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[By Email]

8 August 2023

To:

Secretary Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network (FinCEN)

CC:

Deputy Secretary Wally Adeyemo
Deputy Secretary of the Treasury
U.S. Department of the Treasury

Ms. Andrea Gacki
Incoming Director
Financial Crimes Enforcement Network (FinCEN)

Re:

Bar Criminals from Exploiting the 30 billion dollar American Art Market

Dear Secretary Yellen and Mr. Das,

We represent a broad coalition of organizations dedicated to protecting U.S. economic integrity and national security, as well as promoting good governance and government accountability in the U.S. and around the world.

Given our shared mission, we are writing to offer our full support to the Department of Treasury as you work to strengthen anti-money laundering (AML), counter-terrorist financing (CFT), and sanctions enforcement measures for the \$30.2 billion American art market.

With the Treasury Department, through the Financial Crimes Enforcement Network (FinCEN), completing its rulemaking for the U.S. real estate industry, cultural property will remain the country's largest unregulated market. **We thus urge Treasury and specifically FinCEN now to prioritize closing the legal and**

regulatory loopholes that continue to make the art trade and its participants vulnerable to criminal misuse. Such a step could include:

- Issuing—and then finalizing—rules for antiquities dealers as required by the AML Act of 2020;¹
- Applying AML/CFT protections to other high-risk American art market participants;
- Working with the private sector to strengthen information sharing;
- Updating guidance and training for law enforcement to include the unique risks and opportunities presented by the American art market; and
- Using existing tools, such as targeted recordkeeping and reporting requirements, as well as FinCEN alerts, to better understand and combat threats to the American art market from financial crimes like money laundering, terrorist financing, and sanctions evasion.

This work has become even more urgent and critical over the last year. Despite the U.S. Government's strong response to the 2022 invasion of Ukraine, including substantial efforts to isolate Russia's economy, a major blind spot persists in the American art market. Just this February, Bloomberg revealed that federal prosecutors are targeting major auction houses with subpoenas as part of a wider investigation into Russian oligarchs, the American art market, and sanctions evasion.² The fears of the Department of Justice (DOJ) are well founded: a 2020 Senate report exposed that key allies of the Kremlin, Arkady and Boris Rotenberg, were laundering millions through leading New York auction houses in a full evasion of U.S. sanctions imposed after Russia's *previous* invasion of Ukraine in 2014.³ Unfortunately, the gaps exposed by this report remain wide open three years later, providing an easy backdoor into the world's largest economy—even for America's adversaries.

A 2022 Treasury Department study likewise called upon the United States to apply AML and CFT protections to the broader American art market. The report warned no fewer than 30 times that “high-value art and the market in which it is traded can be abused by illicit financial actors.”⁴ Featured examples spanned the globe, from Vladimir Putin's inner circle (the subjects of the previously mentioned Senate report) to international fugitive Jho Low.

Since this study, ongoing revelations from the Pandora Papers⁵ and Federal investigations have further demonstrated how criminals are exploiting the American art market's vulnerabilities. On April 18, the DOJ unsealed a nine-count criminal indictment charging Nazem Ahmad, a high-profile Lebanese collector turned Hezbollah financier, with multiple felonies for using art and other luxury goods to evade terrorism-related sanctions—a scheme that allowed him to transact at least \$160 million through the U.S. financial system.⁶ Then on June 22, the DOJ followed with the announcement of the largest-ever forfeiture of proceeds from

¹ On January 1, 2021, Congress enacted the Anti-Money Laundering Act of 2020 (the “AML Act”) as part of the National Defense Authorization Act (NDAA) for 2021. See NDAA Sec. 6110(a)(1)(B), to be codified at 31 U.S.C. Section 5312(a)(2)(Y), available at <https://www.congress.gov/bill/116th-congress/house-bill/6395/text>.

² See Ava Benny-Morrison, “Rich Russian Art Buying is Target of US Crackdown on Trade-Sanction Cheats,” Bloomberg, 1 Feb 2023, <https://www.bloomberg.com/news/articles/2023-02-01/hunt-for-sanction-cheats-targets-art-buying-by-rich-russians?leadSource=uverify%20wall>. In February, federal prosecutors issued subpoenas demanding that auction houses turn over records looking to track down “professional sanctions evaders.”

³ See United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020. The bipartisan Congressional report exposed that Russian oligarchs, brothers Arkady and Boris Rotenberg, had laundered millions through American auction houses and art dealers, evading U.S. sanctions on Vladimir Putin's inner circle.

⁴ See Department of Treasury, *Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art*, 2022.

⁵ See David Conn and Malia Politzer, “Offshore loot: how notorious dealer used trusts to hoard Khmer treasures,” *The Guardian*, 4 October 2021, <https://www.theguardian.com/news/2021/oct/05/offshore-trusts-used-pass-on-looted-khmer-treasures-leak-shows-douglas-latchford>.

⁶ U.S. Atty's Office, E. Dist. N.Y., *OFAC-Designated Hizballah Financier and Eight Associates Charged with Multiple Crimes Arising Out of Scheme to Evade Terrorism-Related Sanctions*, U.S. Dep't of Justice (Apr. 18, 2023), <https://www.justice.gov/usao-edny/pr/ofac-designated-hizballah-financier-and-eight-associates-charged-multiple-crimes>.

the sale of stolen antiquities, \$12 million dollars, recovered from the offshore account of indicted antiquities trafficker Douglas Latchford.⁷

The Rotenbergs, Ahmad, and Latchford all abused the art market’s long-standing avoidance of what are now standard requirements from the Bank Secrecy Act (BSA). The BSA requires “financial institutions”—businesses “whose cash transactions have a high degree of usefulness in criminal... matters”—to assist the U.S. government in detecting and preventing money laundering, terrorist financing, and related crimes.⁸⁹ **The art market clearly meets this definition:**

- The Financial Action Task Force (FATF) warned back in 2013 that art and antiquities are particularly vulnerable to money laundering and terrorist financing.¹⁰
- Art finance services—including boutique art lending firms and auction houses with lending programs—are *explicitly* acting as financial institutions.¹¹
- The market *itself* has increasingly recognized its own vulnerability to financial crimes. For example, the Basel Art Trade Guidelines warn that, “In comparison with other trade sectors, the art market faces a higher risk of exposure to dubious trade practices” including antiquities trafficking, fraud, and money laundering. They attribute this to “the volume of illegal or legally questionable transactions, which is noticeably higher in this sector than in other globally active markets.”¹²
- In addition to examples already listed is the DOJ’s ongoing prosecution of six individuals and four corporations for a \$50 million dollar money laundering scheme involving a Pablo Picasso painting. One of the defendants told an undercover agent they had originally planned to clean their funds through real estate, but turned to art because it is “the only market that is unregulated.”¹³
- The American art market remains particularly vulnerable given actions already taken in Europe, since the European Union, United Kingdom, and Switzerland have all already applied their AML regimes to the art market. U.S. dealers operating in Europe, which given the art market’s global nature is likely a large number, thus should be abiding by these rules already.

Such regulation is especially needed since the United States remains the world’s largest art market, valued at \$30.2 billion, and accounting for 45% of the global total in 2022.¹⁴ Moreover, FinCEN and/or Congress have already applied AML obligations to industries of comparable risk and scale, including pawn shops; dealers in precious metals, stones and jewels; as well as sellers of luxury vehicles like planes and yachts.¹⁵ The Administration has likewise signaled its intention to institute AML obligations for the U.S. real estate and private investment sectors.¹⁶ To its credit, the 2020 AML Act, the first major update to the BSA in almost twenty years, has recently added antiquities dealers, but they are just a fraction of the much larger market.

⁷ U.S. Atty’s Office, S. Dist. N.Y., *U.S. Attorney Announces \$12 Million Settlement Of Civil Forfeiture Action Against Estate Of Antiquities Trafficker Douglas Latchford*, U.S. Dep’t of Justice (Jun. 22, 2023),

<https://www.justice.gov/usao-sdny/pr/us-attorney-announces-12-million-settlement-civil-forfeiture-action-against-estate>

⁸ Bank Secrecy Act, 31 U.S.C. § 5312(a)(2)(Z) (2012).

⁹ Bank Secrecy Act, 31 U.S.C. §§ 5311-5332 (2012).

¹⁰ Financial Action Task Force, *National Money Laundering and Terrorist Financing Risk Assessment* (Feb. 2013), available at http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf.

¹¹ See Ava Benny-Morrison, “Rich Russian Art Buying is Target of US Crackdown on Trade-Sanction Cheats,” Bloomberg, 1 Feb 2023, <https://www.bloomberg.com/news/articles/2023-02-01/hunt-for-sanction-cheats-targets-art-buying-by-rich-russians?leadSource=verify%20wall>.

¹² Thomas Christ & Claudia von Sell, *Basel Art Trade Guidelines*, Basel Inst. on Governance (Jan. 2012), https://www.baselgovernance.org/sites/collective.localhost/files/publications/basel_art_trade_guidelines.pdf.

¹³ U.S. Atty’s Office, E. Dist. N.Y., *Six Individuals and Four Corporate Defendants Indicted in \$50 Million International Securities Fraud and Money Laundering Schemes*, U.S. Dep’t of Justice (Mar. 2, 2018),

<https://www.justice.gov/usao-edny/pr/six-individuals-and-four-corporate-defendants-indicted-50-million-international>.

¹⁴ See Art Basel & UBS, “The Global Art Market,” 2023, <https://theartmarket.artbasel.com/global-market>.

¹⁵ Despite having a similar business model to pawn shops, billion dollar companies like the major auction houses are not regulated.

¹⁶ White House, “U.S. Strategy on Countering Corruption,” December 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

THE ANTIQUITIES COALITION

We recognize that this statute's inclusion of antiquities dealers was also one small part of a wider legislative overhaul, which has left the Treasury with enormous tasks before it. That said, again with FinCEN soon to announce rules to formally bring the U.S. real estate sector under anti-money laundering rules, we believe there is now an opportunity—indeed, a responsibility—to act. Unfortunately, if the United States fails to act, we risk our jurisdiction continuing to be a safe haven for criminals.

The leadership of FinCEN and the broader Treasury Department is critical to tackling this threat to our national security, economic integrity, *and* responsible art market, as well as to the prospect of good governance across the world. Thank you for your consideration and work on this timely issue.

Sincerely,

Organizations

The Antiquities Coalition

International Coalition Against Illicit Economies (ICAIE)

Jewelers Vigilance Committee

The ONE Campaign

Transparency International U.S.

Prominent Individuals

John J. Byrne, CAMS, Esq.

Adjunct Professor, George Mason University Schar School of Policy and Government.

Dr. Colette Loll

Founder and Director, Art Fraud Insights, LLC.

Dennis M. Lormel

President and Chief Executive Officer, DML Associates. Former Chief of the FBI's Financial Crimes Program.

Michael J. Loughnane, CFE, CAMS

President, Loughnane Associates. Former Director of Special Operations at the US Environmental Protection Agency, Office of Inspector General (Retired).

Jack Oskvarek

Current SVP, BSA Executive Director, Wintrust Financial and Chair of the ACAMS Chicago Chapter.

Kevin Rogers

US Secret Service (Retired).