cloudfront.net/The_Art_Market_2020-1.pdf.

¹⁵⁹ *Id.* at 262.

United States continued to lead the market in 2019 with 44 percent of all sales by value, with the United Kingdom in second place with 20 percent.¹⁶⁰ International art fairs gather dealers, artists, and collectors to display art from different regions around the world.¹⁶¹ For those unable to travel, the internet enables collectors from Europe, the Middle East, and Asia to easily bid on the same pieces of art.¹⁶²

The art market has attracted criticism because of its lack of transparency. Current rules allow sellers to remain anonymous, and purchasers can use offshore shell companies to conceal ownership and sources of funds.¹⁶³ Sellers of artwork at auction are often not required to disclose their identity to the buyer; in some cases, the auction house does not know the name of the original owner or buyer.¹⁶⁴ Anonymity in the market can make it difficult to track sales transactions, art ownership, and determinations regarding authenticity.¹⁶⁵ Concealment of buyer and seller identity also makes art “an attractive instrument to hide illicit assets . . . because the transactions are often private, prices are speculative and an item can easily be smuggled to evade authorities.”¹⁶⁶

Deloitte and ArTactic’s *Art & Finance Report 2019* found that 77 percent of wealth managers and 75 percent of collectors cite the art market’s lack of transparency as one of the industry’s key challenges.¹⁶⁷ Moreover, 75 percent of art professionals identified the market’s lack of transparency as a major concern, marking a six percent increase from 2016.¹⁶⁸

¹⁶⁰ *Id.* at 37.

¹⁶¹ Y-Jean Mun-Delsalle, *The Art Fair Boom Is Forever Changing the Way the Art Market Does Business*, FORBES (Apr. 7, 2016), <https://www.forbes.com/sites/yjeanmundelsalle/2016/04/07/the-art-fair-boom-is-forever-changing-the-way-the-art-market-does-business/#52d8f7af6c64>.

¹⁶² Frederik Balfour, *Billionaire’s Secrets on How to Make a Bundle in Art*, BLOOMBERG (May 7, 2018), <https://www.bloomberg.com/news/features/2018-05-07/top-collectors-reveal-the-secrets-of-how-to-invest-in-art>.

¹⁶³ Graham Bowley & William Rashbaum, *Has the Art Market Become an Unwitting Partner in Crime*, N.Y. TIMES (Feb. 19, 2017), <https://www.nytimes.com/2017/02/19/arts/design/has-the-art-market-become-an-unwitting-partner-in-crime.html>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Samuel Rubinfeld, *Art World’s Response to Money-Laundering Concerns Draws Critics*, WALL ST. J. (Feb. 27, 2017), <https://blogs.wsj.com/riskandcompliance/2017/02/27/art-worlds-response-to-money-laundering-concerns-draws-critics/>.

¹⁶⁷ DELOITTE, *Art and Finance Report 16*, 171 (6th ED. 2019), <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/artandfinance/lu-art-and-finance-report-2019.pdf>.

¹⁶⁸ *Id.* at 207.

1. Money Laundering in the Art Market

A large part of the art market operates in secrecy, allowing participants to conduct transactions anonymously.¹⁶⁹ According to an article quoting Thomas Christ, a board member of the Basel Institute of Governance, “[t]he art market is an ideal playing ground for money laundering.”¹⁷⁰ Michael Martin, head of the forensic and anti-money laundering services at Deloitte Luxembourg acknowledged this, saying, “art is one of the asset classes that obviously lends itself to money laundering.”¹⁷¹ Smugglers, drug traffickers, arms dealers, and others have turned to the art market as a means to obscure profits and transfer assets outside the reach of financial regulators.¹⁷²

In recent years, critics note that “[p]art of the reason art has become an attractive vehicle for money laundering is that other channels have been narrowed by tighter regulation,” particularly in the financial sector.¹⁷³ For example, mortgage brokers, stockbrokers, casinos, banks, and Western Union are subject to federal money laundering statutes requiring them to report suspicious financial activity and perform due diligence to deter money laundering activities and “combat the financing of terrorism.”¹⁷⁴ The same requirements do not apply to buyers and sellers of art.¹⁷⁵

To provide greater transparency and prevent money laundering activities, the European Union adopted its fifth Anti-Money Laundering directive on April 19,

¹⁶⁹ Graham Bowley & William Rashbaum, *Has the Art Market Become an Unwitting Partner in Crime*, N.Y. TIMES (Feb. 19, 2017), <https://www.nytimes.com/2017/02/19/arts/design/has-the-art-market-become-an-unwitting-partner-in-crime.html>.

¹⁷⁰ *Id.*

¹⁷¹ Eric Reguly, *The link between art and money laundering*, GLOBE AND MAIL (May 15, 2018), <https://www.theglobeandmail.com/report-on-business/international-business/european-business/economists-urge-tighter-regulations-to-curb-money-laundering-in-art-market/article26217852/>.

¹⁷² Patricia Cohen, *Valuable as Art, but Priceless as a Tool to Launder Money*, N.Y. TIMES (May 12, 2013), <https://www.nytimes.com/2013/05/13/arts/design/art-proves-attractive-refuge-for-money-lauderers.html>.

¹⁷³ Samuel Rubinfeld, *Art World’s Response to Money-Laundering Concerns Draws Critics*, WALL ST. J. (Feb. 27, 2017), <https://blogs.wsj.com/riskandcompliance/2017/02/27/art-worlds-response-to-money-laundering-concerns-draws-critics/>.

¹⁷⁴ Patricia Cohen, *Valuable as Art, but Priceless as a Tool to Launder Money*, N.Y. TIMES (May 12, 2013), <https://www.nytimes.com/2013/05/13/arts/design/art-proves-attractive-refuge-for-money-lauderers.html>; RENA S. MILLER & LIANA W. ROSEN, CONG. RESEARCH SERV., R44776, ANTI-MONEY LAUNDERING: AN OVERVIEW FOR CONGRESS, SUMMARY (2017), <https://www.crs.gov/reports/pdf/R44776>.

¹⁷⁵ Kris Hollington, *After Drugs and Guns, Art Theft Is The Biggest Criminal Enterprise in the World*, NEWSWEEK (Jul. 22, 2014), <https://www.newsweek.com/2014/07/18/after-drugs-and-guns-art-theft-biggest-criminal-enterprise-world-260386.html>.

2018.¹⁷⁶ This directive compels businesses selling art to verify the identity of customers before completing transactions of €10,000 or more.¹⁷⁷ Under the directive, European Union member states were required to implement this new requirement by January 10, 2020.¹⁷⁸ The United Kingdom adopted similar rules in the weeks before its exit from the European Union on January 31, 2020.¹⁷⁹ The United States has yet to follow suit.¹⁸⁰

2. The Art Industry is the Largest Legal, Unregulated Market in the United States

Today, the art industry is considered the largest legal, unregulated industry in the United States, permitting purchasers to buy pieces without any record of the transactions, even when large amounts of cash are involved.¹⁸¹ In effect, buyers and sellers can remain anonymous raising the concern that corporate veils are being used “to manipulate markets, evade taxes, [and] launder money.”¹⁸²

Illegal activity, including money laundering, in the art market is made possible, in part, because the art market is generally not subject to the transparency requirements of the Bank Secrecy Act (“BSA”).¹⁸³ The BSA was enacted by Congress in the 1970s to protect the United States from money laundering and corruption by imposing transparency requirements on many types of cash transactions.¹⁸⁴ It includes “requirements for reporting, customer identification and due diligence, recordkeeping, and the establishment and maintenance of BSA/AML compliance programs.”¹⁸⁵ The BSA’s reporting requirements mandate, for example, that financial institutions file suspicious

¹⁷⁶ Anna Brady, *European Union tightens anti-money-laundering rules in the art market*, ART NEWSPAPER (Apr. 30, 2018), <https://www.theartnewspaper.com/news/eu-extends-anti-money-laundering-rules>.

¹⁷⁷ *Id.*

¹⁷⁸ Vera Jourova, *Strengthened EU rules to prevent money laundering and terrorism financing*, EUROPEAN COMMISSION (2018), http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=48935.

¹⁷⁹ Scott Reyburn, *Britain Moves to Regulate Its Art Trade. Bring Your ID.*, N.Y. TIMES (Jan. 10, 2020), <https://www.nytimes.com/2020/01/10/arts/design/uk-art-money-laundering.html>.

¹⁸⁰ Lawrence Kaye & Howard Spiegler, *The Art Market: Would More Regulation Spoil All the Fun*, ART & ADVOCACY, (Vol. 23 2016), <http://www.herrick.com/publications/the-art-market-would-more-regulation-spoil-all-the-fun/>.

¹⁸¹ Kris Hollington, *After Drugs and Guns, Art Theft Is The Biggest Criminal Enterprise in the World*, NEWSWEEK (Jul. 22, 2014), <https://www.newsweek.com/2014/07/18/after-drugs-and-guns-art-theft-biggest-criminal-enterprise-world-260386.html>.

¹⁸² Scott Reyburn, *What the Panama Papers Reveal About the Art Market*, N.Y. TIMES (Apr. 11, 2016), <https://www.nytimes.com/2016/04/12/arts/design/what-the-panama-papers-reveal-about-the-art-market.html>.

¹⁸³ Bank Secrecy Act of 1982, Pub. L. No. 97-258, codified at 31 U.S.C. § 5304.

¹⁸⁴ *Id.*

¹⁸⁵ RENA S. MILLER & LIANA W. ROSEN, CONG. RESEARCH SERV., R44776, ANTI-MONEY LAUNDERING: AN OVERVIEW FOR CONGRESS, 5 (2017), <https://www.crs.gov/reports/pdf/R44776>.

activity reports (“SARs”) regarding “any suspicious transaction relevant to a possible violation of law or regulation.”¹⁸⁶ In addition to SARs, Currency Transaction Reports (“CTRs”) must be submitted for “individuals transporting large amounts of cash internationally, persons with large foreign financial interests, and nonfinancial entities conducting large cash transactions.”¹⁸⁷

The art industry in the United States is not required to comply with the requirements of the BSA.¹⁸⁸ Art dealers in the United States continue to operate without any regulated or structured mechanisms for transparently buying or selling art, including mandatory systems for the declaration or transfer of ownership.¹⁸⁹ Moreover, insider-trading rules applicable to the commodities market do not apply to art, allowing collectors to buy works of art based on privileged information.¹⁹⁰ In addition, “there is currently no regulation that specifically targets money laundering in the art market, nor does the art market itself subject professional art intermediaries to any standards of professionalism that directly address money laundering.”¹⁹¹ The lack of regulatory requirements or voluntary industry-wide standards in the United States means “art dealers have little incentive other than good faith to flag possible money laundering schemes involving artwork for law enforcement.”¹⁹²

Despite the weaknesses in U.S. AML safeguards for the art market, participants in the art industry may be subject to other restrictions including: import and export regulations; cultural property regulations; data protection and privacy laws; state anti-money laundering laws; tax regulations; and local auction regulations.¹⁹³ If they buy or sell art outside of the United States, they may also be subject to non-U.S. anti-money laundering controls.¹⁹⁴

¹⁸⁶ *Id.* at 6.

¹⁸⁷ *Id.*

¹⁸⁸ Lawrence Kaye & Howard Spiegler, *The Art Market: Would More Regulation Spoil All the Fun*, ART & ADVOCACY, (Vol. 23 2016), <http://www.herrick.com/publications/the-art-market-would-more-regulation-spoil-all-the-fun/>.

¹⁸⁹ DELOITTE, *Art and Finance Report* 170 (5th ED. 2017), <https://www2.deloitte.com/content/dam/Deloitte/at/Documents/finance/art-and-finance-report-2017.pdf>.

¹⁹⁰ Marc Speigler, *Time To Reform the Art Market?*, FORBES (May 30, 2005), https://www.forbes.com/2005/05/30/cx_0530conn_ls.html#69dcd7715f0a.

¹⁹¹ Alessandra Dagirmanjian, *Laundering the Art Market: A Proposal for Regulating Money Laundering Through Art in the United States*, 29 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 687, 695 (2019).

¹⁹² *Id.* at 696.

¹⁹³ SOTHEBY'S, *2019 Annual Report* 56 (2019), <https://www.sothebys.com/content/dam/sothebys/PDFs/Sothebys-Annual-Report-12.31.2019.pdf?locale=en>.

¹⁹⁴ Vera Jourova, *Strengthened EU rules to prevent money laundering and terrorism financing*, EUROPEAN COMMISSION (2018), http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=48935; Scott Reyburn,

While members of Congress have introduced legislation to add art and antiquities to the list of industries that must comply with the BSA,¹⁹⁵ Congress has not required comprehensive transparency in the art market.¹⁹⁶

3. The Applicability of the Berman Amendment to High-value Art

Questions have arisen about whether U.S. sanctions policy could help address at least some aspects of the art industry's problems by requiring artists and dealers to ensure they are not engaging in transactions with sanctioned individuals or entities.¹⁹⁷ To gauge the feasibility of that approach, the Subcommittee inquired whether the U.S. sanctions regime applies to high-value art.

As described above, IEEPA allows the President to issue sanctions against specific categories of individuals and entities during a national emergency.¹⁹⁸ IEEPA authority does not, however, allow the President "to regulate or prohibit, directly or indirectly" "the importation from any country, or the exportation to any country ... of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds."¹⁹⁹

The Subcommittee asked the Treasury Department how high-value art is treated under IEEPA, including whether it is exempt from IEEPA controls under the informational materials exception in the Berman Amendment. In response, on October 3, 2019, the Treasury Department stated:

Earlier [in 2019], Treasury undertook a review of the issues related to your inquiry. That review is ongoing and may result in the issuance of new or further pertinent guidance. Accordingly, it would be premature to provide the Subcommittee a formal position on how the Berman Amendment to the International Emergency Economic Powers Act may apply in the context of the matters you raise, particularly since any

Britain Moves to Regulate Its Art Trade. Bring Your ID., N.Y. TIMES (Jan. 10, 2020), <https://www.nytimes.com/2020/01/10/arts/design/uk-art-money-laundering.html>.

¹⁹⁵ See, e.g., Coordinating Oversight, Upgrading & Innovating Technology, & Examiner Reform Act, H.R. 2514, 116th Cong. (2019); Wallace Ludel & Margaret Carrigan, *US House of Representatives passes an anti-money laundering bill that could affect art and antiquities dealers*, THE ART NEWSPAPER (Oct. 25, 2019), <https://www.theartnewspaper.com/news/us-house-of-representatives-passes-an-anti-money-laundering-bill-that-could-affect-art-and-antiquities-dealers>.

¹⁹⁶ Barden Prisant, *The FBI Thinks You're a Money Launderer, And Other Perils of Art Collecting*, FORBES (Jan. 10, 2020), <https://www.forbes.com/sites/bardenprisant/2020/01/10/the-fbi-thinks-youre-a-money-launderer-and-other-perils-of-art-collecting/#589067023957>.

¹⁹⁷ Alice McCool, *Could Trump put an end to the Iranian art boom?*, CNN (Sept. 25, 2018), <https://www.cnn.com/style/article/is-the-iran-art-boom-under-threat/index.html>.

¹⁹⁸ 50 U.S.C. § 1703(b)(2).

¹⁹⁹ 50 U.S.C. § 1702(b)(3).

new or further guidance could have broader implications. Nevertheless, we are taking the concerns you have expressed seriously in the context of that review. We will update you as soon as we are in a position to do so.²⁰⁰

On July 22, 2020, the Treasury Department provided the update and stated:

Our review confirmed that Treasury does not believe the Berman Amendment is a categorical bar to the application of IEEPA-based sanctions to transactions involving artwork. Evaluation of a specific license application relating to designated persons—including one that implicates Berman Amendment materials—must depend on the particular facts and circumstances presented. OFAC intends to issue additional public guidance on this issue in the near term.²⁰¹

The Subcommittee has continued to examine money laundering vulnerabilities in the U.S. art market in order to gauge the extent of the problem, how sanctioned individuals may be exploiting the market’s vulnerabilities to launder suspect funds, and what action should be taken to detect, stop, and prevent ongoing misuse of the U.S. art market.

4. Shell Companies

Shell companies play a significant role in contributing to anti-money laundering vulnerabilities in the U.S. art industry. Treasury’s Financial Crimes Enforcement Network (“FinCEN”) defines shell companies as “typically non-publicly traded corporations or limited liability companies (“LLCs”) that have no physical presence beyond a mailing address and generate little-to-no independent economic value.”²⁰²

Shell companies are generally straightforward and inexpensive to create in all 50 states and offshore jurisdictions.²⁰³ This process involves completing online forms and making an online payment, functions that can be executed by

²⁰⁰ Letter from Brian T. McGuire, U.S. Dep’t of Treasury, Assistant Secretary Office of Legislative Affairs to Chairman Rob Portman (Oct. 3, 2019).

²⁰¹ Letter from Frederick W. Vaughan, U.S. Dep’t of Treasury, Principal Deputy Assistant Secretary Office of Legislative Affairs to Chairman Rob Portman (Jul. 22, 2020).

²⁰² U.S. Dep’t of Treasury, Advisory on the Iranian Regime’s Illicit and Malign Activities and Attempts to Exploit the Financial System, 5 n.12 (Oct. 11, 2018), <https://www.fincen.gov/sites/default/files/advisory/2018-10-11/Iran%20Advisory%20FINAL%20508.pdf>.

²⁰³ Joe Pinsker, *Are Shell Companies Useful for the People Who Aren’t Ludicrously Rich?*, ATLANTIC, (Apr. 8, 2016), <https://www.theatlantic.com/business/archive/2016/04/how-rich-do-you-have-to-be-for-a-shell-company-to-be-useful/477384/>.

individuals, lawyers, or third parties.²⁰⁴ Despite a shell company’s lack of employees and office space, “formation agents” or “company service providers” can provide packages and operational services including mail forwarding, business licenses, local street addresses, telephone listings, and assistance with opening local and foreign bank accounts.²⁰⁵

Individuals and companies can use shell companies for legitimate purposes, such as holding assets, making pooled investments, executing reverse mergers or facilitating transfers.²⁰⁶ They can also be misused to hide the identities of criminals, move illicit proceeds of crime, and commit a wide range of misconduct, including money laundering, human or drug trafficking, fraud, tax evasion, and corruption.²⁰⁷

In the art world, shell companies are frequently used when buying or selling valuable pieces of art.²⁰⁸ For example, shell companies can serve as an intermediary allowing buyers and sellers to shift funds from one jurisdiction to another.²⁰⁹ But shell companies can also be used to conceal the identity of the buyers and sellers, the source and control of assets, and move suspect funds. In this way, shell companies can be used as financial conduits for the transfer of funds and assets, at times without alerting financial institutions or law enforcement to the parties behind the transactions.²¹⁰

Shell companies can provide this anonymity because there is no requirement that beneficial owners be identified during the entity’s formation, opening of financial accounts, or transfer of funds.²¹¹ Tom Cardamone, managing director of the nonprofit research group Global Financial Integrity, illustrated the efforts some parties make to conceal the individuals behind a shell company stating, “you can

²⁰⁴ Malia Wollan, *How to Set Up a Shell Company*, N.Y. TIMES (Nov. 7, 2019), <https://www.nytimes.com/2019/11/07/magazine/how-to-set-up-a-shell-company.html>.

²⁰⁵ U.S. Dep’t of Treasury, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies*, 5–6 (Nov. 2006), https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.

²⁰⁶ Drake Forester, *The Truth About Shell Companies: The Good, The Bad, and the Ugly*, ALL BUSINESS, <https://www.allbusiness.com/shell-companies-legitimate-uses-corruption-105041-1.html>.

²⁰⁷ *Combating Illicit Financing by Anonymous Shell Companies: Hearing Before the S. Comm. on Banking, Housing, & Urban Affairs*, 116th Cong. (2019) (statement of Steven M. D’Antuono, Act. Dep. Assist. Director, Fed. Bureau of Investigation), <https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies>.

²⁰⁸ Scott Reyburn, *What the Panama Papers Reveal About the Art Market*, N.Y. TIMES, (Apr. 11, 2016), <https://www.nytimes.com/2016/04/12/arts/design/what-the-panama-papers-reveal-about-the-art-market.html>.

²⁰⁹ Casey Michel, *The U.S. Is a Good Place for Bad People to Stash Their Money*, THE ATLANTIC, (Jul. 13, 2017), <https://www.theatlantic.com/business/archive/2017/07/us-anonymous-shell-companies/531996/>.

²¹⁰ STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 111TH CONG., REP. ON KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES: FOUR CASE HISTORIES 2, 72 (Comm. Print 2010).

²¹¹ *Id.* at 72.

create an anonymous shell in one jurisdiction that controls an anonymous trust in a completely different country that also controls a bank account in a third country.”²¹²

C. The Four Major Auction Houses

High-value art sales generally occur through a private sale or a public auction.²¹³ Sotheby’s, Christie’s, Phillips, and Bonhams are among the most well-known auction houses in the world, each dating back to the 1700s.²¹⁴ In addition to the largest auction houses, there are over 500 second-tier auction houses that play a significant role in national and international markets, and numerous small auction houses that provide services to domestic markets.²¹⁵ Since the highest value transactions are generally processed by the most well-known auction houses, this report concentrates on their role within the U.S. art market.

1. Sotheby’s

In 1744, Samuel Baker established Sotheby’s in London.²¹⁶ At the outset, the company became successful by auctioning books, and later expanded its business to prints, coins, medals, and antiquities.²¹⁷ After World War I, Sotheby’s began to focus on “the sale of pictures and decorative works of art.”²¹⁸ In 1964, Sotheby’s started a period of global expansion after its purchase of Parke-Bernet, the largest fine art auction house in the United States at the time.²¹⁹ Headquartered in New York, Sotheby’s currently has ten salesrooms around the world, including in London, Hong Kong, and Paris.²²⁰ Beyond those salesrooms, Sotheby’s BidNow program permits remote clients to participate in online auctions around the world.²²¹ Notable Sotheby’s auctions include the 2012 sale of Edvard Munch’s *The*

²¹² *All Things Considered: Want To Set Up a Shell Corporation To Hide Your Millions? No Problem*, NPR (Apr. 13, 2016), <https://www.npr.org/2016/04/13/474101127/want-to-set-up-a-shell-corporation-to-hide-your-millions-no-problem>.

²¹³ Samuel Rubinfeld, *Art World’s Response to Money-Laundering Concerns Draws Critics*, WALL ST. J. (Feb. 27, 2017), <https://blogs.wsj.com/riskandcompliance/2017/02/27/art-worlds-response-to-money-laundering-concerns-draws-critics/>.

²¹⁴ Charlotte Zajicek, *The history of auctions: from ancient Greece to online houses*, THE TELEGRAPH (Oct. 7, 2016), <https://www.telegraph.co.uk/art/online-auctions/history-of-auctions/>; *Top 5 Auction Houses Around World*, AC. COOPER (Jun. 26, 2019), <http://www.ac-cooper.com/top-5-auction-houses-around-world/>.

²¹⁵ ART BASEL & UBS, *The Art Market 2020* 131 (2020), https://d2u3kfw92fzu7.cloudfront.net/The_Art_Market_2020-1.pdf.

²¹⁶ *About Us: The History of Sotheby’s Auction House*, SOTHEBY’S <https://www.sothebys.com/en/about/our-history?locale=en>.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ SOTHEBY’S, *2019 Annual Report* 13, 57 (2019), <https://www.sothebys.com/content/dam/sothebys/PDFs/Sothebys-Annual-Report-12.31.2019.pdf?locale=en>.

²²¹ *Id.* at 13.

Scream, as well as the collections of Jacqueline Kennedy Onassis and Andy Warhol.²²² As of 2018, Sotheby's employed 1,713 people.²²³ In 2019, Sotheby's produced total revenues of \$991,660,000.²²⁴

Sotheby's business is divided into two parts—an agency segment and a finance segment.²²⁵ The agency segment operates Sotheby's auction and private sale business.²²⁶ The finance segment “earns interest income and associated fees through art-related financing activities by making loans that are secured by works of art.”²²⁷ In January 2016, Sotheby's acquired Art Agency Partners which provides art advisory services and strategic guidance to art collectors, artists, and artists' estates.²²⁸

In June 2019, Sotheby's announced a \$3.7 billion merger agreement with BidFair USA, a company owned by the French telecom mogul and art collector Patrick Drahi.²²⁹ Prior to the merger, Sotheby's was the oldest publicly traded company on the New York Stock Exchange (“NYSE”), “predating the [exchange] itself by 48 years.”²³⁰ After the deal with BidFair closed, however, Sotheby's returned “to private ownership after 31 years of trading publicly on the NYSE.”²³¹ Sotheby's CEO, Tad Smith, stated the acquisition “will provide Sotheby's with the opportunity to accelerate the successful program of growth initiatives of the past several years in a more flexible private environment.”²³²

After Sotheby's announced the merger, two Sotheby's shareholders filed suit against the auction house alleging failure to disclose in Sotheby's proxy statement

²²² *About Us: The History of Sotheby's Auction House*, SOTHEBY'S <https://www.sothebys.com/en/about/our-history?locale=en>.

²²³ SOTHEBY'S, *2018 Annual Report* 8 (2018), <http://www.sothebys.com/content/dam/sothebys/PDFs/2018-annual-report.pdf?locale=en>.

²²⁴ SOTHEBY'S, *2019 Annual Report* 8 (2019), <https://www.sothebys.com/content/dam/sothebys/PDFs/Sothebys-Annual-Report-12.31.2019.pdf?locale=en>.

²²⁵ *Id.* at 3.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Diana Wierbicki et al, *Sotheby's Goes Private: What It Means for the Art Market*, WEALTH MGMT. (Jun. 25, 2019), <https://www.wealthmanagement.com/high-net-worth/sothebys-goes-private-what-it-means-art-market>.

²³⁰ *Sotheby's Celebrates Its 275th Year With Ringing of the Opening Bell at the New York Stock Exchange*, SOTHEBY'S (Mar. 11, 2019), <https://www.sothebys.com/en/articles/sothebys-celebrates-its-275th-year-by-ringing-in-the-new-york-stock-exchange>.

²³¹ Margaret Carrigan, *Sotheby's ceases publicly trading on the New York Stock Exchange as its \$3.7bn sale to Patrick Drahi closes*, ART NEWSPAPER (Oct. 3, 2019), <https://www.theartnewspaper.com/news/sotheby-s-ceases-publicly-trading-on-the-new-york-stock-exchange-as-its-usd3-7bn-sale-to-patrick-drahi-closes>.

²³² Diana Wierbicki et al, *Sotheby's Goes Private: What It Means for the Art Market*, WEALTH MGMT. (Jun. 25, 2019), <https://www.wealthmanagement.com/high-net-worth/sothebys-goes-private-what-it-means-art-market>.

complete and accurate information regarding the company's valuation and background of the company's proposed sale to affiliates of Mr. Drahi.²³³ In that suit, the shareholders claimed Sotheby's filed materially misleading disclosures with the SEC.²³⁴ Sotheby's stated in response that, "the vast majority of all public company mergers over \$100 million are the subject of shareholder litigation [and] the lawsuits filed were expected and routine."²³⁵ These cases were subsequently dismissed or settled around 2019.

2. Christie's

Christie's was founded by James Christie in London in 1766.²³⁶ Early in the company's history, Christie's benefited from the instability caused by the French Revolution as many French pieces of art made their way to the British market.²³⁷ In 1824, Christie's gained additional notoriety with the opening of the National Gallery in London, which featured numerous pieces purchased from Christie's.²³⁸ In 1977, Christie's entered the U.S. market, opening a salesroom in New York.²³⁹ Today, Christie's has salerooms in London, New York, Paris, Geneva, Milan, Amsterdam, Dubai, Zurich, Hong Kong, and Shanghai.²⁴⁰ Each year, the company holds roughly 350 auctions in over 80 categories, including jewelry, fine arts, photographs, and wine.²⁴¹ Notable Christie's auctions include Elizabeth Taylor's jewelry collection, George Washington's personal copy of the U.S. Constitution and Bill of Rights, and the \$450 million sale of Leonardo da Vinci's *Salvator Mundi*.²⁴²

In addition to public auctions, Christie's represents clients in private sales.²⁴³ In 2005, Christie's entered the digital market allowing potential buyers to bid online through Christie's Live.²⁴⁴

²³³ Bob Van Voris & Katya Kazakina, *Sotheby's Investors Sue to Block \$2.7 Billion BidFair Offer*, BLOOMBERG (Jul. 19, 2019), <https://www.bloomberg.com/news/articles/2019-07-19/sotheby-s-holders-sue-over-2-7-billion-bidfair-acquisition>.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *About Christie's*, CHRISTIE'S, <https://www.christies.com/about-us/welcome-to-christies>.

²³⁷ *The History of Christie's Auction House*, CHRISTIE'S, <https://www.christies.com/auctions/the-history-of-christies-auction-house>.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *About Us: The History of Sotheby's Auction House*, SOTHEBY'S <https://www.sothebys.com/en/about/our-history?locale=en>.

²⁴¹ *Id.*

²⁴² *The History of Christie's Auction House*, CHRISTIE'S, <https://www.christies.com/auctions/the-history-of-christies-auction-house>.

²⁴³ *About Christie's*, CHRISTIE'S, <https://www.christies.com/about-us/welcome-to-christies>.

²⁴⁴ *The History of Christie's Auction House*, CHRISTIE'S, <https://www.christies.com/auctions/the-history-of-christies-auction-house>.

The company is now owned by French billionaire François Pinault through his holding company Groupe Artémis.²⁴⁵ In 2018, Christie's led the global art market, generating \$7 billion in total sales, "the highest ever in the history of the auction house."²⁴⁶ In 2019, the company generated \$5 billion in auction sales alone.²⁴⁷

In recent years, Christie's started its own art storage business through its subsidiary Christie's Fine Art Storage Services with facilities in Singapore and Brooklyn.²⁴⁸ The company also recalibrated its business model to better accommodate Asian buyers' increased participation in the art market.²⁴⁹ In 2017, Christie's sales in Asia increased 39 percent, which ultimately represented 31 percent of the global market.²⁵⁰ In part due to these increases and the expansion of its online activities, Christie's closed its South Kensington branch in London and scaled back activities in Amsterdam.²⁵¹

Beyond its substantial presence in Asia, Christie's has a longstanding relationship with the Russian market that dates back to the 1770s. In 1778, for example, James Christie sold Sir Robert Walpole's art collection to Empress Catherine the Great, and this collection remains in the Hermitage to this day.²⁵² The strength of this relationship has endured and in 2016, Christie's had a 62 percent share "of the global market for Russian works of art."²⁵³ The company also holds the record for "the highest price ever paid for a Russian painting at public auction – Kazimir Malevich's *Suprematist Composition*, which sold for \$85,812,500 in 2018."²⁵⁴

²⁴⁵ Ted Loos, *Auction Houses Find New Ways to Survive*, N.Y. TIMES (Oct. 12, 2017), <https://www.nytimes.com/2017/10/12/arts/christies-sothebys-auctions.html>.

²⁴⁶ *Christie's continues to lead the global art market*, CHRISTIE'S (Feb. 7, 2019), <https://www.christies.com/features/Christies-continues-to-lead-the-global-art-market-9681-1.aspx>.

²⁴⁷ Nicky Eaton, *Christie's Global Auction Channel Sales Total £3.9 Billion / US \$5.0 Billion in 2019*, ASSOC. PRESS (Dec. 20, 2019), <https://apnews.com/Business%20Wire/afa3d55c49974af6ac2a34f377da8c6a>.

²⁴⁸ Kelly Crow, *The Ultimate Walk-In Closet*, WALL ST. J. (Apr. 26, 2010), <https://www.wsj.com/articles/SB10001424052748703709804575202083586359768#>.

²⁴⁹ *Christie's sales in 2017 total \$6.6 billion*, CHRISTIE'S (Feb. 2, 2018), <https://www.christies.com/features/Christies-2017-results-8870-1.aspx>.

²⁵⁰ *Id.*

²⁵¹ Scott Reyburn, *Christie's to Close a London Salesroom and Scale Back in Amsterdam*, N.Y. TIMES (Mar. 8, 2017), <https://www.nytimes.com/2017/03/08/arts/design/christies-to-close-a-london-salesroom-and-scale-back-in-amsterdam.html>.

²⁵² *The History of Christie's Auction House*, CHRISTIE'S, <https://www.christies.com/auctions/the-history-of-christies-auction-house>.

²⁵³ CHRISTIE'S, *Russian Art 1* (2016), <https://www.christies.com/media-library/pdfs/2017/russian-art-market-report-2016-rev.pdf>.

²⁵⁴ *50 years of Russian Art masterpieces at Christie's*, CHRISTIE'S (Dec. 11, 2019), <https://www.christies.com/features/50-years-of-Russian-art-at-Christies-9747-3.aspx>.

3. Phillips

Harry Phillips founded Phillips Auction House (“Phillips”) in 1796.²⁵⁵ Phillips first achieved “international recognition by selling paintings from the estate of Queen Marie Antoinette and household items from Napoleon Bonaparte.”²⁵⁶ The company was eventually passed to Harry’s son and remained with the family through the 1880s and into the early 1900s.²⁵⁷ By the 1970s, Phillips expanded its catalogue to include “fine art, furniture, and estate collections.”²⁵⁸

In 1999, Phillips was purchased by Bernard Arnault, chairman of Louis Vuitton Moet Hennessey, who subsequently merged the company with the auction house of private art dealers Simon de Pury and Daniela Luxembourg.²⁵⁹ In 2001, Phillips and Bonhams & Brooks confirmed they would merge all operations in Great Britain to trade under the name Bonhams.²⁶⁰ This restructuring allowed Phillips, de Pury & Luxembourg to concentrate on the high end market and transfer their lower-end art sales to Bonhams.²⁶¹ In 2002, Simon de Pury took majority control of the company.²⁶² Six years later, Mercury Group, a luxury retail company, acquired a majority share in the company, and later obtained full control in 2013.²⁶³

Phillips is headquartered in London, where it conducts sales in a limited number of categories—contemporary art, photographs, furniture, watches, and jewelry—and advertises itself as “the most dynamic and forward-thinking auction house.”²⁶⁴ The company’s business also includes special exhibitions, private sales, and advisory and consulting services for private estates, corporate clients, and museums.²⁶⁵ Phillips has ten locations around the globe, including New York, Hong Kong, Geneva, Moscow, Paris, and Seoul.²⁶⁶ In 2019, Phillips had total sales revenue of \$908 million, “with private sales ending the year at \$171.8 million and marking a 34 percent gain from the previous year.”²⁶⁷

²⁵⁵ *About Us*, PHILLIPS, <https://www.phillips.com/about>.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Julia Finch, *Bonhams and Phillips confirm merger*, THE GUARDIAN (Jul. 13, 2001), <https://www.theguardian.com/business/2001/jul/14/6>.

²⁶¹ *Id.*; *Phillips, de Pury & Luxembourg- Company Profile, Information, Business Description, History, Background Information on Phillips, de Pury & Luxembourg*, REFERENCE FOR BUSINESS, <https://www.referenceforbusiness.com/history2/31/Phillips-de-Pury-Luxembourg.html>.

²⁶² *About Us*, PHILLIPS, <https://www.phillips.com/about>.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Locations*, PHILLIPS, <https://www.phillips.com/locations>.

²⁶⁷ *Phillips’ Overall Sales Total \$908 Million in 2019*, PHILLIPS (Feb. 4, 2020), <https://www.phillips.com/press/release/phillips-overall-sales-total-908-million-in-2019>.

4. Bonhams

Thomas Dodd established Bonhams in London in 1793.²⁶⁸ In the 1850s, George Bonham formed a partnership with Dodd's successor George Jones, calling the company Jones & Bonham.²⁶⁹ In 2000, after five generations, the company was re-named Bonhams & Brooks following its acquisition by Brooks auction house.²⁷⁰ Shortly thereafter in 2001, Brooks acquired the British operations of its rival company Phillips.²⁷¹ A year later, Bonhams acquired the American auction house Butterfields, further expanding its global reach.²⁷² In September 2018, the private equity firm Epiris purchased Bonhams for an undisclosed amount.²⁷³

Bonhams “sells more jewelry lots per year than any other international house,” making up more than 40 percent of the company's sales.²⁷⁴ Outside of jewelry, Bonhams specializes in low to mid-range art and antiquities as well as classic cars.²⁷⁵ The company holds more than 250 sales each year at auction venues around the world including Edinburgh, Hong Kong, London, New York, and Sydney.²⁷⁶

5. Online Auctions during the COVID-19 Pandemic

In March 2020, the United States took steps to respond to the COVID-19 pandemic with a number of jurisdictions issuing stay-at-home orders to prevent the spread of the virus. Sotheby's, Christie's, and Phillips shifted to online auction formats as in-person events were cancelled.²⁷⁷ To simulate an in-person auction experience, Sotheby's filmed their auctioneer “facing a fleet of television screens so

²⁶⁸ *About Us*, BONHAMS, https://www.bonhams.com/about_us/.

²⁶⁹ *Id.*

²⁷⁰ *Id.*; Chris Maxwell, *Bonhams auction house*, DIRECTOR UK (Apr. 1, 2014), <https://www.director.co.uk/bonhams-auction-house-company-profile-1-april-2014/>.

²⁷¹ *About Us*, BONHAMS, https://www.bonhams.com/about_us/.

²⁷² The Art Newspaper, *Bonhams Buys Butterfields*, FORBES (Aug. 6, 2002), <https://www.forbes.com/2002/08/06/0806conn.html#493a313732d8>.

²⁷³ Anthony DeMarco, *Bonhams Sold To Private Equity Firm*, FORBES (Sept. 4, 2018), <https://www.forbes.com/sites/anthonydemarco/2018/09/04/bonhams-sold-to-private-equity-firm/#5318c8261f4b>.

²⁷⁴ *Id.*

²⁷⁵ Scott Reyburn, *The Art World's Elephant in the Room*, N.Y. TIMES (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/arts/design/elephant-graph-income-inequality.html>.

²⁷⁶ Javier Espinoza & James Pickford, *Bonhams snapped up by private equity group Epiris*, FIN. TIMES (Sept. 4, 2018), <https://www.ft.com/content/9052fcee-b064-11e8-8d14-6f049d06439c>; *Locations*, BONHAMS, <https://www.bonhams.com/locations/>.

²⁷⁷ Kelly Crow, *Sotheby's to Offer \$60 Million Painting Online in New Format*, WALL ST. J. (May 29, 2020), <https://www.wsj.com/articles/sotheby-s-to-offer-60-million-painting-online-in-new-format-11590769933>; Scott Reyburn, *Christie's New Auction Technique: The Global Gavel*, N.Y. TIMES (Jul. 10, 2020), <https://www.nytimes.com/2020/07/10/arts/design/christies-auction.html>.

viewers could watch as he [fielded] collectors' phone bids placed via colleagues."²⁷⁸ The auctioneer also considered real-time bids placed on the Sotheby's website.²⁷⁹

These online auctions were profitable for all three houses.²⁸⁰ Some 80,000 people joined Christie's July 10, 2020 auction, which sold 79 paintings and brought in \$421 million in overall sales.²⁸¹ This includes Roy Lichtenstein's *Nude with Joyous Painting* that sold for \$46.2 million to an anonymous bidder, roughly \$16 million more than its expected sale price.²⁸² Sotheby's auction on June 29, 2020 brought in \$234.9 million in total sales, including \$85 million for a trio of Francis Bacon works, *Triptych Inspired by the Oresteia of Aeschylus*.²⁸³ The three Bacon paintings also sold to an anonymous telephone bidder.²⁸⁴

Phillips held their own hybrid in-person and online auction on July 2, 2020 bringing \$41 million.²⁸⁵ Phillips CEO Ed Dolman remarked that the "sale was a resounding statement about the strength of our market, . . . as there's a certain amount of huge pent-up demand if you think about the amount of money that would have been spent in the global art market."²⁸⁶ Dolman added further, "it's quite obvious to us there's a significant amount of money on the sidelines waiting to get a chance to get back in the art market."²⁸⁷

D. Art Dealers, Art Galleries, and Art Fairs

Auction houses are not the exclusive means by which collectors purchase high-value works of art. Buyers also rely on art dealers to build their collections

²⁷⁸ Kelly Crow, *Sotheby's to Offer \$60 Million Painting Online in New Format*, WALL ST. J. (May 29, 2020), <https://www.wsj.com/articles/sotheby-s-to-offer-60-million-painting-online-in-new-format-11590769933>

²⁷⁹ *Id.*

²⁸⁰ Kelly Crow, *Roy Lichtenstein's Nude Buoy* Christie's \$421 Million Live-Stream Sale, WALL ST. J. (Jul. 10, 2020), <https://www.wsj.com/articles/roy-lichtensteins-nude-buoys-christie-s-421-million-live-stream-sale-11594419000>; *Contemporary Art Evening Auction*, SOTHEBY'S (Jun. 29, 2020), <https://www.sothebys.com/en/buy/auction/2020/contemporary-art-evening-auction?locale=en>; Nate Freeman, *Phillips Scored \$41 Million in a White-Glove Contemporary Evening Sale as the Auction House Got Hip to New Online Landscape*, ARTNET NEWS (Jul. 2, 2020), <https://news.artnet.com/market/phillips-evening-july-2020-1892250>.

²⁸¹ Kelly Crow, *Roy Lichtenstein's Nude Buoy* Christie's \$421 Million Live-Stream Sale, WALL ST. J. (Jul. 10, 2020), <https://www.wsj.com/articles/roy-lichtensteins-nude-buoys-christie-s-421-million-live-stream-sale-11594419000>.

²⁸² *Id.*

²⁸³ Kelly Crow, *Sotheby's Brings Home the Bacon*, WALL ST. J. (Jun. 29, 2020), <https://www.wsj.com/articles/sothebys-brings-home-the-bacon-11593489255>.

²⁸⁴ *Id.*

²⁸⁵ Nate Freeman, *Phillips Scored \$41 Million in a White-Glove Contemporary Evening Sale as the Auction House Got Hip to New Online Landscape*, ARTNET NEWS (Jul. 2, 2020), <https://news.artnet.com/market/phillips-evening-july-2020-1892250>.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

through private sales.²⁸⁸ In 2019, aggregate dealer sales accounted for 58 percent of the art market by value, in contrast with auction sales, which claimed only 42 percent.²⁸⁹ In private sales, art dealers serve as a liaison between artists or current owners and potential purchasers.²⁹⁰ In this role, and in exchange for a percentage of each artwork sold, dealers often “manage an artist’s sales, network with collectors and curators, and seek to ensure the longevity of an artist’s career by mounting exhibitions” on behalf of their artists.²⁹¹

Traditionally, art dealers conduct private sales through art galleries.²⁹² In 2019 for example, 50 percent of dealer sales were made in galleries; the remaining 50 percent were divided between art fairs (45 percent) and online purchases (5 percent).²⁹³ Galleries represent artists through promotional activities, hosting exhibitions, and ultimately selling their work.²⁹⁴ Primary market dealers sell works by living artists while secondary-market dealers re-sell works “on behalf of collectors, institutions, and estates.”²⁹⁵ Because auction houses tend to focus on the secondary market, galleries execute many first-time sales and as a result play an influential role in determining the value of individual pieces.²⁹⁶

Nevertheless, the historical dominance of art galleries has declined with the increasing popularity of art fairs. Unlike the traditional gallery, which operates from a fixed location, art fairs allow for collaboration between dealers and gallery owners who come together for a limited time to show a wide range of pieces at different price points.²⁹⁷ Art fairs provide valuable networking opportunities, increased exposure for artists, and a bolstered image for host cities, which benefit

²⁸⁸ ART BASEL & UBS, *The Art Market 2018* 30 (2018), <https://www.artbasel.com/about/initiatives/the-art-market>.

²⁸⁹ ART BASEL & UBS, *The Art Market 2020* 32 (2020), https://d2u3kfw92fzu7.cloudfront.net/The_Art_Market_2020-1.pdf.

²⁹⁰ Amy Zipkin, *A Lifetime of Making Art, but New to Selling It Online*, N.Y. TIMES (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/business/lifetime-making-art-new-to-selling-online.html>.

²⁹¹ Zoe Goetzmann, *These Artists Jump-Started Their Careers by Selling Directly to Collectors on Instagram*, ARTSY (Nov. 26, 2018), <https://www.artsy.net/article/artsy-editorial-artists-jump-started-careers-selling-directly-collectors-instagram>.

²⁹² ART BASEL & UBS, *The Art Market 2018* 178 (2018), <https://www.artbasel.com/about/initiatives/the-art-market>.

²⁹³ ART BASEL & UBS, *The Art Market 2020* 193 (2020), https://d2u3kfw92fzu7.cloudfront.net/The_Art_Market_2020-1.pdf.

²⁹⁴ Anna Louie Sussman, *How Galleries Support Their Artists*, ARTSY (Apr. 18, 2017), <https://www.artsy.net/article/artsy-editorial-galleries-support-artists>.

²⁹⁵ ART DEALERS ASSOCIATION OF AMERICA, COLLECTOR’S GUIDE 15 (45th ed. 2007), https://web.archive.org/web/20131008045449/http://www.artdealers.org/dnloads/adaa_guide.pdf.

²⁹⁶ Allison Schragger, *High-end art is one of the most manipulated markets in the world*, QUARTZ (Jul. 11, 2013), <https://qz.com/103091/high-end-art-is-one-of-the-most-manipulated-markets-in-the-world/>.

²⁹⁷ ART BASEL & UBS, *The Art Market 2018* 190–191 (2018), <https://www.artbasel.com/about/initiatives/the-art-market>.

from increased tourism.²⁹⁸ Fairs also expose current collectors to many different galleries and artists in one location, therefore avoiding the inconvenience of traveling between different locations.²⁹⁹ The 2019 Art Basel Miami Beach art fair, for example, hosted 269 galleries from 33 countries in the Miami Beach Convention Center.³⁰⁰

E. Voluntary Anti-Money Laundering and Sanctions Programs in the Art Industry

As explained earlier, under current U.S. law, the art industry is not legally required to comply with the same anti-money laundering requirements as certain financial institutions listed in the BSA.³⁰¹ The BSA authorizes the Treasury Secretary to require those financial institutions to file “certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”³⁰² In addition, the BSA states that “in order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum –

- (A) the development of internal policies procedures, and controls;
- (B) the designation of a compliance officer;
- (C) an ongoing employee training program; and
- (D) an independent audit function to test programs.”³⁰³

Although the provisions of the BSA do not apply to the art industry, all U.S. citizens and companies must comply with U.S. sanctions programs.³⁰⁴ Under IEEPA for example, any U.S. citizen or entity that conducts business with a person on the SDN list is subject to criminal and civil liability.³⁰⁵

²⁹⁸ Y-Jean Mun-Delsalle, *The Art Fair Boom Is Forever Changing the Way the Art Market Does Business*, FORBES (Apr. 7, 2016), <https://www.forbes.com/sites/yjeanmundelsalle/2016/04/07/the-art-fair-boom-is-forever-changing-the-way-the-art-market-does-business/#3589bb5d6c64>.

²⁹⁹ James Tarmy, *Art Fairs Are Popping Up Everywhere. Do They Make Any Money?*, BLOOMBERG (Mar. 6, 2018), <https://www.bloomberg.com/news/articles/2018-03-06/art-fairs-are-popping-up-everywhere-who-profits>.

³⁰⁰ Annie Armstrong, *Art Basel Miami Beach Will Feature 269 Exhibitors in December*, ART NEWS (Sept. 11, 2019), <https://www.artnews.com/art-news/news/art-basel-miami-exhibitor-list-13211/>.

³⁰¹ For the complete list of entities that fall under the definition of a “financial institution” and therefore must comply with the Bank Secrecy Act, see 31 U.S.C. § 5312 (a)(2).

³⁰² 31 U.S.C. § 5311.

³⁰³ 31 U.S.C. § 5318(h)(1)(A)–(D).

³⁰⁴ 50 U.S.C. § 1705(a).

³⁰⁵ 50 U.S.C. § 1705(b)–(c).

Despite not having a legal obligation to implement AML programs under the BSA, the Subcommittee found that the four biggest art auction houses described above all have voluntary AML programs in place. In addition, all four have sanctions compliance programs. This section details the voluntary AML and sanctions programs in place at: (1) Sotheby's; (2) Christie's; (3) Phillips; and (4) Bonhams. The Subcommittee also interviewed one private art dealer who admitted they operated with no AML or sanctions compliance programs in effect.

1. Sotheby's

Sotheby's informed the Subcommittee that it has a compliance department that oversees all issues relating to money laundering, terrorist financing, tax evasion, sanctions policies, and related litigation.³⁰⁶

Worldwide Policy on Money Laundering, Terrorist Financing and Tax Evasion. Sotheby's has a detailed, written set of rules to combat money laundering, terrorist financing, and tax evasion. The current policy document (the "2018 AML Policy") "applies to all members of the Board of Directors, employees, consultants, independent contractors, and others providing services to Sotheby's."³⁰⁷ The document also states that "Sotheby's is committed to strict compliance with all applicable laws regarding anti-money laundering, combatting terrorist financing, and tax evasion."³⁰⁸ It further states that "if you have any concerns about the activity of a client or legality of a transaction in which Sotheby's is involved you must raise those concerns with the Compliance Department immediately."³⁰⁹

The 2018 AML Policy explains that "the single most effective tool in combatting money laundering or terrorist financing is to have adequate knowledge about our clients. We must know who our clients are regardless of whether they are new or existing clients, occasional or regular purchasers or consignors and the volume or value of the transaction activity."³¹⁰ The 2018 AML Policy explains that "for *all* clients, new or existing, we must: (a) know the **true identity** of the person or entity who owns the property or funds in question; and (b) understand **the source of the client's funds**."³¹¹

The 2018 AML Policy also outlines how to deal with an agent acting on behalf of an undisclosed principal. The document states, in pertinent part:

³⁰⁶ Subcommittee Briefing with Sotheby's Employees (Oct. 25, 2018).

³⁰⁷ SOT-000054-78.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.* (emphasis in original).

In the context of ordinary auction and private sale transactions with an agent who you know or believe is acting on behalf of a principal whose identity is not disclosed, we must treat the agent as our client for the purposes of customer due diligence and verification of identification. Before you engage in transactions with agents for undisclosed owners, (e.g., dealers who wish to keep the names of their clients confidential from us), you must ensure that we know and trust the agent concerned . . . In addition, you should confirm that the agent knows personally and/or has conducted appropriate due diligence on its clients' identities and activities.³¹²

The 2018 AML Policy also notes “certain clients and transactions by their nature pose a higher risk of money laundering/terrorist financing or tax evasion. You must consider the below risk factors in connection with every transaction, and if you believe that your client falls within any of the following categories you must notify the Compliance Department immediately.”³¹³ The “higher risk indicators” include: “clients residing in or with property/funds sourced from high-risk jurisdictions, which are those jurisdictions listed in Annex B.”³¹⁴ Annex B lists 38 countries, including Russia.³¹⁵ Sotheby's added Russia to the list of high-risk jurisdictions in 2018; Russia was not included as a high-risk jurisdiction in its prior AML policy.³¹⁶

The 2018 AML Policy also requires enhanced due diligence for transactions involving a politically exposed person or “PEP.”³¹⁷ A PEP is defined in the 2018 AML Policy as “an individual that is, or has, at any time in the preceding year been entrusted with a prominent public function by any state, a European Community institution (such as the European Commission) or an international body....”³¹⁸ The definition of PEP also includes immediate family members and any “person known to be a close associate of the PEP (such as a person who is in a close business relationship with a PEP or a trust or company formed for the benefit of a PEP).”³¹⁹ The 2018 AML Policy explains that for PEPs “the risk of money laundering is legally presumed to be higher based on his/her position and the greater likelihood that he/she will be exposed to corruption.”³²⁰

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ SOT-000419-43.

³¹⁷ SOT-000054-78.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

The Sotheby's 2018 AML Policy also lists various types of "activity which may cause concern," which it refers to as "red-flags."³²¹ The 2018 AML Policy states that "Sotheby's may not establish or maintain a business relationship or conclude a transaction with a client if at the time we are suspicious about money laundering, terrorist funding, the client, the source of funds or the property or that the transaction is part of tax evasion."³²² The 2018 AML Policy lists a number of different types of "red-flags," including, but not limited to the following:

- Client is unwilling to present requested identification documents, even after we have given the client reasonable explanations as to why we have asked for this information.
- Client refuses to provide complete and accurate contact information or business affiliations.
- Client gives evasive or incomplete answers to basic, routine questions.³²³

The 2018 AML Policy states that "all employees are required to report any suspicious transactions or suspected fraud to the Compliance Department."³²⁴

Worldwide Policy on Compliance with Economic Sanctions Programs. Sotheby's 2016 Worldwide Policy Regarding Compliance with Economic Sanctions Programs (the "2016 Sanctions Policy") establishes that "no Sotheby's employee, wherever located, may transact with any blocked party."³²⁵ The 2016 Sanctions Policy explains that OFAC:

administers and enforces U.S. economic and trade sanctions against targeted foreign countries, terrorists and terrorism-sponsoring organizations, international narcotics traffickers, and others. The regulations and executive orders administered and enforced by OFAC prohibit, among other things, the engagement by U.S. persons in transactions with, or the provision by U.S. persons of services to, certain entities and individuals on the Specifically Designated Nationals and other Blocked Persons List and other OFAC lists (collectively, the "OFAC Lists").³²⁶

The 2016 Sanctions Policy also states, "Sotheby's must ensure that no actual or potential client, no agent or intermediary, no beneficiary or principal whose name it acquires in the ordinary course of business . . . are named on the OFAC Lists, are owned 50 percent or more by one or more persons on the OFAC Lists, or any other

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.* (emphasis in original).

³²⁵ SOT-000104-114.

³²⁶ *Id.*

relevant Blocked Parties list.”³²⁷ The document instructs Sotheby’s employees to contact the Compliance Department if they “believe that an active Sotheby’s client is listed on any relevant Blocked Parties lists.”³²⁸

Sotheby’s also “conducts regular screening through an automated tool to ensure that no counterparty is on any relevant Blocked parties list. Sotheby’s also reruns the filter against its counterparties following the release of updates to the OFAC Lists and other relevant lists.”³²⁹ This process is monitored by the Compliance Department.³³⁰ Sotheby’s Compliance Department also conducts due diligence on individual transactions and requires contractual clauses and representations from consignors and purchasers to ensure that such purchases are consistent with Sotheby’s compliance requirements and that the real party in interest is not subject to U.S. prohibitions.

Sotheby’s Briefing. On October 25, 2018, senior employees from the Sotheby’s Compliance Department briefed Subcommittee staff on the company’s policies and practices. The briefing was led by Sotheby’s former Chief Global Compliance Counsel, Head of Regulatory Affairs (“Chief Compliance Counsel”).³³¹ She explained to the Subcommittee that while the art industry is not technically regulated, many regulatory environments apply to the art business.³³² She continued that Sotheby’s has a “mature and well-developed” AML and sanctions compliance program, in which employees use a risk-based approach.³³³ She said the higher the value of the art transaction, the more Sotheby’s needs to understand about the background of the client or the ability of the client to purchase the item.³³⁴

The Chief Compliance Counsel explained that, in some cases, dealers will purchase a work of art and may subsequently sell it to another person.³³⁵ In those instances, she stated that Sotheby’s “doesn’t have a way to get that information” about the person to whom the dealer may subsequently sell the artwork.³³⁶ She stated that, at times, Sotheby’s has asked dealers on whose behalf they are purchasing an item, but there is an economic disincentive for dealers to provide that information to Sotheby’s.³³⁷ The dealers believe that if Sotheby’s knew the identity of their clients, Sotheby’s would go straight to their client and cut out the dealer.³³⁸

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Subcommittee Briefing with Sotheby’s Employees (Oct. 25, 2018).

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

The art dealer's livelihood depends on protecting client information.³³⁹ Should Sotheby's ask a dealer to whom they may intend to resell the artwork following the dealer's transaction with Sotheby's, according to the Chief Compliance Counsel, the dealer would respond, "Are you kidding me? I'm not telling you."³⁴⁰

Ultimately, according to the Chief Compliance Counsel, whether to continue and execute a transaction with a dealer who may sell to a subsequent buyer was a judgment call.³⁴¹ If the dealer is someone Sotheby's knows; established in the art world; someone Sotheby's has transacted with many times in the past; and is not under investigation, she said Sotheby's is likely to complete the transaction.³⁴² If the dealer does not meet those criteria, she said Sotheby's would refuse to move forward: "we'll say there's too much smoke here, and we've done that."³⁴³

The Chief Compliance Counsel stated that in some instances, the Compliance Department offers its counterparties the option of telling Sotheby's Compliance personnel who their principal is, which enhances Sotheby's ability to perform its due diligence and allows counterparties to protect their commercially proprietary information. Sotheby's has been successful in this way in encouraging intermediaries to divulge their clients' identities without risk of losing their business portfolio.³⁴⁴ She said that Sotheby's "has a lot of success with that," yet some intermediaries still refuse to disclose their principal due to a lack of trust.³⁴⁵ Sometimes intermediaries request before disclosing the identity of their principal a non-disclosure agreement ("NDA") to provide comfort that Sotheby's would not share the information outside of its Compliance Department.³⁴⁶

The Chief Compliance Counsel also discussed Sotheby's sanctions compliance policies.³⁴⁷ She explained that Sotheby's runs its client list through World-Check on a daily basis to identify possible sanctions violations.³⁴⁸ This check includes "all the major sanctions from around the world."³⁴⁹ Any hits on sanctioned entities get flagged to the Compliance Department.³⁵⁰ For private sales, Sotheby's runs the names for both the buyer and the seller through World-Check to determine if either are sanctioned.³⁵¹ World-Check is a database used by financial institutions to

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

identify PEPs, SDNs, and other high-risk individuals and organizations.³⁵² She told the Subcommittee that Sotheby’s “has never transacted with an SDN or blocked person.”³⁵³ She asserted the company has “never had a hit and never inadvertently transacted with one.”³⁵⁴

The Chief Compliance Counsel also explained that Sotheby’s due diligence at the time associated with the Subcommittee’s review into a new client or transaction involved a risk-based analysis, which factored in the value of the transaction, the profile on the person, and the legitimacy of why the person has the artwork or the funds to purchase the artwork.³⁵⁵ At the time, Sotheby’s was aware of the risk that the buyer may not be the UBO and dealt with that risk by reviewing the information to which it had access and kept an eye out for red flags.³⁵⁶ She noted there is a significant competitive advantage in the art world to having information about who owns what art, and intermediaries in the art world frequently do not want to disclose who their clients are because they do not want to be cut out of the deal.³⁵⁷ At the relevant time, Sotheby’s trusted some clients to do their own KYC of their transactions parties. And Sotheby’s will walk away from a deal if it was not comfortable with the responses it received.³⁵⁸

2. Christie’s

Global Anti-Money Laundering and Anti-Terrorist Financing Policy. Christie’s first established an AML policy in December 2008,³⁵⁹ and updated it in 2014 and 2015.³⁶⁰ The current AML policy was updated and finalized in March 2018 (the “2018 AML Policy”).³⁶¹ Christie’s former Global Head of Compliance in London explained that the AML policy matured over the years.³⁶²

The 2018 AML Policy established know your client (or “KYC”) procedures as a “key component of Christie’s AML Policy. This involves collecting, verifying and keeping records of the identity of all clients.”³⁶³ The document states that “Christie’s will request sufficient identification documentation from clients to verify their identity using a risk-based approach. Where there is a greater perceived risk

³⁵² See *Refinitiv World-Check Risk Intelligence*, REFINITIV, <https://www.refinitiv.com/en/products/world-check-kyc-screening>.

³⁵³ Subcommittee Briefing with Sotheby’s Employees (Oct. 25, 2018).

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ Christies-PSI-00000286–89.

³⁶⁰ Christies-PSI-00000294–99 (2014); Christies-PSI-00000300–05 (2015).

³⁶¹ Christies-PSI-00000001–006.

³⁶² Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019) (also referred to below as Christie’s “Compliance Counsel”).

³⁶³ Christies-PSI-00000001–006.

of money laundering or terrorist financing, enhanced due diligence, client risk reviews and KYC checks may be required.”³⁶⁴ The 2018 AML Policy poses two questions for Christie’s employees to consider regarding KYC procedures:

- Am I satisfied that the person/entity I am dealing with is the person/entity they claim to be?
- Do the circumstances of the proposed transaction give rise to a suspicion that the property being sold or funds used for payment are derived from criminal activity or may be used to fund terrorism?³⁶⁵

The 2018 AML Policy also states “for clients who are legal entities, Christie’s must also identify the natural persons in control (e.g., directors and beneficial owners).”³⁶⁶ Christie’s requires certain forms of identification for individuals making purchases or the beneficial owner of a private company, including offshore entities.³⁶⁷

Christie’s also notes circumstances that are considered “red flags.”³⁶⁸ The document explains that red flags “are indicators of circumstances where [Christie’s] may require further information from or about the client” and provides specific examples.³⁶⁹

Sanctions Policy. The current Christie’s sanctions policy was issued on May 1, 2018.³⁷⁰ It states that “Christie’s is committed to complying with all Sanctions that may apply to its business at any given time.”³⁷¹ As such, employees and representatives must not “enter into or facilitate any business, dealings, or other activities, directly or indirectly, involving or for the benefit of Sanctioned Parties, except where expressly approved in writing by Compliance.”³⁷²

The Christie’s Sanctions Policy delineates certain countries as high risk countries and requires “all potential business and relationships with clients, suppliers and other third parties in High Risk Countries [to] be referred to Compliance prior to any business being conducted or any business relationship being established.”³⁷³ The policy also states that “Christie’s will ensure that employees in specific regions and departments exposed to dealings with High Risk Countries received appropriate training on Christie’s Sanctions obligations.”³⁷⁴

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ Christies-PSI-00000009–13.

³⁶⁸ Christies-PSI-00000324–26.

³⁶⁹ *Id.*

³⁷⁰ Christies-PSI-00000014–19.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

Christie's Briefing. Employees from Christie's U.S.-based legal department in New York briefed Subcommittee staff on Christie's anti-money laundering policies and sanctions compliance, led by Christie's General Counsel for Dispute Resolution and Legal Public Affairs ("Christie's General Counsel").³⁷⁵ According to her, the Legal Department acts as a "helicopter parent," serving as an independent check on Christie's business activities.³⁷⁶ She noted that the AML policy applies to all employees, including client-facing employees, because Christie's "wants [all employees] to know they are responsible for [compliance] issues."³⁷⁷ The Legal function serves as "an independent check away from the business to look at all decision being made" to ensure appropriate compliance.³⁷⁸ The Compliance Manager for the Americas added that there are "conversations between [client-facing] front line staff to alert [Legal] to red flags."³⁷⁹ He continued that "if a client gives [client-facing staff] pushback it would be an immediate escalation to Legal."³⁸⁰ Regarding Christie's AML policies, Christie's General Counsel noted that they are applicable to all Christie's employees globally.³⁸¹ Additionally, all Christie's employees receive training on the policies.³⁸²

Christie's General Counsel noted that the Legal Department has the ability to "restrict" clients – such as sanctioned individuals.³⁸³ Restricting a client "blocks" them globally from transacting with Christie's.³⁸⁴ Only the Legal Department is able to place or remove these restrictions.³⁸⁵ The decision to restrict someone with derogatory information is simple; the Legal Department can simply say "no" and restrict that individual from transacting with Christie's.³⁸⁶ If information is less clear, the decision is escalated to the head of the compliance department through a report.³⁸⁷ If necessary, the issue can subsequently be escalated to the General Counsel in London or further to the Deputy CEO for a decision.³⁸⁸

³⁷⁵ Subcommittee Briefing with Christie's Employees (Feb. 8, 2019).

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Id.*

3. Phillips

Worldwide Anti-Money Laundering Policy. Phillips provided the Subcommittee with its AML policy (the “Phillips Policy”), which stated that Phillips employees “must report any knowledge or suspicion to the appropriate Phillips Anti-Money Laundering Officer, who then decides whether to make a report to the relevant authority.”³⁸⁹ The Phillips Policy first asks employees to require new clients to submit certain forms of government-issued identification.³⁹⁰ The Phillips Policy also notes that “key questions to ask include:

- Is the consignor or buyer reluctant to provide personal information?
- Is there any suggestion that the client is evading, has evaded or will evade taxes?
- Who is the beneficial owner of the property if it is consigned by an off-shore company?”³⁹¹

The Phillips Policy also includes a section entitled “Red Flags,” which explains “if any of the following ‘Red Flags’ appear and there is no reasonable explanation for the particular Red Flag such that the employee is concerned about the client or transaction, the matter MUST be referred immediately in writing and by telephone to the appropriate Anti-Money Laundering Officer.”³⁹² The Phillips Policy continues with a list of “what to look for,” such as:

- Client provides unusual, inconsistent, or suspicious identification; and
- Clients from certain high risk jurisdictions, particularly if wanting to pay from a local bank (e.g., Iran, North Korea, Algeria, Myanmar, Syria, Indonesia, Yemen).³⁹³

While the Phillips Policy did not include instructions regarding compliance with sanctions, Counsel for Phillips explained that sanctions compliance was considered a component of Phillips anti-money laundering compliance program, noting Phillips’ compliance training from as early as 2011 covered risks and compliance protocols related to sanctions.³⁹⁴

Phillips Briefing. Subcommittee staff received a briefing from Phillips General Counsel based in London.³⁹⁵ He explained that the company’s policies have developed over time.³⁹⁶ He stated that Phillips generally followed what the rest of

³⁸⁹ PHILLIPS-00401-04.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.* (emphasis in original).

³⁹³ *Id.*

³⁹⁴ See Letter from Counsel for Phillips to Subcommittee staff (Jul. 22, 2020).

³⁹⁵ Subcommittee Briefing with General Counsel for Phillips (Dec. 11, 2018).

³⁹⁶ *Id.*

the art industry was doing with regard to AML policy.³⁹⁷ Looking forward, he noted that Phillips was working on incremental steps towards a better policy—based on some of the same obligations imposed on banks regarding enhanced customer due diligence.³⁹⁸ He said he believes this will lead to increased transparency from clients.³⁹⁹ As such, Phillips’ General Counsel stated he believed clients will not be surprised when Phillips begins asking for additional due diligence information, including ultimate beneficial owner information.⁴⁰⁰

Anti-Money Laundering, Sanctions & Counter-terrorism Financing Policy. Phillips’ General Counsel also explained to the Subcommittee that in late 2018, Phillips was preparing to update its AML policy.⁴⁰¹ The current policy was issued on November 6, 2018 and included instructions on: Money Laundering; Sanctions; Due Diligence Process; Frequently Asked Questions; and Client Identification Checklist and Screening Requirements.⁴⁰² Counsel for Phillips stated “the issuance of the policy was then followed by mandatory training in all sale sites in 2018 for all staff.”⁴⁰³ Phillips’ counsel continued:

Phillips currently screens all sellers and buyers—whether existing or new—against sanctions databases. In addition, [art] agents are required to identify their principal and provide Phillips with KYC documentation in relation to themselves and their principal. Phillips insists upon ultimate beneficial ownership (UBO) information for all companies and does not rely upon third parties to carry out KYC—it is all handled in house. Phillips does not pay out to sellers and does not issue invoices to buyers without having full KYC documentation.⁴⁰⁴

4. Bonhams

Summary Controls & Procedures Manual. In April 2018, Bonhams U.S. issued its Bonhams U.S. Group Summary Controls & Procedures Manual (the “2018 Bonhams Manual”) to ensure “that Bonhams and our stakeholders reduce the risk of fraudulent transactions and are compliant with all appropriate regulatory and taxation requirements.”⁴⁰⁵ The 2018 Bonhams Manual explained that the company would employ “a risk-based approach to AML [that] involves assigning different categories of risk (e.g. low, medium, high) to various types of client[s]. We have

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Draft Phillips Anti-money Laundering, Sanctions & Counter-terrorism Financing Policy provided to the Subcommittee; Email from Counsel for Phillips to Subcommittee staff (Mar. 19, 2020).

⁴⁰³ Email from Counsel for Phillips to Subcommittee staff (Mar. 19, 2020).

⁴⁰⁴ *Id.*

⁴⁰⁵ BON004674-4700.

adopted such an approach, giving particular regard to our circumstances, such as our commercial activity, our range of clients and the registration process.”⁴⁰⁶ The 2018 Bonhams Manual identifies the following risk areas:

Type of client – Is the client a private individual or corporate entity? Is the client acting as a principal or agent? Are they an existing or new client? Are you visiting the client in their home or are you seeing them for the first time when they have walked in off the street?

Type of customer – Is the customer present at the sale? Does the customer mix business and private transactions?

Geographical – Where is the client situated?

Transaction/Payment type – How does the buyer settle his/her invoices? How is the vendor paid?

Ongoing monitoring (Behavior) & other risk factors

- Is the transaction consistent with the client’s payment history?
- Is there any unusual or erratic behavior displayed by the client?
- Are there any indicators that raise concerns that the transaction is suspicious?
- A combination of the various criteria should help determine the client’s risk category?⁴⁰⁷

The 2018 Bonhams Manual continues:

However, it is ultimately the member of staff’s professional judgment that will determine whether a client or particular transaction requires further examination.

The higher the risk level of the client, the more scrutiny should be applied before entering into business relations with a client. If it doesn’t “Smell” right, tell us!⁴⁰⁸

The 2018 Bonhams Manual also requires that a vendor provide identification. Further, an “agent as consignor...should disclose to [Bonhams] who their ‘principal’ is (especially if that person is not signing the contract) in...the Master Consignment Agreement (MCA) before the agent signs.”⁴⁰⁹ The document continues: “Bonhams should request or seek confirmation of agency or representation relationship (as

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

between the agent and principal) either by confirming with the principal or requesting documentary support thereof from the agent.”⁴¹⁰

Bonhams Briefing. In a briefing with Subcommittee staff, Bonhams U.S. Counsel, along with outside counsel, explained that prior to the 2018 Bonhams Manual, Bonhams U.S. counsel communicated AML policies to staff during briefings and trainings.⁴¹¹ Bonhams U.S. Counsel noted that until 2016, most of the Bonhams U.S. staff was based in San Francisco, which made communication much easier.⁴¹² She said there was not a need for PowerPoint presentations on AML compliance because “everyone was sitting around the same desk.”⁴¹³

Bonhams U.S. Counsel told the Subcommittee that, historically, Bonhams U.S. did not check its clients against OFAC’s SDN list or any other sanctions lists.⁴¹⁴ Rather, Bonhams U.S. relied on AML and sanctions checks that its financial institutions perform.⁴¹⁵ According to Bonhams U.S. Counsel, the company would not knowingly engage in transactions with family members of sanctioned individuals.⁴¹⁶ Additionally, she represented that Bonhams U.S. would not conduct business with art agents or advisors who were known to represent sanctioned individuals.⁴¹⁷

5. Private Art Dealer

The Subcommittee also investigated private art sales, as further explained below. In reviewing those transactions, the Subcommittee interviewed a private art dealer based in New York (the “Private Dealer”).⁴¹⁸ The Private Dealer has thirty years of experience in the art market, having studied at major universities and worked at many art galleries and major art auction houses

The Private Dealer explained that, at the time the transaction described below took place, she had no written AML or sanctions policies.⁴¹⁹ The Private Dealer explained that she had not received any AML or sanctions-related training at any of the galleries or art auction houses at which she previously worked.⁴²⁰ When asked whether she had a legal obligation to question the origin of the funds

⁴¹⁰ *Id.*

⁴¹¹ Subcommittee Briefing with Bonhams U.S Counsel (Feb. 22, 2019).

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.* Bonhams reported that it now routinely screens all clients against the SDN and other sanctions list via a third party screening provider.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ Subcommittee interview of Private Dealer (Sept. 7, 2018).

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

used to purchase a piece of art, the Private Dealer responded that she did not.⁴²¹ She explained that in the art industry, questioning the source of funds would be considered contrary to industry standards and norms at the time—although she has done it on occasion—and that art agents and intermediaries would not want to provide that information because of confidentiality and privacy concerns of both the art agents and intermediaries and their clients.⁴²² She noted, however, that most of her clients are American and that she knows the identity of the ultimate buyer in the “majority” of her transactions.⁴²³

The Private Dealer explained that over the years, her practices regarding AML have significantly changed, but since the art industry is not regulated in the United States, she has had to self-regulate, rely on the advice of lawyers with expertise in AML and other related areas, and look for potential red flags in transactions, including with respect to the provenance of art pieces, in addition to relying on her gut.⁴²⁴ To that end, she said that if something does not feel right, or she does not know someone personally or through their reputation, she will not do business with them.⁴²⁵

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.*

III. ROTENBERG CASE STUDY: USING OFFSHORE COMPANIES, LAWYERS, AND ART ADVISORS TO MASK OWNERSHIP

Evidence examined by the Subcommittee suggests that the Rotenbergs used shell companies to mask their identities in transactions for high-value art both before and after being sanctioned by the United States. To form and manage those shell companies, the Rotenbergs appear to have used the services of attorney Mark Omelnitski and his company, the Markom Group. In addition, they also appear to have relied on art advisor and dealer Gregory Baltser, a U.S. citizen, to act as their representative in the art world to conceal their identities and involvement in particular art transactions, especially after becoming subject to U.S. sanctions.

Due to the lack of transparency in the art industry and in the formation and operation of shell companies, the evidence demonstrating the links between the Rotenbergs, their shell companies, Mr. Omelnitski, the Markom Group, and Mr. Baltser is not completely certain. Throughout the Subcommittee's investigation, witnesses interviewed by the Subcommittee claimed uncertainty and ignorance. One Sotheby's employee even told the Subcommittee she was untruthful to her employer when she previously stated that Mr. Baltser told her he represented Arkady and Boris Rotenberg. Regardless, the transactions outlined below represent the movement of millions of suspect U.S. dollars across international borders to purchase art, the investment of funds in U.S. assets with substantial rates of return, and a successful weakening of the impact of U.S. sanctions.

A. Attorney Mark Omelnitski and the Markom Group

Evidence suggests that the Rotenbergs were assisted in their efforts to evade U.S. sanctions by Mark Omelnitski, one of the founders of the Markom Group. Mark Omelnitski is a British citizen who was born in Moscow, Russia.⁴²⁶ The Rotenbergs reportedly used Mr. Omelnitski's services to set up a number of offshore shell companies.⁴²⁷

In 2019, a Markom Group website identified Mr. Omelnitski as the Head of Compliance and Client Relations and a member of the Management Committee of the Markom Group.⁴²⁸ That website is no longer active and is only available through internet archives. On the archived website, Mr. Omelnitski was described as "a co-founder of Markom Group, Mark is Managing Director of Markom Management Limited, a founding company of the group. Mark is a member of a

⁴²⁶ SOT-000353.

⁴²⁷ Sean O'Neil & Tom Parfitt, *How Putin's cronies moved millions around the world*, LONDON TIMES (Apr. 5, 2016), <https://www.thetimes.co.uk/article/how-putins-cronies-moved-millions-around-the-world-jbcgjh9vr>.

⁴²⁸ Markom Group, *Key Staff*, (May 17, 2019), <https://web.archive.org/web/20160807231415/http://www.markomgroup.com/key-staff/>.

number of professional bodies and has over 20 years' experience in fiduciary services, corporate management, project administration, real estate, investment, and finance."⁴²⁹

The archived Markom Group website also stated that the organization was "a group of companies established in 2004, which provides global fiduciary, trust, corporate business management, project administration and real estate investment services."⁴³⁰ According to the archived website, the Markom Group included Markom Management Limited, described as:

[T]he founding company of Markom Group. It provides fiduciary, management, administration, bookkeeping, and accounting services relating to the UK, Malta, Hong Kong, Luxembourg, the Isle of Man, British Virgin Islands, and St. Lucia registered companies, partnerships and private equity funds. Markom Management Limited is authorized by [Her Majesty's Revenue and Customs] of the United Kingdom to provide trust and corporate administration services under AML Regulations Act.⁴³¹

In addition to reviewing the archived Markom Group website, during the course of its investigation, the Subcommittee also obtained a copy of the Markom Group of Companies Staff Handbook (5th Edition). That document stated:

Markom Group is a group of six companies registered in different jurisdictions providing fiduciary, trust, corporate business management, corporate business administration, and real estate services. With headquarters based in Tortola on the British Virgin Islands, we also have offices in the United Kingdom, Cyprus, Spain, and New Zealand, and provide extensive services in more than 30 countries around the world. At Markom Group, we provide a variety of services that go beyond the common concept of corporate and fiduciary services. We bring business services together with the latest financial, corporate, and investment expertise.⁴³²

The Markom Group handbook includes a Company Price List for the creation of companies in the following jurisdictions: United Kingdom; British Virgin Islands; Marshall Islands; Seychelles; Republic of Panama, and Cyprus.⁴³³ The specific

⁴²⁹ *Id.*

⁴³⁰ Markom Group, (Jul. 26, 2019),

<https://web.archive.org/web/20160811024803/http://www.markomgroup.com/>.

⁴³¹ Markom Group, *Markom Companies* (Jun. 11, 2018),

<https://web.archive.org/web/20160808093702/http://www.markomgroup.com/markom-companies/>.

⁴³² SOT-172224-356.

⁴³³ *Id.*

prices for services provided in the United Kingdom and British Virgin Islands are as follows:⁴³⁴

Description	Cost (in Euros)
United Kingdom	
Incorporation of a company in the United Kingdom with standard Memorandum and Articles of Incorporation and standard Share Capital	1000
Annual Management of Company in the United Kingdom and provision of Registered Address	2200
Annual Management of Company in the United Kingdom and provision of Registered Address and Company Officers	3500
Annual Management of Company in the United Kingdom and provision of Registered Address and Company Officers with full admin, invoicing, cash management, and annual filing	From 31,200
Incorporation of a Limited Liability Partnership in the United Kingdom with standard Limited Liability Partnership Agreement	1200
Annual management of Limited Liability Partnership in the United Kingdom and provision of Registered Address	2500
Annual management of Limited Liability Partnership in the United Kingdom and provision of Registered Address and Nominee Members	3750
Annual management of Limited Liability Partnership in the United Kingdom and provision of Registered Address and Nominee Members including full admin, invoicing, cash management, and annual filing	From 31,200

Description	Cost (in Euros)
British Virgin Islands	
Incorporation of a Company in the British Virgin Islands with standard Memorandum and Articles of Incorporation and standard Share Capital	1000
Annual Management of the Company in the British Virgin Islands and provision of Registered Address	1200
Annual Management of Company in the United Kingdom and provision of Registered Address and Company Officers	2500

The Markom Group Handbook also listed prices for creating documents within the United Kingdom, British Virgin Islands, Marshall Islands, and Seychelles.⁴³⁵ The

⁴³⁴ *Id.*

⁴³⁵ *Id.*

specific prices for creating documents in the United Kingdom and the British Virgin Islands are as follows:⁴³⁶

Document Price by Jurisdiction	Cost (in Euros)
United Kingdom	
Certificate of Incorporation	273.00
Memorandum and Articles of Incorporation	273.00
Certificate of Good Standing	78.00
Nominee Shareholders Declaration	296.00
Nominee Directors Declaration	296.00
Share Certificate	296.00
Contract Creation	From 1200
Contract Review	From 150
Document Creation	75.00
Document/Contract/Instruction Signing	15.00
Legalization of Documents	191.00
Power of Attorney	345.00
British Virgin Islands	
Certificate of Incorporation	340.00
Memorandum and Articles of Incorporation	340.00
Certificate of Tax Exemption	440.00
Certificate of Good Standing	446.00
Certificate of Incumbency	446.00
Nominee Shareholders Declaration	296.00
Nominee Directors Declaration	296.00
Share Certificate	296.00
Contract Creation	From 1200
Contract Review	From 150
Document Creation	75.00
Document/Contract/Instruction Signing	15.00
Legalization of Documents	300.00
Power of Attorney	345.00
Certificate of Legal Validity	1,155.00

In April 2016, *The London Times* reported that, according to the Panama Papers, Arkady and Boris Rotenberg used the Markom Group to set up a number offshore companies.⁴³⁷ The news article included a quote from Mr. Omelnitski who

⁴³⁶ *Id.*

⁴³⁷ Sean O'Neil & Tom Parfitt, *How Putin's cronies moved millions around the world*, LONDON TIMES (Apr. 5, 2016), <https://www.thetimes.co.uk/article/how-putins-cronies-moved-millions-around-the-world-jbcgjh9vr>.

told the publication: “All our clients’ dealings are bona fide transactions in accordance with the law.”⁴³⁸

1. The Markom Group Established Rotenberg-linked Shell Companies

In spring 2016, the International Consortium of Investigative Journalists (“ICIJ”) published information related to a collection of over 11.5 million documents originating from the Panama-based law firm of Mossack Fonseca & Co. (“Mossack”).⁴³⁹ The documents spanned a more than thirty-year period from 1977 to 2015.⁴⁴⁰ ICIJ disclosed that Mossack was “one of the world’s top creators of shell companies, [which are] corporate structures that can be used to hide ownership of assets.”⁴⁴¹ ICIJ explained that the Mossack documents consisted of files that “contained information on 214,488 offshore entities connected to people in more than 200 countries and territories.”⁴⁴² ICIJ also disclosed that the documents included “emails, financial spreadsheets, passports and corporate records revealing the secret owners of bank accounts and companies in 21 offshore jurisdictions, from Nevada to Singapore to the British Virgin Islands.”⁴⁴³ Those Mossack documents became known as the “Panama Papers.”⁴⁴⁴

Rotenberg-related BVI companies. The Panama Papers included an email chain made public by ICIJ and dated August 27, 2010 from Helen Okell at Mossack to Dorota Skowronska at Mossack with a copy sent to Mark Omelnitski under the subject line “BVI companies – audit.”⁴⁴⁵ The email identified nine companies formed in the British Virgin Islands (“BVI”) for the Rotenbergs.⁴⁴⁶ For each Rotenberg-related company, the email provided the company name, ultimate beneficial owner, a key contact, and company activities as follows:⁴⁴⁷

⁴³⁸ *Id.*

⁴³⁹ *The Panama Papers: Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 3, 2016), <https://www.icij.org/investigations/panama-papers/20160403-panama-papers-global-overview/>.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ SGA_PSI_00053–82. The same document is also publicly available and can be accessed through the ICIJ’s Organized Crime and Corruption Reporting Project website at: https://cdn.occrp.org/projects/panamapapers/putindeal/P4.1_Earliglow_benefic_owners_contact_person_Protsenko.pdf.pdf.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

Company	Ultimate Beneficial Owner (“UBO”)	Contact	Activities
Beechwood Associates Inc.	Arkady Rotenberg	Dmitry Protsenko	Investments
Breckenridge Global Management Limited	Arkady Romanovich Rotenberg	Dmitry Protsenko	Investments
Causeway Consulting Limited	Arkady Rotenberg	Dmitry Protsenko	Investments
Culloden Properties	Boris Rotenberg	None	Investments
Highland Business Group Limited	Igor Rotenberg	Dmitry Protsenko	Investments
Highland Ventures Group Limited	Boris Rotenberg	Dmitry Protsenko	Investments
Kendrick Overseas Ltd.	Rotenberg	Dmitry Protsenko	Holding
Stormont Management Limited	Igor Rotenberg	Dmitry Protsenko	Investments
Stormont Systems Limited	Igor Rotenberg	Dmitry Protsenko	Investments

The email chain provides evidence that Mr. Omelnitski, through the Markom Group, had a business relationship with the Rotenbergs.⁴⁴⁸ It also provides evidence that Arkady, Boris, and Igor Rotenberg established at least eight BVI companies for use in activities related to “investments” and one holding company.⁴⁴⁹ Two of these companies, Highland Business Group Limited and Highland Ventures Group Limited, played key roles in their art investments as described further below.

In addition to the Panama Papers, evidence of links among the Rotenbergs, Mr. Omelnitski, the Markom Group, and the listed shell companies were the subject of an internal investigation performed by Barclays Bank (“Barclays”) and provided to the Subcommittee. Following the release of the Panama Papers in 2016, Barclays reviewed the companies formed by Mr. Omelnitski and the Markom Group. A Barclays internal investigatory memorandum concluded:

Omelnitski and his company, Markom Group, created shell companies for sanctioned individual [Arkady] Rotenberg, a Russian oligarch, who is a close friend of the President of the Russian Federation, Vladimir Putin. Omelnitski is listed as a beneficial owner for the three companies owned by [Arkady] Rotenberg. Omelnitski and his company are nominee directors of multiple unidentifiable shell companies formed in Panama by Mossack Fonseca and the majority of these shell companies are owned by Russian individuals. Markom Group had

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

created multiple shell companies for... [the] majority shareholders of Idealbank, which was investigated due to its possible connections to terrorist financing and money laundering concerns and subsequently was stripped of its banking license in Russia.⁴⁵⁰

The same Barclays memorandum noted, “[T]he ownership of these shell companies appears to be intentionally structured to be opaque in order to hide the identity of the true beneficiaries.”⁴⁵¹

Barclays closed all Markom Group and Gregory Baltser-related accounts. Following the investigation, in August 2017, Barclays worked to close all “198 accounts under the Markom relationship,” of which 59 were U.S. dollar accounts.⁴⁵² Barclays also closed all accounts related to Mr. Baltser.⁴⁵³ Documents provided to the Subcommittee indicate that in 2018 Baltzer Limited subsequently began paying for art from an account at Ameriabank in Yerevan, Armenia.⁴⁵⁴ In 2018, the U.S. State Department listed Armenia as a “major money laundering jurisdiction” and noted that “money laundering crimes in Armenia [would] likely continue to go unreported and undetected.”⁴⁵⁵

2. Rotenberg-Linked Shell Companies were Used to Purchase Art

The Subcommittee identified three shell companies connected to the Rotenbergs and used in the purchase of art both before and after the imposition of U.S. sanctions: (1) Highland Business Group Limited; (2) Highland Ventures Group Limited; and (3) Advantage Alliance. The known ties to the Rotenbergs are explained below.

a. Highland Business Group Limited

The Subcommittee traced certain art purchases to Highland Business Group Limited (“Highland Business”) prior to the imposition of U.S. sanctions on Arkady and Boris Rotenberg in March 2014. According to ICIJ, Highland Business was incorporated on January 14, 2010 and registered in the British Virgin Islands.⁴⁵⁶

⁴⁵⁰ BARC_006752–61.

⁴⁵¹ *Id.*

⁴⁵² BARC_005547–51.

⁴⁵³ BARC_007036.

⁴⁵⁴ *See, e.g.*, SOT_202090–95; Christies-PSI-00066049.

⁴⁵⁵ U.S. Dep’t of State, Bureau of Int’l Narcotics & Law Enforcement Affairs, *International Narcotics Control Strategy Report*, Vol. II, Money Laundering (Mar. 2019), <https://www.state.gov/wp-content/uploads/2019/03/INCSR-Vol-INCSR-Vol.-2-pdf.pdf>.

⁴⁵⁶ *Highland Business Group Limited*, INT’L CONSORTIUM OF JOURNALISTS, <https://offshoreleaks.icij.org/nodes/10139350>.

Markom Nominees Limited is listed as a shareholder of Highland Business beginning on January 14, 2010.⁴⁵⁷ Mossack is listed as the company's agent.⁴⁵⁸

The Panama Papers email chain described above listed Igor Rotenberg as the ultimate beneficial owner for Highland Business.⁴⁵⁹ But other evidence suggests that Highland Business Group received its funding from entities associated with Arkady Rotenberg. For example, \$47,000 was transferred from Advantage Alliance Limited ("Advantage Alliance") on March 27, 2012 with the payment details: "as per agency agreement."⁴⁶⁰ As explained below, a Barclays' internal investigation linked Advantage Alliance to Arkady Rotenberg.

b. Highland Ventures Group Limited

The Subcommittee traced funds for certain art purchases to Highland Ventures Group Limited ("Highland Ventures") following the imposition of U.S. sanctions in March 2014 on Arkady and Boris Rotenberg. Conflicting evidence collected by the Subcommittee regarding the ownership of Highland Ventures places Arkady, Boris, and Igor Rotenberg as the owners of the company at various points in time. As explained below, the strongest evidence suggests that Arkady Rotenberg funded the shell company, which would make him the UBO.

Evidence of Ownership by Arkady Rotenberg. Wire transfers in U.S. dollars sent by Milasi Engineering Limited ("Milasi Engineering"), a company owned by Arkady Rotenberg to Highland Ventures suggest that the true UBO of Highland Ventures was Arkady Rotenberg.

Arkady Rotenberg owned Milasi Engineering. Documents produced to the Subcommittee as part of an investigation conducted by Barclays included a December 31, 2014 Milasi Engineering Report and Financial Statements.⁴⁶¹ That document listed "Arkadiy Rotenberg" as the company's UBO.⁴⁶² That same document stated that Milasi Engineering was incorporated in Cyprus on September 6, 2007 and "the principal activities of the company...are the holding of investments and loan financing."⁴⁶³

*Milasi Engineering funded Highland Ventures.*⁴⁶⁴ Wire transfers produced to the Subcommittee show that Milasi Engineering transferred millions of U.S. dollars

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ SGA_PSI_00053-82.

⁴⁶⁰ BARC_006752-61.

⁴⁶¹ BARC_006014-43.

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ It should be noted that Barclays determined a minority portion of Milasi Engineering shares were held by Culloden Properties Limited ("Culloden"). See BARC_006068-69. Barclay's investigation

to Highland Ventures. According to one wire transfer, on January 30, 2013, Milasi Engineering transferred \$69,600,000 from its account at SMP Bank in Moscow to Highland Ventures' account at The Pictet Group, a private bank with offices in Geneva, Switzerland.⁴⁶⁵ Payment details for the wire transfer described the funds as “dividends for 2011 year,” suggesting Highland Ventures—or its beneficial owner—was one of Milasi Engineering’s shareholders.⁴⁶⁶ A second wire transfer on December 18, 2013, shows Milasi Engineering transferred \$54,451,493.49 from its account at Gazprombank in Moscow to the same Highland Ventures account at The Pictet Group.⁴⁶⁷ That wire transfer described the funds as “dividends for 2012 year.”⁴⁶⁸ Together, the two transfers to Highland Ventures from Milasi Engineering exceeded \$124 million.

Three months later, on March 18, 2014, two days after President Obama signed EO 13661, which authorized sanctions on individuals providing material support to the Russian government, Highland Ventures moved \$39,588,000 from its account with The Pictet Group in Geneva, Switzerland to its account at Gazprombank in Moscow, Russia.⁴⁶⁹ Two days after that, on March 20, 2014, the U.S. Treasury Department designated Arkady and Boris Rotenberg as sanctioned

determined that Culloden “has always been owned by Boris Rotenberg since it was incorporated” and following sanctions on Boris Rotenberg “Markom continued with the transfer of the company to Cyprus.” See BARC_006068–69. After the transfer of Arkady Rotenberg’s interests, Milasi Engineering was majority owned by Igor Rotenberg who, at the time, was not yet sanctioned by the United States. This was presumably purposeful to comply with the Treasury Department rule that a company is only considered blocked if it is majority owned by a sanctioned individual. See U.S. DEPT OF TREASURY, REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED (2014), https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf. Therefore, the fact that sanctioned Boris Rotenberg owned a minority share did not affect Milasi Engineering’s status as a sanctioned entity. As with Highland Ventures, Milasi Engineering made U.S. dollar transfers labeled as dividends to Culloden. On January 30, 2013 Milasi Engineering transferred \$63,880,000 from its SMP Bank account in Moscow to Culloden’s account at The Pictet Group with the wire instructions “Dividends for 2011 Year.” See JPMorgan Chase (Nov. 7, 2018), SB981623-FI US Wire Search, Milasi Engineering, line 5. On October 8, 2013, Milasi Engineering sent \$15,000,000 from its SMP Bank account to Culloden’s Societe Generale account in New York with the same wire instructions. See JPMorgan Chase (Nov. 7, 2018), SB981623-FI US Wire Search, Milasi Engineering, line 9. Milasi made two large transfers from its Gazprombank account to Culloden’s accounts at The Pictet Group and Societe Generale in New York on January 9, 2014 for \$41,711,697.34 and \$19,999,963.34, respectively. Both payments included the wire instructions “Dividends for 2012 Year.” DBAG00000019, lines 34 & 35. Mr. Omelnitski admitted to Barclays during its investigation that Culloden was owned by Boris Rotenberg, and explained he was in the process of transferring Culloden to Cyprus in May 2016. See BARC_006811–17.

⁴⁶⁵ JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Highland Ventures Group, line 2.

⁴⁶⁶ *Id.*

⁴⁶⁷ DBAG00000013, line 10; DBAG00000019, line 32.

⁴⁶⁸ *Id.*

⁴⁶⁹ DBAG00000013, lines 17–18.

individuals or specifically designated nationals blocked from doing business with U.S. persons.⁴⁷⁰

The multi-million dollar transfers between Milasi Engineering and Highland Ventures are strong evidence of the shell company's link to Arkady Rotenberg.

A United Kingdom government agency determined Arkady Rotenberg owned Highland Ventures. In addition to the fund transfers described above, a 2018 letter by Barclays indicates that a UK government agency concluded that Highland Ventures was owned by Arkady Rotenberg.⁴⁷¹ On May 18, 2018, the Head of Financial Crime Policy at Barclays Bank sent a letter to Alexandre Manfull, the Assistant Director of Sanctions Compliance & Evaluation at OFAC, stating "in August 2017, Barclays was contacted by [a UK government agency] who provided Barclays with a list of entities that [it] believed to be owned or controlled by Arkady Rotenberg, including...Highland Ventures."⁴⁷²

A Societe Generale investigation linked Highland Ventures to Arkady Rotenberg. An investigation by Societe Generale determined that an account at another financial institution owned by Highland Ventures was "utilized as a pass-through account for layering activities to channel and conceal a flow of funds...."⁴⁷³ Further, Societe Generale "was unable to rule out that the processed funds did not originate from a sanctioned individual, the father of Igor Rotenberg," Arkady Rotenberg.⁴⁷⁴

An art purchase through an independent dealer linked Highland Ventures to Arkady Rotenberg. An invoice and transfer of funds associated with a private art purchase investigated by the Subcommittee provided another piece of evidence suggesting Arkady Rotenberg was the UBO of Highland Ventures. As further explained below, the private sale of a famous painting by René Magritte called *La Poitrine* listed Highland Ventures on the invoice as the buyer.⁴⁷⁵ The Markom Group assisted with the purchase of *La Poitrine*; Anna Wilkes (Finance Director and Managing Director for the Markom Worldwide Group) signed the invoice as the Director of Highland Ventures.⁴⁷⁶ The invoice listed Advantage Alliance as the entity that provided payment for *La Poitrine*, which totaled \$7.5 million.⁴⁷⁷ As

⁴⁷⁰ Press Release, U.S. Dep't of Treasury, *Treasury Sanctions Russian Officials, Members of the Russian Leadership's Inner Circle, and an Entity for Involvement in the Situation in Ukraine* (Mar. 20, 2014), <https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx>.

⁴⁷¹ BARC_005572-74.

⁴⁷² *Id.*

⁴⁷³ SGA_PSI_01570.

⁴⁷⁴ *Id.*

⁴⁷⁵ Documents on file with the Subcommittee.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

explained below, the Subcommittee traced that \$7.5 million payment to another company owned by Arkady Rotenberg, Senton Holdings Ltd.⁴⁷⁸

Barclays also linked Advantage Alliance to Highland Ventures. An internal Barclays' investigation linked Highland Ventures to Advantage Alliance through two wire transfers to Highland Ventures from Advantage Alliance between November 2015 and March 2016, which totaled \$381,347.70.⁴⁷⁹ Details provided about the payments indicated: "as per agency agreement."⁴⁸⁰

Together, the Milasi Engineering transfers, the UK government agency conclusion, and the facts surrounding the purchase of *La Poitrine* suggest Arkady Rotenberg is the UBO of Highland Ventures.

Evidence of Ownership by Igor Rotenberg. There is also some evidence that the true UBO of Highland Ventures was Arkady's son, Igor Rotenberg. First, a Barclays investigator summarized this finding in an April 6, 2017 email stating:

Markom Management Ltd have confirmed that Highland Ventures Group Ltd was never owned by Boris Rotenberg. It has in fact always been owned by Igor Rotenberg since it was incorporated on [February 18, 2010] . . . Igor is not subject to the current US sanctions, however, as you are already aware he is the son of Arkady Rotenberg who is a sanctioned individual.⁴⁸¹

The April 2017 email also pointed to evidence provided by Markom Management that Igor Rotenberg owned Highland Ventures.⁴⁸² That evidence included a Trust Deed between Igor Rotenberg and Markom Nominees Ltd dated February 18, 2010 stating that Igor Rotenberg had granted 50,000 shares of Highland Ventures to Markom Nominees Ltd as trustee.⁴⁸³

Saffron Nominees Limited held Highland Ventures. In addition, Markom Management provided documents to Barclays that indicated that Igor Rotenberg owned Highland Ventures through another company named "Saffron Nominees Limited."⁴⁸⁴ A document titled "Register of Shareholders" for Highland Ventures stated that Markom Nominees Ltd held 50,000 shares from February 18, 2010 to

⁴⁷⁸ BARC_000002, lines 24 and 25; BARC_006912-15.

⁴⁷⁹ BARC_006752-61.

⁴⁸⁰ *Id.*

⁴⁸¹ BARC_006068-71.

⁴⁸² *Id.*

⁴⁸³ BARC_006117-20.

⁴⁸⁴ BARC_006068-71.

March 5, 2016.⁴⁸⁵ On March 5, 2018, all 50,000 shares were transferred to Saffron Nominees Limited.⁴⁸⁶

Barclays also produced documents from Markom that provided additional information on share ownership. These documents included a “Nominee Declaration” dated August 5, 2016 stating that Saffron Nominees Limited held shares of Highland Ventures for Igor Rotenberg.⁴⁸⁷ In addition, Barclays produced a Certificate dated November 21, 2016 and filed with the Cyprus Ministry of Energy, Commerce, Industry, and Tourism Department of the Registrar of Companies and Official Receiver Nicosia that listed Saffron Nominees Limited as the owner of shares of Highland Ventures.⁴⁸⁸

Arkady Rotenberg transferred ownership of Milasi Engineering to Igor Rotenberg. Four months after the United States imposed sanctions on Arkady Rotenberg, Markom Group assisted in transferring Arkady Rotenberg’s interest in Milasi Engineering to his son Igor Rotenberg at a time before Igor was subject to U.S. sanctions. Markom Group executed this transfer by transferring shares in two holding companies that, together, owned the majority of shares in Milasi Engineering. The transfer of ownership of the two shell companies from Arkady Rotenberg to Igor Rotenberg amounted to also transferring the ownership of Milasi Engineering, since the two shell companies owned the company.

According to documents provided by Mr. Omelnitski to Barclays, prior to July 2014, Milasi Engineering was owned by Beechwood Associates and Kendrick Overseas.⁴⁸⁹ Causeway Consulting owned Kendrick Overseas.⁴⁹⁰ Arkady Rotenberg owned both Beechwood Associates and Causeway Consulting.⁴⁹¹ Arkady Rotenberg’s ownership of Beechwood Associates and Causeway Consulting was also suggested by information in the Panama Papers email chain cited above.⁴⁹² In addition, as previously mentioned, the December 31, 2014 Milasi Engineering Report and Financial Statement listed Arkady Rotenberg as the company’s ultimate beneficial owner.⁴⁹³

Markom Group facilitated the transfer of ownership for Beechwood Associates and Causeway Consulting. Documents provided by Markom Group to Barclays documented the transfer of Beechwood Associates and Causeway Consulting. On July 28, 2014, Arkady Rotenberg transferred his shares in Beechwood Associates

⁴⁸⁵ BARC_00221.

⁴⁸⁶ *Id.*

⁴⁸⁷ BARC_06116.

⁴⁸⁸ BARC_006075–76.

⁴⁸⁹ BARC_006013.

⁴⁹⁰ *Id.*

⁴⁹¹ BARC_006068–71; BARC_006013.

⁴⁹² SGA_PSI_00053–82.

⁴⁹³ BARC-006014–43.

Ltd and Causeway Consulting Ltd to Highland Ventures.⁴⁹⁴ To document the transfers, Joseph Amin, Deputy Chairman of the Markom Group, sent letters on Markom Group letterhead to Arkady Rotenberg regarding both companies stating: “following the sale of this company to the third party we hereby inform you of the termination of our services to you in regard to the above mentioned company.”⁴⁹⁵ The Markom Group asserted the transfer of ownership of these two companies effectively transferred ownership of Milasi Engineering to Igor Rotenberg. The Markom Group provided to Barclays a Deed of Trust dated February 18, 2010, making Markom Nominees the trustee of 50,000 shares of Highland Ventures on behalf of Igor Rotenberg.⁴⁹⁶

The Barclays investigator requested information from Markom Group on the consideration Highland Ventures paid for the shares in Beechwood Associates and Causeway Consulting “to ensure that the companies were not merely being transferred by Arkady to his son Igor.”⁴⁹⁷ Markom Group responded to the request as follows:

Both Beechwood Associates and Causeway Consulting had been advanced loans by Highland Ventures Group Ltd. As neither Beechwood nor Causeway were able to repay these loans, the loan liability was converted into Share Purchase Agreements (“SPAs”) through which Highland Ventures Group Ltd became the new shareholder of the companies. The overall consideration price for the shares of Beechwood that was paid amounts to 6 billion Rubles [approximately \$99,889,020.00]; and the consideration price paid for Causeway was 3 billion Rubles [approximately \$49,950,000.00].⁴⁹⁸

The Markom Group provided Barclays with the following chart to explain the ownership structure:⁴⁹⁹

⁴⁹⁴ BARC_000227; BARC_006122; BARC_006124 (Causeway Consulting) and BARC_000231; BARC_006126; BARC_006077 (Beechwood Associates).

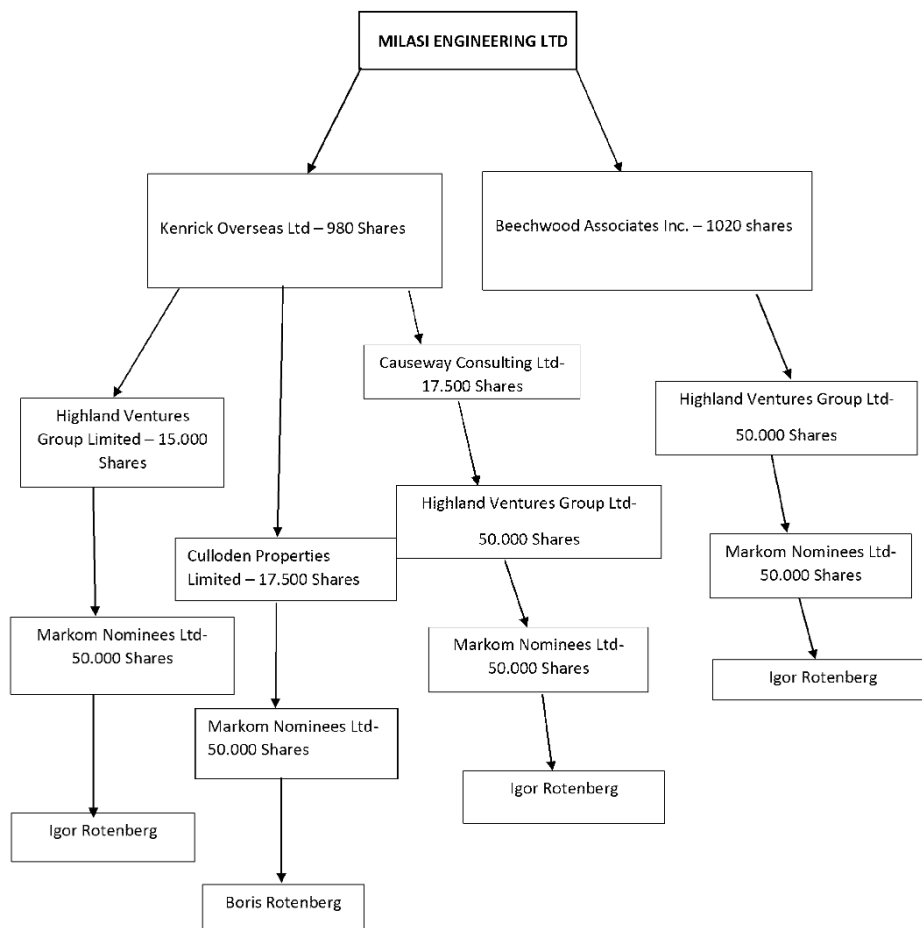
⁴⁹⁵ BARC_006077 (Beechwood Associates); BARC_006124 (Causeway Consulting).

⁴⁹⁶ BARC_006046–49.

⁴⁹⁷ BARC_006068–71.

⁴⁹⁸ BARC_006068–71; BARC_006804–10.

⁴⁹⁹ BARC_006013.



The Barclays investigator determined the transfer to Igor Rotenberg was intended to evade U.S. sanctions on Arkady Rotenberg. The investigative report explained:

It should be noted that A[rkady] Rotenberg was listed as an SDN on or about March 20, 2014, over four months before the ownership of Beechwood and Causeway was transferred to his son. Furthermore, such transfer to a non-SDN close relative taking place at the time of sanctions designation does not appear to be a proper transfer to a bona fide purchaser acting at arm’s length as defined by the Office of Foreign Asset Control (“OFAC”). Barclays NY believes the transfer of ownership to I[gor] Rotenberg was intended as circumvention of sanctions.⁵⁰⁰

Barclay’s investigation concluded with regard to Mr. Omelnitski and the Markom Group:

⁵⁰⁰ BARC_006804–10.

Companies organized by Omelnitski and his group suggest that Markom may potentially have created numerous companies for Russian oligarchs and close acquaintances of Russian President, Vladimir Putin, who have been previously implicated in questionable undertakings. Furthermore, the ownership of these shell companies appears to be intentionally structured to be opaque in order to hide the identities of true beneficiaries.⁵⁰¹

Evidence of Ownership by Boris Rotenberg. Finally, evidence also exists that Highland Ventures was owned by Boris Rotenberg. The strongest evidence is the Mossack email chain cited above and released with the Panama Papers, which listed Boris Rotenberg as the UBO of Highland Ventures.⁵⁰² According to ICIJ, Highland Ventures was incorporated on January 14, 2010 and registered in the British Virgin Islands using Mossack as an agent.⁵⁰³ As noted above in the chart, Mossack listed the activities of Highland Ventures as “investments.”⁵⁰⁴

Summary of Evidence on Ownership of Highland Ventures Group. The evidence is not conclusive as to whether Arkady, Boris, or Igor Rotenberg, or possibly some combination of the three, qualified as the UBO of Highland Ventures. But the evidence is clear that one or more of the Rotenbergs controlled the company. As a result, the clear implication is that the Rotenbergs directed and funded purchases of high-value art in the United States.

c. Advantage Alliance

In addition to Highland Business and Highland Ventures, the Subcommittee examined the ownership and activities of a third shell company, Advantage Alliance. The Subcommittee became interested in Advantage Alliance due to its role in the purchase of *La Poitrine*, as explained above.⁵⁰⁵

As mentioned above, evidence suggests that Advantage Alliance had ties to Arkady Rotenberg. A 2017 Barclays internal investigation observed that “Advantage Alliance...appears to have received payments from an entity which [the bank] has learned is owned by [Arkady Rotenberg].”⁵⁰⁶ Barclays identified the entity that made the payment to Advantage Alliance as Highland Ventures.⁵⁰⁷

⁵⁰¹ *Id.*

⁵⁰² SGA_PSI_00053-82.

⁵⁰³ *Highland Ventures Group Limited*, INT’L CONSORTIUM OF JOURNALISTS, <https://offshoreleaks.icij.org/nodes/10143427>.

⁵⁰⁴ SGA_PSI_00053-82.

⁵⁰⁵ *See infra.*

⁵⁰⁶ BARC_005572-95.

⁵⁰⁷ *Id.*

Barclays also investigated Advantage Alliance’s links to the Markom Group and Mr. Omelnitski. A Barclays investigatory memorandum noted that Advantage Alliance’s account with the bank was opened in the name of MP Intermediary Services Limited in 2008.⁵⁰⁸ The memorandum continued: “The beneficial owner was listed as Alexander Druzhinin, a Russian national....The third party signatories were listed as [Anna] Wilkes, Joseph Amin, and [Mark] Omelnitski. Internet research identified Amin as the Managing Director of Markom Media and Druzhinin as a director of Markom Partners Plc.”⁵⁰⁹ Ms. Wilkes is identified in another related Barclays investigation as the Finance Director and Managing Director for the Markom Worldwide Corporation.⁵¹⁰ In short, all three account signatories for Advantage Alliance were Markom Group employees. And other evidence previously described established that the Markom Group formed companies and performed related corporate services for the Rotenbergs.

The Barclays investigation of Mr. Omelnitski also noted that when the Advantage Alliance account was opened at the bank, the expected annual turnover for the account was £3 million or about \$3,746,670.⁵¹¹ Despite this expectation, the account was involved in 129 wire transfers from March 2012 to May 2016 totaling \$60,972,491.89.⁵¹² The Barclays investigation found that Advantage Alliance engaged in transactions with a wide range of entities, including traders of cocoa products, a security firm, traders of metals, a sourcing company, a brokerage firm, a construction company in Russia, and a supplier of used cooking oil.⁵¹³ The Advantage Alliance transactions also included a payment directly to an art dealer for the purchase of *La Poitrine*, which was sold to Highland Ventures, as further discussed below.⁵¹⁴

Barclays determined that the wire activity “does not appear to be in line with [Advantage Alliance]’s expected line of business.”⁵¹⁵ As such, “the account was closed on October 24, 2016 as Barclays Corporate identified spikes in activity seen during April and May, with large transfers in sent straight out in full as Int[ernational] Payments, which did not match expectations for the nature of the business.”⁵¹⁶ Further, Barclays suspected that these funds may be the proceeds of a crime.⁵¹⁷

⁵⁰⁸ BARC_006752–61.

⁵⁰⁹ *Id.*

⁵¹⁰ BARC_006762–65.

⁵¹¹ BARC_006752–61.

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ BARC_005514–21.

In the end, although the Subcommittee was unable to determine with absolute certainty the ultimate beneficial owners of Highland Business, Highland Ventures, or Advantage Alliance, the evidence is strong that all three companies were connected to and controlled by the Rotenbergs.

B. Art Advisor Gregory Baltser

In addition to evidence that the Rotenbergs used multiple shell companies to mask involvement in high-value U.S. art transactions, the Subcommittee reviewed evidence that the Rotenbergs attempted to conceal their participation in the U.S. art market by hiding behind a Moscow-based art advisor and dealer, Gregory Baltser.

Background. Gregory Baltser is a naturalized U.S. citizen who resides in Moscow.⁵¹⁸ As a U.S. citizen, he is required to comply with U.S. laws, including U.S. sanctions laws. Mr. Baltser graduated from Moscow State Stroganov Academy of Industrial and Applied Arts.⁵¹⁹ A press release dated March 19, 2019 described Mr. Baltser as “a reputable antique specialist and talented decorator whose reputation extends far beyond the borders of the Russian Federation.”⁵²⁰ One auction house described Mr. Baltser as “the only dealer who buys whole interiors and houses in Europe and brings them to Russia.”⁵²¹

Mr. Baltser established the BALTZER Auction Agency and Services in 2014 and the website for the BALTZER Agency states:

The BALTZER Agency is here to be your representative; whether at an auction house, gallery, art dealer, or private sale or purchase. Our specialists are professionals with experience of working in the world’s major auction houses, including Sotheby’s, Christie’s, and Phillips. Our job is to save you time and effort, and protect you from expensive mistakes.⁵²²

Mr. Baltser has also established the BALTZER CLUB, described in a press release as:

⁵¹⁸ SOT-000350.

⁵¹⁹ *Gregory Baltser – Antique Expert, Collector & Decorator*, FINE ART SHIPPERS (Mar. 15, 2019), <https://fineartshippers.com/gregory-baltser-antique-expert-collector-decorator/>.

⁵²⁰ Ilya Kushnirskiy, *Introducing BALTZER – Your Personal Guide to Art Collecting*, FINE ART SHIPPERS (Mar. 19, 2019), <https://www.einpresswire.com/article/479578592/introducing-baltzer-your-personal-guide-to-art-collecting>.

⁵²¹ Christies-PSI-00000048-49.

⁵²² *Baltzer: Your Personal Guide to the World of Art & Collecting*, BALTZER LLC (2020), <https://baltzer.com/en/about>.

a private club for art collectors, experts, and all those who are fascinated by beautiful things. This exclusive club is a kind of museum that allows the members to enjoy art and antiques in a comfortable and relaxing atmosphere. Besides, the BALTZER CLUB is known for its elegant educational and social events in one way or another related to culture, arts, and collectibles.⁵²³

The BALTZER Agency website states the BALTZER CLUB “includes events such as recitals, readings, discussion panels, exhibitions of private collections and lectures on various aspects of art and collecting lead by experts.”⁵²⁴ A prior version of the BALTZER website dated 2018 explained how the BALTZER Agency facilitated an individual’s “participation at an auction.”

We organize your entire auction process, including registering you for a sale, attending an auction on your behalf and handling all of the subsequent stages of the transactions. Our aim is to save you from the red tape of auctions while protecting you from a false step.⁵²⁵

The 2018 website continued explaining how the BALTZER Agency assists a buyer in registering for an auction:

An independent buyer at a sale must register for each new auction separately, going through the tedious verification process again and again. He or she must confirm not only their ability to pay, but also that their funds have not been acquired through unlawful means. Many auction houses have their own requirements regarding documentation, and oftentimes different departments of a single auction house in different cities may require different documents to be submitted. It can take several weeks for this process to be completed. Our clients, however, are freed from this pile of paperwork – our long-standing relationship with many auction houses means that we can simplify the registration process and make it the same for all auctions. By allowing us to handle all of your paperwork, you can even take part in any auction at the last minute.⁵²⁶

Notably, the 2018 website also addressed how an individual would participate in an auction, including efforts by BALTZER to provide an individual “complete anonymity.”

⁵²³ Ilya Kushnirskiy, *Introducing BALTZER – Your Personal Guide to Art Collecting*, FINE ART SHIPPERS (Mar. 19, 2019), <https://www.einpresswire.com/article/479578592/introducing-baltzer-your-personal-guide-to-art-collecting>.

⁵²⁴ *Baltzer: Your Personal Guide to the World of Art & Collecting*, BALTZER LLC (2020), <https://baltzer.com/en/about>.

⁵²⁵ BALTZER, *Participation at an Auction* (2018), document on file with the Subcommittee.

⁵²⁶ *Id.*

How, exactly, would you like to take part in an auction? The most enjoyable option is for us to bring you privately to the main hall of our Club, where you can settle yourself comfortably in front of a video screen and watch a live broadcast of the sales in the auction room. You can take part in the auction yourself, if you wish, by telephone. A personal manager from our agency will assist you. If a visit to our premise is not in your plans, the manager will simply ring you during the auction and tell you how things are progressing over the phone, and pass on your bid to the auction room. Finally, you can place an absentee bid. In this case, we will not bother you while the auction is taking place. Instead, a manager will bid for lots at your instruction, having established a maximum beforehand. This is convenient if the sale you wish to participate in takes place on the opposite side of the world. Working on your behalf, we act professionally and exclusively in your interests. If necessary, we can even give you complete anonymity. We remain level-headed and know the auction process inside out.⁵²⁷

1. The Auction Houses Viewed Mr. Baltser as the Principal Buyer

A key issue related to Mr. Baltser and his business is whether he acts as a principal or an agent when buying and selling art. The cumulative evidence, as discussed in more detail below, suggests that Mr. Baltser bought art on multiple occasions on behalf of the Rotenbergs, but never disclosed their involvement. Nor did the auction houses ask for whom Mr. Baltser was purchasing art. Even after the imposition of U.S. sanctions, Mr. Baltser failed to disclose his representation of the Rotenbergs, who were prohibited as a result of those sanctions from doing business with U.S. persons and entities. Mr. Baltser took advantage of rules and practices that allowed him to present himself as the “principal” buyer and avoid naming any client that he might be representing in the purchase or sale. This allowed for Mr. Baltser to provide the “complete anonymity” that his 2018 website promised.

Sotheby’s. Sotheby’s told the Subcommittee that since Mr. Baltser took title to the purchases he made in his name, Sotheby’s did not view Mr. Baltser as an agent; Sotheby’s viewed him as the principal buyer.

The Chief Compliance Counsel explained to the Subcommittee during a briefing that Mr. Baltser is considered the principal when he makes a purchase: “He buys it and pays for it.”⁵²⁸ She continued, “There are no third party payments,

⁵²⁷ *Id.*

⁵²⁸ Subcommittee Briefing with Sotheby’s Employees (Oct. 25, 2018).

the money comes from his account at a major bank.”⁵²⁹ She explained that there are some in the art business who Sotheby’s knows are buying for someone else or who actually disclose that they are acting as an agent or nominee on behalf of someone else.⁵³⁰ She contrasted that scenario with Mr. Baltser stating “he’s the principal; he’s purchasing the art in his own name with funds in his own bank account.”⁵³¹ She explained that Sotheby’s “cannot ask clients to disclose the source of funds in their bank accounts. Sotheby’s has no legal authority to demand such information.”⁵³²

An agent, the Chief Compliance Counsel explained, will buy an item, but not take title.⁵³³ She explained to the Subcommittee that, under Sotheby’s policy, Mr. Baltser was not an agent, but instead purchased and took title of the artwork.⁵³⁴ She explained that “Sotheby’s does not know and has no legal right to know to whom he may resell the art once he takes title of the art.”⁵³⁵ She also stated that “when Baltser transacts with Sotheby’s, he is the person who takes legal ownership and legal risk as the purchaser.”⁵³⁶ She further asserted that “Baltser is taking a risk because his client could turn around and say, ‘I don’t want to buy this thing anymore.’”⁵³⁷

The Chief Compliance Counsel also told the Subcommittee that Sotheby’s staff knew Mr. Baltser well and considered him to be a known-quantity and an important Sotheby’s client.⁵³⁸ She could not recall Sotheby’s having concerns about transacting with Mr. Baltser prior to the Subcommittee’s investigation and said that he transacted with Sotheby’s using accounts at major banks. Sotheby’s assigns “Tiers” or “Levels” to clients based upon the amount and frequency of purchases. The highest level is 1 and the lowest level is 9.⁵³⁹ She said that Mr. Baltser was a “Level 1” Sotheby’s client.⁵⁴⁰ She explained that these clients are the ones who are “wined and dined” and receive “special attention.”⁵⁴¹ In some cases, she said an entire team of Sotheby’s employees can be assigned to them.⁵⁴² The Chief Compliance Counsel stated that Sotheby’s was moving away from using client levels.⁵⁴³

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ *Id.*

Christie's. Christie's General Counsel stated in a briefing that Mr. Baltser is known to Christie's as an interior decorator who engaged with the auction house in low value, but high volume transactions.⁵⁴⁴ She said he would then sell the items purchased at Christie's to his clients or via his membership club.⁵⁴⁵ When describing his purchasing history, Christie's General Counsel stated it was apparent Mr. Baltser engaged in fairly low level purchases that fit within Christie's understanding of his profile and operations.⁵⁴⁶ She noted that Mr. Baltser purchased wine, as well as interior decoration items and ceramics.⁵⁴⁷

Bonhams. Bonhams U.S. Counsel and outside Counsel for Bonhams stated in a briefing that Bonhams U.S. does not consider Gregory Baltser to be an agent, but rather a dealer given that he is transacting in his own name and with his own funds and thereby assumes all contractual risks.⁵⁴⁸ Bonhams U.S. also understood that Mr. Baltser often subsequently resells a purchased item to someone else.⁵⁴⁹ Bonhams U.S. outside counsel noted that it is common in the auction world to have counter-parties and that when Bonhams U.S. sells to a dealer, Bonhams knows that the item may be re-sold.⁵⁵⁰ While Bonhams U.S. requires bidders (including dealers) to disclose whether they are acting on behalf of a third-party, and to represent that the third-party is not on the SDN or other sanctions list, it does not require that a dealer disclose the identity of a third-party buyer. Bonhams U.S. views Mr. Baltser as the principal buyer.⁵⁵¹ Bonhams U.S. Counsel said that Bonhams U.S. was not aware of who Mr. Baltser represented, nor did it matter, since Bonhams U.S. viewed him as the buyer.⁵⁵²

Phillips. While Phillips' General Counsel did not discuss Mr. Baltser directly, he explained during a briefing the legal issues surrounding agents in the art industry.⁵⁵³ According to him, agents often bid on their own behalf to buy items for stock.⁵⁵⁴ These dealers often have a shop and sell art privately.⁵⁵⁵ He said auction houses have no way of knowing whether dealers are bidding on behalf of themselves or someone else unless the dealer tells the auction house.⁵⁵⁶

Phillips' General Counsel noted that sometimes after a successful bid at an auction, an agent will inform the auction house that they were actually acting on

⁵⁴⁴ Subcommittee Briefing with Christie's Employees (Feb. 8, 2019).

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ Subcommittee Briefing with Bonhams U.S. Counsel (Feb. 22, 2019).

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ Subcommittee Briefing with General Counsel for Phillips (Dec. 11, 2018).

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.*

behalf of someone else.⁵⁵⁷ At that point the agent will provide the details of the end purchaser so that Phillips can issue an invoice in the name of the purchaser.⁵⁵⁸ According to him this happens for several reasons, including: (1) the agent does not want to pay for the purchased item himself; and (2) agents want any legal liability for the purchase to transfer to the purchaser.⁵⁵⁹ Phillips then conducts “know your customer” checks on the actual purchaser.⁵⁶⁰

He acknowledged that there could be circumstances in which an agent may have a principal that pays the agent directly.⁵⁶¹ This would result in what he termed a “back-to-back transaction” whereby the invoice would remain in the name of the agent, and in those instances the auction house would not be aware of the second transaction.⁵⁶² He stated that Phillips’ preference is to have the person in the room bidding be the person invoiced and responsible for that sale, but sometimes it is not that simple.⁵⁶³

2. Mr. Baltser Purchased Art as an Agent for Steamort

Mr. Baltser used a shell company to purchase art, which adds another layer of complexity to the connections between the Rotenbergs and the high-value art market. Prior to the imposition of U.S. sanctions against Arkady and Boris Rotenberg in March 2014, the majority of purchases Mr. Baltser made that the Subcommittee linked to the Rotenbergs were in the name of Steamort Limited (“Steamort”). Steamort was incorporated in Belize on August 28, 2008.⁵⁶⁴ Steamort’s principal place of business, however, was listed as 10 Great Russell Street; London, England.⁵⁶⁵ According to the company’s Certificate of Incumbency dated September 12, 2012, Steamort’s only director and shareholder is Jason Hughes, a British national residing in Cyprus.⁵⁶⁶ The Certificate of Incumbency states that Mr. Hughes holds the company’s 50,000 shares.⁵⁶⁷ That same Certificate lists ATM Secretaries Limited as the Secretary of Steamort.⁵⁶⁸ Steamort has maintained a bank account at Tallinn Business Bank in Estonia since at least April 30, 2009.⁵⁶⁹

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

⁵⁶² *Id.*

⁵⁶³ *Id.*

⁵⁶⁴ Christies-PSI-00005647.

⁵⁶⁵ Christies-PSI-00005647; Christies-PSI-00005637-46.

⁵⁶⁶ Christies-PSI-00083483-84; Christies-PSI-00083535-36.

⁵⁶⁷ Christies-PSI-00083483-84.

⁵⁶⁸ *Id.*

⁵⁶⁹ Christies-PSI-00020892.

Jason Hughes was associated with over 200 companies. According to public reporting, Mr. Hughes is associated with more than 200 companies. In 2012, an investigation by ICIJ and *The Guardian* uncovered “a network of individuals willing to appear on official records as directors of companies while acting only on the instructions of its real owners, who stay invisible and off-the-books.”⁵⁷⁰ The investigative report explained:

The nominees play a key role in keeping secret hundreds of thousands of commercial transactions. They do so by selling their names for use of official company documents, using addresses in obscure locations all over the world.⁵⁷¹

The ICIJ investigation identified Mr. Hughes as a nominee director linked to 210 companies, including 64 BVI companies, 144 UK companies, and 2 Irish companies.⁵⁷²

Mr. Baltser contracted with Steamort. According to a document produced by Christie’s to the Subcommittee, on October 27, 2008, Steamort entered into a services agreement (the “Steamort Agreement”) with Mr. Baltser.⁵⁷³ That agreement referred to Steamort as the “customer” and Mr. Baltser as the “consultant.”⁵⁷⁴ The Steamort Agreement called for Mr. Baltser to assist Steamort with the search, valuation, acquisition, shipping, and insurance for works of art and interior items.⁵⁷⁵ The Steamort Agreement allowed Mr. Baltser on behalf of Steamort to, in part:

- negotiate terms and conditions of acquisition of works of art and/or interior items;
- participate in auctions (including those of Sotheby’s and Christie’s), make bids at the auctions; and
- conclude sale and purchase, acquisition and ancillary agreements with sellers.⁵⁷⁶

The Steamort Agreement was signed by Mr. Hughes on behalf of Steamort; Mr. Baltser signed for himself.⁵⁷⁷

⁵⁷⁰ James Ball, *Offshore secrets revealed: the shadowy side of a booming industry*, GUARDIAN (Nov. 25, 2012), <https://www.theguardian.com/uk/2012/nov/25/offshore-secrets-revealed-shadowy-side>.

⁵⁷¹ *Id.*

⁵⁷² *Id.*

⁵⁷³ Christies-PSI-00005637-46.

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

According to the Steamort Agreement, Steamort would pay Mr. Baltser \$9,500 a month for his services.⁵⁷⁸ A review of financial records confirmed that from March 25, 2010 to October 31, 2016, Steamort sent 96 wire transfers to Mr. Baltser's account totaling \$907,000.⁵⁷⁹ Most of these payments were in increments of \$9,500.⁵⁸⁰ Almost all of the instructions located in the wire transfer information noted "payment for consulting services in antiques by invoice" followed by a date.⁵⁸¹

Beginning in 2017, Mr. Baltser began receiving \$9,500 payments from two companies other than Steamort, Aester Limited⁵⁸² and Sinara Company LP.⁵⁸³ From March 2, 2017 to April 6, 2018, Aester Limited sent Baltser eight wire transfers in \$9,500 increments totaling \$76,000.⁵⁸⁴ From July 7, 2017 to June 18, 2018, Sinara Company sent Baltser 14 wire transfers in \$9,500 increments totaling \$133,000.⁵⁸⁵ In total, between March 2010 and October 2018, it appears Mr. Baltser

⁵⁷⁸ *Id.*

⁵⁷⁹ DBAG0000011; BOFA-40684 (wires from 2010 were not available).

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² Aester Limited was incorporated on December 7, 2016, in England and Wales, with a registered office address of 13 John Princes Street, Second Floor, London, England. *See* Certificate of Incorporation of a Private Limited Company, Company No. 10514112 (Dec. 7, 2016), <https://beta.companieshouse.gov.uk/company/10514112>. According to its filing history, on March 16, 2018, ATM Secretaries Limited, the same Secretary of Steamort, was appointed as the Secretary of the company. *See* Appointment of Corporate Secretary, Company No. 10514112 (Mar. 16, 2018), <https://beta.companieshouse.gov.uk/company/10514112>. On January 1, 2018, Oleksandr Baksaliar, a Ukrainian national, was listed as a "person with significant control" of the company. *See* Notice of Individual Person with Significant Control, Company No. 10514112 (Jul. 3, 2018), <https://beta.companieshouse.gov.uk/company/10514112>. According to the company's confirmation statement filed on December 28, 2018, Aester Limited's principal activity is the "wholesale of furniture, carpets and lighting equipment; wholesale of electronic and telecommunications equipment and parts; wholesale of wood, construction materials, and sanitary equipment; and wholesale of hardware, plumbing and heating equipment and supplies." *See* Confirmation Statement, Company No. 10514112 (Dec. 28, 2018), <https://beta.companieshouse.gov.uk/company/10514112>.

⁵⁸³ Sinara Company LP was registered in the United Kingdom as limited partnership ("LP") on January 16, 2017. Just like Aester Limited, the principal place of business was listed as 13 John Princes Street, 2nd Floor, London, England. *See* Application for Registration of a Limited Partnership, Company No. LP17803 (Jan. 16, 2017), <https://beta.companieshouse.gov.uk/company/LP017803>. The general nature of the business was listed as "tourism and ticketing services." *See* Application for Registration of a Limited Partnership, Company No. LP17803 (Jan. 16, 2017), <https://beta.companieshouse.gov.uk/company/LP017803>. The partners of Sinara Company LP were listed as Portervale Trading Company and Reox Limited. *See* Application for Registration of a Limited Partnership, Company No. LP17803 (Jan. 16, 2017), <https://beta.companieshouse.gov.uk/company/LP017803>. On March 30, 2019, Sinara Company LP was dissolved; Portervale Trading Company signed the dissolution document. *See* Statement specifying the nature of a change in the limited partnership, Company No. LP17803 (Mar. 30, 2019), <https://beta.companieshouse.gov.uk/company/LP017803>.

⁵⁸⁴ BOFA-40684.

⁵⁸⁵ *Id.*

received \$1,116,000 in fees for his consulting services under the Steamort Agreement.⁵⁸⁶

Christie's questioned Steamort's ownership. Prior to U.S. sanctions in March 2014, Mr. Baltser purchased art from the auction houses in Steamort's name. The Christie's client representative for Mr. Baltser ("Baltser Client Advisor") told the Subcommittee that Mr. Baltser introduced himself as someone who purchased art on behalf of other people.⁵⁸⁷ The Baltser Client Advisor explained, "one thing's for sure, he's not buying it for himself."⁵⁸⁸

Christie's requested information on Steamort's UBO from Mr. Baltser. On November 29, 2010, following the registration of Steamort's account, Christie's internally requested information regarding the "confirmation of the directors of the company" and "confirmation of who is the ultimate beneficial owner of the company."⁵⁸⁹ The request went unanswered until February 7, 2012.⁵⁹⁰

On February 7, 2012, Christie's compliance department emailed the Business Development Manager Business Development Manager about the documentation requested in 2010 for Steamort's company directors and the ultimate beneficial owner.⁵⁹¹ The email noted that Mr. Baltser was listed as Steamort's owner in the client profile, but additional documentation was required.⁵⁹² The Business Development Manager responded that she was unable to reach Mr. Baltser due to the time difference between London and Moscow, explaining:

I have tried to get in touch with the client, but he is probably sleeping as he is supposed to bid very early in the morning our time. Steamort/Grigoriy [sic] Baltser have been regular client of Christies. Just today he participated in a sale in London and is bidding tomorrow as well. He is a very respected businessman and I personally know [him] very well. Is it possible for me to get this documentation to you after the sale. He is bidding on 19 lots!⁵⁹³

An AML Specialist also from Christie's compliance department responded, "if you could follow up after the sale it would be greatly appreciated."⁵⁹⁴

⁵⁸⁶ *Id.*

⁵⁸⁷ Subcommittee interview of Christie's Baltser Client Advisor (Jul. 15, 2019).

⁵⁸⁸ *Id.*

⁵⁸⁹ Christies-PSI-00059124-27.

⁵⁹⁰ *Id.*

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

The next day, on February 8, 2012, the Business Development Manager informed the AML Specialist that she spoke to Mr. Baltser and explained to him that there were “some outstanding registration documents” required for Steamort.⁵⁹⁵ She told the AML Specialist that Mr. Baltser informed her that “he can get me a copy of the company’s registration card and the contract that he has with Steamort ltd. He cannot get us the name of the beneficial owner of the company as this information is unavailable to him.”⁵⁹⁶ In response, the AML Specialist asked to be put “in touch with the person who he has entered into agreement with.”⁵⁹⁷ He also reminded the Business Development Manager that “beneficial ownership is required for all business clients, and this information has been outstanding for nearly two years already.”⁵⁹⁸ The Business Development Manager forwarded the AML Specialist’s email to the Baltser Client Advisor requesting advice. The Business Development Manager stated that Mr. Baltser said he would “not bother the directors of the company with any questions and he cannot provide us with the information on who the beneficiaries are. I am stuck.”⁵⁹⁹

On February 21, 2012, the AML Specialist asked the Business Development Manager for an update regarding the required Steamort documentation.⁶⁰⁰ The following day, February 22, 2012, the Business Development Manager informed the AML Specialist that Mr. Baltser asserted he would provide everything the next week.⁶⁰¹

A month later, on March 22, 2012, the Business Development Manager emailed the AML Specialist documents regarding Steamort, including the Baltser/Steamort 2008 Services Agreement and the Belize Certificate of Incorporation dated August 28, 2008.⁶⁰² The AML Specialist replied stating that the documents confirmed the agreement between Baltser and Steamort, but did not “confirm ownership of the Belize Company.”⁶⁰³ The AML Specialist once again requested that the Business Development Manager confirm the owner of Steamort, stressing that “this inquiry has been open since the fall 2010 sales.”⁶⁰⁴ On March 26, 2012, the AML Specialist emailed “we will need to restrict the account from future bidding pending confirmation of beneficial ownership.”⁶⁰⁵

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ Christies-PSI-00041928.

⁶⁰¹ *Id.*

⁶⁰² Christies-PSI-00041976–87.

⁶⁰³ *Id.*

⁶⁰⁴ *Id.*

⁶⁰⁵ Christies-PSI-00042009.

That same day, March 26, 2012, the Business Development Manager sought the Baltser Client Advisor's advice; Mr. Baltser wanted to bid in an upcoming auction in New York.⁶⁰⁶ The Business Development Manager emailed:

the "beneficiary" issue is still not resolved. [Mr. Baltser] says that even verbally he cannot confirm anything as he himself doesn't know who the ultimate beneficiaries of Steamort are. He is asking if he can still bid in the sale without this document. What can we do?"⁶⁰⁷

The Baltser Client Advisor responded: "let me check, please. As soon as I have some info[rmation], I will let you know."⁶⁰⁸ The Baltser Client Advisor responded to the AML Specialist:

Christie's London can accept the verbal confirmation of the beneficiary owner of the company (as an exception). This is a very important client of ours who actively buys in various Gold Sale categories. We worked very hard to encourage this client to participate in the sales and we feel it's a shame to lose him now. The additional documents were requested in February 2012, the client provided them at his earliest convenience. Please advise if I should contact any other colleagues of ours to discuss this urgent matter.⁶⁰⁹

The Baltser Client Advisor confirmed to the Subcommittee that on certain occasions Christie's would accept verbal confirmation of the beneficial owner.⁶¹⁰

The AML Specialist emailed and requested that she "kindly disclose the beneficial owners, and Legal can conduct the checks."⁶¹¹ On March 27, 2012, the Business Development Manager informed the Baltser Client Advisor that she would contact Baltser and "try to ask him to at least verbally confirm, the beneficiaries."⁶¹² On March 28, 2012, the Business Development Manager emailed Christie's compliance and stated that "the sole beneficiary of Steamort is Mrs. Luisa Brown."⁶¹³ The AML Specialist responded that same day: "Luisa Brown is clear, and the client is fine to bid in the upcoming sale on April 4th."⁶¹⁴ The AML Specialist continued: "Going forward, please note we require documentary confirmation of beneficial ownership in accordance with our Legal requirements

⁶⁰⁶ Christies-PSI-00035437.

⁶⁰⁷ *Id.*

⁶⁰⁸ *Id.*

⁶⁰⁹ Christies-PSI-00042041.

⁶¹⁰ Subcommittee interview of Christie's Baltser Client Advisor (Jul. 15, 2019).

⁶¹¹ Christies-PSI-00099753.

⁶¹² Christies-PSI-00099719.

⁶¹³ Christies-PSI-00099753.

⁶¹⁴ Christies-PSI-00099787.

when opening new business accounts, and without it a risk review would have to be conducted.”⁶¹⁵

When questioned by the Subcommittee, the Baltser Client Advisor stated that she had no knowledge of Mrs. Brown and did not know of any connection between Mrs. Brown and Mr. Baltser.⁶¹⁶ Mr. Baltser never provided documentary evidence that Luisa Brown was the beneficial owner of Steamort.⁶¹⁷

3. Mr. Baltser Established BALTZER Auction Agency and Club in Moscow

The creation of Mr. Baltser’s art agency and private club, called BALTZER Auction Agency and Club, added another layer of complexity to the purchase of high-value art by shell companies linked to the Rotenbergs. The creation of BALTZER is further described below. Notably, Mr. Baltser’s last name is spelled with an “s” and his art agency with a “z.”

In November 2012, prior to forming his agency and club, Mr. Baltser contacted Christie’s and Sotheby’s to discuss a business proposal with him through his new private club in Moscow.⁶¹⁸ Mr. Baltser sent a letter to Christie’s explaining “we have conceived a definitive idea of creating a new company with transparent and clear ideology, which would be able to solve many problems of auction life, guaranteeing to the participants the clean title of transaction and services.”⁶¹⁹ Mr. Baltser indicated his new company’s club would be used by “a whole class of contemporaneous collectors” that he had created and who were “the leading Moscow and Russian collectors – the active participants of auction biddings at many world marketplaces.”⁶²⁰

a. Christie’s Partnered with Mr. Baltser

Beginning in late 2012, Christie’s and Mr. Baltser began discussing a potential partnership. On December 17, 2012, the Managing Director of Growth Markets for Christie’s in London (“Managing Director”), sent an email to Mr. Baltser to inform him that Christie’s has “all of the key people internally at Christi[e]’s together to discuss your interesting proposal. We are consolidating a list of questions which we will have with you by the close of business tomorrow evening and looking forward to continuing discussions with you.”⁶²¹ The following

⁶¹⁵ *Id.*

⁶¹⁶ Subcommittee interview of Christie’s Baltser Client Advisor (Jul. 15, 2019).

⁶¹⁷ Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶¹⁸ Christies-PSI-00016692-94; SOT-005728-30.

⁶¹⁹ Christies-PSI-0016692-00016694.

⁶²⁰ *Id.*

⁶²¹ Christies-PSI-00000649.

day, Mr. Baltser emailed the Managing Director that he was glad “we are moving forward with the proposal and I expect way more activity going with the auctions as soon as I get this new structure set....and I will be happy to answer and clarify all the questions in a timely manner.”⁶²²

On December 18, 2012, the Managing Director provided Mr. Baltser with a list of questions raised by various members of the Christie’s team regarding his proposal, including:

- Do you intend to bid on behalf of [the art club] or on behalf of the third party?
- Will you be able to take on responsibility to obtain all necessary KYC/AML (Know your client and Anti money laundering) checks required? What structures are in place to ensure these protocols are met?
- Will we know the names of the clients or will all details be held by you and the company?⁶²³

Beginning in early 2013, representatives from Christie’s began traveling to Moscow to meet with Baltser and his team regarding the proposal.⁶²⁴ On January 22, 2013, Mr. Baltser sent the Baltser Client Advisor a reply to the Managing Director’s questions, stating:

We are currently in the process of reviewing Russian laws and related legislation pertaining to KYC/AML. One of the key components of the KYC/AML process implies checking the identity of every client and collecting Personally Identifiable Information (PII). According to Russian legislation as well as the Confidentiality Agreement between Company and our clients, [Mr. Baltser’s agency] is obligated not to disclose [personally identifiable information] data to any third parties without the Client’s consent, except as may be required by law or court order. Considering this, we are ready to accept responsibility for such processes as KYC (know your customer) and AML (anti money laundering).⁶²⁵

On March 21, 2013, the Baltser Client Advisor emailed the Managing Director to inform him that she is “in regular contact with Mr. Gregory Baltser regarding various auctions and client purchases” and explained that he:

keeps on asking if we are ready to proceed with our IT advice and further discussions of his proposed project. Unfortunately, Gregory cannot proceed with ordering any technical equipment and his whole

⁶²² Christies-PSI-00000651.

⁶²³ Christies-PSI-00000653-54.

⁶²⁴ Christies-PSI-00000694.

⁶²⁵ Christies-PSI-00020853-56.

project is on hold now. Gregory is very much concerned that he is missing all major auctions in May, June and July (and is under impression we [are] no longer interested in cooperation).⁶²⁶

On March 22, 2013, the Managing Director replied that he needed “to get [the President of Christie’s Europe] to focus on this and will try and do so today and send an appropriate message to Mr. Baltser.”⁶²⁷ On March 27, 2013, the Baltser Client Advisor emailed the President of Christie’s Europe requesting his “thoughts on Gregory Baltser’s project discussed yesterday and if we could proceed with it on the IT front.”⁶²⁸ On April 12, 2013, the President of Christie’s Europe approved moving forward with the project with Baltser “as long as there is no corporate risk.”⁶²⁹

On April 24, 2013, Christie’s representatives met with Mr. Baltser in Moscow to discuss the partnership between Mr. Baltser’s art agency and Christie’s.⁶³⁰ Present at the meeting were Mr. Baltser, the Managing Director, the Business Development Manager, and the Baltser Client Advisor.⁶³¹ The meeting resulted in a list of action items to move the partnership forward.⁶³²

i. Mr. Omelnitski Served as the Money Laundering Reporting Officer for BALTZER LLP

The action items noted that Mr. Baltser “further explained that their Trustee in London was familiar with the [KYC] process and they have a system approved by the Russian government.”⁶³³ On June 5, 2013, Mr. Omelnitski emailed the Managing Director, stating that Mr. Baltser asked him “to contact [you] in regards to arranging a meeting for purposes of identifying of required [AML/KYC] compliance procedures and policies.”⁶³⁴

On August 12, 2013, Mr. Omelnitski emailed corporate documents regarding the “new Baltser structure” to Christie’s Senior Compliance Counsel (“Compliance Counsel”), including incorporation records pertaining to the newly created Baltzer entities – Baltzer Limited (Cyprus) and BALTZER LLP.⁶³⁵ The Shareholders Certificate for Baltzer Limited listed Markom Nominees LTD as shareholder.⁶³⁶

⁶²⁶ Christies-PSI-00036515–16.

⁶²⁷ *Id.*

⁶²⁸ Christies-PSI-00036540.

⁶²⁹ Christies-PSI-00037583–85.

⁶³⁰ Christies-PSI-00000725–31.

⁶³¹ *Id.*

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ Christies-PSI-00000764.

⁶³⁵ Christies-PSI-00005845–76.

⁶³⁶ *Id.*

Baltzer Limited also listed Markom Directors as its Director and Markom Secretaries Limited as its Secretary.⁶³⁷

The following day, Mr. Omelnitski emailed Christie’s in-house counsel in London a copy of BALTZER’s Compliance Procedures Manual.⁶³⁸ The manual stated:

In addition to our existing money-laundering measures, BALTZER (“Agency”) has entered into an agreement with Markom Management Limited (“Markom”), whereby Markom will independently check, verify and handle information about the Agency’s clients.⁶³⁹

The manual further stated that BALTZER employees “unclear on the [customer due diligence] steps required when engaging a new client please contact Dr. Mark Omelnitski (the [Money Laundering Reporting Officer]), in the first instance for further advice.”⁶⁴⁰

Christie’s compliance personnel reviewed the Manual, which identified compliance measures. The Manual indicated that BALTZER had entered into an agreement with Markom for Markom to independently check, verify, and handle information about BALTZER clients.⁶⁴¹ The Manual states that BALTZER clients are required to comply with AML legislation, and identifies obligations arising under the UK’s 2007 Money Laundering Regulations.⁶⁴² The Manual also included BALTZER’s customer due diligence measures, including customer identification procedures for individuals and entities, and provided for enhanced due diligence where the client is a politically exposed person.⁶⁴³ In addition, Christie’s compliance personnel noted that Markom was listed on the HMRC-Her Majesty’s Revenue & Customs-Supervised Businesses Register of companies that have registered with HRMC under the UK Money Laundering Regulations.⁶⁴⁴

⁶³⁷ *Id.*

⁶³⁸ Christies-PSI-00001179–1237.

⁶³⁹ *Id.*

⁶⁴⁰ *Id.*

⁶⁴¹ *See* Christies-PSI-00001190.

⁶⁴² *See* Christies-PSI-00001194.

⁶⁴³ *See* Christies-PSI-00001194–95.

⁶⁴⁴ *See* Letters from Counsel for Christie’s to Subcommittee staff (Mar. 5, 2019 and Jul. 22, 2020).

ii. Christie's Agreed to Allow Mr. Baltser to Conduct Anti-Money Laundering and Sanctions Checks on His Own Clients

Mr. Omelnitski represented Mr. Baltser and BALTZER LLP in contract negotiations with Christie's as Mr. Baltser and Christie's exchanged drafts of the agreement.⁶⁴⁵ On February 4, 2014, Christie's and BALTZER LLP entered into a letter agreement that established the terms of the two entities' relationship.⁶⁴⁶ Mr. Baltser signed on behalf of BALTZER LLP; the Managing Director signed on behalf of Christie's.⁶⁴⁷ As part of the agreement, Christie's agreed to supply BALTZER LLP with a number of bidding paddles under one account.⁶⁴⁸ As stated in the contract, this enabled BALTZER LLP to "bid in Christie's auctions simultaneously."⁶⁴⁹

Regarding customer due diligence, the agreement established that:

- BALTZER LLP will conduct customer due diligence on its members to the standards required by the EU Money Laundering Directive, consents to Christie's relying on such customer due diligence and will retain for a period of not less than 5 years, the documents and records evidencing the same. Where these documents or records are held outside the UK, copies will be made available to Christie's or relevant enforcement agencies or regulators under court order or relevant mutual assistance procedure.
- BALTZER LLP will further certify to Christie's, at the end of every trading year that it has conducted customer due diligence in accordance with these requirements and that it has no reason to suspect that any of its members are engaged in money laundering activities.⁶⁵⁰

Christie's former Global Head of Compliance explained these provisions mirrored language she previously used as an attorney for a large U.S. financial institution in agreements between financial institutions.⁶⁵¹ She also confirmed to the Subcommittee that this was the first time Christie's allowed another entity to perform these types of customer due diligence checks.⁶⁵²

⁶⁴⁵ Christies-PSI-00001516-21.

⁶⁴⁶ Christies-PSI-00000032-34.

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*

⁶⁵¹ Subcommittee interview of Christie's former Global Head of Compliance (Jul. 15, 2019).

⁶⁵² *Id.*

iii. BALTZER LLP Failed to Provide Anti-money Laundering and Sanctions Compliance Certifications Required by the Agreement with Christie's

As stated above, the agreement between BALTZER LLP and Christie's required BALTZER LLP to certify annually that it conducted customer due diligence and did not suspect its clients were engaged in money laundering.⁶⁵³ Obtaining that certification, as scheduled and with the proper assertions regarding anti-money laundering, became a challenge for Christie's over the course of the relationship due to a lack of responsiveness by Mr. Omelnitski, despite numerous attempts by Christie's to obtain the certification. As explained below, Christie's later revised the agreement with BALTZER, in part because of Mr. Omelnitski's failure to provide the required compliance certifications. The new agreement required Mr. Baltser to identify all winning bidders to the Christie's Legal Department to perform KYC checks.

2014. Christie's Compliance Counsel emailed Mr. Omelnitski on September 26, 2014 requesting "to refresh [Christie's] due diligence in relation to the BALTZER arrangements, particularly around sanctions screening."⁶⁵⁴ She confirmed to the Subcommittee she was referring to the increasing number of sanctions imposed by the United States and the European Union on Russian individuals and entities in response to the annexation of Crimea.⁶⁵⁵

On October 15, 2014, the Compliance Counsel emailed Mr. Omelnitski regarding the certification required in the February 2014 Letter Agreement.⁶⁵⁶ She explained that "[g]iven the rapidly evolving sanctions landscape in Russia, we are asking all our business partners to certify that they have complied and will continue to comply with relevant AML regulations including ongoing sanctions screening against...EU, UN, OFAC, etc. lists."⁶⁵⁷ The Compliance Counsel emailed Mr. Omelnitski on October 31, 2014 to again request the report.⁶⁵⁸ Mr. Omelnitski responded and assured her that "we are preparing the report...I shall have it for you within a week."⁶⁵⁹ On November 22, 2014, Mr. Omelnitski emailed the Compliance Counsel stating, "I am really sorry for [the] delay with the report. I am traveling extensively over the last two months. I shall be ready with it next week. Once again apologies for [the] delay."⁶⁶⁰

⁶⁵³ Christies-PSI-00000032-34.

⁶⁵⁴ Christies-PSI-00098744.

⁶⁵⁵ Subcommittee interview of Christie's former Global Head of Compliance (Jul. 15, 2019).

⁶⁵⁶ Christies-PSI-00098749-52.

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

⁶⁶⁰ Christies-PSI-00088125.

Mr. Omelnitski provided the certification to the Compliance Counsel on December 2, 2014 titled, “AML Report on behalf of ‘Baltzer’ for period October 2013 through November 2014.”⁶⁶¹ The document stated:

I can confirm that our investigation did not reveal any irregularities, which were concerning. I can further confirm that despite BALTZER having a significant number of Russian clients there were no transactions, which fall under recent sanctions against Russia.⁶⁶²

The former Global Head of Compliance told the Subcommittee this language satisfied the certification requirement in the February 14, 2014 Letter Agreement.⁶⁶³

2015. A year later, on December 3, 2015, the Compliance Counsel emailed Mr. Omelnitski asking, “could you please let me have a compliance report for this year?”⁶⁶⁴ Mr. Omelnitski did not provide the requested compliance report.⁶⁶⁵

2016. The Compliance Counsel emailed Mr. Omelnitski on June 7, 2016 and again asked, “would you please be able to send me a compliance certification again similar to the report you so kindly provided at the end of 2014?”⁶⁶⁶ Mr. Omelnitski did not provide the requested report.⁶⁶⁷ On June 28, 2016, the Compliance Counsel again requested that Mr. Omelnitski “confirm when we can expect to receive your compliance certification?”⁶⁶⁸ Mr. Omelnitski failed to provide the requested compliance report.⁶⁶⁹

2017. On July 13, 2017, the Compliance Counsel emailed Mr. Omelnitski stating, “we will need the compliance certificate from you as per our agreement.”⁶⁷⁰ On October 9, 2017, Mr. Omelnitski emailed information regarding BALTZER’s purchases.⁶⁷¹ Mr. Omelnitski’s email stated that for “transactions September 2016-September 2017,” Baltzer’s agency “had the turnover of £3,269,457.30, Euro 5,775,449.40 and USD 1,402,661.60.”⁶⁷² The email broke down those amounts between auction houses, clients, and suppliers.⁶⁷³ The email did not provide any certifications regarding compliance with AML policies as required by the Letter

⁶⁶¹ Christies-PSI-00035361-62.

⁶⁶² *Id.*

⁶⁶³ Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶⁶⁴ Christies-PSI-00098858.

⁶⁶⁵ Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶⁶⁶ Christies-PSI-00098961.

⁶⁶⁷ Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶⁶⁸ Christies-PSI-00098976.

⁶⁶⁹ Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶⁷⁰ Christies-PSI-00093620-23.

⁶⁷¹ Christies-PSI-00093885-87.

⁶⁷² *Id.*

⁶⁷³ *Id.*

Agreement.⁶⁷⁴ In response, the Compliance Counsel alerted Mr. Omelnitski that “we need to talk and review the approach to client due diligence.”⁶⁷⁵

The Compliance Counsel asked Mr. Omelnitski to “clarify the relationship between BALTZER and Markom” on October 20, 2017.⁶⁷⁶ She raised the fact that “BALTZER is both a client who outsources client due diligence and compliance to Markom Group as well as a related entity due to Markom Group being a director/shareholder.”⁶⁷⁷ She also addressed the issue of Mr. Baltser’s clients and suggested that “the Compliance Department is able to keep the identity of clients securely within a private and confidential file that is not accessible by anyone other than Compliance/Legal.”⁶⁷⁸ The Compliance Counsel asserted the information would “be provided solely to me in order to enable Christie’s to comply with our KYC procedures and relied on solely for this purpose.”⁶⁷⁹ She explained to the Subcommittee that she never received answers to her questions about the Markom Group’s relationship to Mr. Baltser’s companies.⁶⁸⁰

2018. The parties negotiated the terms of a new agreement, which was signed on March 19, 2018.⁶⁸¹ The new agreement contained additional requirements, which the former Global Head of Compliance explained gave Christie’s additional control and comfort regarding purchases by BALTZER.⁶⁸² For purposes of customer due diligence, the new agreement required that, “For all successful bidders, BALTZER will make the customer due diligence documentation (including any originals) promptly available to Christie’s for inspection within 10 working days after the auction and in any event, prior to the release of the relevant lot.”⁶⁸³ The new terms also stated that “BALTZER warrants on a continuing basis while this agreement remains in force that:

- i. any bid on behalf of its Members does not facilitate tax evasion or tax fraud;
- ii. any bid on behalf of its Members does not violate or facilitate a violation of sanctions including those administered or enforced by the US Department of Treasury’s OFAC, US Department of State, the UN Security Council, the EU, Her Majesty’s Treasury or the Hong Kong Monetary Authority;

⁶⁷⁴ *Id.*

⁶⁷⁵ *Id.*

⁶⁷⁶ Christies-PSI-00094167-68.

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.*

⁶⁷⁹ *Id.*

⁶⁸⁰ Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶⁸¹ Christies-PSI-00005015-27.

⁶⁸² Subcommittee interview of Christie’s former Global Head of Compliance (Jul. 15, 2019).

⁶⁸³ Christies-PSI-00099306-14.

- iii. it does not know, and has no reason to suspect that any buyer is under investigation for, charged with or convicted of money laundering, terrorist activities or other crimes; and
- iv. any shipping of lots on which Baltzer has successfully bid will be done in compliance with all applicable export and import laws.⁶⁸⁴

The new agreement was dated March 19, 2018.⁶⁸⁵ The former Global Head of Compliance explained that with the new agreement, the BALTZER account was restricted until the company provided Christie's the required customer documentation.⁶⁸⁶ She told the Subcommittee that BALTZER complied with the new requirement and provided the customer information, but continued to pay for purchases from his bank account.⁶⁸⁷ Therefore, financially, Christie's was unable to look beyond BALTZER's bank account to determine the source of the funds used to make purchases.⁶⁸⁸

**b. Sotheby's Declined to Sign an Agreement with BALTZER LLP,
but Continued to Transact with Mr. Baltser**

Mr. Baltser also approached Sotheby's to enter into an agreement with BALTZER LLP. While Sotheby's considered the proposal, the auction house ultimately declined. According to a document produced by Sotheby's to the Subcommittee, during the course of the negotiations with Mr. Baltser, the Sotheby's account representative for Mr. Baltser ("Baltser Account Representative"), represented to Sotheby's leadership that Mr. Baltser's clients were Russian oligarchs.⁶⁸⁹ She also specifically identified Arkady and Boris Rotenberg as two of Mr. Baltser's clients.⁶⁹⁰ But when asked by the Subcommittee to confirm that Arkady and Boris Rotenberg were Mr. Baltser's clients, she said she had fabricated the information to encourage Sotheby's to agree to Mr. Baltser's proposal.⁶⁹¹ The Subcommittee questions her truthfulness in her interview, given the Subcommittee traced funds used to purchase art by Mr. Baltser back to shell companies linked to the Rotenbergs.

⁶⁸⁴ *Id.*

⁶⁸⁵ *Id.*

⁶⁸⁶ Subcommittee Interview of Christie's former Global Head of Compliance (Jul. 15, 2019).

⁶⁸⁷ *Id.*

⁶⁸⁸ *Id.*

⁶⁸⁹ SOT-015933.

⁶⁹⁰ SOT-018689-93.

⁶⁹¹ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

i. Mr. Baltser Purchased Art from Sotheby's on Behalf of Steamort

As with Christie's, Mr. Baltser purchased art from Sotheby's on behalf of Steamort, signing invoices on behalf of the company as early as 2011.⁶⁹² The Baltser Account Representative told the Subcommittee that Mr. Baltser used Steamort to purchase items from Sotheby's.⁶⁹³ She explained that it was common for purchasers to use various companies when purchasing art.⁶⁹⁴ The Baltser Account Representative asserted Steamort preceded BALTZER LLP and she did not believe Steamort existed anymore.⁶⁹⁵ She did not know why Mr. Baltser made the switch from Steamort to BALTZER LLP, but she thought that Mr. Baltser created BALTZER LLP around the time that he established his art agency. She also recalled that Mr. Baltser provided BALTZER LLP's incorporation and compliance due diligence documents to Sotheby's.⁶⁹⁶

ii. Mr. Baltser Approached Sotheby's on his Business Proposal with BALTZER LLP

In early 2013, Mr. Baltser also approached Sotheby's about a business proposal with his art agency. On February 11, 2013, the Baltser Account Representative emailed Sotheby's Chief Operating Officer in Europe, and other Sotheby's associates (in pertinent part):

Level 1, top transacting Russian client, Mr. Gregory Baltser (Steamort Ltd) is setting up a private club in Moscow for his friends and clients, Russian oligarchs. This club's activity will be centered around auction house activities. He wants to involve the club members into buying at auctions.

Some of these clients have already started transacting through him.⁶⁹⁷

The Baltser Account Representative explained to the Subcommittee that Mr. Baltser's club would allow club members to view a live stream of an auction taking place outside of Moscow.⁶⁹⁸ She also noted that using the word "oligarch" at the time meant a high net worth Russian individual.⁶⁹⁹ She purposefully used the word "oligarch;" it was her job to sell Mr. Baltser's ideas to her superiors.⁷⁰⁰

⁶⁹² SOT-000406-07; SOT-006167.

⁶⁹³ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁶⁹⁴ *Id.*

⁶⁹⁵ *Id.*

⁶⁹⁶ *Id.*

⁶⁹⁷ SOT-015933.

⁶⁹⁸ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

An internal Sotheby's meeting invitation dated March 25, 2013 explained how Mr. Baltser's club would work:

The client [Mr. Baltser] would have members bid on his account. He could have members bidding against each other but under the same account, on different paddles. He would remain liable to Sotheby's for any bids his members provide – he would control that his end to effectively manage his risk...Mostly his members would pay him and he would pay us. His members may wish to be invoiced directly – in which case, if not already known to us, our KYC rules apply and they set up an account and we invoice directly – although in the event of non-payment he knows he can't "excuse himself"... We'd have/keep the veto – e.g. would not allow a transfer to a No Bid client.⁷⁰¹

The Baltser Account Representative explained that Sotheby's invoiced Mr. Baltser directly and would divide his purchases into multiple invoices if he requested.⁷⁰² She asserted Mr. Baltser was the client: "That's how he bid and that's how he paid. As far as I'm concerned the client is Greg Baltser."⁷⁰³ The Baltser Account Representative made clear that she could not register a bid for Mr. Baltser unless the payment would be coming from his company.⁷⁰⁴ However, she also explained that Mr. Baltser "would almost never tell us on behalf of who he is bidding for."⁷⁰⁵

The Baltser Account Representative continued to advocate partnering with Mr. Baltser and forwarded several documents from Mr. Baltser to her colleagues regarding his club on May 31, 2013.⁷⁰⁶ One of the documents noted that Mr. Baltser would "obtain all the necessary KYC/AML checks required."⁷⁰⁷ The document also noted "one of the key components of the KYC/AML process implies checking the identity of every client and collecting personally identifiable information."⁷⁰⁸ The Baltser Account Representative recalled there were extensive discussions internally at Sotheby's about Mr. Baltser performing the KYC checks on his own because Sotheby's wanted to know who his clients were for KYC purposes.⁷⁰⁹ Sotheby's asked him to reveal the identity of his clients, which "obviously made him very uncomfortable as a dealer would never do this normally."⁷¹⁰ She explained that Mr. Baltser was reluctant to do this, but Sotheby's was unsure how it could satisfy itself

⁷⁰¹ SOT-115602.

⁷⁰² Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁷⁰³ *Id.*

⁷⁰⁴ *Id.*

⁷⁰⁵ *Id.*

⁷⁰⁶ SOT-172699-711.

⁷⁰⁷ *Id.*

⁷⁰⁸ *Id.*

⁷⁰⁹ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁷¹⁰ *Id.*

that his clients were compliant.⁷¹¹ She recalled that Mr. Baltser provided additional company and compliance documents to address Sotheby's KYC concerns. She explained that dealers and art galleries never disclose who their clients are. However, she noted that any gallery owner was responsible for running its own client due diligence.⁷¹² She stated that Sotheby's did due diligence on Mr. Baltser as the client, but Mr. Baltser would perform the due diligence on his own clients.⁷¹³

In summer 2013, Mr. Baltser continued to push regarding a partnership between himself and Sotheby's.⁷¹⁴ Through the Baltser Account Representative, Mr. Baltser requested a meeting to "address all the questions and issues we have with" his proposal.⁷¹⁵ In the same June 6, 2013 email, the Baltser Account Representative noted that "this week Gregory has set up a record for a Russian painting at auction buying Nichols Roerich's canvas at Bonhams for [£7.88 million]," referring to Mr. Baltser's purchase of the *Madonna Laboris*.⁷¹⁶

iii. The Baltser Account Representative Claims Arkady and Boris Rotenberg were Mr. Baltser's Clients before they were Sanctioned

As part of her continued advocacy on behalf of Mr. Baltser, and his business proposal to Sotheby's, the Baltser Account Representative created a document in advance of a meeting on October 9, 2013 that showed Mr. Baltser's clients included, Arkady and Boris Rotenberg.⁷¹⁷ The Baltser Account Representative sent an email to her assistant that attached Forbes biographies of the men.⁷¹⁸ The Deputy Chairman of Sotheby's Europe and Chairman of Sotheby's Russia ("Chairman of Sotheby's Russia") told the Subcommittee during an interview that when he saw the list that included Arkady and Boris Rotenberg, he thought, "It looked quite impressive to me—to have [] oligarchs on the list."⁷¹⁹ He confirmed that he believed the compliance department and the managing director of Sotheby's would have seen the client list at the time, which was before sanctions were imposed on Arkady and Boris Rotenberg.⁷²⁰

⁷¹¹ *Id.*

⁷¹² *Id.*

⁷¹³ *Id.*

⁷¹⁴ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019); SOT-172576-78.

⁷¹⁵ SOT-172576-78.

⁷¹⁶ *Id.*

⁷¹⁷ SOT-018689-93.

⁷¹⁸ SOT-018689-93.

⁷¹⁹ Subcommittee interview of the Deputy Chairman of Sotheby's Europe and Chairman of Sotheby's Russia (May 30, 2019).

⁷²⁰ *Id.*

However, the Baltser Account Representative stated in her Subcommittee interview that Mr. Baltser never represented to her that Arkady and Boris Rotenberg were his clients.⁷²¹ She stated she fabricated the fact the Rotenbergs were clients of Mr. Baltser to convince her employer, Sotheby's, there was "significant business potential" in the agreement with Mr. Baltser.⁷²² She stated she located the two Rotenbergs by googling Russians on the Forbes list.⁷²³ The biographies attached to her email listed Arkady Rotenberg as number 1,153 on the Forbes list and number 30 in Russia.⁷²⁴ The biography for Boris Rotenberg listed him as number 1,031 on the billionaires list and number 69 in Russia.⁷²⁵ The Subcommittee questions the truthfulness of Baltser Account Representative's answer given that funds used by Mr. Baltser to purchase art were traced back to shell companies linked to the Rotenbergs.

In order to facilitate a decision on Mr. Baltser's proposal, the Baltser Account Representative and the Chairman of Sotheby's Russia drafted a list of pros and cons.⁷²⁶ Once they both agreed on the list, they sent the list to the then Managing Director for Sotheby's Europe ("Managing Director") on October 15, 2013.⁷²⁷ The list included the following positive points they associated with the proposed business arrangement with Mr. Baltser:

1. Baltser has a client base that wants to buy in our sales and have already been buying using Baltser's services. We encourage his bids and he pays on time.
2. He declared his plans willingly and honestly to us. He is regulated by the Russian authorities and before accepting to deal with any of his potential clients he has to go through KYC and do all due diligence.
3. His logistics operation, to make buying in auction houses easy and fun, appeals to a number of wealthy Russians who trust him. Among his clients are Forbes list businessmen.
4. On several occasions the identity of his clients has been revealed to us and we set up personal accounts for these clients. Some have already started transacting with us directly.⁷²⁸

The list also included "concerns:"

1. We do not always know who his clients are. We do however know Baltser well and we have transacted with him for a number of years.

⁷²¹ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁷²² *Id.*

⁷²³ *Id.*

⁷²⁴ SOT-018689-93.

⁷²⁵ *Id.*

⁷²⁶ SOT-051481-82.

⁷²⁷ SOT-018663-64.

⁷²⁸ *Id.*

He is well known to the dealer community for the last 15 years. We assume we are happy that he transacts as usual, if we decide not to recognize his new plans.

2. He can manipulate a market by a ring. There is no evidence at all to support this. Anyway this is not in his interest as the more clients he gets to bid the more fees he can charge.
3. His business becomes too powerful and he dictates terms to us. We don't think that will happen as we do not see this business growing into 100s of clients. Exclusivity is important to Russians. Also there are too many factions between the powerful elite who will always use different agents and dealers. There are many more powerful buyers in the market and full [buyer's premium] is paid by all.⁷²⁹

The email to the Managing Director continued:

Whilst we must be fully compliant it does seem duplicitous that we allow him to bid today but have worries when he explains his ambitions. Furthermore we allow other European and US agents that bid on behalf of clients and we do not demand to know who their clients are.⁷³⁰

The email then asked the question: "Should we be partners?"⁷³¹ And concluded, "In our opinion, no. If Baltser has more clients bidding in our sales we benefit anyway. If his business succeeds and we think this is a winning formula we should then consider changing our office model."⁷³²

As with Christie's, Mr. Omelnitski provided documentation of anti-money laundering and client due diligence policies and procedures to Sotheby's on behalf of Mr. Baltser, including a 50-page BALTZER LLP compliance procedures manual and customer due diligence measures, as well as BALTZER LLP incorporation documents.⁷³³ He also advocated for Mr. Baltser saying "Gregory is really anxious to commence co-operation with Sotheby's" on October 11, 2013.⁷³⁴ The Baltser Account Representative told the Subcommittee she understood that Mr. Omelnitski was Mr. Baltser's representative in the United Kingdom and that his role appeared mainly to involve helping Mr. Baltser set up BALTZER LLP.⁷³⁵

⁷²⁹ *Id.*

⁷³⁰ *Id.*

⁷³¹ *Id.*

⁷³² *Id.*

⁷³³ SOT-005232-82.

⁷³⁴ SOT-004597-99.

⁷³⁵ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

On October 28, 2013, the Chairman of Sotheby's Russia emailed the Managing Director to request a date to meet with Mr. Baltser in Moscow.⁷³⁶ He responded, "sure but not before I have heard your convincing arguments as to how we protect our position re 'his' clients!"⁷³⁷ The Chairman of Sotheby's Russia responded referencing his October 15, 2013 email of positive points and concerns and noted "I saw [Mr. Baltser] last week with [the Baltser Account Representative] and he has agreed to reveal the names of his clients."⁷³⁸

iv. Sotheby's Declined Mr. Baltser's Business Proposal

Sotheby's corporate headquarters in New York ultimately decided not to sign an agreement with Mr. Baltser.⁷³⁹ The Chairman of Sotheby's Russia told the Subcommittee that one of the reasons Sotheby's declined Mr. Baltser's business proposal was due to concern over his undisclosed clients.⁷⁴⁰ The concerns extended beyond the identity of his clients to their potential to manipulate market prices by coordinating their bids at Sotheby's auctions.⁷⁴¹ He also explained that Sotheby's wanted to have more control over the transactions by directing them to occur directly with Sotheby's, and Mr. Baltser's proposal overall was more advantageous for Mr. Baltser than Sotheby's.⁷⁴²

Even though Sotheby's declined Mr. Baltser's proposal, Mr. Baltser continued to bid in auctions and purchase art from the auction house. The Chairman of Sotheby's Russia explained the only difference was that Sotheby's declined Mr. Baltser's business proposal to create a direct cable for broadcasting high quality images of items being auctioned by Sotheby's into Mr. Baltser's private art club.⁷⁴³

c. Mr. Baltser Purchased Art with Funds Traced to Rotenberg-linked Shell Companies

The evidence indicates that the Rotenbergs used Mr. Baltser as their art adviser and agent both before and after the imposition of U.S. sanctions in March 2014. Each purchase followed the same pattern. Mr. Baltser purchased the art and took title either through Steamort or later, his own company BALTZER LLP. Then, one of the shell companies highlighted above (Highland Business or Highland Ventures) would wire funds to Steamort to pay for the piece of art. Prior to U.S.

⁷³⁶ SOT-018624.

⁷³⁷ *Id.*

⁷³⁸ *Id.*

⁷³⁹ SOT-201809-11; SOT-01893; Subcommittee interview of the Deputy Chairman of Sotheby's Europe and Chairman of Sotheby's Russia (May 30, 2019).

⁷⁴⁰ Subcommittee interview of the Deputy Chairman of Sotheby's Europe and Chairman of Sotheby's Russia (May 30, 2019).

⁷⁴¹ *Id.*

⁷⁴² *Id.*

⁷⁴³ *Id.*

sanctions, Mr. Baltser routinely purchased art in the name of Steamort; Steamort would also wire the funds directly to the seller.

Following the imposition of U.S. sanctions, which coincided with the establishment of BALTZER, Mr. Baltser added a step. Steamort generally wired funds to purchase the art to BALTZER LLP. Mr. Baltser would then take title for the purchased artwork in the name of BALTZER LLP and wire the funds to the auction house from his BALTZER LLP account.

There were exceptions to this post-sanctions practice. One such exception documented below involved Highland Ventures taking title to a \$7.5 million Magritte painting, while another shell company linked to Mr. Omelnitski (Advantage Alliance) wired the payment directly to the dealer. The Subcommittee traced those funds to a company owned by Arkady Rotenberg.

4. Examples of Pre-Sanctions Art Purchases

Several examples of how the Rotenbergs purchased art pre-sanctions through the services of Mr. Baltser follow.

a. Nicholas Roerich's *And We Continue Fishing*

Date of Sale	November 1, 2011
Price	\$1,426,500
Auction House	Sotheby's New York
Purchaser of Record	Steamort Limited

Transaction background. On November 1, 2011, Sotheby's held an auction entitled "Important Russian Art."⁷⁴⁴ Nicholas Roerich's *And We Continue Fishing* from the Bolling Family Collection was part of that sale and was projected to sell for between \$1.2 million and \$1.5 million.⁷⁴⁵ The Sotheby's website noted that the painting was "the fourth of six paintings in Roerich's *Sancta* series."⁷⁴⁶ Further, the website stated, "These allegorical paintings are meant to represent a spiritual journey, and they are unique within the artist's 1920s oeuvre for their distinctively Russian setting and imagery."⁷⁴⁷

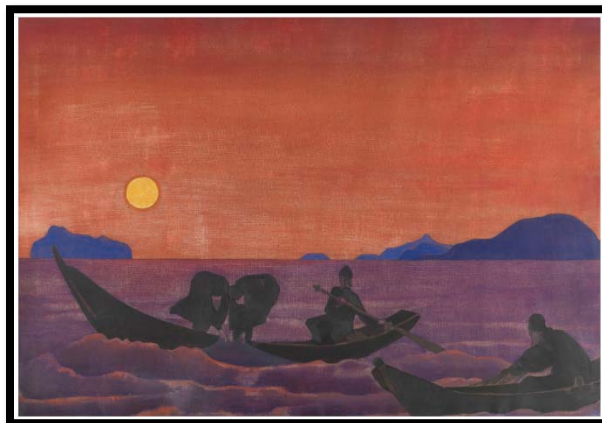
⁷⁴⁴ *Important Russian Art*, SOTHEBY'S (Nov. 1, 2011), <https://www.sothebys.com/en/auctions/ecatalogue/2011/important-russian-art/lot.18.html>; SOT-000299-301.

⁷⁴⁵ *Id.*

⁷⁴⁶ *Id.*

⁷⁴⁷ *Id.*

Mr. Baltser purchased the painting for \$1,426,500 in the name of Steamort.⁷⁴⁸ Following the purchase, Sotheby's invoiced Steamort for the net amount of \$1,426,500.⁷⁴⁹ That amount included the \$1,200,000 hammer price as well as the \$226,500 buyer's premium.⁷⁵⁰



Nicholas Roerich's And We Continue Fishing (Photo Credit: Sotheby's)

Origin of funds used for purchase. On November 16, 2011, Highland Business wired \$1,496,862.12 from its account with Societe Generale to Steamort's Tallinn Business Bank account.⁷⁵¹ The notes for the wire transfer stated "payment under finder agreement [dated October 26, 2011]."⁷⁵² Five days later, on November 21, 2011, Steamort wired \$1,415,808.20 from its Tallinn Business Bank account to Sotheby's New York account at JPMorgan Chase.⁷⁵³ The wire transfer instructions stated "[payment] by statement of account [dated November 2, 2011], Account N 51245607 for subjects of interior."⁷⁵⁴

Owner. When questioned, the Sotheby's Baltser Account Representative told the Subcommittee that she did not know for whom Mr. Baltser purchased this painting, nor did she recall asking him to reveal the identity of the buyer.⁷⁵⁵

b. Pierre-August Renoir's *Nature Morte aux Fruits*

Date of Sale	May 14, 2012
Price	\$1,750,000
Auction House	Sotheby's New York
Purchaser of Record	Steamort Limited

Transaction background. On May 14, 2012, Mr. Baltser purchased Renoir's *Nature Morte aux Fruits* for \$1,750,000 on behalf of Steamort through a private

⁷⁴⁸ SOT-000406-07.

⁷⁴⁹ *Id.*

⁷⁵⁰ *Id.*

⁷⁵¹ SGA_PSI_00506-29, transaction no. 19453397.

⁷⁵² *Id.*

⁷⁵³ DBAG0000024, line 256; JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Steamort, line 62.

⁷⁵⁴ *Id.*

⁷⁵⁵ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

sale.⁷⁵⁶ The invoice noted the sale was for Sotheby’s sale number: “NOPT12-2012.”⁷⁵⁷

Origin of funds used for purchase. On May 16, 2012, Highland Business wired \$1,989,000 from its Societe Generale account to Steamort’s Tallinn Business Bank Account.⁷⁵⁸ The wire transfer instructions noted that the payment was “according to finder agreement dated [May 14, 2012].”⁷⁵⁹ On May 21, 2012, Steamort wired \$1,750,000 from its Tallinn Business Bank account to Sotheby’s New York account at JPMorgan Chase.⁷⁶⁰ The wire transfer instructions noted the payment was for “Sale: NOPT12 -2012, Lot 0128 for subjects of interior.”⁷⁶¹

Owner. When questioned, the Sotheby’s Baltser Account Representative told the Subcommittee that she did not know for whom Mr. Baltser purchased this painting, nor did she recall asking him to reveal the identity of the buyer.⁷⁶²

Shipment. Art Courier managed the shipment of the painting by Dietl to Germany for storage at the Hasenkamp art storage facility.⁷⁶³

c. Pierre-Auguste Renoir’s *Femmes dans un Paysage*

Date of Sale	June 11, 2012
Price	\$2,800,000
Auction House	Sotheby’s Hong Kong
Purchaser of Record	Steamort Limited

Transaction background. In May 2012, the Sotheby’s Baltser Account Representative learned of a private sale of Pierre-Auguste Renoir’s *Femmes dans un Paysage* in Hong Kong.⁷⁶⁴ The seller wanted \$3,300,000 for the painting.⁷⁶⁵ On June 7, 2012, the Baltser Account Representative said in an email that her client “seems to be interested however he is not ready to pay 3.3. His offer is 2.7 USD.”⁷⁶⁶ On June 8, 2012, the Sotheby’s representative for the seller in Hong Kong emailed the Baltser Account Representative confirming that “we have a go ahead to sell at \$2.8

⁷⁵⁶ SOT-006167.

⁷⁵⁷ *Id.*

⁷⁵⁸ SGA_PSI_00506–29, transaction no. 20892304.

⁷⁵⁹ *Id.*

⁷⁶⁰ DBAG0000024, line 320; JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Steamort, line 72.

⁷⁶¹ *Id.*

⁷⁶² Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁷⁶³ Dietl Production (Jun. 28, 2018) (409911 Air Export JFK to FRA).

⁷⁶⁴ SOT-043264–67.

⁷⁶⁵ *Id.*

⁷⁶⁶ *Id.*

million.”⁷⁶⁷ The email continued “we can bill in [Hong Kong] where there is no tax.”⁷⁶⁸ However, the Baltser Account Representative responded that “the buyer – Steamort Ltd – would like the deal to be done in [New York].”⁷⁶⁹ She then emphasized “it is very important to the buyer. The lot will then be shipped to Europe or Russia.”⁷⁷⁰ The Baltser Account Representative told the Subcommittee she did not recall why it was important for the deal to be done in New York.⁷⁷¹

On June 11, 2012, Mr. Baltser – on behalf of Steamort – purchased the painting for \$2,800,000.⁷⁷²

Origin of funds used for purchase. On June 20, 2012, Highland Business wired \$3,396,600 from its account at Societe Generale to Steamort’s Tallinn Business Bank account.⁷⁷³ The wire transfer instructions noted: “according to finder agreement.”⁷⁷⁴ On June 22, 2012, Steamort transferred \$2,800,000 from its Tallinn Business Bank to Sotheby’s Hong Kong account at HSBC Hong Kong.⁷⁷⁵ The payment notes for the wire transfer stated: “for subjects of interior.”⁷⁷⁶

Owner. When questioned, the Sotheby’s Baltser Account Representative told the Subcommittee that she did not know for whom Mr. Baltser purchased this painting, nor did she recall asking him to reveal the identity of the buyer.⁷⁷⁷

Shipment. Art Courier managed the shipment of the painting by Dietl for “temporary storage at [Cologne],” Germany at the Hasenkamp art storage facility.⁷⁷⁸

⁷⁶⁷ *Id.*

⁷⁶⁸ *Id.*

⁷⁶⁹ *Id.*

⁷⁷⁰ *Id.*

⁷⁷¹ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁷⁷² SOT-006071; SOT-002387–91.

⁷⁷³ SGA_PSI_00506–29, transaction no. 21173983.

⁷⁷⁴ *Id.*

⁷⁷⁵ DBAG0000024, line 339.

⁷⁷⁶ *Id.*

⁷⁷⁷ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁷⁷⁸ SOT-041359–60; SOT-041364.

d. René Magritte’s *Le Rendez-Vous* and Salvador Dali’s *Papillons*

Date of Sale	November 7, 2012
Price	\$869,000
Auction House	Sotheby’s New York
Purchaser of Record	Steamort Limited

Transaction background. On November 7, 2012, at Sotheby’s Impressionist & Modern Art Sale, Mr. Baltser purchased René Magritte’s *Le Rendez-vous* and Salvador Dali’s *Papillons* in the name of Steamort.⁷⁷⁹ *Le Rendez-vous* sold for \$662,500, which included the hammer price of \$550,000 and buyer’s premium of \$112,500.⁷⁸⁰ *Papillons* sold for \$206,500, which included the hammer price of \$170,000 and buyer’s premium of \$36,500.⁷⁸¹ Together the cost of the two paintings totaled \$869,000.⁷⁸²

Origin of funds used for purchase. On November 13, 2012, Highland Business wired \$903,180.11 from its account at Societe General to Steamort’s Tallinn Business Bank account.⁷⁸³ The wire transfer instructions noted: “according to finder agreement.”⁷⁸⁴ On the same day, Steamort wired \$869,000 from its Tallinn Business Bank to Sotheby’s New York account at JPMorgan Chase.⁷⁸⁵ The wire transfer noted it was “for subjects of interior.”⁷⁸⁶



René Magritte’s Le Rendez-Vous (Photo Credit: Sotheby’s)

Owner. When questioned, the Sotheby’s Baltser Account Representative told the Subcommittee that she did not know for whom Mr. Baltser purchased these paintings, nor did she recall asking him to reveal the identity of the buyer.⁷⁸⁷

⁷⁷⁹ SOT-000402-05.

⁷⁸⁰ *Id.*

⁷⁸¹ *Id.*

⁷⁸² *Id.*

⁷⁸³ SGA_PSI_00-00506-29, transaction no. 22320799.

⁷⁸⁴ *Id.*

⁷⁸⁵ DBAG0000024, line 394; JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Steamort, line 87.

⁷⁸⁶ *Id.*

⁷⁸⁷ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

Shipment. Art Courier managed the shipment for both the paintings by Dietl to Germany for storage at the Hasenkamp art storage facility.⁷⁸⁸

e. Salvador Dali's *Monstruo Blando Adormecido*

Date of Sale	December 13, 2012
Price	\$2,350,000
Auction House	Sotheby's London
Purchaser of Record	Steamort Limited

Transaction background. On December 13, 2012, Sotheby's London invoiced Steamort through Mr. Baltser for the purchase of Salvador Dali's *Monstruo Blando Adormecido* for \$2,350,000 in a private sale.⁷⁸⁹ The invoice was numbered: 92179804.⁷⁹⁰

In past instances, Mr. Baltser signed the purchase contract on behalf of Steamort. For this purchase, however, the purchase contract was signed by "A. Solovyeva."⁷⁹¹ The Baltser Account Representative emailed Mr. Baltser: "Sorry, this is not your signature. The accountants cannot accept it. Please sign it yourself and send me again."⁷⁹² Instead, Mr. Baltser sent a document that listed Alevtina Solovyeva as holding the power of attorney for Steamort.⁷⁹³ He also provided Ms. Solovyeva's Russian passport.⁷⁹⁴

Origin of funds used for purchase. On December 14, 2012, Highland Business wired \$3,113,550 from its Societe Generale account to Steamort's account at Tallinn Business Bank.⁷⁹⁵ The wire transfer noted: "according to finder agreement."⁷⁹⁶ On December 17, 2012, Steamort wired \$2,350,000 from its Tallinn Business Bank to Sotheby's London account at HSBC London.⁷⁹⁷ The wire transfer noted: "pmt by invoice 92179804 [dated December 13, 2012] for subjects of interior."⁷⁹⁸

⁷⁸⁸ DIETL 409911 (Air Export JFK to FRA).

⁷⁸⁹ SOT-005674-76.

⁷⁹⁰ *Id.*

⁷⁹¹ SOT-005630-31.

⁷⁹² SOT-005690.

⁷⁹³ SOT-005686-87.

⁷⁹⁴ SOT-5681-82.

⁷⁹⁵ JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Highland Business Group, line 15.

⁷⁹⁶ *Id.*

⁷⁹⁷ DBAG0000024, line 409.

⁷⁹⁸ *Id.*

Owner. When questioned, Sotheby’s Baltser Account Representative told the Subcommittee that she did not know for whom Mr. Baltser purchased this painting, nor did she recall asking him to reveal the identity of the buyer.⁷⁹⁹

Shipment. A November 29, 2012 letter from Sotheby’s London to Mr. Baltser confirmed the export license for the painting and also noted, “The next step is for the painting to be shipped to Cologne as per your discussions with [Sotheby’s Baltser Account Representative].”⁸⁰⁰ Art Courier managed the shipment of the painting to Germany for storage at the Hasenkamp art storage facility.⁸⁰¹

f. Lyonel Feininger’s *Brucke II*; Salvador Dali’s *Sans Titre: New Accessories*; and Man Ray’s *Le Trop-Plein*

Date of Sale	February 4, 2014
Auction House	Christie’s London
Purchaser of Record	Baltzer Limited

Transaction background. On February 4, 2014, Christie’s London held its Impressionist/Modern Evening Sale.⁸⁰² During that sale, Mr. Baltser purchased Lyonel Feininger’s *Brucke II* for £4,786,500.⁸⁰³ Baltzer Limited took title of the painting.⁸⁰⁴ In another Christie’s sale that same day, The Art of the Surreal, Mr. Baltser purchased Salvador Dali’s *Sans Titre: New Accessories* and Man Ray’s *Le trop-plein*.⁸⁰⁵ Baltzer Limited took title for those two paintings as well.⁸⁰⁶

Origin of funds used for purchase. The Subcommittee did not receive wire information regarding the above paintings since Mr. Baltser purchased the paintings in British pounds in London. However, as explained below, it is likely Mr. Baltser purchased these paintings on behalf of the Rotenbergs. On August 30, 2015, an employee of Mr. Baltser emailed a Christie’s employee a list of “links of our Client’s works.”⁸⁰⁷ Mr. Baltser’s employee explained “If you see any opportunities to promote these works or to make this collection more valuable please let me know.”⁸⁰⁸ The list of 31 works included *Sans Titre*, *Le Trop-Plein*, and *Brucke II*.⁸⁰⁹

⁷⁹⁹ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁸⁰⁰ SOT-015974

⁸⁰¹ SOT-005713-14.

⁸⁰² *Sale 1505: Impressionist/Modern Evening Sale*, CHRISTIE’S (Feb. 4, 2014), <https://www.christies.com/salelanding/index.aspx?intsaleid=24583&saletitle=>.

⁸⁰³ Christies-PSI-00046436; *see also Sale 1505: Impressionist/Modern Evening Sale, Lot 36*, CHRISTIE’S (Feb. 4, 2014), <https://www.christies.com/lotfinder/lot/lyonel-feininger-5766388-details.aspx?from=salesummery&intobjectid=5766388>.

⁸⁰⁴ Christies-PSI-00046436.

⁸⁰⁵ Christies-PSI-00046433-35.

⁸⁰⁶ *Id.*

⁸⁰⁷ Christies-PSI-00062223-26.

⁸⁰⁸ *Id.*

⁸⁰⁹ *Id.*

The Subcommittee traced funds used to purchase 16 of these paintings to Rotenberg-linked shell companies. Specific to *Brucke II*, Mr. Baltser's employee noted "The client wants to send this painting to an exhibition. Do you have any ideas? Do you have any news re Brucke 0? Is it possible to make an offer to the owner?"⁸¹⁰

Owner. The Christie's Baltser Client Advisor told the Subcommittee Mr. Baltser bid for these paintings over the phone with her.⁸¹¹ She stated someone was with Mr. Baltser during the bidding, but she did not recognize the individual's voice or ask who was with Mr. Baltser.⁸¹² She did not know for whom Mr. Baltser purchased the paintings.⁸¹³

As explained below, Mr. Baltser attempted to sell the *Brucke II* five years later at an auction at Sotheby's in February 2019.⁸¹⁴ However, prior to the auction, Sotheby's withdrew *Brucke II* from the auction due to a lack of interest in bidding on the painting.⁸¹⁵

5. The United States Sanctioned Arkady and Boris Rotenberg on March 20, 2014

As stated above, the United States government imposed sanctions on certain "Russian government officials and members of the inner circle" on March 20, 2014 in response to Russia's annexation of Crimea, including Arkady and Boris Rotenberg.⁸¹⁶ Despite these sanctions, Mr. Baltser's business model did not change. He continued to purchase art just as he did before the United States imposed sanctions on the Rotenbergs and several entities associated with them.⁸¹⁷ This continued despite the auction houses taking actions to block transactions by sanctioned individuals.

Sotheby's. Boris Rotenberg and his wife, Karina, were listed in the Sotheby's client directory.⁸¹⁸ Sotheby's records reflect only one transaction

⁸¹⁰ *Id.*

⁸¹¹ Subcommittee interview of Christie's Baltser Client Advisor (Jul. 15, 2015).

⁸¹² *Id.*

⁸¹³ *Id.* Counsel for Christie's explained that this is consistent with historic practice for an auction house not to routinely ask dealers for the identity of dealers' clients because of concerns that auction houses would poach dealers' clients. See Letter from Counsel for Christie's to the Subcommittee (Jul. 22, 2020).

⁸¹⁴ SOT-202107-09.

⁸¹⁵ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁸¹⁶ Press Release, U.S. Dep't of Treasury, Treasury Sanctions Russian Officials, Members of the Russian Leadership's Inner Circle, and An Entity for Involvement in the Situation in Ukraine, (Mar. 20, 2014), <https://www.treasury.gov/press-center/press-releases/pages/jl23331.aspx>.

⁸¹⁷ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019); Subcommittee interview of Christie's Baltser Client Advisor (Jul. 15, 2019).

⁸¹⁸ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

regarding Boris or Katrina Rotenberg, which was Karina’s art purchase for approximately £3,000 in May 2012.⁸¹⁹ In February 2014, the month before U.S. sanctions were imposed, the Baltser Account Representative requested that Sotheby’s consider Boris and his wife “level 2” collectors.⁸²⁰ Sotheby’s considered clients given this designation “high value clients or collectors” with “a total transaction value greater than or equal to \$5 [million], but less than \$25 [million] in the last three years” or “a documented collection value of between \$5 and 25 [million].”⁸²¹

When asked by a Sotheby’s colleague over email about Boris and Karina Rotenberg’s collection interests, the Baltser Account Representative replied that they collected “Russian [works of art]” and “Sculpture (bronze).”⁸²² The Baltser Account Representative told the Subcommittee she could not remember why she requested that Sotheby’s upgrade the Rotenbergs to level 2 clients when they had not made any purchases in the past two years before the request.⁸²³ She commented she believed moving them to a level 2 client better reflected their significant potential to purchase artwork because of their wealth, and would give them access to preferred events.⁸²⁴ The Baltser Account Representative said she never worked directly with Karina or Boris Rotenberg or met them in person.⁸²⁵

Internal emails indicate that Sotheby’s blocked Boris Rotenberg from purchasing or consigning with the auction house following the March 20, 2014 sanctions.⁸²⁶ On March 21, 2014, a Sotheby’s employee emailed the Baltser Account Representative the list of 16 newly sanctioned Russian individuals from the U.S. Treasury Department that included Arkady and Boris Rotenberg and stated, “There are some familiar names on this list. I hope it won’t effect [*sic*] the rest of our business.”⁸²⁷ In another email to the Baltser Account Representative, another Sotheby’s employee noted, “quite a few of our clients are affected by this.”⁸²⁸ According to the Baltser Account Representative, transactions with Boris Rotenberg were subsequently blocked.⁸²⁹

Christie’s. Christie’s General Counsel explained to the Subcommittee that following the imposition of U.S. sanctions on Russia in March 2014, Christie’s immediately recognized these sanctions posed a new “high risk” for them.⁸³⁰ She

⁸¹⁹ SOT-38579–85; SOT-038569–70.

⁸²⁰ SOT-061223.

⁸²¹ SOT-059764–65.

⁸²² SOT-061223.

⁸²³ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁸²⁴ *Id.*

⁸²⁵ *Id.*

⁸²⁶ SOT-202066–69.

⁸²⁷ SOT-202071–74.

⁸²⁸ SOT-202066–69.

⁸²⁹ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁸³⁰ Subcommittee Briefing with Christie’s Employees (Feb. 8, 2019).

observed that Christie's has a lot of Russian clients who are high net worth individuals.⁸³¹ In response to the imposition of sanctions, Christie's Compliance Manager for the Americas added that Christie's screened their client lists against the revised SDN lists and restricted any accounts they identified in their system.⁸³² He noted that Christie's increased its scrutiny of Russian art sales in the United Kingdom.⁸³³ Neither Christie's General Counsel nor the Compliance Manager for the Americas were aware of any specific guidance provided to Christie's employees in response to the March 2014 sanctions.⁸³⁴

A Christie's employee circulated the U.S. Treasury Department's announcement of the April 28, 2014 sanctions to a group with the note "I thought it might [be] interesting to read."⁸³⁵ Another Christie's employee responded "not good news unfortunately."⁸³⁶ Still another Christie's employee, Managing Director of Christie's Russia, on the email chain responded:

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 interesting. And hence the need for the new office is crucial. 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 office. So look at the positives.⁸³⁷

While another Christie's employee responded that "its just more familiar faces are on the sanctions list," the Managing Director of Christie's Russia agreed, but wrote "I'm just telling you what I'm telling everyone in London...to fend off the 'poor you' 'poor russia' chat!"⁸³⁸

On May 19, 2014, Christie's blocked Arkady and Boris Rotenberg from Christie's spring exhibition marketing.⁸³⁹

⁸³¹ *Id.*

⁸³² *Id.*

⁸³³ *Id.*

⁸³⁴ *Id.*

⁸³⁵ Christies-PSI-00035164-69.

⁸³⁶ *Id.*

⁸³⁷ *Id.*

⁸³⁸ *Id.*

⁸³⁹ Christies-PSI-00101137-74.

6. Examples of Post-Sanctions Art Purchases

Despite blocking Arkady and Boris Rotenberg from buying or selling directly with their businesses, U.S. auction houses continued to do business with Mr. Baltser, even though he was known to be participating in art deals with wealthy Russian oligarchs, who could be subject to U.S. sanctions. In particular, the Sotheby's Baltser Account Representative told Sotheby's management that Arkady and Boris Rotenberg were Mr. Baltser's clients.⁸⁴⁰ The Subcommittee also identified transactions with a private dealer and a public gallery based in New York linked to Rotenberg shell companies. In total, the Subcommittee identified \$18,405,625 in art purchased in the months following the Rotenbergs being sanctioned by the United States. Examples of post-sanctions transactions facilitated by Mr. Baltser linked back to the Rotenbergs follow.⁸⁴¹

a. Sotheby's New York Impressionist and Modern Art Day Sale: Multiple Works

Date of Sale	May 8, 2014
Price	\$6,806,125
Auction House	Sotheby's New York
Purchaser of Record	BALTZER LLP

Transaction background. On May 8, 2014, less than two months after the United States imposed sanctions on Russia, Sotheby's New York held its Impressionist & Modern Art Day Sale.⁸⁴² The sale brought in \$66 million, "marking a new record result for this auction in New York."⁸⁴³ At that sale, Mr. Baltser purchased the following items listed on invoice number 92320018:⁸⁴⁴

⁸⁴⁰ As explained above, in June 2019, the Sotheby's Account Representative told the Subcommittee she fabricated this information in an effort to convince Sotheby's management to accept Mr. Baltser proposal. *See infra*, pgs. 101-103.

⁸⁴¹ While art is the focus of this report, the Subcommittee also reviewed transactions related to Mr. Baltser purchasing wine through the auction houses. In one instance, Mr. Baltser facilitated Christie's shipment of wine directly to a residence linked to Igor Rotenberg after Igor was sanctioned by the United States. In August 2018, an employee of Mr. Baltser requested that Christie's ship \$32,000 worth of wine to the following address: Case dell'Olmo in Monte Argentario, Italy. *See* Christies-PSI-00080314. Public information suggests this residence belongs to Igor Rotenberg. *See* Enea LandArt LLC Invoice, *Mr. and Mrs. Rotenberg, Casa dell Olmo, Monte Argentario, Italy*, <https://novayagazeta.ru/storage/b/2014/09/26/Dok4.pdf>.

⁸⁴² *Impressionist & Modern Art Day Sale*, SOTHEBY'S (May 8, 2014), <https://www.sothebys.com/en/auctions/2014/impressionist-modern-art-day-sale-n09140.html>.

⁸⁴³ *Id.*

⁸⁴⁴ SOT-028595-98.

Description	Hammer Price	Buyers Premium	Total
Henry Moore, <i>Figures</i>	\$500,000	\$105,000	\$605,000
Marc Chagall, <i>Femme et Enfant</i>	\$980,000	\$201,000	\$1,181,000
Lyonel Feininger, <i>Ulla</i>	\$170,000	\$39,000	\$209,000
Lyonel Feininger, <i>Yellow Ship on Red Sea</i>	\$60,000	\$15,000	\$75,000
Lyonel Feininger, <i>Steile Strasse</i>	\$200,000	\$45,000	\$245,000
Georges Braque, <i>Pichet et Journal</i>	\$2,500,000	\$465,000	\$2,965,000
Tsuguharu Foujita, <i>Portrait de Jeune Femme (Hanka Zborowska)</i>	\$290,000	\$63,000	\$353,000
Maurice de Vlaminck, <i>La Seine à Chatou</i>	\$475,000	\$100,000	\$575,000
Tamara de Lempicka, <i>Le Coquillage</i>	\$450,000	\$95,000	\$545,000



Tsuguharu Foujita's, Portrait de Jeune Femme/Hanka Zborowska (Photo Credit: Sotheby's)

The invoice number 92320018 reflected the total purchase of art by Mr. Baltser as \$6,753,000.⁸⁴⁵ Mr. Baltser also purchased Emile Othon Friesz's *La sieste* for \$53,125, which included a hammer price of \$42,500 and a buyer's premium of \$10,625.⁸⁴⁶ Sotheby's numbered the invoice for *La sieste* as 92320019.⁸⁴⁷ Together, both invoices totaled \$6,806,125.

The Sotheby's Baltser Account Representative told the Subcommittee that Mr. Baltser had participated in the auction over the telephone with her.⁸⁴⁸

Origin of funds used for purchase. On May 27, 2014, Steamort wired \$3,956,825 from its Tallinn Business Bank account to BALTZER LLP's Barclays account.⁸⁴⁹ The wire transfer noted it was "part payment by invoice 40 [dated May 16, 2014] for subjects of interior."⁸⁵⁰ And on June 3, 2014 Steamort wired \$2,965,000 from its Tallinn Business Bank account to BALTZER LLP's Barclays account.⁸⁵¹ That wire transfer stated, "payment by

⁸⁴⁵ *Id.*

⁸⁴⁶ SOT-028593-94.

⁸⁴⁷ *Id.*

⁸⁴⁸ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

⁸⁴⁹ DBAG0000024, line 559; BARC_006850, line 10.

⁸⁵⁰ *Id.*

⁸⁵¹ DBAG0000024, line 561; BARC_006850, line 11.

invoice 40 [dated May 16, 2014] for subjects of interior.”⁸⁵² Together the wires totaled \$6,921,825.

On June 3, 2014, BALTZER LLP wired \$6,806,125 from its Barclays bank account to Sotheby’s New York JPMorgan Chase account.⁸⁵³ The payment details noted that the wired funds were for invoices “92320018” and “92320019.”⁸⁵⁴



George Braque's *Pichet et Journal* (Photo Credit: Sotheby's)

Owner. When asked about these purchases, the Sotheby’s Baltser Account Representative stated she assumed Mr. Baltser was purchasing these lots on behalf of one or more of his clients.⁸⁵⁵ She recalled hearing Mr. Baltser talking to his client on the phone call during the auction and described “another Russian male voice in the background.”⁸⁵⁶ She did not know, however, with whom Mr. Baltser interacted during the auction.⁸⁵⁷

Shipment. Art Courier managed the shipment of the paintings by Dietl to Germany for storage at the Hasenkamp art storage facility.⁸⁵⁸

b. Works by Yakov Georgievich Chernikhov

Date of Sale	June 4, 2014
Price	\$598,000
Auction House	Bonhams New York
Purchaser of Record	BALTZER LLP

Transaction background. On June 4, 2014, Bonhams held an auction in New York titled, “The Story of the 20th Century.”⁸⁵⁹ The auction examined “the last century from several angles, including history & politics, art & literature and science & technology, closing with a private collection of materials related to the

⁸⁵² *Id.*

⁸⁵³ JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Baltser, Line 11; BARC_006850, line 12.

⁸⁵⁴ *Id.*

⁸⁵⁵ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

⁸⁵⁶ *Id.*

⁸⁵⁷ *Id.*

⁸⁵⁸ DIETL 45253 (Air Export JFK to CGN).

⁸⁵⁹ Press Release, Bonhams, The Story of the 20th Century (Jun. 4, 2014), https://www.bonhams.com/press_release/16539/.

history of computing.”⁸⁶⁰ The description of the auction continued: “The Arts & Literature section is anchored by an important graphic archive of Soviet architect and futuristic visionary, Yakov Chernikhov, consisting of more than 1,000 original and richly detailed illustrations (estimate \$350,000-450,000).”⁸⁶¹ The auction was held in Bonhams’ Madison Avenue salesroom in New York.⁸⁶²

At the auction, Mr. Baltser purchased Lot 28 for \$425,000, which included the \$350,000 hammer price and a \$75,000 buyer’s premium.⁸⁶³ Lot 28 included architectural drawings and sketches by Chernikhov.⁸⁶⁴ Mr. Baltser also purchased Lot 29 for \$173,000, which included the \$140,000 hammer price and a \$33,000 buyer’s premium.⁸⁶⁵ Lot 29 included Chernikhov’s “unpublished journals, sketchbooks, and treatises.”⁸⁶⁶ Bonhams invoiced BALTZER LLP for both lots.⁸⁶⁷ The invoice noted “auction details: BOK14061NY – 21652” and the Client number for BALTZER LLP as 20353471.⁸⁶⁸

Origin of funds used for purchase. On June 16, 2014, Highland Ventures wired \$612,950 from its Gazprombank account in Moscow to Steamort’s Tallinn Business Bank account.⁸⁶⁹ The wire transfer noted, “as per invoice 50 [dated June 9, 2014].”⁸⁷⁰ On June 20, 2014, Steamort wired this same amount from its Tallinn Business Bank account to BALTZER LLP’s Barclays bank account.⁸⁷¹ That wire transfer noted, “payment by invoice 61 [dated June 19, 2014] for subjects of interior.”⁸⁷²

On July 8, 2014, BALTZER LLP wired \$598,000 from its Barclays bank account to Bonhams’ account at City National Bank.⁸⁷³ The wire instructions noted “as per invoice 19146328 for sale BOK14061NY-21652 Client ID 20353471.”⁸⁷⁴

⁸⁶⁰ *Id.*

⁸⁶¹ *Id.*

⁸⁶² *Id.*

⁸⁶³ BON000569.

⁸⁶⁴ *Lot 28, Yakov Georgievich Chernikhov*, BONHAMS (Jun. 4, 2014), <https://www.bonhams.com/auctions/21652/lot/28/?category=list&length=186&page=1>.

⁸⁶⁵ BON000569.

⁸⁶⁶ *Lot 29, Yakov Georgievich Chernikhov*, BONHAMS (Jun. 4, 2014), <https://www.bonhams.com/auctions/21652/lot/29/?category=list&length=12&page=3>.

⁸⁶⁷ BON000569.

⁸⁶⁸ *Id.*

⁸⁶⁹ DBAG0000024, line 565.

⁸⁷⁰ *Id.*

⁸⁷¹ DBAG0000024, line 568; BARC_006850, line 20.

⁸⁷² *Id.*

⁸⁷³ BARC_006850, line 28.

⁸⁷⁴ *Id.*

Shipment. Art Courier handled the shipment for both Chernikhov lots, which were shipped by Dietl to Germany for storage at the Hasenkamp art storage facility.⁸⁷⁵

c. René Magritte’s *La Poitrine*

Date of Sale	June 2014
Price	\$7,500,000
Private Sale	Private Art Dealer
Purchaser of Record	Highland Ventures Group Limited

Transaction background. Magritte’s *La Poitrine* was sold through a private art dealer located in New York City (“Private Dealer”). The Private Dealer explained to the Subcommittee during her interview that the sale of *La Poitrine* started like most of her sales, in that the seller’s agent reached out to her to ask if she knew anyone interested in buying the painting.⁸⁷⁶ Initially, the painting was located in Pittsburgh, Pennsylvania, but was transported to Cirkers Warehouse in New York City where the Private Dealer viewed it.⁸⁷⁷ The Private Dealer explained that she did extensive due diligence to ensure the provenance of the painting. That due diligence included researching the artwork using well-established industry resources, viewing the painting herself, confirming based on information available to her and an analysis of the label on the back of the painting that the seller was the owner and the work was authentic, and consulting legal counsel.⁸⁷⁸

The Private Dealer explained to the Subcommittee that she contacted Art Advisor 1 to see if she knew of an interested buyer for *La Poitrine* because she had known Art Advisor 1 was looking for a Magritte.⁸⁷⁹ The Private Dealer told the Subcommittee that she knew Art Advisor 1 from her time previously working for another gallery.⁸⁸⁰ The Private Dealer stated that Art Advisor 1 was well known to that gallery, as well as in the industry, and had made a number of purchases there.⁸⁸¹ However, the Private Dealer had never sold a piece to Art Advisor 1 before contacting her regarding *La Poitrine*.⁸⁸²

The Private Dealer emailed Art Advisor 1 on May 9, 2014: “[A]ttached is a poor photo of the Magritte that has been offered to me for \$9,500,000. I think it is a very good picture but too expensive. If you have interest I can see if there is

⁸⁷⁵ DIETL 458323 (Air Export JFK to FRA).

⁸⁷⁶ *Id.*

⁸⁷⁷ *Id.*

⁸⁷⁸ *Id.*

⁸⁷⁹ *Id.*

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.*

⁸⁸² *Id.*

flexibility. It is in NYC as well!”⁸⁸³ Following several emails regarding negotiations on price, the Private Dealer emailed Art Advisor 1 on May 19, 2014: “I believe the owner will take \$6,750,000 if payment is fast so we can close at \$7.5 if you can get him to agree.”⁸⁸⁴ Art Advisor 1 emailed the Private Dealer to inform her that she should issue the invoice to:

HIGHLAND VENTURES GROUP LTD
Akara bldg., 24 De Castro str.
Wickhams Cay 1 Road Town
Tortola, BVI⁸⁸⁵

The Private Dealer issued the invoice to Highland Ventures on May 30, 2014.⁸⁸⁶

On June 5, 2014, Art Advisor 1 emailed the Private Dealer and relayed that “[t]he client want[s] the guarantee or certificate that it’s exact Magritte from catalogue reasonee....He wants guarantee that [] its exact[ly] this work from catalogue. And he send money.”⁸⁸⁷ Art Advisor 1 continued, “can we do just certified [*sic*] of the back photos by his lawyer? just easy 2 photos and certify that its original?”⁸⁸⁸ In response, the Private Dealer emailed Art Advisor 1 “an image of the back of the painting with the Carnegie Museum label and name of the owner covered” and a picture of “the loan letter from Carnegie (also name of owner covered).”⁸⁸⁹

At the request of the Private Dealer, a New York Law Firm describing itself as “a boutique law firm with a practice focused on art matters,” provided an opinion letter on *La Poitrine* dated June 5, 2014.⁸⁹⁰ The New York Law Firm addressed the opinion letter to “Undisclosed Potential Purchaser” at “Undisclosed Address.”⁸⁹¹ The opinion letter explained that a client of the law firm “requested that we view and confirm that the painting...is located in New York and ready to ship.”⁸⁹² The letter stated that two attorneys, including the letter’s signatory, had viewed the painting and included two pictures of the front of the painting and one of the back (or *verso*).⁸⁹³ The letter stated that the attorneys were “provided with what appear to be copies of (i) an invoice reflecting the sale of the Artwork in 1965 (as described in the Catalogue Raisonne excerpt), (ii) 1981 correspondence with the editor of the

⁸⁸³ DEALER000002-04.

⁸⁸⁴ DEALER000007.

⁸⁸⁵ DEALER0000018.

⁸⁸⁶ DEALER0000026.

⁸⁸⁷ DEALER000030.

⁸⁸⁸ DEALER000033.

⁸⁸⁹ DEALER000034-37.

⁸⁹⁰ DEALER000040-43.

⁸⁹¹ *Id.*

⁸⁹² *Id.*

⁸⁹³ *Id.*

Catalogue Raisonne, and (iii) museum documents with a name matching that on the *verso* of the painting.”⁸⁹⁴ The letter concluded:

While we, as attorneys, cannot provide warranties or legal advice to an undisclosed potential purchaser, we can and do confirm that the facts set forth above based on our personal knowledge are accurate and that we did today view and photograph the painting as described above. We are also advised that the current owner of the painting is, in connection with its sale, prepared to represent and warrant without qualification or reservation of any kind that the painting is an authentic work of art created by Rene Magritte.

On June 10, 2014, the Private Dealer emailed Art Advisor 1 the executed purchase agreement dated May 28, 2014. The purchase agreement listed Highland Ventures Group Limited as the buyer, while the Private Dealer was listed as the agent for the “Undisclosed Owner” for the purchase price of “US\$7,500,000 (to be paid in equivalent Euros (€) with rate determined on the date of payment).”⁸⁹⁵ The Private Dealer signed on behalf of her company as the Managing Member; Anna Wilkes signed on behalf of Highland Ventures as the company’s Director.⁸⁹⁶

The purchase agreement attached wire transfer instructions that stated \$7,500,000 was sent from Advantage Alliance’s account at Barclays to the Private Dealer’s account at First Republic Bank.⁸⁹⁷ On July 7, 2014, the Private Dealer wired Art Advisor 1’s mother \$400,000 for “[f]ixed agreed introduction commission fees on purchase of the painting by the client” to her LGT Group Bank account.⁸⁹⁸

⁸⁹⁴ *Id.*

⁸⁹⁵ Private Dealer Production on file with the Subcommittee (Apr. 11, 2018).

⁸⁹⁶ *Id.*

⁸⁹⁷ Private Dealer Production on file with the Subcommittee (Apr. 11, 2018).

⁸⁹⁸ *Id.*; Subcommittee interview of Private Dealer (Sept. 7, 2018).

The Private Dealer kept \$237,500 and wired the remaining \$6,862,500 to the seller's agent.⁸⁹⁹ The Private Dealer told the Subcommittee she never questioned the involvement of Highland Ventures or Advantage Alliance in the transaction, nor would it occur to her to question the involvement of either entity.⁹⁰⁰ She stated she had relied, in part, on the advice of outside legal counsel and the



René Magritte's La Poitrine (Photo Credit: Private Dealer)

involvement of established financial institutions in connection with the transaction.⁹⁰¹ She explained she also took comfort in the fact that the buyer was represented by a well-known person in the industry who had previous dealings with well-established galleries and art auction houses.⁹⁰²

Both the buyer and the seller remained confidential for the duration of the sale.⁹⁰³ The Subcommittee also interviewed Art Advisor 1, who reported that she did not know the buyer's identity.⁹⁰⁴ Art Advisor 1 told the Subcommittee she was working for Art Advisor 2, who she believed knew the name of the buyer.⁹⁰⁵ The Subcommittee interviewed Art Advisor 2 and asked her for the name of the buyer of *La Poitrine*.⁹⁰⁶ Art Advisor 2 declined to give the Subcommittee the name of the buyer without the buyer's consent; Subcommittee staff asked Art Advisor 2 to request the buyer allow her to provide their name to the Subcommittee.⁹⁰⁷ Subcommittee staff also emailed Art Advisor 2 and asked for the name of the buyer.⁹⁰⁸ She initially replied that she was still waiting for her client to answer the

⁸⁹⁹ Subcommittee interview of Private Dealer (Sept. 7, 2018).

⁹⁰⁰ *Id.*

⁹⁰¹ *Id.*

⁹⁰² *Id.*

⁹⁰³ *Id.*

⁹⁰⁴ Subcommittee interview of Art Advisor 1 (Jun. 14, 2019).

⁹⁰⁵ *Id.*

⁹⁰⁶ Subcommittee interview of Art Advisor 2 (Jul. 12, 2019).

⁹⁰⁷ *Id.*

⁹⁰⁸ Email to Art Advisor 2 from Subcommittee Staff (Jul. 22, 2019).

request to reveal his or her identity.⁹⁰⁹ Subcommittee staff emailed Art Advisor 2 again a month later; she did not respond.⁹¹⁰

Origin of funds used for purchase. The Subcommittee traced the payment for *La Poitrine* to Senton Holdings Limited (“Senton Holdings”).⁹¹¹ A Barclays’s investigation found that Senton Holdings is a company that is ultimately owned by Arkady Rotenberg.⁹¹² The Barclays investigatory memorandum explained that Senton Holdings was an offshore entity operated by AKM Associates Ltd on behalf of Estate Managers (Surrey) Ltd, which is owned by Arkady Rotenberg.⁹¹³

On June 17, 2014, Senton Holdings wired \$7,555,000 from its Gazprombank account in Moscow to Advantage Alliance’s Barclays account in the United Kingdom.⁹¹⁴ The following day on June 18, 2014, Advantage Alliance sent \$7,500,000 from its Barclays bank account to the Private Dealer’s account at First Republic Bank with the wire instructions, “as per purchase confirmation [dated May 28, 2014].”⁹¹⁵

Shipment. A BALTZER employee coordinated the shipment of the painting through Dietl International.⁹¹⁶ The painting was shipped to the Hasenkamp storage facility in Germany.⁹¹⁷

d. Jean-Paul Riopelle’s *Ombre d’Espace*

Date of Sale	June 23, 2014
Price	\$1,750,000
Private Sale	Public Art Gallery in New York
Purchaser of Record	Igor Rotenberg; BALTZER LLP

Transaction background. In June 2014, a public art gallery located in New York (the “Gallery”) exhibited works for sale at the annual Art Basel art fair in Switzerland.⁹¹⁸ The exhibit included a “large canvas by Jean-Paul Riopelle, a leading member of the European Abstract Expressionist movement.”⁹¹⁹ The Gallery described Riopelle’s *Ombre d’Espace* as “a thrilling juxtaposition of vivid reds, blues,

⁹⁰⁹ Email from Art Advisor 2 to Subcommittee Staff (Sept. 6, 2019).

⁹¹⁰ Email from Subcommittee Staff to Art Advisor 2 (Oct. 10, 2019).

⁹¹¹ BARC_000002, lines 24 and 25.

⁹¹² BARC_006912–15.

⁹¹³ *Id.*

⁹¹⁴ BARC_000002, line 24.

⁹¹⁵ BARC_000002, line 25.

⁹¹⁶ DEALER000055; DEALER000070.

⁹¹⁷ DIETL 456047 (Air Export JFK to FRA).

⁹¹⁸ Website on file with the Subcommittee.

⁹¹⁹ *Id.*

yellows and greens in a rich, thick impasto. The painting flashes with energy, representing the dynamic action of the painter.”⁹²⁰

On June 17, 2014, representatives from the Gallery met Igor Rotenberg at the Art Basel exhibit in Switzerland.⁹²¹ Igor Rotenberg gave the Gallery representative his business card, which indicated he was the Chairman of the Board for NPV Engineering.⁹²² According to notes taken by the Gallery representative on Mr. Baltser’s business card, Mr. Baltser accompanied Igor Rotenberg as his art advisor and translator.⁹²³ The notes also indicated a city and state where Mr. Baltser lived.⁹²⁴



Jean Paul Riopelle's Ombre d'Espace

Later that day, June 17, 2014, a Gallery representative emailed Igor Rotenberg, “Congratulations on your decision to acquire the extraordinary painting *Ombre d’Espace*, 1954, by Jean Paul Riopelle for your collection.”⁹²⁵ The email attached the invoice for the painting stating the price of \$1,750,000.00 and addressed the invoice to:

Igor Rotenberg
Chairman of the Board of Directors
NPV Engineering
5, B Strochenovsky Pereulok
Moscow 115054 RUSSIA⁹²⁶

This was the same address found on Igor Rotenberg’s business card.⁹²⁷

On June 19, 2014, a Gallery representative emailed Mr. Baltser: “I understand from your conversation with [the Gallery owner] that information for the invoice for the Riopelle painting needs to be changed. Kindly send to us as soon

⁹²⁰ *Id.*

⁹²¹ GALLERY PSI 0029.

⁹²² GALLERY PSI 0054.

⁹²³ *Id.*

⁹²⁴ *Id.*

⁹²⁵ GALLERY PSI 0045–47.

⁹²⁶ *Id.*

⁹²⁷ GALLERY PSI 0054.

as possible the updated details.”⁹²⁸ Mr. Baltser responded that same day with the updated information, which requested the invoice be changed to BALTZER LLP.⁹²⁹ Mr. Baltser requested, “Please issue an invoice to BALTZER LLP using our London address.”⁹³⁰ As requested, the Gallery representative updated the invoice with the following address:

BALTZER LLP
Suite 9, 68 South Lambeth Road
London, UNITED KINGDOM⁹³¹

Origin of funds used for purchase. On June 24, 2014, Highland Ventures wired \$1,785,000.00 from its Gazprombank account to Steamort’s account at Tallinn Business Bank.⁹³² The associated wire transfer instructions noted: “as per invoice no 65 [dated June 23, 2014].”⁹³³ On June 26, 2014, Steamort wired \$1,785,000.00 from its Tallinn Business Bank account to BALTZER LLP’s Barclay’s account.⁹³⁴ The wire transfer instructions stated, “payment by invoice 65 [dated June 23, 2014] for subjects of interior.”⁹³⁵ That same day, BALTZER LLP sent \$1,750,000 from its Barclay’s account to the Gallery’s account at Citibank.⁹³⁶ The wire instructions noted, “invoice 11116 [dated June 17, 2014] client BALTZER LLP.”⁹³⁷

Shipment. In July 2014, *Ombre d’Espace* was shipped to the Gallery’s warehouse in New York located at Crozier Fine Arts.⁹³⁸ Internal Gallery emails indicated that Mr. Baltser “asked us to keep the Riopelle in the US for Igor until his home in Italy is finished. He said that they would probably have it delivered in September when the home is ready.”⁹³⁹ On October 20, 2014, a Gallery representative emailed Crozier Fine Arts and requested that *Ombre d’Espace* be released to Dietl.⁹⁴⁰ Dietl, in turn, requested that the painting be released to Tiffany Transport on October 22, 2014.⁹⁴¹ The airway bill indicated that the painting was shipped to the Hasenkamp art storage facility in Germany.⁹⁴²

⁹²⁸ GALLERY PSI 0073.

⁹²⁹ GALLERY PSI 0075–76. The updated BALTZER LLP information for the invoice was on Markom Management letterhead.

⁹³⁰ GALLERY PSI 0089–90.

⁹³¹ GALLERY PSI 0125–26. According to public filings, this was the same address for Markom Management Ltd at this time. Markom Management Ltd, Company No. 05291280, Annual Return, (Feb. 13, 2014), <https://beta.companieshouse.gov.uk/company/05291280>.

⁹³² DBAG0000024, line 571.

⁹³³ *Id.*

⁹³⁴ DBAG0000024, line 572.

⁹³⁵ *Id.*

⁹³⁶ BARC_006850, line 22; CITI0000628, 1811141 wires, Baltzer LLP, line 1 (Nov. 15, 2018).

⁹³⁷ *Id.*

⁹³⁸ GALLERY PSI 0218–20.

⁹³⁹ GALLERY PSI 0223.

⁹⁴⁰ GALLERY PSI 0257.

⁹⁴¹ GALLERY PSI 0265.

⁹⁴² GALLERY PSI 0306.

e. Ormond Gigli's *Girls in the Windows*, New York City, 1960

Date of Sale	September 29, 2014
Price	\$32,500
Auction House	Christie's New York
Purchaser of Record	BALTZER LLP

Transaction background. On September 29, 2014, Christie's New York held a photography auction that included Ormond Gigli's photograph *Girls in the Windows*, New York City, 1960.⁹⁴³ At that auction, Mr. Baltzer purchased *Girls in the Windows* for \$32,500.⁹⁴⁴ That price included a \$26,000 hammer amount and a \$6,500 buyer's premium.⁹⁴⁵ The invoice was issued to BALTZER LLP in Moscow, Russia and was numbered: "DB 14002121."⁹⁴⁶ The condition report for the photograph stated:

Vibrantly colored chromogenic print on semi-glass paper with margins and flush-mounted on aluminum. Very minor bumps to print corners not affecting image, visible under close inspection only. A beautiful print in excellent condition.⁹⁴⁷

Origin of funds used for purchase. On October 6, 2014, Highland Ventures wired \$33,312.50 from its Gazprombank account to Steamort's Tallinn Business Bank account.⁹⁴⁸ The wire noted "per request DD October 2, 2014 (Ref. Christie's 20/21 Photographs)."⁹⁴⁹ On October 30, 2014, BALTZER LLP wired



Ormond Gigli's Girls in the Windows, New York City, 1960
(Photo Credit: Christie's)

⁹⁴³ Lot 119: *Girls in the Windows*, CHRISTIE'S (Sept. 29, 2014), <https://www.christies.com/lotfinder/Lot/ormond-gigli-b-1925-girls-in-the-5827326-details.aspx>.

⁹⁴⁴ *Id.*

⁹⁴⁵ Christies-PSI-00034727-29.

⁹⁴⁶ *Id.*

⁹⁴⁷ Christies-PSI_00040866.

⁹⁴⁸ DBAG0000024, line 587.

⁹⁴⁹ *Id.*

\$32,500.00 to Christie's New York account at JPMorgan Chase with the note "invoice no DB 14002121 [dated September 29, 2014]." ⁹⁵⁰

Owner. The Christie's Baltser Client Advisor stated that since Christie's New York auctioned the photograph, she was not on the phone with Mr. Baltser when he bid for it. ⁹⁵¹ She did not know for whom Mr. Baltser purchased the photo, nor did she ever ask him to reveal the identity of the buyer. ⁹⁵²

f. Tamara De Lempicka's *Un Port Sous La Lune*

Date of Sale	November 6, 2014
Price	\$665,000
Auction House	Christie's New York
Purchaser of Record	BALTZER LLP

Transaction background. On November 6, 2014, at Christie's New York Impressionist & Modern Day Sale, BALTZER LLP successfully purchased Tamara De Lempicka's *Un port sous la lune* for \$665,000, which included the hammer price of \$550,000 and a buyer's premium of \$115,000. ⁹⁵³ Christie's issued an invoice numbered: DB 14005218. ⁹⁵⁴ The condition report for the painting stated:

Oil on canvas. Wax-lined. There is frame abrasion to the extreme edges with associated losses in the upper corners. There are horizontal and vertical stretcher-bar marks. There are lines of stable craquelure to the canvas. There are surface abrasions to the right of the bird and above the hammer. There are pin-points of paint loss near the center right edge. Examined under ultra-violet light. There are scattered strokes of inpainting, predominantly to the aforementioned stretcher-bar marks and to the wall on the left. ⁹⁵⁵

Origin of funds used for purchase. On November 26, 2014, Highland Ventures sent three wires totaling \$721,369.98 from its Gazprombank account in Moscow to Steamort's Tallinn Business Bank account. ⁹⁵⁶ These three wires were in

⁹⁵⁰ BARC_006850, line 41; JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Baltzer, line 27.

⁹⁵¹ Subcommittee interview of Christie's Baltser Client Advisor (Jul. 15, 2019).

⁹⁵² *Id.* As noted above, Counsel for Christie's stated this was consistent with historic industry practice for an auction house not to routinely ask dealers for the identity of their clients because of concerns that auction houses would poach dealers' clients. See Letter from Counsel for Christie's to the Subcommittee (Jul. 22, 2020).

⁹⁵³ Christies-PSI-00071575-76.

⁹⁵⁴ *Id.*

⁹⁵⁵ Christies-PSI-00041703.

⁹⁵⁶ DBAG0000024, lines 600, 601, and 602.

the following increments: \$681,685; \$15,435; and \$24,249.98.⁹⁵⁷ All three wires referenced a request or invoice dated November 24, 2014.⁹⁵⁸

On December 1, 2014, Steamort wired \$697,120.00 from its Tallinn Business Bank account to the BALTZER LLP's Barclays bank account.⁹⁵⁹ On December 3, 2014, BALTZER LLP wired \$665,000 to Christie's New York.⁹⁶⁰ The wire noted it was for "invoice [number] DB 14005218 DD [November 6, 2014]."⁹⁶¹

Owner. When asked, the Christie's Baltzer Client Advisor stated she did not know for whom Mr. Baltzer purchased the painting, nor did she ask Mr. Baltzer to reveal the identity of the buyer.⁹⁶²

Shipment. Art Courier managed the shipment of *Un port sous la lune* by Dietl to the Hasenkamp art storage facility in Germany.⁹⁶³



Tamara De Lempicka's *Un Port Sous La Lune*
(Photo Credit: Christie's)

g. Andreas Gursky's *James Bond Island I* and *Niagara Falls*

Date of Sale	November 13-14, 2014
Price	\$1,054,000
Auction House	Phillips New York
Purchaser of Record	Steamort Ltd

Transaction background. On November 13, 2014, Mr. Baltzer purchased Andreas Gursky's *James Bond Island I* at the Phillips Contemporary Art auction (Sale NY010714, Lot 14) in New York for \$725,000.⁹⁶⁴ This amount included the

⁹⁵⁷ *Id.*

⁹⁵⁸ *Id.*

⁹⁵⁹ DBAG0000024, line 605; BARC_006850, line 54.

⁹⁶⁰ BARC_006850, line 55; JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Baltzer, line 35.

⁹⁶¹ *Id.*

⁹⁶² Subcommittee interview of Christie's Baltzer Client Advisor (Jul. 15, 2019).

⁹⁶³ DIETL 46653 (Air Export JFK to FRA).

⁹⁶⁴ PHILLIPS-00441.

\$600,000 hammer price and the \$125,000 buyer's premium.⁹⁶⁵ The next day, November 14, 2014, Mr. Baltser purchased Gursky's *Niagara Falls* at the same auction (Sale NY010814, Lot 228) for \$329,000.⁹⁶⁶ That amount included the \$270,000 hammer price and the \$59,000 buyer's premium.⁹⁶⁷ Phillips originally invoiced BALTZER LLP for both pieces of art on November 19, 2014.⁹⁶⁸ The two purchases together totaled \$1,054,000.

Origin of funds used for purchase. On November 21, 2014, Highland Ventures wired \$743,185 from its Gazprombank account in Moscow to Steamort's Tallinn Business Bank account.⁹⁶⁹ The same day, Highland Ventures also wired \$337,285 from its Moscow-based Gazprombank account to Steamort's Tallinn Business Bank account.⁹⁷⁰ The amounts together totaled \$1,080,470.

However, instead of Steamort forwarding the payment to BALTZER LLP, Steamort paid Phillips directly. An employee of Mr. Baltser's emailed Phillips that Mr. Baltser's client wired the money for the paintings to the wrong account.⁹⁷¹ Mr. Baltser's employee asked Phillips to re-invoice to a third party, Steamort.⁹⁷² Prior to re-invoicing to Steamort, consistent with Phillip's then-controlling policy, Phillips required Steamort to establish an official account with Phillips. It was within this process that Phillips obtained Steamort's certificate of incorporation and a letter of authorization,⁹⁷³ which were provided.⁹⁷⁴ The letter stated:

STEAMORT LTD, a company incorporated under the laws of Belize under registration number 77,269 on the 28th of August 2008, (hereinafter referred to as the "Company") hereby confirms that the Company has effected the payment of \$1,054,000 (one million and fifty four thousand US dollars zero cents) with regard to the purchase of the artworks by BALTZER LLP who was acting as an agent of the Company at Phillips' Contemporary Art auctions held on 13 and 14 November 2014 in New York. The details of the purchased works of are as follows:

⁹⁶⁵ *Id.*

⁹⁶⁶ PHILLIPS-00442.

⁹⁶⁷ *Id.*

⁹⁶⁸ PHILLIPS-08282-84.

⁹⁶⁹ DBAG0000024, line 598.

⁹⁷⁰ DBAG0000024, line 597.

⁹⁷¹ PHILLIPS-08266-68; PHILLIPS-08280.

⁹⁷² *Id.*

⁹⁷³ *Id.*

⁹⁷⁴ PHILLIPS-08255-60.

Lot No. 14. – Andreas Gursky, James Bond Island I (Invoice No. NY10714/1025/1)

Lot No. 228 – Andreas Gurksy, Niagara Falls (Invoice No. NY010814/1109/1).⁹⁷⁵

The letter was electronically signed by Steamort Director Jason Hughes.⁹⁷⁶ Phillips changed the purchaser on the invoice to Steamort for both works.⁹⁷⁷

On December 1, 2014, Steamort wired \$725,000 and \$329,000 from its Tallinn Business Bank account in two separate wires to Phillips' account at Citibank.⁹⁷⁸ The wire transfer instructions noted the payment was for "payment by invoice...for subject of interior."⁹⁷⁹ The instructions specifically referenced NY010714, Lot 14 and NY010814, Lot 228.⁹⁸⁰



Andreas Gursky's James Bond Island I
(Photo Credit: Phillips)

Owner. The Phillips Baltser Account Representative stated she did not know for whom Mr. Baltser purchased these photographs or the owner of Steamort.⁹⁸¹

Shipment. The photographs were separated for shipment. *James Bond Island I* was shipped to Moscow with Alexander Dobrovskiy listed on the invoice on Phillips letterhead.⁹⁸² *Niagara Falls* was shipped to Hasenkamp art storage facility in Germany with BALTZER LLP listed on the invoice.⁹⁸³ Art Courier managed the shipments handled by Dietl.⁹⁸⁴

⁹⁷⁵ *Id.*

⁹⁷⁶ *Id.*

⁹⁷⁷ PHILLIPS-00441-42.

⁹⁷⁸ DBAG0000024, lines 603, 604.

⁹⁷⁹ *Id.*

⁹⁸⁰ *Id.*

⁹⁸¹ Subcommittee interview of Phillips Baltser Account Representative (Apr. 4, 2019).

⁹⁸² DIETL 465442 (Air Export JFK to MOW). While Phillips created invoices listing both BALTZER LLP and Steamort as the owner of *James Bond Island I*, Dietl's shipping records included the invoice on Phillips letterhead indicating Alexander Dobrovskiy had purchased and taken title for the painting. After an internal investigation, Phillips found no record of this version of the invoice in its files, nor were any Phillips employees aware of the invoice listing Mr. Dobrovskiy as the owner of *James Bond Island I*. See Letter from Counsel for Phillips to Subcommittee staff (May 6, 2019).

⁹⁸³ DIETL 46653 (Air Export JFK to FRA).

⁹⁸⁴ DIETL 465442 (Air Export JFK to MOW); DIETL 46653 (Air Export JFK to FRA).

7. Mr. Baltser Shipped Art Purchased by Rotenberg-linked Companies to the Hasenkamp Storage Facility in Germany

A number of pieces of art examined by the Subcommittee were shipped to Hasenkamp in Germany for storage. As such, the Subcommittee requested information from Hasenkamp on the pieces of art maintained there in storage related to Mr. Baltser or BALTZER LLP.⁹⁸⁵ In response, a Hasenkamp representative initially stated that he would need Mr. Baltser’s consent to release that information.⁹⁸⁶ Later, the Hasenkamp representative sent an email indicating that he had determined that Mr. Baltser only managed the art stored at the facility.⁹⁸⁷ The name on the contract with Hasenkamp to store the art was Highland Business Limited, which was later replaced by Taide Connoisseur Selection.⁹⁸⁸ The Hasenkamp representative could not provide the name of the individual behind Highland Business Limited, since the contract was signed in the company’s name.⁹⁸⁹

A website that is no longer publicly available stated, “Taide Connoisseur Selection Limited was incorporated on 5th October 2016 with registration number 2016-00336 and is licensed by Financial Services Regulatory Authority as Private Mutual Fund (number IMF (PF)/025 as characterized by The International Mutual Act 12.16.”⁹⁹⁰ A tab for “Key Staff” listed only one person: Dr. Mark Omelnitski.⁹⁹¹

In August 2019, during the course of the Subcommittee’s investigation, the Taide Connoisseur Selection account at Hasenkamp was closed and all art stored under the account was shipped to Moscow.⁹⁹²

The Subcommittee documented at least one purchase by Taide Connoisseur during the course of its investigation. That purchase was of Joseph Albers’s *Embedded Linear Construction II*.

a. Joseph Albers’s *Embedded Linear Construction II*

Date of Sale	September 28, 2017
Price	\$47,500
Auction House	Christie’s New York
Purchaser of Record	Baltzer Limited

⁹⁸⁵ Email from Subcommittee staff to Hasenkamp representative (Jun. 25, 2019).

⁹⁸⁶ Email from Hasenkamp representative to Subcommittee staff (Jun. 28, 2019).

⁹⁸⁷ Email from Hasenkamp representative to Subcommittee staff (Jul. 16, 2019).

⁹⁸⁸ *Id.*

⁹⁸⁹ Email from Hasenkamp representative to Subcommittee staff (Jul. 26, 2019).

⁹⁹⁰ Screenshots of website on file with the Subcommittee.

⁹⁹¹ *Id.*

⁹⁹² Email from Hasenkamp representative to Subcommittee staff (Jul. 23, 2020).

Transaction background. Josef Albers's *Embedded Linear Construction II* was offered for sale on September 28, 2017 as part of Christie's Post-War and Contemporary Art sale in New York, sale number 13892.⁹⁹³ The work was Lot 17. The condition report provided by Christie's noted that, "The work is structurally sound and in working order. Faint abrasions, small spots of discoloration and minute accretions are visible occasionally to the metal. A few faint handling marks are to the glass."⁹⁹⁴ Mr. Baltzer bought the work in the name of Baltzer Limited with a hammer price of \$38,500 and a buyer's premium of \$9,500 for a total of \$47,500.⁹⁹⁵

Origin of funds used for purchase. On November 14, 2017, Taide Connoisseur sent \$50,129.88 from its Gazprombank account in Moscow to Baltzer Limited's account at Ameriabank.⁹⁹⁶ On November 16, 2017, Baltzer Limited sent \$47,500 to Christie's account at JPMorgan Chase in New York with the wire instructions "Sale no 13892 [dated September 28, 2017] Lot 17."⁹⁹⁷

Shipment. A BALTZER employee emailed Christie's on November 28, 2017 and requested that the auction house "organize shipping of this lot from New York to Frankfurt."⁹⁹⁸ The BALTZER employee referred Christie's to an Art-Courier employee who explained that "Christie's will need to organize export from the USA and airfreight to [Frankfurt Airport] airport only, uncleared. We will handle supervision in Germany, collection of the crate from [Frankfurt Airport] and local delivery under bond to our bonded warehouse by ourselves."⁹⁹⁹ The contact for Christie's at the Frankfurt Airport was an employee of Hasenkamp art storage facility located in Cologne.¹⁰⁰⁰ BALTZER paid Christie's the shipping costs of \$2,575 on January 12, 2018.¹⁰⁰¹



*Joseph Alber's Embedded Linear Construction II
(Photo Credit: Christie's)*

⁹⁹³ Christies-PSI-00026831.

⁹⁹⁴ Christies-PSI-00026828.

⁹⁹⁵ Christies-PSI-00058908-09.

⁹⁹⁶ CITI000628, 1811141 wires, Baltzer Limited, line 6 (Nov. 15, 2018).

⁹⁹⁷ JPMorgan Chase (Nov. 7, 2018), SB981623-F1 US Wire Search, Baltzer, line 166.

⁹⁹⁸ Christies-PSI-00078529.

⁹⁹⁹ Christies-PSI-00078545-50.

¹⁰⁰⁰ Christies-PSI-00078604-11.

¹⁰⁰¹ Christies-PSI-00079041-61.

8. Mr. Baltser Attempted to Sell Art Purchased with Funds Traced to Rotenberg-linked Companies

Information provided to the Subcommittee indicates that Mr. Baltser has also sought to sell pieces of art owned by his clients. His efforts in 2015 to generate interest among potential buyers in 31 high-value paintings provides further evidence of Mr. Baltser's business relationship with the Rotenbergs.

a. Mr. Baltser Sent Christie's a List of Works in the Rotenberg's Collection

On August 30, 2015, one of Mr. Baltser's employees emailed Christie's stating: "Please find below the links of our Client's works....If you need any extra information for any of these works, please feel free to ask. If you see any opportunities to promote these works or to make this collection more valuable please let me know."¹⁰⁰² Mr. Baltser's employee continued: "I also have more clients with some [impressionist] works they are ready to sell."¹⁰⁰³

The email listed 31 paintings by Giorgio de Chirico, Salvador Dali, René Magritte, Pierre-Auguste Renoir, Man Ray, Lyonel Feininger, Tsuguharu Foujita, Tamara de Lempicka, Henry Moore, Marc Chagall, Maurice de Vlaminck, Georges Braque, and Yves Tanguy.¹⁰⁰⁴ The list read as stated below and included the following paintings, 16 of which are also highlighted above:¹⁰⁰⁵

1. Giorgio de Chirico

Le Muse Inquietanti
Ettore e Andromatica

2. Salvador Dali

Nu de Dos, Gala
Bataille Autour d'un Pissenlit (This work is available for sale)
Sans Titre
Ampurdanese Yang and Yin
Papillons, 1950
Soft Monster, 1976

3. Renee Magritte

The Pleasure Principle
La Generation Spontanee, 1937 (This work is available for sale)

¹⁰⁰² Christies-PSI-00062223-26.

¹⁰⁰³ *Id.*

¹⁰⁰⁴ *Id.*

¹⁰⁰⁵ *Id.*

La Poitrine, 1960
Le Rendez-Vous
La Traversee Difficile II
Le Prince Charmant
Towards Pleasure

4. Pierre-Auguste Renoir

Femme dans un paysage
Still Life with Fruits

5. Man Ray

Le Trop-plein, 1937

6. Lyonel Feininger

Brucke II

The Clients wants to send this painting to an exhibition. Do you have any ideas?

Do you have any news re Brucke 0? Is it possible to make an offer to the owner?

Steep Street

Ulla

Sailing ship on Red Sea

7. Tsuguharu Foujita

Hanka Zborowska

8. Tamara De Lempicka

Le Coquillage, 1939

Nature Morte avec Lys et Photo

New York Harbor

All these three works are in Turin till tomorrow (August 31) and then they move to Verona for the exhibition.

9. Henry Moore

Three Figures

10. Marc Chagall

Scène champêtre

11. Maurice de Vlaminck

La Seine a Chatou, 1909

12. Georges Braque

Pichet et Journal



*Marc Chagall's Scene Champêtre/Femme et enfant
(Photo Credit: Sotheby's)*

13. Yves Tanguy The Speeding Bow

When the Subcommittee showed the email containing the above list of works to her, the Christie's Baltser Client Advisor noted that the email was not addressed to her, and she did not know who owned the collection of works.¹⁰⁰⁶ As explained above, the Subcommittee traced funds used to purchase 16 of the 31 listed paintings back to Rotenberg-linked shell companies suggesting the Rotenbergs were the "client" of Mr. Baltser's who owned the collection.¹⁰⁰⁷

b. Mr. Baltser Attempted to Sell *Brucke II*

In late 2018, Mr. Baltser approached Christie's and Sotheby's about selling two works that were part of the collection listed above. Those two works were Salvador Dali's *Bataille Autour d'un Pissenlit* ("Battle around a dandelion") and Lyonel Feininger's *Brucke II*.¹⁰⁰⁸ Both auction houses provided estimates for the auction of the paintings and deal terms. Mr. Baltser



Salvador Dali's *Battle Around a Dandelion* (Photo Credit: Fundacio Gala Salvador Dali)

¹⁰⁰⁶ Subcommittee interview of Christie's Baltser Client Advisor (Jul. 15, 2019).

¹⁰⁰⁷ The 16 paintings the Subcommittee traced funds used to purchase the paintings to Rotenberg-linked shell companies include: (1) Salvador Dali's *Papillons* and (2) *Soft Monster (Monstruo Blando Adormecido)*; (3) Renee Magritte's *Le Rendez-Vous* and (4) *La Poitrine*; (5) Pierre-Auguste Renoir's *Femme dans un paysage* and (6) *Still life with fruits (Nature Morte aux fruits)*; (7) Lyonel Feininger's *Steep Street (Steile Strasse)*, (8) *Ulla*, and (9) *Sailing ship on Red Sea*; (10) Tsuguharu Foujita's *Hanka Zborowska (Portrait de Jeune Femme)*; (11) Tamara de Lempicka's *Le Coquillage* and (12) *New York Harbor (Un Port Sous la Lune)*; (13) Henry Moore's *Three Figures*; (14) Marc Chagall's *Scene Champetre (Femme et Enfant)*; (15) Maurice de Vlaminck's *La Seine a Chatou*; and (16) Georges Braque's *Pichet et Journal*.

¹⁰⁰⁸ As noted above, Dali's *Battle around a dandelion (Bataille Autour d'un Pissenlit)* was included in the list of 31 works sent by Mr. Baltser's employee to Christie's. See Christies-PSI-00062223-26. The provenance provided by Mr. Baltser to Christie's stated the current owner purchased the painting in July 2013 at ARTEXPO SA. Christies-PSI-0073512-13. Financial records provide support for this purchase. On July 11, 2013, Steamort sent \$7,000,000 from its Tallinn Business Bank account to ARTEXPO SA's UBS account in Geneva, Switzerland. DBAG0000024, line 462. The wire instructions stated: "Payment by invoice GB-130702 [dated July 4, 2013] for subject of interior." *Id.* The fact that Christie's only estimated the painting would sell for between £2 million and £3 million explains why the painting was not considered for auction.

chose Sotheby's to auction *Brucke II*, but the painting was ultimately pulled from the auction due to lack of interest. At the time, the Subcommittee was investigating both auction houses and Mr. Baltser.

i. Mr. Baltser Approached Christie's to Sell *Brucke II*

An employee of Mr. Baltser emailed Christie's Baltser Client Advisor on December 7, 2018 to alert Christie's that one of Mr. Baltser's clients was interested in selling Salvador Dali's *Bataille Autour d'un Pissenlit* and Lyonel Feininger's *Brucke II*.¹⁰⁰⁹ The email noted that both of the paintings were located in Germany for storage.¹⁰¹⁰ She responded to Mr. Baltser's employee on December 21, 2018 that Christie's suggested an offering price for Feininger's *Brucke II* between £4 million and £6 million and an offering price between £2 million and £3 million for Dali's *Bataille Autour d'un Pissenlit*.¹⁰¹¹

On January 14, 2019, Christie's Director, Head of Evening Sale for Impressionist and Modern Art emailed Mr. Baltser the terms the auction house would provide if Mr. Baltser chose Christie's to consign and sell *Brucke II*.¹⁰¹² The email documented what Christie's would offer with regard to "Sale date and Context:

- Our Impressionist & Modern Art Evening Sale will be held on the 27th February.
- The market for German art is incredibly strong at the moment, so now is a very good time for your client to offer the work. **Your work would be a highlight of the German section of the sale.**
- You will recall the work was acquired from us by your client, so it is a work we know very well, and we also know the under-bidders of the work when it was sold to your client. **This is a unique knowledge advantage that Christie's has.**
- This February sale season will be one of the strongest ever at King Street – we have an incredible single owner collection 'Hidden Treasures' which will be before the Evening Sale, and a number of masterpieces confirmed for the Evening Sale. I attach an overview of these works, and also the related press releases. As a result, **all top Impressionist & Modern collectors will be at Christie's this season.**

¹⁰⁰⁹ Christies-PSI-00081879-83.

¹⁰¹⁰ *Id.*

¹⁰¹¹ Christies-PSI-00096106-26.

¹⁰¹² Christies-PSI-00082059-66.

- These works already consigned are very complementary to your work – **and nothing we have consigned will compete with your work.**¹⁰¹³

The email also described the marketing Christie’s would offer stating, “We can provide the following:

1. Feature window banner at King Street
2. Frontispiece detail inclusion in the Impressionist & Modern Art Evening Sale
3. Tour to New York as part of February’s sale preview (early February)
4. Eight pages in the catalogue including a fold-out illustration
5. Inclusion in Christie’s Magazine as a highlight of the Impressionist & Modern Art Evening Sale
6. Inclusion in the Chinese language sale ebrochure
7. Online highlight of the sale
8. Postcard at front of House¹⁰¹⁴

Financially, Christie’s offered “an enhanced hammer of **106%**.”¹⁰¹⁵ Regarding timing, Christie’s noted, “We will be printing the catalogue around the 31st [of] January, so we have around two weeks to finalise everything. The timing will be tight, but it is all possible.”¹⁰¹⁶

Two days later, on January 16, 2019, Christie’s offered to increase the hammer level to 107.5 percent explaining, “This is beyond our normal level for this value but we are keen to work with you on this project and to work again with this fantastic picture.”¹⁰¹⁷

The Baltser Client Advisor explained that Christie’s was eager to have the *Brucke II* for the evening sale, but the consignment was very competitive.¹⁰¹⁸ She noted that Mr. Baltser was also talking to Sotheby’s about selling the painting.¹⁰¹⁹ Ultimately, Mr. Baltser consigned *Brucke II* with Sotheby’s to sell, but the Baltser Client Advisor stated that Mr. Baltser did not make the decision.¹⁰²⁰ She explained that Mr. Baltser told her the lawyer for his client who owned the painting made the decision to consign the painting to Sotheby’s.¹⁰²¹

¹⁰¹³ *Id.* (emphasis in original).

¹⁰¹⁴ Christies-PSI-00082059-66.

¹⁰¹⁵ *Id.* (emphasis in original).

¹⁰¹⁶ *Id.*

¹⁰¹⁷ Christies-PSI-00065736.

¹⁰¹⁸ Subcommittee interview of Christie’s Baltser Client Advisor (Jul. 15, 2019).

¹⁰¹⁹ *Id.*

¹⁰²⁰ *Id.*

¹⁰²¹ *Id.*

ii. Sotheby's Agreed to Sell *Brucke II*

Mr. Baltser also contacted the Baltser Account Representative at Sotheby's about consigning and selling *Brucke II*. She emailed Mr. Baltser that Sotheby's estimated the painting would bring between £4 million and £6 million at auction.¹⁰²² In an internal Sotheby's email, she confirmed that "the estimate was fine (around the same as offered by other auction houses)."¹⁰²³ She also noted, "this client has an important collection which might be potentially for sale in the future:

4 works by Magritte
3 works by Dali
several De Chirico(s)
several De Lempicka"¹⁰²⁴

Brucke II was added to Sotheby's Impressionist and Modern Art Evening Sale in London scheduled for February 26, 2019.¹⁰²⁵ Two versions of the contract to consign and sell the painting existed. The first contract was dated January 15, 2019.¹⁰²⁶ The terms of the contract made clear that Sotheby's estimated *Brucke II* would sell for between £4,000,000 and £6,000,000 at auction.¹⁰²⁷ The contract also established that Sotheby's would pay Mr. Baltser "7.5 [percent] of the hammer price achieved for the [*Brucke II*]."¹⁰²⁸ Mr. Omelnitski signed on behalf of BALTZER LLP, but Sotheby's did not execute this version.¹⁰²⁹

Sotheby's did sign a version of the contract with the same terms dated January 18, 2019.¹⁰³⁰ However, this version was not signed by Mr. Omelnitski on behalf of Mr. Baltser. Instead, Markom Directors (Cyprus) LTD signed the January 18, 2019 version of the contract on behalf of Mr. Baltser.¹⁰³¹ The Baltser Account Representative did not know why there were two versions of the contract, or why Sotheby's only signed the January 18, 2019 version of the contract.¹⁰³² Following the execution of the contract, the Baltser Account Representative coordinated the shipment of *Brucke II* from Cologne to London.¹⁰³³

¹⁰²² SOT-202506.

¹⁰²³ SOT-202405.

¹⁰²⁴ *Id.*

¹⁰²⁵ *A Century of Bauhaus: School of Modernity*, SOTHEBY'S (Feb. 12, 2019), <https://www.sothebys.com/en/articles/a-century-of-bauhaus-school-of-modernity>.

¹⁰²⁶ SOT-202176-78.

¹⁰²⁷ *Id.*

¹⁰²⁸ *Id.*

¹⁰²⁹ *Id.*

¹⁰³⁰ SOT-202107-09.

¹⁰³¹ *Id.*

¹⁰³² Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

¹⁰³³ SOT-202532-33.

Sotheby's requested information related to sanctions compliance. In light of the Subcommittee's ongoing investigation, Sotheby's sent due diligence questions to Mr. Baltser regarding the proposed transaction and his general compliance program.¹⁰³⁴ In the email attaching the questions, the Baltser Account Representative explained to Mr. Baltser, "There is additional scrutiny being placed on transactions with clients in certain regions and we are therefore asking for this additional information."¹⁰³⁵ The Baltser Account Representative told the Subcommittee this was the first time she had seen Sotheby's request such information from a client.¹⁰³⁶

Sotheby's questioned Mr. Baltser regarding the February 2014 purchaser of Brucke II. As part of Sotheby's due diligence questions to Mr. Baltser regarding the *Brucke II* proposed consignment, Sotheby's requested that Mr. Baltser respond to a series of questions regarding compliance with sanctions laws entitled, "Sotheby's Sanctions Questionnaire."¹⁰³⁷ Sotheby's asked: "When you purchased Lyonel Feininger, *Brucke II*, from Christie's on 4 February 2014, were you acting as a bidding or buying agent on behalf of another individual or entity? If yes, on whose behalf were you acting?"¹⁰³⁸ Mr. Baltser responded:

The purchase was made on May 14, 2014. Yes, we were acting on behalf of our client, the legal entity. However, our Finder agreement with the client contains a non-disclosure provision, which legally prohibits us to disclose the client's identity to anyone without the client's consent. Further to the below explanations, please note that after all appropriate checks by us at that time, we are able to confirm absence of any sanctions of any country in relation to that client.¹⁰³⁹

The Subcommittee subsequently requested that Sotheby's provide it with a copy of those due diligence questions and answers and told Sotheby's that it had no objection to Sotheby's notifying Mr. Baltser at that time of the Subcommittee's request for those documents. After the Subcommittee reviewed those materials, which disclosed the identity of the company and individual Mr. Baltser stated currently owned *Brucke II*; it did not disclose the name of the previous owner who purchased *Brucke II* at a Christie's auction on February 4, 2014 due to a non-disclosure agreement. The Subcommittee requested that Sotheby's ask Mr. Baltser to request that his previous client consent to disclosing his or her name to

¹⁰³⁴ SOT-202154-55.

¹⁰³⁵ *Id.*

¹⁰³⁶ Subcommittee interview of Sotheby's Baltser Account Representative (Jun. 27, 2019).

¹⁰³⁷ SOT-202045-89.

¹⁰³⁸ *Id.*

¹⁰³⁹ *Id.*

Sotheby's.¹⁰⁴⁰ Sotheby's requested the information, but as of the publishing of this report, Sotheby's has been unable to obtain the requested consent.¹⁰⁴¹

In addition, recognizing the disparity in the public sale date and the sale date provided by Mr. Baltser in his response to Sotheby's due diligence questions, the Chairman of Sotheby's Russia emailed Mr. Baltser on April 1, 2019 and pointed out "the Christie's sale occurred in February, and not in May."¹⁰⁴² Mr. Baltser responded, "My apologies, you are indeed correct and the sale date was on 4 February 2014."¹⁰⁴³

Mr. Baltser did not provide the name of the February 2014 purchaser. As stated above, Mr. Baltser asserted that he could not reveal the name of the individual or entity that purchased the *Brucke II* on February 4, 2014 due to a non-disclosure provision in the relevant contract.¹⁰⁴⁴ Mr. Baltser stated, however, "Yes, we have identified the ultimate beneficial owner of the purchasing entity, and determined that neither the entity nor the ultimate beneficial owner of the entity were on any sanctions list or blocked persons list in any jurisdiction."¹⁰⁴⁵

Sotheby's also asked Mr. Baltser: "Are you now selling on behalf of another individual or entity or does any other individual or entity have a financial interest in the sale?"¹⁰⁴⁶ Mr. Baltser responded to that question, "Yes, we are selling on behalf of our current client (who is different from, and not associated with, the previous client), whose details are presented below."¹⁰⁴⁷ The attachments asserted that the *Brucke II* now belonged to a company incorporated in the Marshall Islands.¹⁰⁴⁸ In response to further questioning by Sotheby's, Mr. Baltser confirmed ultimate beneficial owner of the Marshall Island company and provided a Russian passport for that individual.¹⁰⁴⁹ He continued, "We confirm that appropriate sanctions checks have been done for [the UBO] and [the UBO] is not subject to sanctions in any jurisdiction."¹⁰⁵⁰

Sotheby's also questioned Mr. Baltser about his other clients and asked, "Have you done all appropriate checks to ensure that none of the individuals or entities on whose behalf you have acted for in prior transactions with Sotheby's were subject to any sanctions by the U.S., UK, EU or other country?"¹⁰⁵¹ In

¹⁰⁴⁰ Email from Subcommittee Staff to Counsel for Sotheby's (Jul. 18, 2019).

¹⁰⁴¹ Email from Counsel for Sotheby's to Subcommittee Staff (Jul. 18, 2019).

¹⁰⁴² SOT-202045-89.

¹⁰⁴³ *Id.*

¹⁰⁴⁴ *Id.*

¹⁰⁴⁵ *Id.*

¹⁰⁴⁶ *Id.*

¹⁰⁴⁷ *Id.*

¹⁰⁴⁸ *Id.*

¹⁰⁴⁹ *Id.* (including a Russian passport for the named UBO at SOT-202083).

¹⁰⁵⁰ *Id.*

¹⁰⁵¹ *Id.*

response, Mr. Baltser stated, “Yes, we have done such checks and none of these check found any sanctions applicable to the persons on whose behalf we have acted for in prior transactions with Sotheby’s.”¹⁰⁵²

Brucke II was in storage at Hasenkamp art storage facility in Germany.¹⁰⁵³ The transport of the painting to London was managed by Art Courier.¹⁰⁵⁴ The Baltser Account Representative explained that the *Brucke II* was removed from the auction because Sotheby’s was not able to identify any potential bidders before the day of the sale.¹⁰⁵⁵

9. Mr. Baltser Did Not Cooperate with the Subcommittee’s Investigation

During the course of its investigation, the Subcommittee asked to interview Mr. Baltser.¹⁰⁵⁶ Through his counsel, Mr. Baltser declined the interview request and stated that he was in Moscow with no plans to return to the United States. On August 23, 2019, Mr. Baltser’s counsel wrote to the Subcommittee on behalf of Baltzer Limited (the “August 2019 Letter”) following a discussion of the Subcommittee’s findings. The August 2019 letter stated, in part:

Baltzer [Limited], a Cyprus company, is one of many art dealerships that offer services to individuals and entities who wish to purchase or sell fine art in private sales or at auctions. Some of Baltzer [Limited]’s clients are Russian nationals and entities, and Russian law allows such individuals and entities to engage Baltzer [Limited] on a basis which affords them confidentiality and prohibits Baltzer [Limited] from disclosing their identities without their consent under pains of administrative, civil, or criminal penalties. As such, Russian law severely limits the information that Baltzer [Limited] would be able to provide your Subcommittee.

Baltzer [Limited] can confirm, however, that it has never, at any time, represented or transacted in any way with Boris or Arkady Rotenberg. Baltzer [Limited] strongly denies any suggestion to the contrary.¹⁰⁵⁷

In another letter from his attorney on July 13, 2020 letter (the “July 2020 Letter”), Mr. Baltser stated that BALTZER LLP was dissolved in 2017, but never dealt with

¹⁰⁵² *Id.*

¹⁰⁵³ SOT-202710–11; SOT-202727–28.

¹⁰⁵⁴ SOT-202727–28.

¹⁰⁵⁵ Subcommittee interview of Sotheby’s Baltser Account Representative (Jun. 27, 2019).

¹⁰⁵⁶ Subcommittee conference call with David Vicinanza, Counsel for Baltzer Limited (Jul. 23, 2019).

¹⁰⁵⁷ Letter from David Vicinanza, Counsel for Baltzer Limited to the Subcommittee (Aug. 23, 2019).

Arkady or Boris Rotenberg.¹⁰⁵⁸ The July 2020 Letter also stated that Mr. Baltser’s agreement with Steamort required him to maintain the confidentiality of Steamort’s clients, but he “has personal knowledge that he was never involved in any transaction involving Steamort Ltd. that constituted any transaction with any person or entity that appear on the OFAC list at the time of the transaction.”¹⁰⁵⁹ The July 2020 Letter also stated that Mr. Baltser could not confirm whether he ever dealt with Igor Rotenberg due to Russian law.¹⁰⁶⁰

Neither letter addressed whether Highland Business or Highland Ventures were clients of Baltzer Limited, BALTZER LLP, or Steamort. Despite ICIJ publishing information surrounding the Panama Papers since the spring of 2016, the July 2020 Letter stated that Baltzer Limited had:

no access to or knowledge of the Panama Papers and is unaware of anyone who does. Accordingly, Baltzer has and must reasonably rely on the U.S. Department of Treasury’s own determination through the OFAC list. That list – the government’s own official position – confirms that Highland [Business and Highland Ventures are] not sanctioned. Additionally, the most widely-accepted commercial sanctions list check services, Visual Compliance and Thompson Reuters World-Check, do not list Highland entities as owned by Boris or Arkady Rotenberg.¹⁰⁶¹

As noted above, Barclays used the information found in the Panama Papers to conduct an extensive investigation of its accounts related to Mr. Omelnitski. This investigation determined that Mr. Omelnitski and his company “created shell companies for sanctioned individual [Arkady] Rotenberg...intentionally structured to be opaque in order to hide the identity of the true beneficiaries.”¹⁰⁶² The investigation led to the bank closing all Mr. Omelnitski’s accounts, including accounts related to Mr. Baltser.¹⁰⁶³

10. During the Course of the Subcommittee’s Investigation Phillips, Christie’s, and Sotheby’s Stopped Transacting with Mr. Baltser

During the Subcommittee’s investigation Phillips, Christie’s, and Sotheby’s reported that the auction houses would no longer transact with Mr. Baltser or BALTZER LLP due to the Subcommittee’s investigation. Counsel for Phillips told

¹⁰⁵⁸ Letter from David Vicinanza, Counsel for Baltzer Limited to the Subcommittee (Jul. 13, 2020).

¹⁰⁵⁹ *Id.* (noting that Nixon Peabody, Mr. Vicinanza’s firm, did not represent BALTZER LLP or Steamort Ltd.).

¹⁰⁶⁰ *Id.*

¹⁰⁶¹ Letter from David Vicinanza, Counsel for Baltzer Limited to the Subcommittee (Jul. 13, 2020).

¹⁰⁶² BARC_006752-761.

¹⁰⁶³ BARC_005547-51; BARC_007036.

the Subcommittee it stopped transacting with Mr. Baltser when it received the Subcommittee's initial request.¹⁰⁶⁴ Christie's stopped transacting with Mr. Baltser during the course of the Subcommittee's investigation.¹⁰⁶⁵ And counsel for Sotheby's reported the auction house added Mr. Baltser to its "all transactions blocked" list, which requires an analysis of each transaction before it is executed.¹⁰⁶⁶ Counsel for Sotheby's reported the auction house made this determination after reviewing documents from another auction house used by Subcommittee staff during its interview of a Sotheby's employee.

Counsel for Baltzer Limited addressed the auction houses blocking Mr. Baltser in his August 2019 Letter response to the Subcommittee:

Despite Baltzer's innocence, the inquiries posed by this Subcommittee to the art dealership and auction community have already severely impacted Baltzer's ability to conduct the legitimate business in which it has engaged for several decades. This has done substantial collateral damage to Baltzer and its employees, and has forced Baltzer to largely suspend operations.¹⁰⁶⁷

Counsel for Bonhams U.S. reported that the auction house has continued to transact with the BALTZER Agency in a limited capacity.¹⁰⁶⁸ Specifically, Bonhams U.S. has accepted bids from the BALTZER Agency, but has not accepted consignments.¹⁰⁶⁹ With respect to each bidding registration, the BALTZER Agency has been asked to confirm, prior to bidding, whether they are acting as an agent or principal.¹⁰⁷⁰ If the BALTZER Agency has responded that it is acting as an agent, it must provide (and has provided) as a condition of being permitted to bid: (i) the full name, address and date of birth of the principal; (ii) a copy of the passport of the principal; (iii) a letter of authorization from the principal; and (iv) a completed bidding registration form, signed by the principal.¹⁰⁷¹

¹⁰⁶⁴ Email to Subcommittee staff from Counsel for Phillips (Mar. 6, 2020).

¹⁰⁶⁵ Conference call with Counsel for Christie's (Mar. 18, 2020).

¹⁰⁶⁶ Conference call with Counsel for Sotheby's (Mar. 23, 2020).

¹⁰⁶⁷ Letter from David Vicinanza, Counsel for Baltzer Limited to the Subcommittee (Aug. 23, 2019).

¹⁰⁶⁸ Email from Counsel for Bonhams to Subcommittee staff (Jul. 25, 2020).

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ *Id.*

¹⁰⁷¹ *Id.*

IV. ADDITIONAL U.S. DOLLAR TRANSACTIONS BY ROTENBERG-LINKED SHELL COMPANIES

While the Subcommittee investigation concentrated on certain high-value art purchases involving the Rotenberg-related shell companies Highland Business and Highland Ventures, those companies did not limit their activities to art transactions. Records indicate that the companies were also used for other purposes and conducted other transactions in U.S. dollars after Arkady and Boris Rotenberg were sanctioned in March 2014.

Between the announcement of sanctions by President Obama on March 16, 2014 and the addition of Arkady and Boris Rotenberg to the SDN list on March 20, 2014, shell companies linked to the Rotenbergs repatriated \$121,966,500 to Russia. As explained below, these companies and others continued conducting transactions—including art purchases—in U.S. dollars totaling \$91,554,202.30 after the imposition of U.S. sanctions on Arkady and Boris Rotenberg on March 20, 2014.

Steamort. Although the UBO of Steamort is unknown, it is clear the company served as an intermediary between Rotenberg-linked shell companies and BALTZER LLP in the purchase of art. Following the imposition of sanctions on March 20, 2014, Steamort was a part of 160 transactions totaling \$22,643,828.05.¹⁰⁷² The most recent transaction was dated May 15, 2017.¹⁰⁷³

Highland Ventures. Highland Ventures sent \$39,588,000.00 from its account at The Pictet Group in Switzerland to its Gazprombank account in Moscow on March 18, 2014, two days after President Obama announced sanctions on Russia related to its annexation of Crimea, but before Arkady and Boris Rotenberg were added to the SDN list on March 20, 2014.¹⁰⁷⁴

Highland Ventures continued to operate in U.S. dollars through U.S.-based financial institutions post-March 20, 2014.¹⁰⁷⁵ Bank wire information shows that the company was involved in 36 transactions amounting to \$16,433,804.16; most of these transactions were payments made by Highland Ventures to a variety of parties, including Steamort, Advantage Alliance, Ernst and Young, and other art galleries.¹⁰⁷⁶

Advantage Alliance. Advantage Alliance also participated in U.S. dollar transactions through U.S.-based financial institutions following the imposition of U.S. sanctions in March 2014. From April 3, 2014 to June 6, 2016, Advantage

¹⁰⁷² DBAG0000024, line 548–707.

¹⁰⁷³ DBAG0000024, line 707.

¹⁰⁷⁴ DBAG0000013, lines 17–18.

¹⁰⁷⁵ DBAG0000013, lines 19–54.

¹⁰⁷⁶ *Id.*

Alliance was involved in 87 transactions totaling \$29,048,139.65.¹⁰⁷⁷ Those transactions included the receipt of \$16,033,224.30 and the payment of \$13,014,915.35.¹⁰⁷⁸ Despite dealing in U.S. dollars, the counterparties to these transactions were not always located in the United States.¹⁰⁷⁹

Other Rotenberg-related shell companies listed in the Panama Papers engaged in high-dollar transactions unrelated to art after March 2014.

Causeway Consulting. The Panama Papers linked Arkady Rotenberg to Causeway Consulting.¹⁰⁸⁰ An investigation by Barclays confirmed Arkady Rotenberg owned the shell company.¹⁰⁸¹ Causeway Consulting sent \$14,663,000 from its Gazprombank account in Moscow through a U.S.-based financial institution to entities located outside of the United States from January 13, 2015 to April 8, 2015.¹⁰⁸²

Culloden Properties. The Panama Papers identified Boris Rotenberg as the owner of Culloden Properties.¹⁰⁸³ An investigation by Barclays confirmed Boris Rotenberg was the UBO for the company.¹⁰⁸⁴ Culloden Properties sent \$82,378,500 from its Pictet Group account to an account at Gazprombank in Moscow on March 18, 2014, two days after President Obama announced sanctions on Russia for its occupation of Crimea, but before sanctions were imposed on March 20, 2014 on Arkady and Boris Rotenberg.¹⁰⁸⁵ Culloden sent \$255,800 in two transactions on March 11, 2015 and August 12, 2015 from its Gazprombank account in Moscow to entities located outside of the United States.¹⁰⁸⁶

Other companies linked to the Rotenbergs also continued to transact in U.S. dollars post-sanctions on Arkady and Boris Rotenberg:

Milasi Engineering. As explained above, the 2014 Financial Statement for Milasi Engineering listed Arkady Rotenberg as the UBO.¹⁰⁸⁷ Post March 20, 2014 sanctions on Arkady Rotenberg, Milasi Engineering sent \$99,700 on March 13, 2015 to a shell company located in BVI.¹⁰⁸⁸

¹⁰⁷⁷ BARC_000002, lines 23–109.

¹⁰⁷⁸ BARC_000002.

¹⁰⁷⁹ *Id.*

¹⁰⁸⁰ SGA_PSI_00063–82.

¹⁰⁸¹ BARC_006124.

¹⁰⁸² DBAG00000008, lines 3–5.

¹⁰⁸³ SGA_PSI_00063–82.

¹⁰⁸⁴ BARC_006068–69.

¹⁰⁸⁵ DBAG0000010, line 5.

¹⁰⁸⁶ DBAG0000010, lines 6–7.

¹⁰⁸⁷ BARC_006014–6043.

¹⁰⁸⁸ DBAG0000019, line 37.

Senton Holdings. An investigation by Barclays determined that Arkady Rotenberg was the UBO for Senton Holdings.¹⁰⁸⁹ After March 20, 2014, Senton Holdings was a part of transactions worth \$8,409,930.44, with the most recent wire transfer dated June 26, 2018.¹⁰⁹⁰ The largest transfer of \$7,555,000, as mentioned above, was tied to the purchase of *La Poitrine* by René Magritte.¹⁰⁹¹

¹⁰⁸⁹ BARC_006912-15.

¹⁰⁹⁰ DBAG0000022, lines 5-15.

¹⁰⁹¹ DBAG0000022, line 5.

V. CONCLUSION

As Congress and the Executive Branch consider ways to ensure the effectiveness of sanctions, the role that shell companies play in allowing UBOs to remain anonymous must be considered. While there are legitimate business reasons to retain confidentiality, offshore entities with nominee directors and shareholders pose a significant threat to the success of U.S. efforts to block sanctioned individuals from engaging in prohibited transactions.

The Subcommittee's investigation also makes clear that the voluntary programs in place at auction houses are not enough. Further, there is a lack of transparency in private art sales. As such, Congress should add high-value art to the list of industries that must comply with BSA requirements. Given the intrinsic secrecy of the art industry, it is clear that change is needed in this multi-billion-dollar industry.

Appendix G

Letter of January 21, 2020 from Hillary E. Robinson, Executive Director, Art Dealers
Association of Canada



Art Dealers Association
of Canada Association des
marchands d'art
du Canada

Mr. Kyle McCleery
Junior Commission Counsel
Cullen Commission of Inquiry into Money Laundering in British Columbia
601 – 700 West Georgia Street,
Vancouver, BC V7Y 1B6

Tuesday, January 21, 2020

Dear Mr. McCleery,

Thank you for your letter of January 9th, 2020 (Request for Records).

We have spoken with current and past Board members and it seems that the subject of money laundering is not one that has been discussed by us as an organization.

We are happy to share our ADAC Code of Ethics with you, and that document has been included with this communication. Regarding the other requests, we have no documentation to provide you.

It is worth noting that the Canadian art market is a small one and most of our dealers have long-standing relationships with their clients. In the words of one member we spoke to, "A stranger walking through the door looking to purchase a \$5 million picture would set off alarm bells for most of us".

It must be said that we have no knowledge of these types of activities taking place among our members. However, it goes without saying that we will, as an organization, comply with any forthcoming legislation and/or adopt and disseminate any recommended standards with regard to money laundering. It is worth noting that the Canadian art market is a fragile one and that over-legislation may run the risk of doing more harm than good.

Should you have any questions, or wish to have further discussions, please don't hesitate to contact me.

Kind regards,

Hilary E. Robinson
Executive Director

Encl.

Appendix H

Art Dealers Association of Canada Code of Ethics



Art Dealers
Association
of Canada

Association des
marchands d'art
du Canada

The Art Dealers Association of Canada has established and implemented the following Code of Ethics.

Members of the Art Dealers Association of Canada:

1. Shall abide by the laws of Canada and by international treaties ratified by Canada, dealing with cultural property, exported and imported;
2. Shall fairly fulfill contractual obligations with artists, collectors, dealers, public and private institutions, and conduct business in an ethical and moral manner;
3. Shall co-operate with the Board of Directors of the Association when it sits as a disciplinary body in matters of ethical conduct;
4. Shall co-operate with competent authorities to help minimize malpractice or unethical procedures in the art market;
5. Shall conform to recognized fair appraisal procedures;
6. Shall reasonably assure themselves of the authenticity of works identified to be by a particular artist and offered for sale by them and shall be prepared to give Certificates of Authenticity where appropriate. Where any works may have doubtful authenticity, such information shall be disclosed to any prospective purchaser;
7. Shall ensure that works offered to the public are accurately described and labeled;
8. Shall respect the legal relationships of artists and suppliers with other galleries;
9. Shall, upon request and within a reasonable time, make available to an artist a financial and/or inventory accounting with respect to works of art of that artist held on consignment or sold by that member gallery;
10. Shall, unless contrary arrangements are made, reimburse artists or clients for any works by the artist, or received from a client, and held on consignment as soon as possible after the sale and payment thereof by the purchaser; and
11. Shall safeguard, conserve and protect by all usual means, works of art left in the custody of the member gallery.

Appendix I

British Columbia Yacht Brokers Association Anti-Money Laundering Practice Policy



ANTI-MONEY LAUNDERING PRACTICE POLICY

INTRODUCTION AND PURPOSE

Money laundering is a general term that describes any process used to disguise the source of money or assets derived from illegal activity, and to “clean” profits made from illegal activities by converting them into legal money or assets. There are numerous techniques to launder money, and these can be very sophisticated.

Money laundering is a local, national, and global problem, and governments at all levels have been enacting additional legislation and regulations as required to combat it.

This policy sets out the rules and guidelines for BCYBA brokers to follow in their business transactions, in order to minimize the risk of yacht transactions being used for money laundering purposes and thus maintain public confidence in the yacht brokerage industry.

KNOWING YOUR CLIENT: CLIENT IDENTIFICATION

In any potential transaction, brokers must ascertain and confirm the identity of the client or clients. In addition to each individual client’s full name and address, brokers should confirm the client’s citizenship and, if not a Canadian citizen, their residency status in Canada.

If the client is an entity, such as a corporation, trust, partnership, or organization, the broker should confirm both the existence of the entity and the identity of the individual providing instructions on behalf of the entity. Please see also the “Beneficial Ownership” section.

Below are several methods used to ascertain and confirm the identity of clients:

1. Photo ID Method (Individuals and Instructing Individuals for Entities)

- Valid, original and current (unexpired) ID issued by the government of Canada, a province or territory, or a passport issued by a foreign government. Driver licenses issued by a state of the USA or other foreign entities may also be acceptable. Examples of invalid ID include health cards, gun permits, and ID issued by a municipal government.
- The ID must contain the individual’s name and photo, and it must be reviewed in the client’s physical presence to verify that the name and photo are those of the client.
- Must record in the broker’s files all of the following: the individual’s name on the ID, the date the ID was checked, the ID type, the ID identifying number, the jurisdiction (province, state, country) that issued the ID, and the ID’s expiry date if one is stated on the document. Broker may also take a photocopy or

photograph of the ID for their records.

2. Credit File Method (Individuals):

- Verify ID by reviewing an individual's valid and current credit bureau file information located in Canada, in existence for at least 3 years (not a credit assessment).
- Must obtain the information directly from a Canadian credit bureau or a third-party vendor authorized by one; verify that the name, address, date of birth match that provided by the individual; and record and retain the information, with the date of verification and reference number.
- Must record in the broker's files all of the following: the individual's name, the individual's credit file number, the name of the credit bureau or third party vendor providing the credit file, and the date the credit file was searched or consulted.
- Note that Equifax and Transunion are the two credit bureaus operating in Canada. Equifax has a Fraud Identity Authentication Section on its website.
- Note also that there are limitations to this method, including: credit bureau information may be incomplete or out of date; not every individual has a file at a credit bureau; and some businesses report to one credit bureau but not the other.

3. Dual Process Method (Individuals):

- Review valid and current information from two different independent and reliable sources to verify the individual's ID, using two of the three following sources:
 - Information that contains the individual's name and address.
 - Information that contains the individual's name and date of birth.
 - Information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution.
- The document used should be an original and not a copy.
- Note that a reliable source is an originator or issuer of information that the broker trusts and is well known, reputable and independent (for example, federal, provincial, territorial and municipal levels of government in Canada, Crown corporations, financial institutions, and utility providers).
- Must record in the broker's files all of the following: the individual's name; the names, types, and identifying numbers (such as account number or certificate number) of the two sources reviewed to verify the individual's identity; and the date of the review.

4. Confirming the Existence of an Entity:

- To confirm the existence of a corporation, must confirm its name, address, and the names of its directors, and that it is in good standing.
- For a British Columbia corporation, obtain a recent copy of company search result and confirm that the company is in good standing.

- For entities other than a British Columbia corporation, must obtain equivalent certificates and documentation sufficient to confirm that the entity exists and is in good standing in the jurisdiction in which it is formed, as well as the names and addresses of its directors.
- If the instructing individual is not listed on the entity’s documents as a director or officer or equivalent, brokers should obtain confirmation in writing that the individual is authorized to instruct on behalf of the entity.
- Must record in the broker’s files all of the following: the corporation’s registration number (or equivalent, for an entity other than a corporation), the type of record reviewed, the source of the record, and the date of the review.

DISGUIISING OWNERSHIP: BENEFICIAL OWNERSHIP AND SHAREHOLDER TRANSPARENCY

There are two components to ownership of an asset. These are “legal title” and “beneficial title”. Often, the owner of the two components is the same. However, they can be split apart and owned by different individuals or entities. In the case of registered assets such as luxury yachts, automobiles and real estate, the legal owner is the individual or entity registered on title. If the beneficial owner is separated, this may not be obvious as there is no registry of beneficial ownership.

Separating legal and beneficial title may be legitimate. For example, in a trust arrangement, legal title to an asset is held by or on behalf of the trustees for the benefit of the trust beneficiaries. However, criminals may also use beneficial ownership arrangements to conceal their identities and to engage in money laundering activities.

Brokers should ask questions and do their due diligence to confirm whether or not there are any beneficial ownership arrangements to be aware of in connection with a yacht transaction. Even a legitimate beneficial ownership arrangement may impact the yacht transaction.

Legal Owner	Beneficial Owner
<ul style="list-style-type: none"> • Legal owner holds legal title to property or asset in his or her name • Often the legal owner and the beneficial owner are the same 	<ul style="list-style-type: none"> • Beneficial owner enjoys certain benefits of owning property or assets, even if their name does not appear on legal title • Beneficial ownership arrangements may be legitimate or illegitimate • Criminals use beneficial ownership arrangements to try to hide their individual identities and to facilitate money laundering

Corporate shareholdings may also be structured to facilitate hiding the identities of beneficial owners. Both Canada and British Columbia have enacted legislation to combat this by requiring greater transparency as to who is the beneficial owner of a company. For this reason, as part of their due diligence on a transaction, brokers should obtain:

- The names and addresses of all persons who own, directly or indirectly, 25 per cent or more of a client organization or its shares.
- Information identifying ownership, control and structure of the entity.
- If the share or ownership units of an entity are held in trust, the names and addresses of all trustees and all known beneficiaries and settlors of the trust.

HANDLING CASH TRANSACTIONS

One common tactic for laundering money is to process it through another party's account, such as a broker's account. Brokers should always follow best practices whenever handling transaction funds is necessary. Below are some practice points:

- Brokers can make it their policy to never accept cash.
- Brokers should decline cash payments greater than \$10,000 in aggregate for any transaction.
- Brokers should be wary of cash payments of smaller amounts over time, which can result in the broker accepting a large amount of cash payments over the course of a transaction.
- Brokers must provide the payer a written duplicate receipt for the amount of cash received. The receipt must be dated, state the amount of cash received and the name of the payer, and be signed by both the broker and the payer. The broker must maintain a cash receipt book of such duplicate receipts.
- Brokers should ask about the source of cash funds received, and record this information on the duplicate receipt or in the broker's transaction record.
- Any refunds of cash payments received should be made in cash only. Avoid writing a cheque or making a wire transfer as a refund.
- Brokers should watch out for direct deposits of cash into their bank account by clients or third parties. This could happen without the broker's knowledge or consent. The broker should check all direct deposits to determine the form of funds received and accurately record the information. If cash was received, the broker should make further enquiries to determine whether the deposit raises any red flags or concerns raised in this policy.

TIPS TO IDENTIFY POTENTIAL MONEY LAUNDERING

Money laundering can take a variety of forms, and is often disguised by activities that are legitimate in some circumstances. The following are some indicia that a transaction may

involve money laundering, and that further due diligence is warranted.

Client Behaviour:

- Client proposes to pay for a significant portion of the transaction with cash.
- Client over-justifies or over-explains the purchase.
- Client shows unusual concerns about the brokerage anti-money laundering policy.
- Client shows a lack of concern about risks, commissions, or other transaction costs.

Unusual Transaction:

- Client sells or buys yacht significantly below or above market value.
- Client buys yacht without inspecting it.
- Frequent change of ownership of same yacht, particularly between related or acquainted parties.
- If a yacht is re-sold shortly after purchase at a significantly different purchase price, without corresponding changes in market values for that type of yacht.
- Client buys back a yacht that he or she recently sold.
- Client negotiates a purchase for the market value or above the asked price, but requests that a lower value be recorded on documents, paying the difference “under the table”.
- Client purchases multiple yachts in a short time period, and seems to have few concerns about the condition and anticipated repair or operating costs of each yacht.
- Transactions in which payment is made in cash, bank notes, bearer cheques or other anonymous instruments.
- Transactions in which the parties show a strong interest in completing the transaction quickly, without there being good cause.

Use of Other Parties:

- Use of nominees or beneficial ownership arrangements.
- Client does not want to put their name on any document that would connect them with the yacht or uses different names on the yacht purchase agreement, closing documents and deposit receipts.
- Client inadequately explains a last-minute substitution of the purchasing party’s name.
- Client purchases a yacht in someone else’s name such as an associate or a relative, other than a spouse, a parent or an adult child.
- Client pays initial deposit with a cheque from a third party, other than a spouse, a parent or an adult child.
- Client pays substantial down payment in cash and balance is financed by an unusual source (for example a private lender) or offshore bank.
- A transaction involving legal entities, when there does not seem to be any

relationship between the transaction and the activity carried out by the buying company.

- Transaction is completely anonymous — transaction conducted by lawyer — and all deposit cheques are drawn on the lawyer's trust account.

BROKERAGE POLICIES AND PROCEDURES

Brokers are responsible for setting up a comprehensive and effective program for compliance with their obligations under this Anti Money Laundering Practice Policy. That program should include the following elements:

- Risk assessment – A risk assessment is an analysis of the potential risks that could expose your business to money laundering. Brokers should conduct the risk assessment, identify mitigation measures and strategies, and document the results.
- Policies and procedures – Develop and apply written policies and procedures for the handling of transaction funds and protecting the broker's business against money laundering practices, including the implementation of the mitigation measures and strategies identified in the risk assessment.
- Compliance officer – Appoint one or more individuals who will be responsible for the implementation and oversight of the compliance program. The compliance officer must have the necessary authority to carry out the requirements of the compliance program.
- Training program – Develop, implement and maintain a training program for employees and anyone else authorized to act on behalf of the broker in connection with yacht transactions.
- Review of compliance program – Review the compliance program every two years to ensure its effectiveness, and make amendments as necessary.

[End of the Anti-Money Laundering Practice Policy.]

Appendix J

British Columbia Yacht Brokers Association Code of Ethics



CODE OF ETHICS

Current to June 2020

BRITISH COLUMBIA
YACHT BROKERS ASSOCIATION
CODE OF ETHICS

In this document:

- a) **“Association” means the British Columbia Yacht Brokers Association;**
- b) **“Broker” means a member of the Association; and**
- c) **“Code of Ethics” means this document.**

The Association expects the use of all printed Association approved forms and the symbol of the Association as an assurance of a qualified yacht broker. However, the use of the forms and symbol is restricted to member firms in good standing only.

The Broker shall make every effort at the time of listing a vessel to assure that the vessel is not listed with another Broker and/or that any existing listing has been formally cancelled.

All shared commission agreements shall be negotiated and confirmed in writing prior to the submission of any offer to purchase.

RELATIONS WITH THE PUBLIC

1. The Broker has the duty to protect the public against fraud, misinterpretation, coercion or offensive or unethical practices in the brokering of yachts. The Broker shall endeavor to eliminate any practices that could be damaging to the public or to the dignity and integrity of the yacht brokerage business, and shall assist the Association in regulating the practices of Brokers and Salespersons.
2. The Broker pledges to be well informed on current market conditions in order to be in a position to advise clients as to the fair market value of vessels.
3. The Broker shall endeavor to be informed regarding laws, proposed legislation, governmental orders and other essential information and public policies that affect the interests of his client.
4. The Broker shall keep himself informed as to movements affecting yachting in his community, province and nation so that he shall be better able to contribute to public thinking on matters of taxation, legislation, marine use, waterfront planning and other issues affecting yachting interests.
5. The Broker shall maintain a trust account for the purpose of holding money in respect of a brokerage transaction separate from the Broker's own funds or those of his company and shall pay into such trust account all money received in respect of such transaction subject to written instructions from the persons on behalf of whom such money is being held. The Broker shall administer its trust account and handle trust account funds in accordance with **the Association's** rules, regulations and policies regarding trust account matters, and if there are no such rules, regulations and policies in effect then in accordance with best practices in the Province of British Columbia for trust account matters.
6. The Broker shall be careful to present a true presentation in the Broker's advertising and shall not advertise without identifying the firm or, where applicable, the Broker.
7. The Broker shall encourage written contractual relationships in all matters relating to a brokerage transaction in order to avoid misunderstanding between parties.

8. The Broker shall ensure that all terms, conditions and financial obligations in respect of a brokerage transaction are in writing and that such writing expresses the true agreement between the parties. The Broker shall deliver a copy of such agreement to each of the parties at the time of execution or as soon thereafter as practicable.
9. The Broker shall not be a party to the naming of false consideration in any document and shall not submit an offer to an owner or co-operating broker unless the offer is in writing with an adequate deposit from the offeror.
10. Notwithstanding that the Broker may represent more than one party to a transaction, the Broker shall not accept compensation from more than one party without full disclosure to all parties to the transaction.
11. The Broker shall not acquire an interest in either directly or indirectly for himself, or for any corporation in which he is a shareholder, director or officer, a vessel without making the true position as known to him known to the owner in writing; and in selling a vessel owned by him, or in which he has an interest, his interest as known to him shall be revealed to the purchaser in writing.
12. The Broker shall always recommend the timely employment of an independent marine surveyor, a mechanical inspector and sea trials as a condition precedent to the completion of a brokerage transaction.
13. The Broker shall inform all parties to a transaction that it is not the practice of a member Broker to engage in activities (i.e., conveyancing and clearing of title) that might be construed as constituting the practice of law and shall recommend legal counsel. If either party declines to seek legal counsel, then the Broker should have the declining party or parties sign a waiver which limits the responsibility and liability of the Broker in the transaction.
14. The Broker shall at all times act in accordance with all applicable laws, government regulations, this Code of Ethics, and **the Association's** rules, regulations and policies including its Anti Money Laundering Practice Policy.

RELATIONS WITH THE CLIENT

15. If the Broker accepts employment, then the Broker is pledged to protect and promote the interests of his client, but notwithstanding such pledge, is obliged to deal fairly with all parties to the transaction and in accordance with all applicable laws, government regulations, and the Association's **rules, regulations and** policies including this Code of ethics and the Anti Money Laundering Practice Policy. If the Broker himself or with the aid of his fellow Broker is unable to render a skilled and conscientious service in such employment, he shall not accept the listing.
16. The Broker shall use his best efforts to ascertain all pertinent facts concerning any vessel for which the Broker accepts a listing so that he may fulfill the obligation to avoid error, exaggeration, misrepresentation or concealment of pertinent facts.
17. The Broker shall not advertise a vessel without the owner's authority and in any offering the price quoted shall not be other than that agreed upon with the owner.
18. If before the owner has accepted any offer on a vessel, another offer is made on that vessel, then, whether or not such other offer is made by a prospective purchaser or a co-operating broker, such offer shall be presented to the owner for consideration.
19. The Broker shall not undertake to make an appraisal or opinion of value that is outside the Broker's field of experience or where the Broker has an interest or contemplated interest unless the facts are fully disclosed to the client or he obtains the assistance of an authority on such type of vessel and the identity of such authority is disclosed to the client. In no circumstances shall any charge be made which is contingent upon the amount of value reported.

RELATIONS WITH HIS FELLOW BROKERS

20. The Broker shall respect the rights of a broker who holds an exclusive listing. A Broker co-operating with the listing broker shall not invite the participation of a third broker without the express consent of the listing broker.
21. Negotiations concerning a vessel listed exclusively with one Broker shall be carried on with the listing broker, not the owner, except with the express consent of the listing broker. All shared commission agreements shall be negotiated prior to the submission of any offer to purchase.
22. Signs giving notice of any vessel for sale shall not be placed on any vessel by more than one broker unless authorized by the owner. The Broker shall not interfere with another broker's sign.
23. The Broker shall seek no unfair advantage over his fellow brokers and shall willingly share with them the lessons of his experience and study.
24. A Broker shall not seek information about a competitor's transaction to be used for the purpose of closing the transaction himself or for the purpose of interfering with any contractual undertaking.
25. The Broker shall not voluntarily disparage the business practice of a competitor, nor volunteer an opinion of a competitor's transaction. If such an opinion is sought, it shall be rendered with strict professional integrity and courtesy.
26. If allegations are made that a Broker by act or omission has committed practices which, if true, would be a breach of any **of the Association's** rules, regulations and practices, including this Code of Ethics or **the Association's** Anti Money Laundering Practice Policy, or would otherwise be deemed to be not in the best interests of the Association, that Broker shall promptly and diligently cooperate and comply with any Association review or investigation into such allegations and make available to this review or investigation all pertinent facts, documents and information. The Broker shall promptly and diligently comply with any sanction or remedial order made as a result of such review or investigation.
27. In the best interests of the public, his associates, and his own business, the Broker shall be loyal to the Association and active in its work.

[End of the Code of Ethics.]