



ENFORCEMENT OUTLOOK SERIES:

MANAGING AML RISK UNDER HEIGHTENED SCRUTINY

TED DISKANT

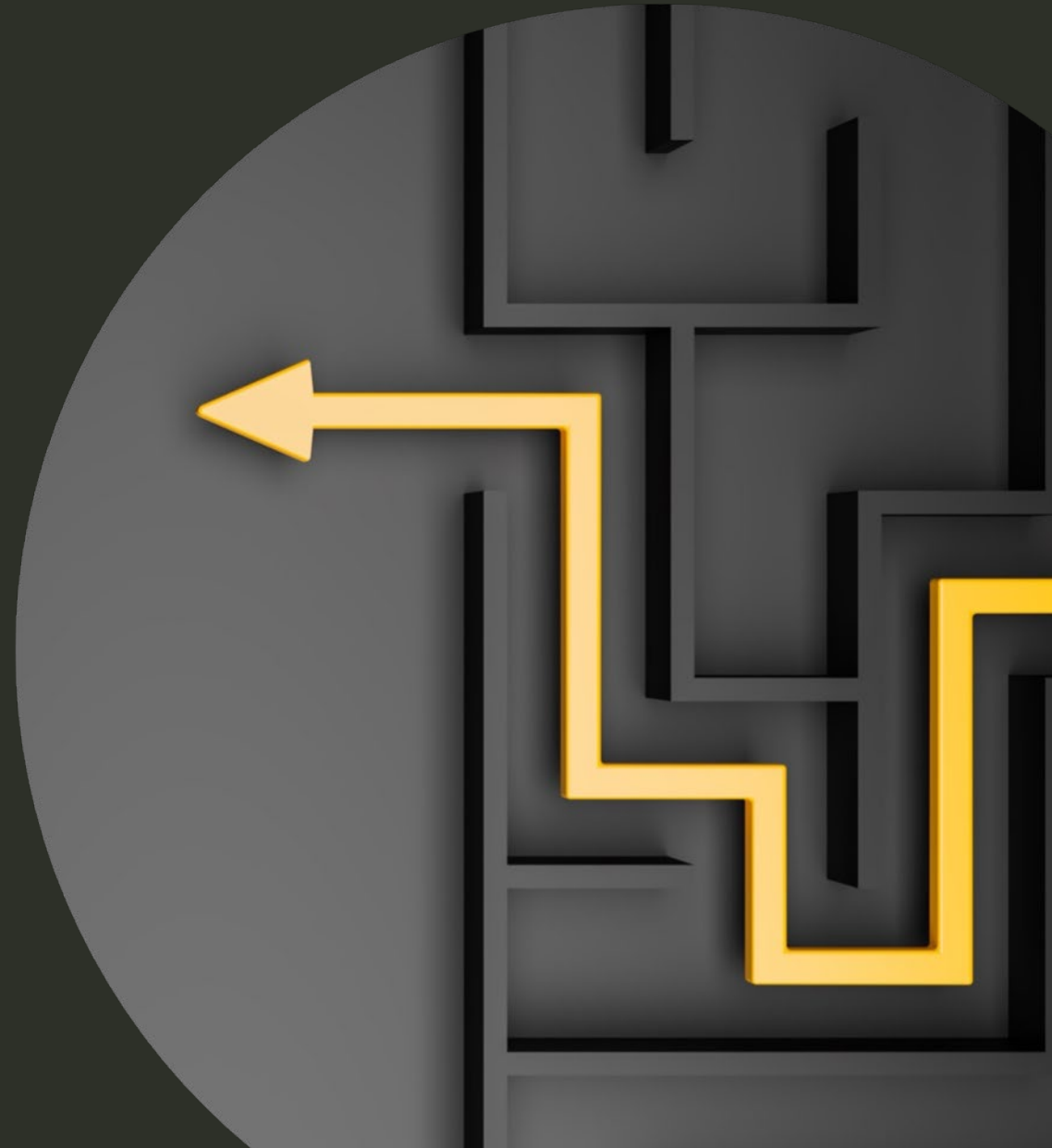
NIKETH VELAMOOR

ALEX WILSON

**McDermott
Will & Emery**

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AGENDA

- AMLA of 2020 – Key Changes and What's Ahead
- Virtual Currencies and AML/BSA Enforcement
 - Key compliance priorities for financial institutions
 - Key recent enforcement actions
- Pending Legislation – the ENABLERS Act
- Russian Sanctions
 - Key compliance considerations
 - Anticipated enforcement activities



TED DISKANT

Partner | New York



NIKETH VELAMOOR

Senior AML, Anti-Corruption and Privacy
Officer and Associate General Counsel,
Neuberger Berman



ALEX WILSON

Chief, Money Laundering and
Transnational Criminal Enterprises Unit,
US Attorney's Office, SDNY

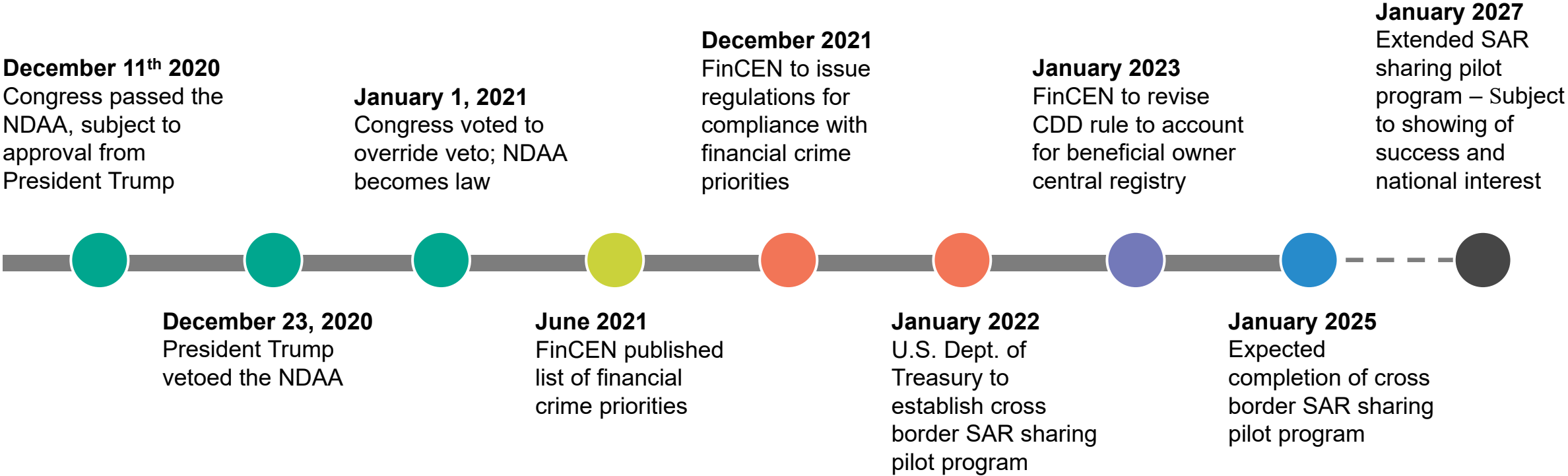
AMLA OF 2020



ANTI-MONEY LAUNDERING ACT OF 2020

- AMLA of 2020 represents the most significant changes to Bank Secrecy Act since its inception:
 - Expands BSA to expressly encompass virtual currency
 - A “financial institution” now includes “a currency exchange, or a business engaged in the exchange of currency, funds, or value that substitutes for currency or funds”
 - Requires disclosure of “ultimate beneficial owners,” establishes the beneficial ownership registry
 - Increased authority to subpoena foreign banks
 - Intended to promote greater information sharing internationally, across law enforcement agencies

SELECTED IMPLEMENTATION TIMELINE OF AMLA 2020



*The above illustration reflects an estimated implementation timeline for certain reforms under the AMLA and is subject to change. Note that this is not a comprehensive timeline of all reforms under the Act.

AMLA – BENEFICIAL OWNERSHIP REPORTING

- As part of AMLA, Congress enacted the Corporate Transparency Act (“CTA”), which requires disclosures about beneficial ownership information
 - Information will include full legal name, residential or business address, and unique identifying number
 - All beneficial owners will need to be reported: “exercises substantial control over an entity or owns or controls 25 percent or more of the ownership interests of an entity”
 - Information will be placed in a FinCEN database
 - Database will be available to federal law enforcement, regulators, intelligence agencies, some state agencies
 - Database may also be accessible by financial institutions
- Exemptions:
 - Public companies, banks, and insurance companies
 - Entities that filed tax returns in the last year with >\$5 million in revenues, >20 employees, and offices in the US
 - Certain 501(c) charitable organizations and trusts
 - Pooled investment vehicles operated by a bank, broker-dealer, registered investment company, or registered investment adviser

AMLA – INCREASED FOREIGN SUBPOENA POWER

- Agencies can subpoena records from foreign entities if the entity maintains a correspondent bank account in the United States
- Any records can then be subpoenaed from the correspondent bank, even if the illegal activity is unrelated to the correspondent account
- Legal issues
 - Conflicts with foreign law (*In re Sealed Case*)
 - Foreign privacy laws (privacy cannot be “sole basis” for quashing subpoena)
 - Personal jurisdiction over foreign banks

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM PRIORITIES

As required under the AMLA of 2020, FinCEN issued its government-wide AML/CFT priorities in June 2021. They include:

- Corruption
- *Cybercrime, cybersecurity, and virtual currency*
- Fraud
- Foreign and domestic terrorist financing
- *Transnational criminal organization activity*
- Drug trafficking organization activity
- Human trafficking and smuggling
- Proliferation financing

VIRTUAL CURRENCIES



AMLA OF 2020 – VIRTUAL CURRENCIES

- AMLA of 2020 expands BSA to expressly encompass virtual currency
 - A “financial institution” now includes “a currency exchange, or a business engaged in the exchange of currency, funds, or value that substitutes for currency or funds”
 - A “monetary instrument” now includes “value that substitutes for any” currency or funds

WHAT THE BSA REQUIRES

A “financial institution” must have:

- Internal policies, procedures, and controls
- Designation of an AML Compliance Officer
- On-going employee training
- Independent audit function to test the AML program
- Effective Customer Due Diligence (“CDD”) program
- BSA requires the AML program be “risk based,” tailored to the risk profile of the financial institution and its customers
- Willful failure to comply with the BSA is a criminal offense

WHAT THE BSA REQUIRES (PART II)

- Suspicious Activity Reports (SARs): All financial institutions must have procedures for identifying suspicious activity, filing SARs within 30 days of detection
 - Strict confidentiality: may not inform customer or business line that SAR will be/has been filed
- Currency Transaction Reports (CTRs): Requires reporting of cash (or currency equivalent) transactions exceeding \$10,000 in one business day
- Record Keeping: Generally, must keep records for at least 5 years

BSA CRIMINAL ENFORCEMENT - BITMEX

Cryptocurrencies

BitMEX Founder Delo Surrenders to Face Bank Secrecy Charges

By Chris Dolmetsch

March 15, 2021, 5:35 PM EDT

Updated on March 16, 2021, 10:51 AM EDT

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One of the founders of pioneering crypto-derivatives exchange BitMEX surrendered to authorities to face charges that he schemed to avoid U.S. anti-money laundering laws.

- BitMEX is a cryptocurrency exchange and derivatives trading platform
- In 2020, four BitMEX executives were indicted for violations of the Bank Secrecy Act
 - The indictment alleged that the defendants deliberately failed to implement anti-money laundering and know-your-customer programs
 - BitMEX executives caused BitMEX and its parent companies to incorporate in Seychelles for the purpose of avoiding US laws/regulations, including BSA
 - Because BitMEX continued to serve U.S. customers, Government's position was that BitMEX still needed to maintain adequate AML and KYC programs, which they willfully failed to do

AML PRIORITIES: CYBERCRIME, CYBERSECURITY AND VIRTUAL CURRENCY

- AML/CFT priorities focused heavily on the use of virtual currency to engage in illicit activity
 - Virtual currency is the preferred form of payment for ransomware tools, child exploitation materials, illicit drugs, and other illicit goods sold online
 - Virtual currency used to pay ransom to perpetrators of ransomware attacks
 - Virtual currency used to layer transactions to hide origins of funds
 - Criminals often use mixers and tumblers to obscure the source of illicit funds when conducting virtual currency transactions

OFAC'S FOCUS ON VIRTUAL CURRENCY

- In October 2021, OFAC announced updated guidance for virtual currency companies
 - Defines virtual currency to broadly encompass most cryptocurrency and tokens, including stablecoins
 - Provided further guidance on how exchanges and providers should implement a “block” on virtual currency
- Expectation that virtual currency companies will employ risk-based sanctions compliance programs

THE ENABLERS ACT

- Bipartisan legislation intended to target illicit money movements, related criminal activity
- Would amend the Bank Secrecy Act definition of “financial institution” to include wide range of additional industries
- Would subject **lawyers, investment advisors, accountants** and others to the same due diligence, compliance requirements that already apply to banks under the BSA
 - Those would include mandatory reporting provisions

SANCTIONS



SANCTIONS

- Rapidly evolving domestically and internationally
- Key provisions of U.S. law:
 - Blocking certain Russian oligarchs, top Government and military officials
 - Blocking entities/individuals related to Russian tech industry
 - Blocking Russian financial institutions, including Sberbank, Alfa Bank
 - Barring certain new investments in Russia

2022 ENFORCEMENT OUTLOOK WEBINAR SERIES: IS YOUR ORGANIZATION PREPARED?

UPCOMING TOPIC

JUNE: SEC ENFORCEMENT / SECURITIES FRAUD

- Hosted on the second Tuesday of each month from 12:00 - 1:00 pm ET
- Please contact Tyler Chalmers (tchalmers@mwe.com) to pre-register for an upcoming webinar

THANK YOU / QUESTIONS?

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