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# U.S. Sanctions and Anti-Money Laundering Developments

Presented by

**John Banes**  
**Jeanine McGuinness**  
**Denis McInerney**  
**Paul Nathanson**  
**Will Schisa**  
**B. Chen Zhu**

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**Davis Polk**

Davis Polk & Wardwell LLP

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# Presenters

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## **John Banes**

John is a partner in Davis Polk's Financial Institutions Group. He advises financial institutions on all types of corporate finance and regulatory matters, as well as U.S. and non-U.S. companies on internal investigations and regulatory enforcement matters, providing compliance, governance, (including FCPA) and transactional advice. John is also a partner in the firm's white collar and criminal defense practice and the internal investigation practice, and advises clients on investigations and compliance matters and related corporate governance, financial reporting and disclosure issues.



## **Jeanine P. McGuinness**

Jeanine is counsel in Davis Polk's Financial Institutions Group and the economic sanctions and national security practice. She practices in the firm's Washington, D.C. office, where she concentrates in U.S. trade and investment laws applicable to cross-border transactions, focusing on U.S. economic sanctions, anti-money laundering laws, anti-boycott laws, the Foreign Corrupt Practices Act and transaction reviews by U.S. national security agencies, including the Committee on Foreign Investment in the United States. Her clients include major U.S. and foreign financial institutions, and pharmaceutical, technology, telecommunications, energy, and natural resources companies.

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## **Denis J. McInerney**

Denis is a partner in our Litigation Department and practices in our New York office. His practice focuses on grand jury, regulatory, cross-border, and internal investigations as well as complex criminal litigation. He returned to Davis Polk in 2014 after serving as Chief of the Fraud Section (2010-2013) and then Deputy Assistant Attorney General of the Criminal Division of the U.S. Department of Justice (2013-2014). In those positions, Denis was responsible for supervising approximately 100 prosecutors in DOJ's Fraud Section, which has responsibility for all FCPA investigations conducted by DOJ as well as a wide range of other white collar investigations and prosecutions. He previously served as a Deputy Chief of the Criminal Division in the Southern District of New York.



## **Paul J. Nathanson**

Paul is a partner in Davis Polk's Litigation Department, based in Washington, D.C. His practice focuses on internal investigations and criminal and regulatory enforcement matters, in areas such as the Foreign Corrupt Practices Act, fraud, sanctions, and anti-money laundering. Paul is an experienced trial lawyer and previously served as Deputy Chief of the Financial Crimes and Public Corruption Unit of the U.S. Attorney's Office for the Eastern District of Virginia. He also previously served at the U.S. Treasury Department and is a former law clerk to Chief Justice John G. Roberts Jr.

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# Presenters

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## **Will Schisa**

Will is counsel in Davis Polk's Financial Institutions Group and economic sanctions and national security practice, based in the Washington, D.C. office. He has extensive experience with the economic sanctions laws and regulations administered by the Treasury Department's Office of Foreign Assets Control (OFAC), having served for nearly 10 years as an attorney in the Office of the Chief Counsel, Foreign Assets Control, the legal office that supports OFAC.



## **B. Chen Zhu**

Chen is counsel in Davis Polk's Litigation Department, currently practicing as a Registered Foreign Lawyer in Hong Kong. He relocated from the firm's New York office to Hong Kong in 2013. He represents multinational corporations, financial institutions and individuals in cross-border regulatory enforcement and internal investigations relating to the Foreign Corrupt Practices Act, U.S. economic sanctions, anti-money laundering, market manipulation, and securities fraud, and advises clients on related governance and compliance matters.

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# Agenda

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- Update on Appointments and Nominations to Key Government Positions
- Update on U.S. Sanctions Programs
  - Iran
  - Russia
  - North Korea
  - Venezuela
- Update on Anti-Money Laundering (“AML”) Initiatives
- Recent Enforcement Trends and Developments

# Update on Appointments and Nominations to Key Government Positions



## Treasury Department

- Office of Foreign Assets Control (“OFAC”)
  - *Acting Director: Andrea Gacki*

## Board of Governors of the Federal Reserve System

- *Chairman: Jerome Powell*
- *Vice Chairman for Supervision: Randal Quarles*
- There are still 4 vacant seats (out of 7) on the Board; President Trump has nominated the following individuals to fill 2 of those seats:
  - *Nominee: Richard Clarida for Vice-Chair*
  - *Nominee: Michelle Bowman*



## Federal Deposit Insurance Corporation (“FDIC”)

- *Chairman: Jelena McWilliams*

## Department of Justice (“DOJ”)

- *Head of the Criminal Division: Brian Benczkowski*
- *Assistant Attorney General of the NSD: John Demers*



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# Update on U.S. Sanctions Programs

# Update on U.S. Sanctions Programs

**Sanctions may be imposed against geographical areas and all persons within those areas, or against designated governments, organizations, individuals, and entities wherever they may be located**

- **Territorial (Country) Sanctions:** Cuba, Iran, Syria, Crimea region, North Korea
- **List-Based Sanctions:** Individuals or entities whose property is blocked. Generally placed on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"), including:
  - Individuals and entities determined to be involved in narcotics trafficking, terrorism and terrorist financing, transnational crime, proliferation of weapons of mass destruction, piracy, malicious cyber-enabled activities
  - Individuals and entities in or related to certain former and current regimes around the world as well as specified persons engaged in specific acts in Burundi, the Central African Republic, Darfur, Lebanon, Somalia, and Yemen
- **Sectoral Sanctions:** Starting in July 2014, the U.S. government has imposed targeted, non-blocking, less comprehensive "sectoral" sanctions on certain Russian energy and defense companies and financial institutions

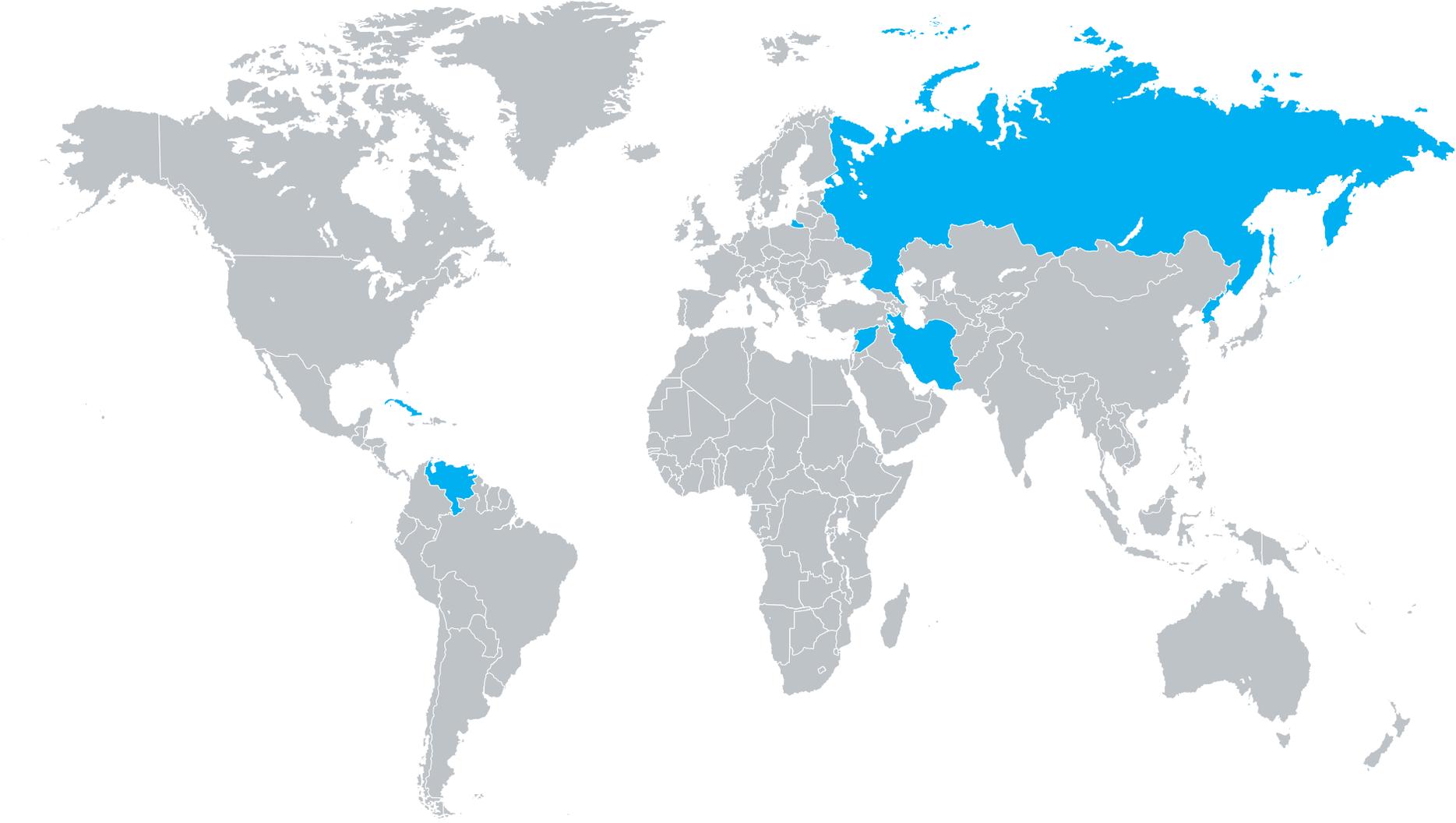
## **Primary vs. Secondary Sanctions**

- The majority of U.S. economic sanctions programs are "primary" sanctions in that they require compliance by U.S. persons and all persons actually located in the United States
- "Secondary" sanctions authorize imposition of prohibitions and restrictions on non-U.S. Persons who engage in certain transactions with or involving Iran, North Korea, Russia, or Hezbollah

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# Update on U.S. Sanctions Programs

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# Update on U.S. Sanctions Programs

IRAN



## **U.S. Withdrawal from the Joint Comprehensive Plan of Action (“JCPOA”)**

- On May 8, 2018, President Trump:
  - Announced that he was terminating the United States’ participation in the JCPOA; and
  - Issued a National Security Presidential Memorandum directing his administration to immediately begin the process of fully re-imposing sanctions that target critical sectors of Iran’s economy, including the energy, petrochemical, and financial sectors
- As such, all nuclear-related secondary sanctions authorities targeting Iran will be reinstated after specified wind-down periods
  - Depending on the particular sanctions measure, the United States provides for a wind-down period of either 90 days (through August 8, 2018) or 180 days (through November 4, 2018)
    - Following the conclusion of the applicable wind-down period, persons engaged in activities involving Iran will face exposure to secondary sanctions or enforcement actions under U.S. law
    - Additionally, the U.S. Government has indicated that no later than November 5, 2018, the U.S. will reimpose, as appropriate, sanctions on persons who had been removed from the SDN List or other sanctions lists on January 16, 2016 (“Implementation Day”)

# Update on U.S. Sanctions Programs

## IRAN (CONT.)



- On June 27, 2018, OFAC revoked General License (“GL”) H and replaced it with a narrower authorization to wind down authorized activities by November 5, 2018
  - GL H (issued on January 16, 2016) had provided that a U.S. owned or controlled foreign entity could engage in direct or indirect transactions with the Government of Iran, or any persons subject to the jurisdiction of the Government of Iran
- Since the U.S. withdrawal from the JCPOA, the Trump Administration has signaled that it will (among other things):
  - Push for other countries to commit to zero Iranian oil imports by November; and
  - Deny EU requests for waivers
- In response to the U.S. government’s actions, efforts are being made by other JCPOA signatories to preserve the agreement

# Update on U.S. Sanctions Programs

## RUSSIA



### **The Countering America’s Adversaries through Sanctions Act (“CAATSA”) was signed into law on August 2, 2017**

- Codifies existing sanctions on Russia and requires congressional review of any attempt by the President to terminate, waive, or significantly modify current sanctions on Russia
- Also modified existing sanctions directives and provided additional sanctions designation authorities

### **Implementation of new sanctions authorities under CAATSA has been uneven**

- State Department missed deadlines in Fall 2017 to publish guidance on new defense-sector sanctions, and has yet to target anyone under this authority, which came into effect on January 28, 2018
- On March 15 and April 6, 2018, the U.S. designated various Russian targets under authorities codified by CAATSA
  - April 6 actions targeted individuals and companies with substantial connections to U.S. and international markets, and were among the most significant and impactful actions OFAC has ever taken
  - OFAC has issued, and then amended, various general licenses to help minimize the impact of the new sanctions on U.S. persons and U.S. allies
- Additional sanctions actions following the April 6 designations were reportedly put on hold

# Update on U.S. Sanctions Programs

## NORTH KOREA



**Title III of CAATSA includes a number of new sanctions provisions and other measures targeting sources of economic support for the North Korean Government, including:**

- Expanded designation criteria
- Discretionary blocking authority
- Correspondent account prohibition
- Shipping and vessel sanctions
- Human rights sanctions
- State sponsor of terrorism review

**On September 21, 2017, President Trump signed E.O. 13810**

- Promulgated new secondary sanctions targeting non-U.S. individuals and entities that conduct certain business with North Korea
  - According to Treasury Secretary Mnuchin, E.O. 13810 puts foreign financial institutions on notice that, “going forward, they can choose to do business with the United States or with North Korea, but not both”
  - OFAC designated 16 Chinese companies pursuant to E.O. 13810
- New designations appear to be on hold as negotiations over North Korea’s nuclear program are ongoing, but all sanctions remain in place

# Update on U.S. Sanctions Programs

VENEZUELA



## **On August 24, 2017, the Trump Administration issued E.O. 13808, which imposed financial sanctions on the Venezuelan Government**

- The E.O. specifically prohibits U.S. persons or persons within the U.S. from engaging in transactions related to, providing financing for, or otherwise dealing in:
  - New debt (with maturity greater than 90 days) of Petroleos de Venezuela, S.A. (“PdVSA”);
  - New debt (with maturity greater than 30 days), or new equity, of the Venezuelan Government (other than PdVSA);
  - Bonds issued by the Venezuelan Government prior to August 25, 2017;
  - Dividend payments or other distributions of profits to the Venezuelan Government from any entity owned or controlled, directly or indirectly, by the Venezuelan Government; and
  - Purchasing, directly or indirectly, any securities from the Venezuelan Government other than securities qualifying as new debt with maturity of less than or equal to 90 days for PdVSA or 30 days for rest of the Venezuela Government

# Update on U.S. Sanctions Programs

## VENEZUELA (CONT.)



- OFAC additionally issued four new general licenses on August 24, 2017, pursuant to E.O. 13808, including a wind-down license (“GL 1”) and licenses authorizing:
  - Transactions involving CITGO Holding, Inc. and its subsidiaries, which are U.S. Person entities (“GL 2”);
  - Transactions and dealings related to certain bonds (“GL 3”); and
  - New debt transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, or replacement parts and components (“GL 4”)
- On May 24, 2018, President Trump issued E.O. 13835, which prohibits all transactions related to, provision of financing for, and other dealings by U.S. Persons, or within the U.S. in:
  - Purchase of any debt owed to the Venezuelan Government, including accounts receivable;
  - Any debt owed to the Venezuelan Government that is pledged as collateral after the effective date of this order, including accounts receivable; and
  - Sale, transfer, assignment, or pledging as collateral by the Venezuelan Government of any equity interest in any entity in which the Venezuelan Government has 50 percent or greater ownership interest
    - On July 19, 2018, OFAC issued GL 5 to authorize transactions otherwise subject to this prohibition involving the PdVSA 2020 8.5 percent bond

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# Update on U.S. Sanctions Programs

## VENEZUELA (CONT.)



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- Following E.O. 13808, on March 19, 2018, the Trump Administration issued E.O. 13827, which bans U.S. transactions in Venezuela’s “petro” digital currency
  - OFAC additionally released accompanying FAQs which clarify that:
    - “Petro” and “petro-gold” are considered a “digital currency, digital coin, or digital token” that was issued by, for, or on behalf of the Venezuelan Government on or after January 9, 2018
    - Venezuela’s traditional fiat currency, *bolivar fuerte*, however, is not considered such a currency

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# Update on AML Initiatives

# Update on AML Initiatives

## OVERVIEW OF U.S. AML LAWS AND REGULATIONS

**Purpose of U.S. AML laws and regulations is to prevent use of financial system to launder money that comes from criminal activity**

**A variety of regulatory and law enforcement agencies, including the OCC, FDIC, Federal Reserve, FinCEN, and DOJ, are responsible for AML enforcement**

### **General Outlook**

- Regulatory changes to AML rules are being seriously discussed
  - OCC Comptroller Joseph Otting has made it clear that reform in this area is one of his top priorities, stating in his June 14, 2018 Senate Banking Committee testimony that compliance with current AML requirements has become “*inefficient and costly*” requiring banks to spend “*billions each year*”
  - In May, federal banking regulators met to discuss ways to potentially improve the current AML laws and regulations, reportedly focusing on streamlining the rules
    - In addition, proposed legislation has been introduced in Congress that would address international sharing of Suspicious Activity Reports (“SARs”) with affiliates
- Expect continued focus on transparency
- Expect focus on new financial technologies and platforms and ultimate beneficial ownership of entities
- Strong policy imperatives continue to underlie the general federal AML framework

# Update on AML Initiatives

## OVERVIEW OF U.S. AML LAWS AND REGULATIONS (CONT.)

### **Money Laundering Control Act of 1986 ("MLCA" 18 U.S.C. §§ 1956 & 1957)**

- Criminal AML statute applies to:
  - Criminals who launder their ill-gotten gains
  - Any persons or entities that knowingly participate in those transactions
- Creates federal criminal liability for conduct related to laundering the proceeds of "specified unlawful activity" (over 170 separate crimes)

### **Bank Secrecy Act of 1970 ("BSA")**

- Requires financial institutions to create and maintain records of customer transactions and to report certain financial transactions to the government
- Provisions in Title III of USA PATRIOT Act of 2001 have amended the BSA
- Newly applicable BSA regulations focus on beneficial ownership information and customer due diligence ("CDD")

# Update on AML Initiatives

## FINCEN CUSTOMER DUE DILIGENCE RULE

### On May 11, 2018, FinCEN's CDD rule became applicable

- Under the CDD rule, covered financial institutions' CDD processes must include, at a minimum:
  - Customer identification and verification;
  - **Beneficial owner identification and verification;**
  - Understanding the nature and purpose of customer relationships; and
  - Ongoing monitoring for reporting suspicious transactions and, on a risk-based basis, maintaining and updating customer information
- The CDD rule's definition of "beneficial owner" is two-pronged, focusing on ownership and control of customers that are legal entities:
  - Under ownership prong, beneficial owner is any individual who, directly or indirectly, owns 25% or more of equity interests of the legal entity customer; and
  - Control prong requires identification of one individual with significant responsibility to control, manage, or direct the legal entity
- Certain entities are excluded from the definition of legal entity customers

# Update on AML Initiatives

## DFS RULE 504

### **On January 1, 2017, New York State Department of Financial Services (“DFS”) Rule 504 came into effect**

- The purpose of the rule is to address shortcomings that the DFS had identified in financial institutions’ transaction monitoring and filtering programs.
- To that end, the rule:
  - Clarifies required attributes of Regulated Institutions’ Transaction Monitoring and Filtering Programs
  - Requires regulated institutions’ Boards of Directors or Senior Officers to annually certify compliance to the Superintendent
  - First certifications were due by April 15, 2018

- DFS Superintendent Maria T. Vullo has stated the following with respect to Rule 504:

***Financial institutions doing business in New York must do everything they can to help stem the tide of illegal financial transactions that fund terrorist activity. It is time to close the compliance gaps in our financial regulatory framework to shut down money laundering operations and eliminate potential channels that can be exploited by global terrorist networks and other criminal enterprises.***

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# Update on AML Initiatives

## LEGALIZATION OF RECREATIONAL MARIJUANA IN VARIOUS U.S. STATES

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- Under the Controlled Substances Act (the “CSA”), marijuana is a Schedule I drug
  - The CSA prohibits the manufacturing, distributing, and/or dispensing of Schedule I drugs, including marijuana
- The MLCA prohibits any person from knowingly conducting certain financial and monetary transactions involving the proceeds of “specified unlawful activity,” including the proceeds from marijuana-related violations of the CSA
  - There are currently no safe harbor provisions for banking marijuana/cannabis-related businesses (“MRBs”) that are compliant with state law
- Providing banking services to MRBs would generally require banks to engage in financial transactions involving the proceeds of unlawful activities under federal law and would therefore violate federal criminal AML laws
- Given the current legal environment, most U.S. banks (other than very small banks) remain unwilling to provide services to MRBs
- But situation will become harder and harder to navigate, particularly given the recent legalization of recreational marijuana in California, which is expected to generate over \$7 billion in annual sales in the first few years

# Update on AML Initiatives

## LEGALIZATION OF RECREATIONAL MARIJUANA IN VARIOUS U.S. STATES (CONT.)

- Many banks are conservative and will not knowingly handle any money from MRBs. But as the industry grows, a host of ordinary businesses (from electricians to farming or packaging suppliers) will begin receiving more revenue from sales to MRBs
  - How will risk-averse banks (especially in major markets like Colorado and California) treat this eventuality?
  - Is there a clear delineation between an MRB and a non-MRB?
  - FinCEN guidance: “Whether [a] financial institution decides to provide indirect services to [an MRB] is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.”
- Only a significant change in federal law will provide a stable platform for banks to provide banking services to U.S. MRBs operating legally under state law
- Various bills have been proposed; none is expected to pass during this Congress
  - “Strengthening the Tenth Amendment Through Entrusting States Act” (the “STATES Act”) — recently introduced into Congress
  - House and Senate versions of another bill, the “Secure and Fair Enforcement Banking Act” (the “SAFE Act”), were introduced in Spring 2017

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# Update on AML Initiatives

## LEGALIZATION OF RECREATIONAL MARIJUANA IN CANADA

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- Under Canadian law, Canada has legalized cannabis for medical use
- In June 2018, the Canadian House of Commons and Senate passed legislation legalizing the recreational use of marijuana nationwide
  - The law will become effective on October 17, 2018
- Many U.S. banks are concerned about providing services to their Canadian correspondent bank clients that are banking the Canadian cannabis industry
- A U.S. bank that provides direct or indirect financial services to a Canadian MRB operating lawfully under Canadian law, where such MRB does not export or have intent to export marijuana to or from the U.S., should not violate the MLCA
  - But operational and due diligence challenges remain for U.S. banks

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# Recent Enforcement Trends and Developments

# Recent Enforcement Trends and Developments

## ENFORCEMENT OVERVIEW

### **Sanctions actions in 2017 and 2018 to date**

- In 2017, OFAC announced the resolution of 18 cases totaling \$120 million in monetary settlements and penalties, including \$100 million from multi-agency settlement (totaling \$1.19 billion) with Chinese telecom company ZTE
- In 2018 to date, OFAC announced the resolution of one case with a monetary settlement of approximately \$150,000
- DOJ continues to bring actions, including civil forfeiture actions, for sanctions violations

### **AML actions in 2017 and 2018 to date**

- Two large multi-agency resolutions with financial institutions (Rabobank, U.S. Bank) in early-2018
- Regulators and DOJ continue to focus on risk-based compliance and importance of institutional culture and holding individuals accountable for BSA/AML failures
- Focus on AML cases involving digital currencies

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# Recent Enforcement Trends and Developments

## EXPANSION OF FCPA CORPORATE ENFORCEMENT POLICY

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### **Possible application of FCPA Corporate Enforcement Policy to sanctions/AML enforcement**

- The FCPA Pilot Program began in 2016 to encourage self-disclosure, cooperation, and remediation in exchange for mitigation credit, including potential declination
- The FCPA Pilot Program was formally adopted in November 2017 and incorporated into DOJ's U.S. Attorneys' Manual as the FCPA Corporate Enforcement Policy
- In March 2018, DOJ leaders announced they would use the FCPA Corporate Enforcement Policy as nonbinding guidance in other criminal cases:

*We intend to embrace, where appropriate, a similar approach and similar principles — rewarding voluntary self-disclosure, full cooperation, timely and appropriate remediation — in other contexts.*

– John Cronan, Acting Assistant Attorney General, Criminal Division

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# Recent Enforcement Trends and Developments

## EXPANSION OF FCPA CORPORATE ENFORCEMENT POLICY (CONT.)

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### **Possible application of FCPA Corporate Enforcement Policy to sanctions/AML enforcement (cont.)**

- Barclays received an NPA after it self-disclosed FX manipulation, completed a thorough internal investigation, created a compliance program to help prevent future similar conduct, and cooperated fully (including with a related investigation of an employee)
- If factors of self-disclosure, cooperation, and remediation are present, there is a presumption of declination absent aggravating circumstances. Under the FCPA Corporate Enforcement Policy, such aggravating circumstances could include:
  - Involvement by executive management of the company in the misconduct;
  - Significant profit to the company from the misconduct;
  - Pervasiveness of the misconduct within the company; and
  - Criminal recidivism
- It is unclear how possible application of the FCPA Corporate Enforcement Policy will affect enforcement of sanctions and AML cases

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# Recent Enforcement Trends and Developments

## SANCTIONS ENFORCEMENT ACTIONS

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### **OFAC is bringing a broad range of sanctions enforcement actions**

- Enforcement action against a company for causing sanctions violations (CSE Transtel)
  - In July 2017, CSE Transtel and its subsidiary, both located in Singapore, settled with OFAC
  - OFAC found CSE Transtel violated U.S. sanctions because it “caused” financial services to be exported or re-exported from the U.S. to Iran
- Enforcement action for a subsidiary that conducted due diligence in Iran, which was found to be importing a service from Iran (IPSA)
  - IPSA provides due diligence services for countries’ citizenship by investment programs, which can include applicants from sanctioned countries
  - IPSA subsidiary in UAE hired subcontractors (who hired third parties) to conduct due diligence in Iran for Iranian national applicants
  - OFAC found that even though foreign subsidiaries conducted due diligence, services were imported into the U.S. because they were “on behalf of and for the benefit of IPSA”

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# Recent Enforcement Trends and Developments

## SANCTIONS ENFORCEMENT ACTIONS (CONT.)

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### **OFAC is bringing a broad range of sanctions enforcement actions (cont.)**

- Enforcement actions brought against a variety of industries, including retail and healthcare-related goods (Cartier, United Medical Instruments)
  - Cartier: In September 2017, OFAC settled with a retailer of luxury goods for exporting shipments of jewelry to SDN, when name, address, and country location matched information on SDN List
  - United Medical Instruments: In February 2017, OFAC settled with a company selling medical imaging equipment for facilitating the sale of goods from a UAE company to Iran
  - In 2017 and 2018 to date, 18 of the 19 enforcement actions announced by OFAC involved non-financial institutions
- Enforcement actions brought for conduct by non-U.S. subsidiaries of U.S. companies (White Birch, Dentsply)
  - BD White Birch Investment: Canadian subsidiary shipped Canadian-origin paper to Sudan, with the involvement of some U.S. personnel; concealed from its bank that goods were going to Sudan
  - Dentsply Sirona: Subsidiaries, including one in the UK, exported dental products to third-country distributors with knowledge or reason to know they were destined for Iran

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# Recent Enforcement Trends and Developments

## SANCTIONS ENFORCEMENT ACTIONS (CONT.)

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### DOJ sanctions enforcement actions against individuals

- Except for ZTE, all of DOJ's major sanctions cases in 2017 and 2018 to date have been brought against individuals
- *United States v. Zarrab et al.*, No. 1:15-cr-867 (S.D.N.Y.)
  - Reza Zarrab and Mehmet Hakan Atilla, along with a number of alleged co-conspirators who remain at large, were indicted on multiple charges arising from Zarrab's business with Iran
    - Sanctions violations – Accused of causing U.S. banks to violate sanctions (with DOJ characterizing the banks as “victims” of Zarrab's scheme)
    - Bank fraud – Accused of making material misrepresentations to U.S. banks by concealing the true beneficiary of the transactions
    - Money laundering – Accused of conspiring to transfer funds to U.S. banks with the intent to promote the illegal export of services to Iran
    - Conspiracy to defraud the U.S. – Accused of impairing, impeding, and obstructing the lawful and legitimate functions and operations of OFAC
  - On October 17, 2016, the Court denied Zarrab's motion to dismiss, finding that the Indictment set forth the elements to prove each count against Zarrab and that the U.S. nexus was sufficient
  - Zarrab pleaded guilty to bank fraud; money laundering; and conspiracy to defraud the U.S., violate IEEPA, and commit bank fraud and money laundering; Atilla was found guilty of the same crimes except for money laundering

# Recent Enforcement Trends and Developments

## SANCTIONS ENFORCEMENT ACTIONS (CONT.)

### DOJ sanctions enforcement actions against individuals (cont.)

- *United States v. Tajideen*, No. 17-cr-00046 (D.D.C.)
  - DOJ accused Tajideen of conspiring to evade U.S. sanctions by concealing his effective control of companies, despite having less than 50% ownership
  - Tajideen is also charged with money laundering through purposefully concealing his association with certain companies
  - Tajideen is currently awaiting trial while the court is deciding a number of pre-trial motions
- *United States v. Ali Sadr Hashemi Nejad*, No. 18-cr-224 (S.D.N.Y.)
  - Sadr is accused of concealing his interest in corporate entities in connection with receiving \$115 million in payments through U.S. banks for a Venezuelan housing project for the benefit of Iranian parties
  - Sadr is charged with money laundering, evading sanctions, and bank fraud
- *United States v. Zong*, No. 16-cr-00142 (D. Alaska)
  - On December 14, 2016, 47-count indictment against Kenneth Zong for alleged scheme to move approximately \$1 billion in restricted Iranian funds out of South Korea to Iranian recipients
  - Zong is awaiting trial, and his son was indicted earlier this year on one count of conspiracy to commit money laundering

# Recent Enforcement Trends and Developments

## SANCTIONS ENFORCEMENT ACTIONS (CONT.)

### **U.S. officials have signaled a focus on Asia, including mainland China and Hong Kong, in the U.S. effort to enforce North Korean sanctions**

- High-profile cases in 2017 (CSE Transtel, ZTE)
- Other recent enforcement actions targeting Asian entities include:
  - Designations by OFAC of Chinese, Taiwanese, and Singaporean entities relating to North Korean sanctions
  - 2016 criminal action by DOJ against Chinese trading company Dandong Hongciang Industrial Development and four individuals for evading U.S. sanctions against North Korea and related sanctions by OFAC
  - 2017 action by FinCEN against Bank of Dandong, finding that the bank acted as a conduit for North Korean access to the U.S. financial system and designating the bank an institution of “primary money laundering concern”
  - 2017 and 2018 DOJ civil forfeiture actions against Velmur Management Pte. Ltd., Mingzheng International Trading Ltd., and Dangdong Chengtai Trading Ltd.
- Treasury Department’s Under-Secretary for Terrorism and Financial Intelligence Sigal Mandelker recently stressed expectation of “100% implementation of sanctions against North Korea” by Asian counterparts

**In addition, in April 2018, WSJ reported that DOJ was investigating Chinese telecommunications company Huawei Technologies for Iranian sanctions violations**

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# Recent Enforcement Trends and Developments

## AML ENFORCEMENT

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### Federal agencies and BSA/AML compliance

- Rabobank
  - Maintained a list of customers for whom no transaction review was undertaken, even when transactions generated internal alerts or the customers' activity had changed since initial placement on the list
  - In February 2018, pleaded guilty to conspiracy to defraud the U.S. by impeding the OCC's investigation
  - Ordered to forfeit over \$350 million
  - Agencies involved: DOJ, OCC
- U.S. Bank
  - Transaction monitoring systems capped the number of alerts that were subject to further compliance review; caps were based on staffing resources, not on AML risks
    - When tested transactions that fell below alert limits, realized high proportion of transactions were suspicious; instead of lowering alert thresholds, the company stopped testing
  - Failed to file SARs on high-profile customer, despite red flags
  - In February 2018, entered into a DPA with DOJ and settled with multiple other agencies
  - Agreed to forfeit \$528 million and to pay additional monetary penalties
  - Agencies involved: DOJ, OCC, FinCEN, Federal Reserve

# Recent Enforcement Trends and Developments

## AML ENFORCEMENT (CONT.)

### Federal agencies and BSA/AML compliance (cont.)

- **Mega Bank:** In January 2018, the Federal Reserve imposed a \$29 million penalty after finding “significant deficiencies” in Taiwanese Mega Bank’s AML and bank secrecy controls
  - Previously in 2016, DFS had imposed a \$180 million penalty for violating NY AML laws, in particular suspicious transactions between Mega Bank’s New York and Panama branches
- **Citibank, NA:** In January 2018, the OCC imposed a \$70 million monetary penalty on Citibank for failing to comply with the agency’s 2012 consent order related to BSA/AML deficiencies
- **Industrial and Commercial Bank of China (“ICBC”):** In March 2018, the Federal Reserve required ICBC within 60 days to propose a written plan for strengthening its AML policies and within 30 days to hire an independent party to do a lookback
- **Bank of China (“BOC”):** In March 2018, BOC paid a \$12 million civil monetary penalty to the OCC for a number of BSA/AML violations resulting from “systemic deficiencies” in various aspects of its compliance program
- **ICBC Financial Services (“ICBCFS”):** In May 2018, ICBCFS paid a \$5.3 million civil penalty to FINRA and the SEC for deficient transaction monitoring systems and failure to report suspicious transactions
- The OCC also entered Consent Orders this year with Washington Federal and UBS for deficiencies related to BSA/AML compliance

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# Recent Enforcement Trends and Developments

## AML ENFORCEMENT (CONT.)

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### **New York State Department of Financial Services Enforcement of AML/BSA compliance**

- **Habib Bank**
  - In September 2017, DFS brought action for alleged AML and terrorist financing violations, in addition to failing to comply with a 2015 consent order
  - Habib Bank surrendered its license and wound down its New York branch
- **Bank of Tokyo Mitsubishi (“BTMU”)**
  - From 2014 to 2017, DFS was investigating alleged AML compliance failures and BTMU’s compliance with two prior consent orders with DFS in 2013 and 2014
  - In November 2017, BTMU applied for and was granted a federal charter issued by the OCC
  - BTMU subsequently sued DFS for its attempt to exercise jurisdiction over BTMU, arguing DFS no longer had jurisdiction over BTMU
  - Case is pending in the Southern District of New York

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# Recent Enforcement Trends and Developments

## AML ENFORCEMENT (CONT.)

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### Actions brought against individuals for institutional failures in compliance

- In December 2017, DOJ entered into a DPA with the Vice President and AML Investigations Manager of Rabobank
  - Individuals allegedly implemented policies and procedures that “precluded and/or suppressed” investigation into potentially suspicious transactions (*United States v. Martin*, 17-cr-4232 (S.D. Cal.))
- In March and June 2018, OCC brought actions against various executives at both Merchants Bank (including the CEO) and the Gibraltar Private Bank & Trust Company
- The SEC has also focused on individual liability for failures to file SARs, with two actions so far in 2018
  - Compliance officer alleged to have failed to file SARs when he knew of numerous red flags and did not investigate why systems failed to discover suspicious activity (*Kevin McKenna and Robert Eide*, Admin. Proc. File No. 3-18413)
  - CCO and AML officer alleged to have failed to investigate red flags and file SARs after bank’s clearing firm raised concerns about transactions (*Jerard Basmagy*, Admin. Proc. File No. 3-18487)

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# Recent Enforcement Trends and Developments

## AML ENFORCEMENT (CONT.)

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### Focus on digital currencies

- FBI says 75% of its AML cases involve digital currencies (e.g., Bitcoin).
- FinCEN brought action against a virtual currency exchange (BTC-e)
  - FinCEN alleged BTC-e lacked basic controls to prevent the use of its services for illicit purposes
  - As a result, BTC-e maintained a criminal customer base that concealed and laundered proceeds from crimes, none of which were reported to FinCEN or law enforcement as required under the BSA

# Recent Enforcement Trends and Developments

## CREDITING

### Crediting in multi-agency resolutions

- Recent speeches by Deputy Attorney General Rod Rosenstein, among others in DOJ leadership, have emphasized the importance of crediting
- On May 9, 2018, DAG Rosenstein announced a new policy, incorporated into the U.S. Attorneys' Manual, that encourages DOJ personnel to consider “piling on” issues when entering into multi-agency resolutions and to coordinate with other agencies
- In two large multi-agency cases in 2018, DOJ credited amounts paid to other agencies
  - Rabobank – DOJ credited up to \$50 million paid to the OCC
  - U.S. Bank – DOJ credited up to \$75 million paid to the OCC
- The Federal Reserve, FDIC, and OCC also recently announced a commitment to coordinating on penalties in multi-agency resolutions

*If two or more [agencies] consider bringing a complementary action (e.g., action involving a bank and its parent holding company), those [agencies] should coordinate . . . potential penalties . . . of the enforcement action.*

– FFIEC Policy Statement on Interagency Notification of Formal Enforcement Action, June 12, 2018

# Recent Enforcement Trends and Developments

## FORFEITURE

- In sanctions cases, civil forfeiture can apply to property that is or is derived from **proceeds traceable** to certain violations (18 U.S.C. § 981(a)(1)(C))
- In AML cases, civil forfeiture can apply to property **involved in** transactions or attempted transactions in violation of money laundering statutes, or any **property traceable** to such property (18 U.S.C. § 981(a)(1)(A))
- Large forfeiture actions related to alleged sanctions violations (*In re 650 Fifth Avenue*) and AML violations (*Rabobank, U.S. Bank, 1MDB*)
- U.S. Supreme Court's 2017 decision in *Honeycutt v. United States*, holding that forfeiture pursuant to 21 U.S.C. § 853(a)(1) (relating to certain drug crimes) was limited to property the defendant actually acquired (i.e., the government cannot rely on a joint and several liability theory)
  - DOJ has conceded that principles of *Honeycutt* apply to forfeiture in sanctions cases
- Forfeiture actions of non-U.S. assets through U.S. correspondent accounts
  - USA PATRIOT Act Section 319

# Questions



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# For the Interested Reader

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- July 2017 Webcast: U.S. Sanctions and AML Regulation
  - <https://www.davispolk.com/publications/webcast-us-sanctions-and-aml-regulation>
- Davis Polk's Resource for Financial Regulatory Reform:
  - <http://www.finregreform.com/>
- Related Client Memoranda and Publications
  - U.S. Justice Department's Extraterritorial Tools for Sanctions Enforcement: What Chinese Banks and Companies Should Know About Overseas Subpoenas and Asset Seizures (July 10, 2018), <https://www.davispolk.com/files/2018-07-10-what-chinese-banks-and-companies-should-know-about-doj-overseas.pdf>
  - Federal Banking Agencies' New Policy on Coordinating Enforcement Actions Is an Important First Step (June 20, 2018) <https://www.finregreform.com/single-post/2018/06/20/federal-banking-agencies-new-policy-coordinating-enforcement-actions-important-first-step/>
  - Deputy Attorney General Rosenstein Announces New Policy to Avoid "Piling On" in Corporate Enforcement Actions (May 11, 2018), [https://www.davispolk.com/files/2018-05-11\\_deputy\\_attorney\\_general\\_rosenstein\\_announces\\_new\\_policy\\_to\\_avoid\\_piling\\_on\\_in\\_corporate\\_enforcement\\_actions\\_0.pdf](https://www.davispolk.com/files/2018-05-11_deputy_attorney_general_rosenstein_announces_new_policy_to_avoid_piling_on_in_corporate_enforcement_actions_0.pdf)
  - President Trump Withdraws from Iran Deal, U.S. Sanctions to "Snap Back" After Limited Wind-down Period (May 9, 2018), [https://www.davispolk.com/files/2018-05-09\\_president\\_trump\\_withdraws\\_from\\_iran\\_deal.pdf](https://www.davispolk.com/files/2018-05-09_president_trump_withdraws_from_iran_deal.pdf)

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# For the Interested Reader

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- Related Client Memoranda (cont.)
  - SEC Pursues Compliance Officers at Broker-Dealer for Aiding and Abetting AML Violations (Apr. 27, 2018), [https://www.davispolk.com/files/2018-04-27\\_sec\\_pursues\\_compliance\\_officers\\_at\\_broker\\_dealer\\_for\\_aiding\\_and\\_abetting\\_aml\\_violations.pdf](https://www.davispolk.com/files/2018-04-27_sec_pursues_compliance_officers_at_broker_dealer_for_aiding_and_abetting_aml_violations.pdf)
  - Latest U.S. Sanctions Developments Show Focus on Mainland China and Hong Kong (Feb. 23, 2018), [https://www.davispolk.com/files/2018-02-23\\_latest\\_u.s.\\_sanctions\\_developments\\_show\\_focus\\_mainland\\_china\\_hong\\_kong.pdf](https://www.davispolk.com/files/2018-02-23_latest_u.s._sanctions_developments_show_focus_mainland_china_hong_kong.pdf)
  - President Trump “Decertifies” the Iran Deal – What Happens Next? (Oct. 16, 2017), [https://www.davispolk.com/files/2017-10-16\\_president\\_trump\\_decertifies\\_the\\_iran\\_deal\\_what\\_happens\\_next.pdf](https://www.davispolk.com/files/2017-10-16_president_trump_decertifies_the_iran_deal_what_happens_next.pdf)
  - The Countering America’s Adversaries Through Sanctions Act Becomes Law (Aug. 4, 2017), [https://www.davispolk.com/files/2017-08-07\\_the\\_countering\\_americas\\_adversaries\\_through\\_sanctions\\_act\\_becomes\\_law.pdf](https://www.davispolk.com/files/2017-08-07_the_countering_americas_adversaries_through_sanctions_act_becomes_law.pdf)