Financial Crimes Enforcement Network
Policy Division
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ATTN: RIN 1506-AB50 Docket Number FINCEN-2021-0006

Sir or Madam:

This is a response to the September 23, 2021 Advanced Notice of Proposed Rulemaking (ANPRM 1506-AB50) by the Financial Crimes Enforcement Network (FinCEN), which is seeking to implement Section 6110 of the Anti-Money Laundering Act of 2020, which became law on January 1, 2021. Section 6110 of the AML Act amended the BSA by including as a type of financial institution a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities. Section 6110 requires the Secretary of the Treasury to issue proposed rules to carry out the amendment. This work affirms FinCEN's support of The Department of the Treasury's "Strategic Plan for Fiscal Years 2018-2022" to fulfill its mission to enhance the integrity of financial systems by facilitating the detection and deterrence of financial crimes. Specifically, FinCEN supports Treasury Goal 3: Enhance National Security, including Strategic Objective 3.1 (Strategic Threat Disruption) and Strategic Objective 3.2 (Anti-Money Laundering and Combating Financing of Terrorism Framework).[1]

This letter commenting on the range of questions related to the implementation of amendments to the Bank Secrecy Act (BSA) regarding the trade in antiquities presented in ANPRM 1506-AB50 is submitted on behalf of the Antiquities Coalition.

The Antiquities Coalition unites a diverse group of experts in the fight against the illicit trade in ancient art and artifacts. In addition to championing better law, policy, and digital infrastructure, the AC fosters diplomatic cooperation and advances proven solutions with public and private partners worldwide, including the U.S. and foreign governments, law enforcement, archaeologists and the art and antiquities market and museum leaders.

We appreciate the opportunity afforded by the Treasury Department to submit these comments. We are committed to work with the Treasury Department and other law enforcement agencies to ensure that the American art and antiquities market is no longer vulnerable to a wide range of financial crimes. The goal of implementing programs to detect and prevent such efforts is one in which we are eager to join.

[1] U.S. Treasury, FinCEN's Strategic Plan, FinCEN (2020), https://www.fincen.gov/index.php/about/fincens-strategic-plan.

The $21.3 billion American art and antiquities market is the largest unregulated market in the world, making it vulnerable to a wide range of financial crimes. This ongoing exemption from standard laws and oversight, which now cover all industries of comparable risk and size, is a documented and growing threat to our national security and integrity, as well as the vast majority of legitimate collectors, dealers, auction houses, and museums. This is evidenced most recently by the "Pandora Papers," published this month by the *Washington Post* and *International Consortium of Investigative Journalists,* which revealed how indicted antiquities trafficker Douglas Latchford used offshore accounts to hide and launder millions of dollars in proceeds from his decades of criminal activities.

Unless and until the U.S. public and private sectors close the loopholes that enabled Latchford and others, they will leave wide open the world's biggest economy to money launderers, artifact traffickers, drug smugglers, kleptocrats, oligarchs, terrorists, and the many other criminals proven to have exploited the art and antiquities market's weaknesses. At a minimum, FinCEN should mirror the regulations in other major market countries, to ensure that incommensurate regulations don't present loopholes for bad actors to take advantage of the U.S. financial system.

The challenge of implementation to achieve the goals of the regulations is substantial, and must propose a system that is generally applicable to a wide array of business models.

We are filing these comments in an attempt to provide additional information to FinCEN on its well-founded mission to improve the AML infrastructure – created over 35 years ago with a patchwork of laws and regulations and until now, with no real comprehensive attempt to consider necessary modifications. Our nation's AML infrastructure is strengthened by efforts such as these, which serve its ultimate purpose: to get useful information into the hands of law enforcement, quickly and efficiently. We have provided answers to the questions for which we have the most expertise, and hope that these answers and recommendations will help to cement America's standing as a leader in the fight against financial crimes.

A. The Antiquities Market

1. Please identify and describe the roles, responsibilities, and activities of persons engaged in the trade in antiquities, including, but not limited to, advisors, consultants, dealers, agents, intermediaries, or any other person who engages as a business in the solicitation or the sale of antiquities. Are there commonly understood definitions of particular roles within the industry? Who would be considered within or outside such definitions?

FinCEN must carefully consider the implications of who might be included under any proposed definitions and ensure that the parties that have access to information that can be used to perform due diligence are covered.

The UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019 avoided defining each and every role, and instead chose to apply the regulations to "art

market participants." An art market participant (AMP) is defined in the ML Regulations as "a firm or sole practitioner who (i) by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or (ii) is the operator of a freeport when it, or any other firm or sole practitioner, by way of business stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more." This has widely been understood to include intermediaries such as consultants, advisors, and agents, but left up for interpretation whether it included people such as lawyers or accountants.

In applying similar legislation to the precious metals and jewellery industries, FinCEN recognized that the industry was characterised by businesses of multiple sizes and capacities — much like the art and antiquities market. In 31 CFR § 1027.100(b), "Dealer" is defined as "a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year: (i) Purchased more than $50,000 in covered goods; and (ii) Received more than $50,000 in gross proceeds from the sale of covered goods." Such a definition does away with nitpicking over the details of the type of person or entity engaged in the market, and focuses instead on property being exchanged, "covered goods." If FinCEN were to follow this route, it would be possible to create a definition of "covered goods" that encompasses both art and antiquities — a topic we explain further in our answer to question 10 below.

Most importantly, whatever the terms used, they must be sure to involve any parties that have a large amount of information that can be used to perform due diligence.

4. What, if any, information does a buyer typically learn about the seller, cosigner, or intermediary involved in the sale of antiquities? When a seller, cosigner, or intermediary offers an item for sale, why might a person involved in the antiquities trade withhold the name of the seller, consigner, or intermediary from the buyer? What, if any, business purpose does this serve? Should the buyer have the right to learn this information to determine whether the provenance of an item is legitimate? Why or why not?

Despite the lack of any requirement to do so here, any dealer operating in the EU or UK must already perform a high level of customer due diligence and data collection in order to remain in compliance with AML requirements. Requiring the collection of such information here in the United States would only mirror the requirements to transact in the other major art and antiquities markets globally.

Discretion and privacy are a desirable feature of the art and antiquities market — for individuals seeking to keep their transactions, wealth, and hobbies private — and for

those who want to launder money. There are perfectly legitimate reasons to desire such privacy and discretion, such as personal and property security risks. Such practices shouldn't be assumed to be polite excuses for money laundering — most art and antiquities market actors are not actively trying to commit financial crimes. But the market is being used to conduct these crimes with astonishing sums of money, with increasing frequency. What was once a courtesy to the customer is now a liability.

Businesses operating internationally must already perform this customer due diligence and data collection in compliance with the EU's Fifth AntiMoney Laundering Directive and the UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019. FinCEN should impose beneficial ownership requirements in accordance with FATF, the EU's Fifth Anti-Money Laundering Directive (5AMLD), and the UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019. FATF has published best practices that clearly differentiate between basic ownership information (about the immediate legal owners of a company or trust), and beneficial ownership information (about the natural person(s) who ultimately own or control it). They also clarify that having accurate and up-to-date basic information about a legal person or legal arrangement is a fundamental prerequisite for identifying the ultimate beneficial owners, and require international cooperation in relation to ownership information. 5AMLD and the UK's regulations build upon this, and require that EU Member States allow access to beneficial ownership details on corporate and other entities in a coordinated manner. To balance the need for a public register with confidentiality and data protection rules, 5AMLD requires that the information available on the public register be specific and limited.

In the United States, there is no central register of publicly available information regarding business ownership. Certificates of ownership may merely give the name of the organizer, not who controls the funds, therefore business's client identification records must include details of the beneficial owner. Businesses should keep records of a client's identification for at least 5 years following the completion of a transaction, or until the end of the business relationship. In the interest of data protection laws and privacy, the buyer should be advised that they will need to voluntarily supply Know Your Customer (KYC) information and this information will be verified in a due diligence process. As when one opens a bank account, consent is given, and failing to comply or providing non-verifiable information prevents the account from being opened.

7. What are the money laundering, terrorist financing, sanctions, or other illicit financial activities risks associated with the trade in antiquities? What is the industry experience with money laundering, terrorist financing, and other illicit financial activity? Which parts of the market are most vulnerable to these risks? In which geographical locations do those

vulnerabilities tend to take place? Are there certain types of persons engaged in the trade in antiquities whose activities present lower money laundering, terrorist financing, and other illicit financing risks and for whom the application of BSA requirements is less critical? Are there certain types of persons engaged in the trade in antiquities whose activities present greater money laundering, terrorist financing, and other illicit financing risks and for whom the application of BSA requirements is more critical?

The risks of money laundering and terror finance, avoidance of sanctions, and other illicit financial crimes are very high with antiquities due to the historical lack of regulatory oversight in the trade. Because of the lack of oversight, the antiquities sector provides a target rich environment for illicit actors, with issues such as built-in anonymity and masking of beneficial ownership, ineffective protection of artifacts at archeological sites in high-risk countries, counterfeits and forgeries, fraudulent provenance and use of social media in suspect transactions.

The cultural objects involved span geography and history, from Mesopotamian relics and Egyptian mummies to Monets, Van Goghs, Dalis, and Picassos, as well as countless fakes and forgeries. Sometimes these antiquities and artworks are central to the crimes themselves, but just as often, they are tools to launder the proceeds of artifact trafficking, drug smuggling, embezzlement, corruption, or other crimes. The criminals responsible include small-time crooks, infamous kleptocrats, white-collar embezzlers, and ISIS jihadists. However, they are rarely dedicated collectors or professionals from the market, but rather bad actors seeking to exploit the sector's weakness. As a result, the industry has responded that the bad actors are far outnumbered by legitimate actors. Even if this were true, the scale of the art and antiquities market, and the enormous sums of money involved in even a single transaction, can make one 'bad apple spoil the bunch.' The lack of data and case studies is not an indication that the problem does not exist. In the absence of obligations to provide information to law enforcement, it is simply impossible to know the size of the problem: without reporting requirements, SARs, and KYC protocols, the relevant data not being collected.

Da'esh has made front page headlines for its pillage of the Cradle of Civilization, but the threat goes far beyond Iraq and Syria. International experts continue to warn that antiquities looting and trafficking is funding Da'esh in Libya, Al Qaeda and the Houthi militias in Yemen, and, farther afield, the Taliban in Afghanistan. These terrorist threats persist into the Maghreb, given the 2011 resurgence of radical Islamists groups in Mali up into the Sahel region. According to the 2020 Global Terrorism Index, three of the five Maghreb countries have experienced an intensification of terrorist activity over the last 20 years.[2] As in the Middle East, cultural racketeering can play a key role in terrorist

[2] Vision of Humanity, 2020 Global Terrorism Index, Vision of Humanity (2020), https://www.visionofhumanity.org/maps/global-terrorism-index/#/.

financing in the region. Moreover, this terrorist financing often goes hand-in-hand with money laundering and other financial crimes, to which the art and antiquities market is also particularly vulnerable. Art and antiquities market leaders, the banking industry, and governments have increasingly recognized the growing risks from this criminal activity, calling for strengthened best practices and legislation to fight back while better protecting legitimate collectors, museums, and market actors. During the summer of 2020, a U.S. congressional report detailed how Russian oligarchs used the largely unregulated art and antiquities market to evade sanctions by moving money through shell corporations and investing it in artworks. In the words of Senator Tom Carper, who led the Congressional investigation with Senator Rob Portman, the case illustrates that "criminals, terrorists and wealthy Russian oligarchs like the Rotenbergs are able to use an unregulated art industry […] to hide assets, launder funds, and evade sanctions. Unfortunately, our failure to close these obvious loopholes make U.S. sanctions—an important national security tool—far less effective than they could be." In October of 2021, the ICIJ-led investigation into The Pandora Papers revealed that the late antiquities dealer Douglas Latchford used offshore trusts to sell looted Cambodian art. The United States is in a unique position to make a difference, as it remains the world's largest art and antiquities market, making up 42% of the global total.

The Treasury Department should 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. In the sanctions context, having access to beneficial ownership information would enable OFAC to evaluate entities' ties to Specially Designated Nationals (SDNs). If an entity is majority owned by an SDN, U.S. persons would be prohibited from doing business with it under OFAC's 50 Percent Rule, which states that an entity owned 50 percent or more by an SDN is itself considered blocked.[3] This would place pressure on art and antiquities buyers, sellers, and intermediaries such as auction houses, galleries, and advisors, to conduct more effective due diligence on their business transactions – including determining who the ultimate beneficial owner (UBO) of a company or particular artwork or antiquity – to ensure that those transactions will not violate sanctions.

The market's weaknesses are many. Global sales of art and antiquities in 2019 totaled $64.1 billion, and even with the impacts of COVID-19, auctions in 2020 and 2021

[3] 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. Office of Foreign Assets Control, Sanctions Programs and Information, United States Department of the Treasury, https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

continue to break records. That high dollar value alone makes the market attractive to criminals, but additional factors contribute, including its longstanding culture of discretion, as well as the unique nature of antiquities. After all, artworks and antiquities do not carry anything like a Vehicle Identification Number or "VIN" — most are easily moved across borders and through customs, and they are notoriously difficult to price.

We must help the market build and maintain a secure and legal marketplace. This can be done by engaging in stricter AML protocols, by gathering and verifying client identities, disclosing beneficial ownership, and sharing that information with others so red flags can be spotted. Additionally, the financial industry needs to develop awareness of financial crimes in the art and antiquities market, develop risk matrices, and in general engage more closely with the market to better understand the unique risks. International cooperation and consistent compliance structures are essential in closing loopholes in the art and antiquities market worldwide to ensure that the global trade can continue, safely.

8. Which participants involved in the trade in antiquities are in positions in which they can effectively identify and guard against money laundering, the financing of terrorism, and other illicit financing risks in connection with the transactions they conduct? For example, do these participants have access to information regarding the nature and purpose of the transactions at issue and the participants' involvement in completion of the transactions?

Dealers, especially auction houses and financial institutions, already have much of the information law enforcement and the Treasury need to identify and prevent financial crimes in the art and antiquities market — or can easily obtain it. Market actors should identify and verify clients as part of effective customer due diligence. This should include a form of identification, as well as details of beneficial owners and controllers for cultural objects and legal entities alike. Due to the industry standard of discretion, some dealers may feel it is impossible to ask a client accustomed to this discretion to voluntarily disclose identifying information. Dealers must choose between voluntarily performing customer due diligence and potentially losing a client, or maintaining the status quo and gathering little to no information on their client. By making this a legal requirement, dealers are empowered to perform customer due diligence without risking insulting a client.

The perceived lack of beneficial ownership information on high-end buyers played a key part in the Senate's critique of money-laundering risk in the art market. Unfortunately, a confidential registry of beneficial ownership data maintained by FinCEN will not necessarily redress this concern. Such a database will be available to financial institutions if, and only if, the customer of the institution consents. This limitation may make it difficult for antiquities traders, and impossible for art dealers, to use the registry to facilitate AML due diligence.

On the other hand, the mere existence of this requirement may be enough to deter some bad actors. Similar regulations in the UK have faced scrutiny as both buyers and sellers have sought to evade detection by listing intermediaries as the ultimate beneficial owner.

9. What, if any, safeguards does the industry currently have in place to protect against business loss and fraud? For example, how, if at all, do market participants currently identify and verify the identity of the buyer, seller, or ultimate beneficial owner of an antiquity to guard against money laundering, terrorist financing, or other illicit financial activity? To what extent do market participants conduct due diligence on agents and other intermediaries involved in purchases and sales of antiquities? To what extent do safeguards vary depending on the size, nature of the transactions, and whether the transaction involves foreign jurisdictions? To what extent are the safeguards voluntary or required by contractual arrangements, trade associations, or other forms of industry self-regulation? Could these safeguards be leveraged and modified to detect and prevent money laundering, terrorist financing, and other illicit financial activities, or to better detect and prevent such activities?

As discussed in our answer to question 8, the art and antiquities market's best practices are already demanding much of what the new law will require, if not more. However, until it is required, those who do the right thing and voluntarily collect this information risk being punished — by giving off the impression that they do not trust their customers, they risk losing business. The Rotenberg case further proves that these best practices and internal AML policies are not being enforced, not even by major auction houses like Sotheby's, as do recent revelations in the Pandora Papers. The existing best practices and guidelines are very strong, but lack of enforcement means there is every incentive not to follow them. Market leaders have acknowledged that this is a problem; the Responsible Art Market (RAM) Initiative, out of Geneva, provides a gold standard. Led by the market itself, RAM is working to raise awareness of risks facing their sector, as well as to provide practical guidance for meeting them head on. In making this a legal requirement, participants in the art and antiquities market are empowered to ensure that they are not unwittingly facilitating financial crimes.

B. Regulation of the Industry

10. How should "antiquities" be defined for the purposes of FinCEN's regulations? Should jurisdictional or territorial considerations be taken into account when determining how antiquities should be defined (e.g., foreign cultural heritage laws)?

We strongly believe that separately defining and regulating "art" and "antiquities" creates more problems than it solves.

Defining "antiquities" is difficult, primarily because the difference between an antiquity and a work of art falls in the eye of the beholder. Indeed, it can be true that an object is as

much an antiquity as it is a work of art. Dealers in art may also deal in antiquities and vice-versa, and often when dealing with aged or ancient art, the terms are used interchangeably. An ancient Roman statue is as much an archaeological artifact as it is an artwork, and is equally appropriate to find in the collections of an art museum as an archaeological park. Additionally, unequal regulations on art and antiquities will be incredibly burdensome and confusing for market participants who deal in both to meet; regulations must be as consistent as possible. As such, we have suggested that FinCEN consider regulating both art and antiquities as "cultural property," and concern themselves less with the definition of 'art' and 'antiquity' and instead devote attention to the regulations that will most benefit these markets. In keeping with this, we point to the definition of "cultural property" in the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which very wisely does not try to make a differentiation between art and antiquity and considers both (among many other things) under the scope of the definition of "cultural property." Similarly, the IRS has defined a qualified work of art as "any archaeological, historic, or creative tangible personal property" (26 USC § 2503(g)(2)) — this definition, while less useful for academics, would work for AML purposes.

FinCEN grappled with similar issues when applying the BSA to the precious metals and jewellery industries, and the solution was to apply the rule to "covered goods" which was given an encompassing definition that contemplated the many materials and goods that can be exchanged by these businesses.[4] It would be possible for FinCEN to create a similar definition of "covered goods" for the art and antiquities market.

However, should FinCEN proceed with the current intent to propose separate regulations on the antiquities and art markets and therefore require a definition for "antiquity," it is important that FinCEN be consistent with international AML and CFT definitions, particularly those in major markets like the European Union, to ensure consistent compliance structures across major markets. The EU's Cultural Commission on Taxation and Customs defines cultural goods as items that countries believe have "artistic, historical, or archaeological value, and which belong to the country's national cultural heritage;" the cultural goods cut off is 250 years or older.[5]

11. How is an antiquity distinct from a work of art?

While we maintain that the distinction between an antiquity and a work of art is arbitrary and circumstantial, we do recognize that insofar as Contemporary Art is concerned, it

[4] "Covered goods" include jewels, precious metals, and precious stones, and finished goods (including but not limited to, jewelry, numismatic items, and antiques) that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods. 31 CFR § 1027.100(a).
[5] EU Cultural Commission: https://ec.europa.eu/taxation_customs/business/customs-controls/cultural-goods_en

must be recognized that the Contemporary Art market is far less concerned with questions of provenance than Modern Art or than antique or ancient art, because the provenance history of a work from the time of its creation to present is so short, not easily obfuscated, and generally widely known.[6] Additionally, dealers in Contemporary Art's primary incentive is to protect artists and ensure long-term acceptance of that artist and their work.[7] As such, provenance standards must contemplate the different needs and concerns of these markets, while requiring publication of provenance so as to eliminate the issues of incomplete or falsified provenance histories in the future.

12. How should "trade of antiquities" be defined for the purposes of FinCEN's regulations? Should FinCEN distinguish between the commercial, for-profit trade of antiquities and non-commercial, not-for-profit activity? If so, how?

It is important to include not-for-profit institutions given recent scandals that have shown that museums are at risk of unknowingly being involved in suspect transactions. There is little need to distinguish between commercial, for-profit trade and not-for-profit trade of art and antiquities. Any non-profit or non-commercial engagement in the trade of antiquities and art — for example, for a museum collection — is still engaging in the for-profit trade, unless it is purely cultural exchange. Transactions may be financial even if currency is not exchanged. Individuals may use donations to museums for tax-write offs. Indeed, the curator Jiri Frel at the Getty Museum conducted one of the largest tax fraud schemes in American museum history by working alongside antiquities trafficker Robert Hecht to arrange for Hollywood elites to donate objects in exchange for a tax-write off at an inflated value based on appraisals forged by Jiri Frel.

13. Are there any other terms that FinCEN should consider addressing and defining as part of a rulemaking on the trade in antiquities? If so, what are those terms, why should they be addressed, and how should they be defined?

Online Marketplaces are a major global venue for art and antiquities market transactions and are vulnerable to money laundering.[8] "Online marketplaces" includes websites such as eBay, Amazon, craigslist, and etsy, as well as Facebook, Instagram, and WhatsApp where transactions take place in direct messages, using ancillary services like PayPal to complete the transaction. Online marketplaces have unique challenges.

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[6] Google Arts and Culture, "What's the Difference Between Modern and Contemporary Art?" https://artsandculture.google.com/story/what-s-the-difference-between-modern-and-contemporary-art/vwKiW17vbvl3JA

[7] A dealer in Contemporary Art will want to decrease the rate of exchange of an artist's work on secondary markets; if a work changes ownership frequently, the implication is that it is a low-value work. The dealer wants to protect the pricing and value of an artist, therefore, a short provenance history is important. To ensure this, dealers must perform adequate due diligence and ensure a work will not exchange hands frequently — not out of concern for money laundering, but out of concern for protecting their investment in an artist. As a result of these interests, gallerists are intensely involved in secondary markets; sometimes they will buy back works in order to preserve the pricing.

[8] According to Art Fraud Insights, Ebay's arts & antiques category transacts over half a billion dollars annually.

Online marketplaces should authenticate all sellers and buyers, requiring proof of identity before any high-value transaction ("pre-registration"), and keep these records of their client's identification securely. Additionally, like all market players, online platforms should perform effective vetting and due diligence, including following appropriate Know-Your-Customer (KYC) protocols for customers and clients. Like art and antiquities dealers, galleries, and auction houses, online marketplaces will need to confirm at certain value levels with whom they do business, performing effective customer due diligence.

Online marketplaces have the unique ability to verify client identities and check for suspicious activity well before a transaction takes place, and may prohibit anyone from transacting on their marketplace in advance of those actors listing, selling, or buying. These actions will determine that the clients are not sanctioned individuals, and enable businesses to keep records of their clients identification. This is similar to the EU's 5th anti-money laundering directive, which requires that dealers participating in transactions of €10,000 verify client identities, check for suspicious activity, and keep secure records. As online marketplaces are not selling their own goods and services, and are thus particularly vulnerable to a wide range of financial crimes, they should follow effective vetting and due diligence with regard to those selling on their marketplaces and Know-Your-Customer protocols for customers and clients as applicable.

14. Should FinCEN establish a monetary threshold for activities involving trade in antiquities that would subject persons involved in such activities above that threshold to FinCEN's regulations, but exempt persons whose activities fall below that threshold? What is an appropriate dollar value for such a threshold and should it be set as an annual or per-transaction threshold? Should there be a different threshold—including potentially a zero-dollar threshold—for legal entities as opposed to natural persons?

At the very least, the U.S. must aim for consistency with other market countries. The 2018 5th Anti-Money Laundering Directive of the European Union required dealers for art transactions of €10,000 or more to comply with anti-money laundering regulations, including verifying the seller, buyer, and ultimate beneficial owner (which, as the name suggests, refers to the person or persons who ultimately benefit from a piece's sale). The United Kingdom and Switzerland now have similar requirements. If the U.S. government does not take similar action, we run the risk of our own art and antiquities market becoming a safe haven for financial criminals.

15. Should there be any other exemptions for categories or types of persons engaged in the trade of antiquities beyond the consideration of a monetary threshold?

FinCEN must be mindful that small business owners do not have the capacity to meet stringent AML and KYC requirements that larger businesses may meet with ease. Larger businesses dealing in antiquities often already have voluntary AML programs in place;

implementing the forthcoming rules will be far easier for such entities than for a smaller business owned and operated by one or two individuals. As such, any rulemaking must consider the capacity of dealers and market stakeholders; it must not be overly burdensome for a small or medium business. If the cost of compliance is too high, it may lead certain transactions further underground.

16. Which aspects of the current regulatory framework applicable to financial institutions should apply to persons engaged in the trade in antiquities?

b. How could know-your-customer requirements, such as customer due diligence or customer identification programs, apply in the transaction process in the trade in antiquities? What would be the effect on industry of imposing customer verification and identification requirements on sellers, purchasers, and others involved in the trade in antiquities? How would the application of know-your-customer requirements to this industry assist in preventing money laundering, terrorist financing, and other illicit financial activity?

Art industry leaders have called for, and many have implemented, measures similar to those that will be contemplated by FinCEN. The position of Sullivan & Worcester, a leading law firm representing artists, museums, and market actors, is that proposed language would "impose on art dealers the kind of know your customer (KYC) that banks take for granted, and which honestly should already be part of a prudent business' intake process."[9] Put another way, it would protect dealers from unknowingly facilitating crimes, and they should be doing what the law requires under their own codes and practices. These guidelines have greatly evolved in recent years. The Responsible Art Market (RAM) Initiative, out of Geneva, provides a gold standard. Led by the market itself, RAM is working to raise awareness of risks facing their sector, as well as to provide practical guidance for meeting them head on.

c. What, if any, difficulties are associated with requiring the disclosure of or otherwise obtaining beneficial ownership information for legal entities engaged in the trade of antiquities, including foreign legal entities that may be outside the scope of current or future U.S. beneficial ownership reporting requirements?

Art and antiquities market actors should identify and verify clients as part of effective customer due diligence. This should include a form of identification, as well as details of beneficial owners and controllers for cultural objects and legal entities alike. Beneficial ownership refers to the natural person who ultimately owns or controls a transaction, legal entity, or arrangement (such as a company, trust or foundation). The art and antiquities market should impose beneficial

[9] Nicholas O'Donnell, Bill Introduced in U.S. House of Representatives Would Impose Money Laundering Reporting Requirements on Art Dealers, JDSUPRA (May 24, 2018), https://www.jdsupra.com/ 21 legalnews/bill-introduced-in-u-s-house-of-87003/

ownership requirements in accordance with FATF, the EU's Fifth Anti-Money Laundering Directive (5AMLD), and the UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019. FATF has published best practices that clearly differentiate between basic ownership information (about the immediate legal owners of a company or trust), and beneficial ownership information (about the natural person(s) who ultimately own or control it). They also clarify that having accurate and up-to-date basic information about a legal person or legal arrangement is a fundamental prerequisite for identifying the ultimate beneficial owners, and require international cooperation in relation to ownership information. 5AMLD and the UK's regulations build upon this, and require that EU Member States allow access to beneficial ownership details on corporate and other entities in a coordinated manner. To balance the need for a public register with confidentiality and data protection rules, 5AMLD requires that the information available on the public register be specific and limited.

Clients must be identified and verified. Businesses will need to confirm at certain value levels with whom they do business, performing effective customer due diligence. This is typically done by collecting two forms of identification, such as a passport and utility bill for individuals, and formation documents and details of beneficial owners and controllers for legal entities. In the United States, there is no central register of publicly available information regarding business ownership. Certificates of ownership may merely give the name of the organizer, not who controls the funds, therefore business's client identification records must include details of the beneficial owner. Businesses should keep records of a client's identification for at least 5 years following the completion of a transaction, or until the end of the business relationship. In the interest of data protection laws and privacy, the buyer may be advised that they will need to voluntarily supply Know Your Customer (KYC) information and this information will be verified in a due diligence process. Businesses operating internationally must already perform this customer due diligence and data collection in compliance with the EU's Fifth AntiMoney Laundering Directive and the UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

We thank you for your attention to this comment, and look forward to assisting the Treasury Department and FinCEN in its well-founded mission to improve the AML infrastructure and include antiquities under the scope of the BSA.

Signed:

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