

“AML Compliance in the UK and the US”

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Thomas Jefferson School of Law

By: Leslie A. Fischman

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ABSTRACT

Money laundering impacts the UK not only on an economic level but also raises a “moral obligation.”¹ Even after the UK leaves the EU, it will still be required to adhere to the principles of law established by the various inter-governmental regimes responsible for detecting and stopping illicit and criminal activity.² FATF is The Financial Action Task Force responsible for setting standards and promoting effective implementation of “legal, regulatory and operational measures” for combatting money laundering, terrorist financing, financing the proliferation of weapons of mass destruction, and other related threats to the integrity of the international financial system.”³ Another example of a supervisory authority is the Law Society, which has “delegated all regulatory functions to the Solicitors Regulation Authority ... act[ing] independently ... responsible for monitoring and enforcing solicitors compliance with their AML obligations.”⁴ The basis for anti-money laundering legislation in the UK has mostly “been formed from EU directives and recommendations from the Government.”⁵ Meanwhile, in the US, The USA Patriot Act of 2001 amends the Bank Secrecy Act (BSA) that requires “all financial institutions to establish Anti-Money Laundering (AML) programs.”⁶

¹ Vishal Marria, The Future of Money Laundering After Brexit, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

² Vishal Marria, The Future of Money Laundering After Brexit, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

³ What is behind our AML legislation?, Gambling Commission, <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/AML/Approach-to-AML/What-is-behind-our-AML-legislation.aspx>.

⁴ Anti-money laundering, The Law Society, <https://www.lawsociety.org.uk/support-services/risk-compliance/anti-money-laundering/>.

⁵ What is behind our AML legislation?, Gambling Commission, <https://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/AML/Approach-to-AML/What-is-behind-our-AML-legislation.aspx>.

⁶ Anti Money Laundering (AML) in the United States of America, Banker’s Academy, <http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials/606-aml-usa-sp-74>.

TABLE OF CONTENTS

Introduction 4

Literature Review

Methodology

Discussion

AML Compliance in the UK and the US

Is Public Access a Fundamental Right?

NGOs, Global Witness and Transparency International

Terrorist Financing

Virtual Currency

The Use of Bitcoin

How does the AMLD 5 Play a Role in Virtual Currency

Virtual Currency: Response by the EU (Effects on Tech)

UBO's and High Risk Third Countries

Due Diligence

-Compliance (and Due Diligence)

Banking in the US and Tech

Banking in the UK and Tech

- *The Anti-Money Laundering Act 2018 (SAML A 2018)*

Brexit, FIUs, and Request to Obtain Information

Beneficial Ownership

AML Compliance in the US

AML Compliance in the UK versus the US

Money Laundering in the UK – Prosecuting Offences

New AML Laws in the UK 2017

New AML Laws UK 2018

The History of AML in the US

AML Enforcement in the US

The Bank Secrecy Act

The OCC

What is AML, and the 5 Pillars

AML Compliance in the US

-Corporate Transparency in the US According to FATF

How Does AML in the US Work?

AML Compliance in the UK

AML in the UK v. US – Primary Differences

Examples of SROs and How They Been Affected?

Conclusion

Recommendations

Future Areas of Research

Bibliography

INTRODUCTION

According to the National Crime Agency's National Strategic Assessment 2017, money laundering alone costs the UK an "estimated £24 Billion" a year,⁷ whereby the illegal proceeds from serious and organised crime, drugs, cybercrime, and people trafficking are "laundered through UK banks and other regulated businesses, ... include[ing] money from international criminal activity or corruption."⁸ Taking its toll on society, and requiring new professional standards as a growing "social basis for fighting against money laundering" continues.⁹ Banks and Financial Institutions in the UK, are being pressured to look beyond a purely "regulatory perspective" alone, while taking extreme measure to "enhance their procedures and due diligence."¹⁰ Such as engaging in the "Flag It Up Campaign, which focuses on the social impact of money laundering ... [and requires the filing of] suspicious activity reports."¹¹

In the UK the anti-money laundering regime is composed of the following organizations and required to follow the following laws and rules set out in the "Proceeds of Crime Act 2002 (POCA), the Money Laundering, Terrorist Financing and Transfer of Funds (Information of the Payer) Regulations 2017 (MLR 2017) and the Terrorism Act 2000 (TA 2000) and the Terrorism Act 2006 (TA 2006)."¹² Other Organizations that are involved in Anti-Money Laundering are the IFA, the NRA "UK National Risk Assessment of Money Laundering and Terrorist Financing,"

⁷ UK Law and Guidance, Institute of Financial Accountants, <https://www.ifa.org.uk/technical-resources/aml/uk-law-and-guidance>.

⁸ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

⁹ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

¹⁰ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

¹¹ Laura Oliver, The knock-on impact of money laundering to wider society, The Spectator (March 21, 2018), <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>.

¹² UK Law and Guidance, Institute of Financial Accountants, <https://www.ifa.org.uk/technical-resources/aml/uk-law-and-guidance>.

HM Treasury, Home Office and the National Crime Agency (e.g. Flag It Up Campaign). The newest “regulator set up by the government to strengthen the UK’s anti-money laundering (AML) supervisory regime and ensure the professional body AML supervisors provide consistently high standards of AML supervision” is The Office for Professional Body Anti-Money Laundering Supervision (OPBAS).¹³

AML has three stages: placement, layering, and integration,¹⁴ and 5 pillars. The purpose of anti-money laundering laws, regulations, and procedures are to “prevent criminals from disguising illegally obtained funds as legitimate income.^{15]} One of the major differences between AML in the US and the UK, is that in the US there is BSA, US Patriot Act, and OPBAS, whereas in the UK there are CIP Requirements for Beneficial Interest, an Action Plan, and EU Directives, and with Brexit in the works, this may also have an effect on AML Compliance. Both the US and the UK “anti-money laundering laws and regulations compare favorably in that both regimes stipulate extensive regulatory requirements for banking institutions to implement and maintain anti-money laundering procedures.”¹⁶ Both have implemented procedures such as: (1) customer due diligence programmes (2) designation of a compliance officer (3) ongoing training programmes (4) audit procedures to test for effectiveness and (4) suspicious activity reporting requirements.¹⁷ Recently, FATF “an intergovernmental body that develops policies to combat

¹³ Office for Professional Body Anti-Money Laundering Supervision (OPBAS), Financial Conduct Authority (March 14, 2019), <https://www.fca.org.uk/opbas>.

¹⁴ Money Laundering in the EU, <https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm>.

¹⁵ Will Kenton, Anti Money Laundering (AML), Investopedia (September 10, 2019), <https://www.investopedia.com/terms/a/aml.asp>.

¹⁶ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared, International Law Office (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

¹⁷ Sidley Austin LLP, US and UK Anti-money Laundering Requirements Compared, International Law Office (September 5, 2008), <https://www.internationallawoffice.com/Newsletters/Banking/USA/Sidley-Austin-LLP/US-and-UK-Anti-money-Laundering-Requirements-Compared>.

financial crime” stated that the UK is doing an insufficient job at “investitgat[ing] high-end money laundering.”¹⁸ While each country has its own unique system for detecting and combatting money laundering the US seems to be doing a better job than the UK. Similarly OPBAS found that “despite EU requirements, ... 80 percent failed to have the proper governance arrangements [required] to combat [money laundering],” it seems as though most members are not sufficiently being trained, and such lack of preparation, is making it difficult to keep up, there simply “isn’t enough regulation going on.”¹⁹ And with Brexit ongoing, “it is possible that regulators will continue to prefer lax regulation implementation if it encourages investment and combats economic damage caused by instability.”²⁰

LITERATURE REVIEW

The two main approaches to tackling Anti-Money Laundering at enforcement and prevention.²¹ In the UK “In the UK, the cornerstone of the enforcement approach is provided by the *2002 Proceeds of Crime Act*, in which virtually “any interaction with the proceeds of crime” (Hicks 2010: 713) is criminalised. The Act created offences of concealing (section 327), arranging (section 328) and acquisition (section 329) of proceeds of crime and sets out provisions for the confiscation of assets acquired through criminal activity.”²² When it comes to

¹⁸ Where the UK Fails on Anti-Money Laundering, PYMNTS (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

¹⁹ Where the UK Fails on Anti-Money Laundering, PYMNTS (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

²⁰ Where the UK Fails on Anti-Money Laundering, PYMNTS (March 15, 2019), <https://www.pymnts.com/aml/2019/corruption-watch-uk-high-end-money-laundering/>.

²¹ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²² Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

prevention, two approaches have been taken a “rule-based and a risk-based” approach.²³ Its important to note that: “Across most countries in the world, financial entities and designated nonfinancial businesses and professions (DNFBPs) are required to follow certain rules in relation to the prevention of ML.”²⁴ A rule-based system, focuses on corporate social responsibility as well relies heavily on “suspicious activity reporting,” (SARs).²⁵ It involves the “standardisation of rules and regulations ... which is hard to measure.”²⁶ In a risk-based approach, “there is a requirement that appropriate steps are taken to identify and assess risk (whether these be customers, products or services).”²⁷ This involves organizations such as the Financial Action Task Force (FATF), which requires members to be aware of the risks, as well reiterated in the EU’s 4th Money Laundering Directive, who defines a risk-based approach as one that is able to “identify, understand and mitigate the risks of money laundering” (EU 2015: 4).²⁸

In general a qualitative approach has been taken when measure the risks associated with Anti-Money Laundering “The first UK NRA (see HM Treasury 2015) sets out an approach based around understanding the threats, vulnerabilities and consequences of ML.”²⁹ The legal

²³ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁴ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁵ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁶ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁷ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁸ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

²⁹ Matt Hopkins & Nikki Shelton, Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology, Eur J Crim Policy Res 25, 63–82 (2019), (June 20, 2018), <https://link.springer.com/article/10.1007%2Fs10610-018-9390-5>.

landscape when it comes to Anti-Money Laundering is constantly changing, since 2018 “changes introduced under the Fourth Money Laundering Directive implemented in the UK via the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)” to the 5th Money Laundering Directive adopted June 19, 2018.³⁰ The five key issues, addressed in the revised directive are as follows: (1) safeguards for financial flows from high-risk third countries, (2) enhancing powers of the EU FIUs and facilitating cooperation, (3) ensuring centralized national bank and payment account registers or central data retrieval systems in all Member States, (4) tackling terrorist financing risks linked to virtual currencies, and (5) tackling risks linked to anonymous pre-paid instruments (e.g. pre-paid cards).³¹ The new EU deadline to transpose the provisions into national law is January 10, 2020.³²

With *Brexit* in the works, even if UK withdraws from the EU, “or any transition period, the government has stated that the UK intends to implement the provisions of the 5MLD.”³³ The UK chose not to opt-in to the 6MLD (regardless of Brexit) “will not be bound by its provisions,” however even if they chose to be bound they would have “met many of the requirements.”³⁴ Meanwhile, the deadline for EU Member States to transpose provisions to national law is December 3, 2020.³⁵ “This Directive focuses on introducing a unified list of 22 specific predicate

³⁰ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³¹ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³² “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³³ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³⁴ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³⁵ “2018: A year in review” Anti-money laundering, Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

offences for money laundering activity which all EU Member States must criminalise in national legislation (if they have not already done so).”³⁶

METHODOLOGY

Anti-Money Laundering Laws are not unique to the UK, and exist in the US and in other countries, as well as in the EU. This study seeks to draw a comparison, between the systems put in place in the UK, and the ones whether similar or different put in place in other countries, are more or less effective in combatting in money laundering and crime. This dissertation takes a qualitative approach to analyzing the data compiled, by the various organizations responsible for monitoring crime, and responding to it, and what is being done to systematically deal with the problems arising due to criminal activity associated with money laundering. In recent years advances in technologically have changed the landscape, when it comes to detecting crime, making it easier, and sometimes harder, this paper discusses those issues. Moreover, advances to the laws have been put in place and implemented, and this paper will discuss whether the laws prescribed implemented made a positive difference to the rate of crime in those countries. Overtime many things have changed, and while AML has become “more effective in dealing with the problem ... its complexity increases,”³⁷ with financial institutions are the “forefront of the fight against money-laundering.” This paper examines, the responsibility that financial institutions have to monitor and respond to crime, and the number of complex organizations who’s laws recommend these processes, explaining who put these laws into place, and what organizations are responsible for calculating the risks associated with money-laundering, the

³⁶ “2018: A year in review” Anti-money laundering. Tackling illicit finance, Kingsley Napley (January 2019), <https://www.kingsleynapley.co.uk/resources/download/363/2018-a-year-in-review-anti-money-laundering.pdf>.

³⁷ Dionysios S. Demetis, A Systems Theoretical approach for Anti-Money Laundering informed by a Case Study in a Greek Financial Institution: Self-reference, AML, its systemic constitution and technological consequences, The London School of Economics and Political Science (2014), <http://etheses.lse.ac.uk/2571/1/U615520.pdf>.

rates of crime, and who dictates what laws are to be followed in order to adequately respond to this growing trend in crime rate in the UK and beyond. Furthermore, we will also be examining the effects that *Brexit* will have on the UK, in terms of the laws that they currently follow, should follow, and whether leaving the EU will have had any impact on their ability to combat money laundering.

DISCUSSION

AML Compliance in the UK and the US

FATF (Financial Action Task Force) “is an independent inter-governmental body” that is responsible for governing AML (“Anti Money Laundering”) compliance standards.³⁸ The recommendations used by FATF are used to help promote “international co-operation” and helps to establish “preventative measures ... taken by financial institutions ... casinos, real estate dealers, lawyers and accountants.”³⁹ There have been recent developments in the UK trending (2018). In the US “AML/CFT issues ...” have become the forefront of combatting financial crime “at both federal and state levels” assessments are made, and “whether the recommendations” provided “have been fully and properly implemented” determines the effectiveness of the AML/CFT system implemented.⁴⁰ Such international cooperation includes: (1) laws that prevent terrorist financing (2) laws that allow for the confiscation of proceeds of crime and terrorist funding (3) “an enforceable means that impose required obligations on

³⁸ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

³⁹ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴⁰ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

financial institutions (4) “institutional or administrative framework” that includes “duties, powers and sanctions.”⁴¹ Depending on the “particular circumstances of [a] country” ... “assessors ... have [the] discretion [to] identify” what strengthens or weakens a current AML/CFT system put into place.⁴² The assessors measure “positive, neutral, or negative influence[s] on the overall rating for each recommendation” to determine its fitness.⁴³ Under (3) mentioned above ... “designated non-financial business and professions (DNFBP), financial institutions, financing of terrorism (FT), legal persons and legal arrangements” are also taken into consideration with regard to “financial institutions ... fundamental to any AML/CFT assessment.”⁴⁴

According to *Global Compliance News*⁴⁵, in 2018, the “EU Anti-Money Laundering Directive (AMLD 5)” took place to “modif[y] the fourth Anti-Money Laundering Directive ... released only in 2015.”⁴⁶ The purpose for this directive was to address the “beneficial ownership [of] information created under the AMLD4 ... [to] be made accessible to the general public [whereby] ... beneficial ownership information will be granted to any natural or legal person that can demonstrate a legitimate interest as well as to any person filing a request in relation to a trust

⁴¹ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴² Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴³ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴⁴ Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, Financial Action Task Force (FATF) Reference Document, (February 27, 2004), <http://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf>.

⁴⁵ Juergen Kraiss, EU:5th EU Anti-Money Laundering Directive published, *Global Compliance News*, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

⁴⁶ Juergen Kraiss, EU:5th EU Anti-Money Laundering Directive published, *Global Compliance News*, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

or similar legal arrangement which holds or controls any corporate or other legal entity.”⁴⁷ Under this provision “information on real estate ownership by any natural or legal person ... [is] made centrally available for public authorities.” These measures further enhance the “rights and competencies of national EU Financial Intelligence Units ... [which] exten[d] ... the cooperation and exchange of information among FIUs and other relevant institutions further facilitated.”⁴⁸

One of the key additions to AML in the UK has been the “failure to prevent (economic crime) clause” which has been implemented to make it a “criminal offense by a corporat[ion] [who] fail[s] to prevent economic crime” and to “reduc[e] the flow of illicit funds through the UK.”⁴⁹ This would require “firms ... to undertake an extensive compliance review and implement a programme ... to ensure their compliance with legislation.”⁵⁰ Part (c) of the clause states that “a person commits a money laundering facilitation offence when acting in the capacity of a person associated with (B) “a relevant body ... [who] is guilty of an offence.”⁵¹ This includes “the acquisition, use or possession of criminal property, under section 329 of the *Proceeds of Crime Act 2002* (acquisition, use and possession).”⁵² Furthermore, a “money

⁴⁷ Juergen Kraiss, [EU:5th EU Anti-Money Laundering Directive published](https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/), Global Compliance News, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

⁴⁸ Juergen Kraiss, [EU:5th EU Anti-Money Laundering Directive published](https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/), Global Compliance News, (July 16, 2018), <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>.

⁴⁹ Irene Madongo, [UK anti-money laundering \(AML\) – Hot topics for 2018](https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/), KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵⁰ Irene Madongo, [UK anti-money laundering \(AML\) – Hot topics for 2018](https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/), KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵¹ [Failure to prevent money laundering: Sanctions and Anti-Money Laundering Bill \[Lords\] – in a Public Bill Committee](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4), TheyWorkForYou, (March 6, 2018), [https://www.theyworkforyou.com/psc/2017-19/Sanctions and Anti-Money Laundering Bill/06-0 2018-03-06c.154.4](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4).

⁵² [Failure to prevent money laundering: Sanctions and Anti-Money Laundering Bill \[Lords\] – in a Public Bill Committee](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4), TheyWorkForYou, (March 6, 2018), [https://www.theyworkforyou.com/psc/2017-19/Sanctions and Anti-Money Laundering Bill/06-0 2018-03-06c.154.4](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4).

laundering offence” includes, in part, the “concealing, disguising, converting, transferring or removing criminal property under section 327 of the *Proceeds of Crime Act 2002*.”⁵³

The AMLD 5 (“*EU Fifth Anti-Money Laundering Directive*”)⁵⁴ was important because “with *Brexit* in view ... the UK will be closely watching ... aspects of it which relate to [the] beneficial ownership and the impact of the UK’s **PSC register regime** ... [is] of particular interest.”⁵⁵ The purpose of the AMLD 5 is to “combat terrorism and money laundering ... [with the potential to] “unmask for the first time the beneficiaries of thousands of secretive trusts.”⁵⁶ This was due in part in “response to the *Panama Papers*, in which a global consortium of journalists revealed the widespread use of trusts and opaque offshore structures to launder money generated from bribery, corruption, and tax evasion.”⁵⁷ With the UK officially leaving the EU next March, negotiations are still ongoing, with Britain “promis[ing] to abide by all existing and new European laws,”⁵⁸ which include:

“the registering of company owners in every member state, access to the names of beneficiaries of trusts for law enforcement agencies and those with a “legitimate interest,” including the investigative journalists and *NGOs*, a cross-border database of

⁵³ Failure to prevent money laundering: Sanctions and Anti-Money Laundering Bill [Lords] – in a Public Bill Committee, TheyWorkForYou, (March 6, 2018), [https://www.theyworkforyou.com/psc/2017-19/Sanctions and Anti-Money Laundering Bill/06-0 2018-03-06c.154.4](https://www.theyworkforyou.com/psc/2017-19/Sanctions%20and%20Anti-Money%20Laundering%20Bill/06-0%202018-03-06c.154.4).

⁵⁴ Irene Madongo, UK anti-money laundering (AML) – Hot topics for 2018, KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵⁵ Irene Madongo, UK anti-money laundering (AML) – Hot topics for 2018, KYC360, (January 18, 2018), <https://www.riskscreen.com/kyc360/article/uk-anti-money-laundering-aml-hot-topics-2018/>

⁵⁶ Juliette Garside, UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive, The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁵⁷ Juliette Garside, UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive, The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁵⁸ Juliette Garside, UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive, The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

company and trust owners, overseen by the *European Commission*, and automatic access to the names of bank account holders for national *financial intelligence units* ["FIUs"]."⁵⁹

Because there was "no-deal [in] Brexit, it is unclear whether the government would still implement new EU laws, such as the fifth anti-money laundering directive."⁶⁰ One of the issues is whether to permit a "public database" which would require member states to "draw up rules to allow [only] those with a "legitimate interest" to have access to "information on a case by case basis."⁶¹ This is important because in order to take preventative measures, the journalists would need access, "the directive" highlights "preventative work done by non-government organisations"⁶² which may or may not have access, be considered to have a legitimate interest under the AMLD 5, in order to combat money laundering. Would journalists have access via the AMLD 5, under Brexit? We'll see. One of the problems is that "UK ... withdr[ew] from the EU"⁶³ this poses a problem addressed by the "Fundamental Rights Forum" in Vienna, who spoke of the UK's image which has been "tarnished by media outlets that have caused

⁵⁹ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶⁰ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶¹ Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶² Juliette Garside, [UK to adopt EU laws on combating terrorism and money laundering: Letter to MP Margaret Hodge confirms decision on fifth anti-money laundering directive](https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge), The Guardian, (July 23, 2018), <https://www.theguardian.com/world/2018/jul/23/uk-eu-laws-terrorism-money-laundering-margaret-hodge>.

⁶³ Daniel Boffey, [British media's Brexit coverage sows division – EU commissioner](https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner), The Guardian, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner>.

division.”⁶⁴ One of the EU’s Missions and “Responsibili[ties], are to get involved, and “to avoid [the] encourage[ment] [of] hate.”⁶⁵ Of importance in the Brexit debate is whether:

“Fundamental rights must be a part of public discourse in the media. They have to belong to the media. Media are also instrumental in holding politicians to account and in defining the limits of what is ‘acceptable’ in a society.”⁶⁶

Is Public Access a Fundamental Right?

After Brexit, *The Guardian* states that “millions of EU citizens could find it difficult to assert their right to remain in the UK ... under Home Office rules denying them access to their personal records.”⁶⁷ The purpose is with regards to immigration so that they cannot obtain material about their cases, which is why the *Data Protection Act 2018* “contains a new exemption permitting Home Office “data controllers” to restrict access to personal data if it would be likely to prejudice ‘effective immigration control.’”⁶⁸ The 5th AMLD is doing away with “legitimate interest” such that “competent authorities” only with be “extend[ed] access to

⁶⁴ Daniel Boffey, [British media’s Brexit coverage sows division – EU commissioner](https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner), *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner>.

⁶⁵ Daniel Boffey, [British media’s Brexit coverage sows division – EU commissioner](https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner), *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner>.

⁶⁶ Daniel Boffey, [British media’s Brexit coverage sows division – EU commissioner](https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner), *The Guardian*, (September 24, 2018), <https://www.theguardian.com/media/2018/sep/24/british-media-brexite-coverage-sows-division-says-eu-commissioner>.

⁶⁷ Owen Bowcott, [Data laws could harm EU citizens’ attempts to stay in UK, court told](https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexite-personal-records-high-court), *The Guardian*, (January 17, 2019), <https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexite-personal-records-high-court>.

⁶⁸ Owen Bowcott, [Data laws could harm EU citizens’ attempts to stay in UK, court told](https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexite-personal-records-high-court), *The Guardian*, (January 17, 2019), <https://www.theguardian.com/politics/2019/jan/17/eu-citizens-right-to-remain-brexite-personal-records-high-court>.

beneficial ownership information of companies to the general public.”⁶⁹ By this law “the Member State is required to ensure that information on beneficial owners of trusts, or similar structures, be held in a central register where the trustee resides within the Union.”⁷⁰

One of the purposes of “widening the scope of the Directive” was to “adop[t] changes” that not only “reflect new financing trends [but also] ... increas[e] transparency regarding the identity of beneficial owners.”⁷¹ A beneficial owner has been defined as, “any natural person(s) who ultimately owns or controls the customer, and/or natural person(s) on whose behalf a transaction or activity is conducted.” “(4th AMLD art. 3, para 6.)”⁷² A beneficial ownership requires “registers for corporate or other legal entities” and that they be made “available to any member of the general public.”⁷³ In regards to access to public information, this requirement enables access to those who are deemed a “beneficial owner” if registered can be given access, only to “persons that file a written request.”⁷⁴

NGOs, Global Witness and Transparency International

⁶⁹ Luke Mizzi, Tessa Borg Bartolo, Analysing the major amendments to be brought about by The Fifth Anti-Money Laundering Directive, Mamo TCV, (August 28, 2018), <http://www.mondaq.com/x/731430/Money+Laundering/Analysing+The+Major+Amendments+To+Be+Brought+About+By+The+Fifth+AntiMoney+Laundering+Directive>.

⁷⁰ Luke Mizzi, Tessa Borg Bartolo, Analysing the major amendments to be brought about by The Fifth Anti-Money Laundering Directive, Mamo TCV, (August 28, 2018), <http://www.mondaq.com/x/731430/Money+Laundering/Analysing+The+Major+Amendments+To+Be+Brought+About+By+The+Fifth+AntiMoney+Laundering+Directive>.

⁷¹ Georg Greitemann, Germany: 5th Anti-Money Laundering Directive Adopted: Extension Of Beneficial Ownership Registers, Mondaq, (April 20, 2018), <http://www.mondaq.com/germany/x/694196/Money+Laundering/5th+AntiMoney+Laundering+Directive+Adopted+Extension+Of+Beneficial+Ownership+Registers>.

⁷² Jenny Gesley, European Union: 5th Anti-Money Laundering Directive Enters into Force, Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷³ Jenny Gesley, European Union: 5th Anti-Money Laundering Directive Enters into Force, Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷⁴ Jenny Gesley, European Union: 5th Anti-Money Laundering Directive Enters into Force, Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

Terrorist Financing

One of the ways in which terrorist are able to finance themselves is through the use of “prepaid cards.”⁷⁵ To disable this activity in the spending ecosystem which includes the hiring of people’s to illegally finance endeavors not in accordance with a country’s financial requirements, AMLD has “lower[ed] [the standards, that is] the monetary thresholds for identifying the holders of prepaid cards to address risks linked to their use in financing terrorist activities,”⁷⁶ to include “payments carried out with anonymous prepaid cards online, that does not exceed 50 euro and “in-store use of an anonymous pre-paid card” not in excess of 150 euro. There are now “electronic data retrieval systems [which] identify natural or legal persons holding or controlling payment accounts, bank accounts, and safe-deposit boxes.”⁷⁷ One of the responsibilities of the FIU (“Financial Intelligence Unit”) to each member state of the EU is to be allowed “direct, immediate, and unfiltered access to that information.”⁷⁸ With permissions as a beneficial owner under AMLD 5, EU Member State FIUs would be able to access that information regarding each individual connected to a pre-paid card to determine risks ... there are many “high-risk third countries” to which the *European Commission* has had “strategic deficiencies in their anti-money laundering or counterterrorism regimes.” This added requirement helps the “AMLD [to]

⁷⁵ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷⁶ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷⁷ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

⁷⁸ Jenny Gesley, [European Union: 5th Anti-Money Laundering Directive Enters into Force](http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/), Library of Congress, (July 16, 2018), <http://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>.

harmoniz[e] the enhanced due diligence requirements [that need to be] performed by the companies conducting business with” other high-risk countries, or in other high risk transactions, such as the solicitation, purchase, and use of pre-paid cards.

“Money laundering exploits payment system vulnerabilities that provide criminals the opportunity to disguise both themselves and the nature of their transactions. Banking fraud groups and other criminals, as they always do, have found and begun to abuse weak links in the chains of security and oversight surrounding products with a great deal of anonymity.”⁷⁹

Virtual Currency

There has been “limited regulation and oversight” by “consumer and investors” in the virtual currency world, “outside of the online gaming community.”⁸⁰ They have found significant abuses with regards to virtual currencies and pre-paid cards, where “banking fraud groups ... have begin to abuse weak links in the chains of security and oversight surrounding products with a great deal of anonymity.”⁸¹ This is because “virtual currency ... unlike regular money is not issued or backed by any government or central bank.”⁸² A blockchain is like a “public

⁷⁹ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸⁰ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸¹ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸² Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

spreadsheet” a public ledger that keeps track of virtual currencies in private computers however online “public keys” unlike “private keys” can be seen on a blockchain. There has been a significant movement to use virtual currency in “digital wallets” this helps to allow convertible and nonconvertible “forms of virtual currency to be identified in publicly accessible blockchains.”⁸³ With a convertible virtual currency there is a “centralized ... administrating authority” whereas “by default, all nonconvertible virtual currency is centralized.”⁸⁴

The Use of Bitcoin

However vast no network is completely anonymous, not even bitcoins, which are like a virtual currency where you can “see every transaction, but not where the transaction came from or where it is going unless someone acknowledges their ownership.” A bitcoin is a convertible and decentralized meaning, it has “no central administrating authority and no central monitoring or oversight.”⁸⁵ [How have new AMLD5 laws affected bitcoin and in the UK/EU?]

There are several “key players” to a Bitcoin transaction” exchangers, administrators, and miners, who engage in the “business of exchanging virtual currency (exchangers); engage in the business of issuing centralized virtual currency, establishing rules or its use, and maintain[s] a central payment ledge” (administrators); and those who participat[e] in a decentralized virtual currency network by running ... software ...and algorithms in a distributed proof-of-work or other distributed proof system used to validate transactions in the virtual currency system

⁸³ Shanique Smith, *You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?*, ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸⁴ Shanique Smith, *You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?*, ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸⁵ Shanique Smith, *You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?*, ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

(miners).⁸⁶ [Who monitors the players to a transaction what systems in place? – depending on centralized banking systems used or not and whether access to public keys is granted by AMLD5, does the EU need permissions to access public keys in the UK or is what is public accessible to all, and how is this similar the same or different than “public information” does public information relate to everything including “public keys?”]

This brings up an important topic: anonymous use of virtual currency. When “one can get money into virtual currency systems ... anonymously’ (1) an owner is not identified (2) their numbers and addresses are not identified, and (3) the countries theyre located in are not identified.⁸⁷ Without a digital footprint, such as an IP address (“using another individual’s account”) “makes their activities difficult to trace” ... including any access to a [required] “public ledger, or blockchain ... maintained by vast identified private computer networks ... [this] makes it possible that participants... [not only abuse the power) of accessing a network [does centralized or decentralized matter, from a bank or card, pre-paid]: especially those networks required to a maintain a ledger ... “by undoing transactions that are thought to be finalized.”⁸⁸

--- pre-paid cards under AMLD 5

⁸⁶ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸⁷ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

⁸⁸ Shanique Smith, [You Think You Know, But You Have No Idea: Effective Oversight in the Era of Increasing Facelessness. Is it Possible?](https://www.acams.org/aml-white-paper-anonymity/), ACAMS, <https://www.acams.org/aml-white-paper-anonymity/>, or <http://www.acams.org/wp-content/uploads/2015/08/You-Think-You-Know-But-You-have-No-Idea-S-Smith.pdf>.

How does the AMLD 5 Play a Role in Virtual Currency

One of the responses “at the European level” to virtual currencies were three measures undertaken by the “European Banking Authority (“EBA”) to “address the risks of virtual currencies.”⁸⁹ These measures, trace the “creation/licencing of a ‘scheme governance authority’ to challenge the “integrity” of the virtual currency as well as trace “extensions ([which are difficult, because anonymous](#)) “of market abuse and AML rules to virtual currency transactions; [and to support] the enactment of specific rules of conduct for market participants.”⁹⁰

“Money laundering and terrorist financing purposes” are arguably the “biggest threa[t] associated [to] virtual currenc[y] (or cryptocurrency[y] use.”⁹¹ This is important because the “means of exchange ... [to] which [a currency] can be transferred, stored and traded electronically” will be changing after Brexit, and new permissions required.⁹² There are certain “virtual currency exchange platforms” which are used to trace virtual currencies, and there are certain “firms designated as obliged entities under EU Law, including credit institutions, financial institutions and certain professionals such as auditors and accountants.”⁹³

⁸⁹ Simont Braun, [AMLD5 and Cryptocurrencies](https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0), Lexology, (October 22, 2018), <https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0>.

⁹⁰ Simont Braun, [AMLD5 and Cryptocurrencies](https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0), Lexology, (October 22, 2018), <https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0>.

⁹¹ Simont Braun, [AMLD5 and Cryptocurrencies](https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0), Lexology, (October 22, 2018), <https://www.lexology.com/library/detail.aspx?g=35d0bed0-2fb0-41a0-9f07-31ebcf6a95e0>.

⁹² Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

⁹³ Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

Virtual Currency: Response by the EU (Effects on Tech)

What are TF and VCs and P2P? --- How does decentralization play a role in the monitoring of virtual currency, how does this affect banking, or the tracing of IP addresses (footprints), monitoring and public oversight of public keys and ledgers, maintenance of. (threat to use of virtual currency popularity – bring up this subject here, and also how it is one of the biggest threats to virtual currency posed by money laundering and terrorist financing purposes).

After Brexit new AML 5 laws will require the UK to abide by EU laws. As an “EU Member State ... the UK is part of a collaborative fight against money laundering and financial crime,”⁹⁴ making it more difficult for people in Tech to work in the UK, which used to be a leader or hub, changes to laws will cause the moving of jobs to Europe, to make it more difficult for financial crimes to occur. [input citation] The EU has therefore created a “Europol Information System (EIS), [which would] enabl[e] law enforcement from different countries within the EU to exchange criminal intelligence” such as virtual currency exchanges, however even then “[with] best practices ... [and] the right agreements put in place. The UK government must ensure the highest standards ... and sustain the importance of implementing effective AML systems.”⁹⁵

Preventing the usage of “virtual currencies [from] abus[e]” ... will require changes to the current anonymity to which terrorist are able to conceal transactions, this is due to the “lack of an EU-level reporting mechanism for identifying suspicious activity.”⁹⁶ According to the MLD5,

⁹⁴ Vishal Marria, *The Future of Money Laundering After Brexit*, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

⁹⁵ Vishal Marria, *The Future of Money Laundering After Brexit*, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

⁹⁶ Jaak Poldma, Rebecca Dipple, *New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies*, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

FIU’s “should be able to obtain information” that would allow them to identify the owner and “associate [the] virtual currency address” to that virtual currency.⁹⁷

UBO’s and High Risk Third Countries

Another system put in place are UBOs (Ultimate Beneficiary Owners) ... which helps to “collaborat[e] data, [which] reduces the number of shell companies in an attempt to prevent illicit behavior by making businesses more transparent.”⁹⁸ This would make it difficult for “criminals to continue to benefit from their crimes.”⁹⁹ (see above “Terrorist Financing)

There are many high-risk third countries, which are prohibited from joining the EU under this new directive AML 5, and the scope of “identifying” high risk countries has since been broadened.¹⁰⁰ Whereby many risks “stemming from ... shell companies and opaque structures ... [are] used by criminals and terrorists to hide the real beneficiaries of a transaction, including for tax evasion purposes.” A *shell company* is an “inactive company [that] use[s] as a vehicle for various financial maneuvers or kept dormant for future use in some other capacity.”¹⁰¹ Under the AMLD 5 *high-risk third countries* are identified by:

⁹⁷ Jaak Poldma, Rebecca Dipple, New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

⁹⁸ Vishal Marria, The Future of Money Laundering After Brexit, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

⁹⁹ Vishal Marria, The Future of Money Laundering After Brexit, (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19.1>

¹⁰⁰ Jaclyn Jaeger, EU Expands controversial AML country blacklist, (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹⁰¹ Jaclyn Jaeger, EU Expands controversial AML country blacklist, (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

“(1) criminalization of money laundering and terrorist financing (2) customer due diligence and recordkeeping requirements (3) reporting of suspicious transactions (4) the powers and procedures of competent authorities (5) the practice in international cooperation; and (6) the existence of dissuasive, proportionate and effective sanctions.”¹⁰²

Compliance Week, argues that: “One of the reasons they are so difficult for anti-compliance practitioners to manage is that they are not uncovered by the traditional due diligence used in compliance programs.”¹⁰³ The purposes for “due diligence used in compliance programs ... is to uncover red flags such as negative media reports, lawsuits, and hits on sanctions lists ... negative indicia ... [which] turn[s] up in ... due diligence investigation[s].”¹⁰⁴ For example, in the US, new (CDD) rule from 2016 forces banks to know the names of their customers in order to reveal them to law enforcement agencies [to avoid the] anonymous misuse of shell companies shall be prevented.”¹⁰⁵ In fact, post-Brexit, “British firms won’t be permitted to set up small shell companies to get around losing mainland Europe distribution rights.”¹⁰⁶

Forbes.com argues that, one of the issues is “continue[d] access to ... shared intelligence database[s]” ... in order “to collectively be prepared” it has become clear that a “no-deal Brexit [is] on the horizon” this is because with new laws put into place ... on their own, the UK will

¹⁰² Will Kenton, What is a Shell Corporation?, Investopedia (March 21, 2019), <https://www.investopedia.com/terms/s/shellcorporation.asp>.

¹⁰³ The continuing problem of shell companies, <https://www.complianceweek.com/blogs/the-man-from-fcpa/the-continuing-problem-of-shell-companies>.

¹⁰⁴ The continuing problem of shell companies, <https://www.complianceweek.com/blogs/the-man-from-fcpa/the-continuing-problem-of-shell-companies>.

¹⁰⁵ Shell corporation, Wikipedia, https://en.wikipedia.org/wiki/Shell_corporation.

¹⁰⁶ Joe McGrath, Euro Watchdog Warns Against Shell Companies Post-Brexit, (May 31, 2017), <https://www.institutionalinvestor.com/article/b1505p9lf8f72s/euro-watchdog-warns-against-shell-companies-post-brexit>.

have to be “vigilant and prepared with efficient monitoring systems” if not by application to EU Member State systems of support, on their own “spot and prevent suspicious activity.”¹⁰⁷

Due Diligence

The *European Commission* and *FATF* differ in terms of their methodology for “developing its list” where there is a “careful review of the legal framework, extensive fact-gathering, and onsite visits” with interactive dialogues.¹⁰⁸

In responding to this “overlap between money laundering and terrorist financing” enhanced due diligence procedures have required the UK to participate in the NCA’s “Flag It Up campaign, “which focuses on the social impact of money laundering ... [and] urges those in the sector to file suspicious activity reports directly with the NCA.”¹⁰⁹

‘Rules and regulations can make crimes like money-laundering seem distant, and removed from everyday life. Compliance can become just a tick-boxing exercise,’ says Phillippa Foster Back CBE, Director for the Institute of Business Ethics (IBE).’¹¹⁰

There are (CDD) Client Due Diligence “reporting and monitoring requirements under the regulations” set by the “Money Laundering Regulations 2017 in the UK, and to help IFA members checklists have been made available to them. The checklists help with “policies,

¹⁰⁷ Vishal Marria, [The Future of Money Laundering After Brexit](https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19), (February 14, 2019), <https://www.forbes.com/sites/vishalmarria/2019/02/14/the-future-of-money-laundering-after-brexit/#20722d88fb19>.

¹⁰⁸ Jaclyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹⁰⁹ <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>

¹¹⁰ <https://blogs.spectator.co.uk/2018/03/the-knock-on-impact-of-money-laundering-to-wider-society/>

controls and procedures, awareness and training, record keeping, firm's risk assessment of money laundering or terrorist financing, CDD, reporting, supervision, and monitoring.”¹¹¹

(a) Compliance (and Due Diligence)

Wherever there are “high-risk third countries on the list” There are a “series of checks and balances that financial institutions must use where there's a high risk of money laundering or terrorist financing.”¹¹² These checks and balances including a finding of:

“(1) additional information on the customer and on the beneficial owners, (2) additional information on the intended nature of the business relationship, (3) information on the source of funds and source of wealth of the customer and of the beneficial owners, (4) obtaining information on the reasons for the intended or performed transactions, (5) the approval of senior management for establishing or continuing the business relationships, and (6) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions that need further examination.”¹¹³

¹¹¹ <https://www.ifa.org.uk/technical-resources/aml/uk-law-and-guidance>

¹¹² Jaelyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹¹³ Jaelyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

Whenever “tackling money laundering” not only is an “enhanced level of scrutiny required for all business relationships ... essential to identify and mitigate any potential risks” but also ... “essential to have increased transparency to deter and identif[y] illegal activity.”¹¹⁴

Banking in the US and Tech

Banks work on a check- based system, where manual review is used to monitor “high-risk transactions and accounts” many of these systems have proven to be inefficient, which is why the US Banking system has “expanded the ranks of its compliance team.”¹¹⁵ As “regulators continu[e] [to] revise [their] rules ... focus expand[ing] from organized crime to terrorism” is being used to “targe[t] individual countries and even specific entities as part of their foreign policies.”¹¹⁶

Banking in the UK and Tech

In the age of technology, with an ability to “send money to another bank in real time ... criminals have been quick to exploit these innovations.”¹¹⁷ According to “The City of London Police’s National Fraud Intelligence Bureau (NFIB) over £32 million has been reported to be lost as a result of CEO fraud alone. Organisations in both the UK and the US have experienced losses

¹¹⁴ Jaclyn Jaeger, [EU Expands controversial AML country blacklist](https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article), (February 13, 2019), <https://www.complianceweek.com/aml/eu-expands-controversial-aml-country-blacklist/24669.article>.

¹¹⁵ Stuart Breslow, Mikael Hagstroem, Daniel Mikkelsen, & Kate Robu, [The new frontier in anti-money laundering](https://www.mckinsey.com/business-functions/risk/our-insights/the-new-frontier-in-anti-money-laundering), McKinsey & Company, (November 2017), <https://www.mckinsey.com/business-functions/risk/our-insights/the-new-frontier-in-anti-money-laundering>.

¹¹⁶ Stuart Breslow, Mikael Hagstroem, Daniel Mikkelsen, & Kate Robu, [The new frontier in anti-money laundering](https://www.mckinsey.com/business-functions/risk/our-insights/the-new-frontier-in-anti-money-laundering), McKinsey & Company, (November 2017), <https://www.mckinsey.com/business-functions/risk/our-insights/the-new-frontier-in-anti-money-laundering>.

¹¹⁷ FinTech Futures, [How new AML tech is freezing the fraudsters](https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/), (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

of thousands to millions of dollars/pounds.”¹¹⁸ Today, over “90% of UK current accounts are ... covered by” Pay.UK, who now has an ability to track down these illegal payment networks, set up by criminals to transfer funds, and investigate in detail exactly how the monies have been stolen and the means by which those “illicit funds [have been] dispersed across a network.”¹¹⁹ This new system of tracking by MITS “Mule Insights Tactical Solution ... underpinned by Vocalink’s Anti-Money Laundering (AML) Insights solution” pinpoints not only “suspected illegal activities,” but can also track “suspicious payments” between multiple accounts “within the same or different financial institutions.”¹²⁰

In addition to those measures, UK “member states” will be required to follow EU laws following their exit from the EU. Why upon leaving the EU, does UK still have to abide by EU laws? The “proposals were issued in response to the evolving and growing threat of terrorism ... due to the “significant gaps in the transparency of financial transactions ... revealed.”¹²¹ In addition, the Secretary of State will have to pass “UK anti-money laundering and terrorist financing regulations” according to AML 5 as well as SAMLA 2018, *The Anti-Money Laundering Act 2018*.¹²²

The Anti-Money Laundering Act 2018 (SAMLA 2018)

¹¹⁸ FinTech Futures, [How new AML tech is freezing the fraudsters](https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/), (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

¹¹⁹ FinTech Futures, [How new AML tech is freezing the fraudsters](https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/), (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

¹²⁰ FinTech Futures, [How new AML tech is freezing the fraudsters](https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/), (March 6, 2019), <https://www.fintechfutures.com/2019/03/how-new-aml-tech-is-freezing-the-fraudsters/>.

¹²¹ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹²² Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

The “Sanctions and Anti-Money Laundering Act 2018 (SAML 2018) is enabling legislation to allow the UK to impose economic and other sanctions, and money laundering and terrorist financing regulations, after the departure from the EU.”¹²³ However, even after the UK’s departure from EU, they have vowed to “continue to work together on AML issues after Brexit,” including compliance with the MLD5, even though deadlines for implementation have not been set.¹²⁴ The UK has even “proposed [to] tight[en] up MLR 2017 ... [and expand] ... the range of businesses” they will apply to areas such as “the virtual or crypto-currencies sector,” as discussed above, in response to growing concerns when it comes to banking and tech.¹²⁵

Brexit, FIUs, and Request to Obtain Information

One of the biggest changes occurring after Brexit and the AML 5, are the “new powers for financial intelligence units ... [and the affect that has had on their] power to request obtain and use information from any obliged entity based on their own analysis and intelligence which used to be “triggered [only] by a prior suspicious activity report.”¹²⁶

All participating countries have been affected by the passage of AML 5, to which they are required to be complaint to, and based on whether or not they are considered a high-risk third country, different rules may apply. Similarly the passage of new laws in other countries, who are AML 5 complaint, requires “member states to establish centralized registers or data retrieval

¹²³ Practical Law Business Crime and Investigations, Sanctions and Anti-Money Laundering Act 2018: overview, Thomson Reuters, [https://uk.practicallaw.thomsonreuters.com/w-015-4069?originationContext=knowHow&transitionType=KnowHowItem&contextData=\(sc.Default\)&firstPage=true&hcp=](https://uk.practicallaw.thomsonreuters.com/w-015-4069?originationContext=knowHow&transitionType=KnowHowItem&contextData=(sc.Default)&firstPage=true&hcp=).

¹²⁴ The UK’s anti-money laundering laws post-Brexit, (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

¹²⁵ The UK’s anti-money laundering laws post-Brexit, (August 29, 2019), <https://www.openaccessgovernment.org/anti-money-laundering-laws-post-brexit/72376/>.

¹²⁶ Jaak Poldma, Rebecca Dipple, New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies, (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

systems to enable financial intelligence units and national competent authorities to access information about the identities of holders of bank and payment accounts and safe-deposit boxes.”¹²⁷

Beneficial Ownership

Denmark was one of the first countries to implement a published register of company shareholders, under the required under *Article 30*, which requires the reporting of beneficial ownership made available to “competent authorities (e.g. financial intelligence units).”¹²⁸

Company **online databases** are primarily responsible for the recording of PSCs (People of Significant Control) who meet the criteria, either directly or indirectly holding more than 25% of the shares to a company.¹²⁹

Article 31, under the AML 5 directive “requires trustees to ‘obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust.’”¹³⁰ Whereby “the protector (if any), beneficiaries or class of beneficiaries, and any other person exercising control over the trust”¹³¹ is required to include such information “on a central register of trusts.”¹³² The “HMRC [is one of the “competent authorities”] who are responsible for

¹²⁷ Jaak Poldma, Rebecca Dipple, [New EU and UK Anti-Money Laundering Rules: The Fifth AML Directive Extends to Cryptocurrencies](https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies), (September 13, 2018), <https://www.orrick.com/Insights/2018/09/New-EU-and-UK-Anti-Money-Laundering-Rules-The-Fifth-AML-Directive-Extends-to-Cryptocurrencies>.

¹²⁸ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹²⁹ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³⁰ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³¹ Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³² Colleen Stretch, [Brexit – What Now for the UK’s AML Regime?](https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/), (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

maintaining a register, however “the UK has no plans to make this information available to the public.”¹³³

There's a difference between “companies and trusts” argues *UK Prime Minister David Cameron*, he highlighted the necessity for a solution to “address[s] the potential misuse of companies, such as central public registries” arguing that it is not appropriate.¹³⁴ Trusts on the other hand, require different treatment, where the implications for privacy are far greater” argues *Lord Newby* ... where there has to be more than a mandatory registration requirement, claiming it to be “disproportionate [in its] approach ... [and] undermines the common-law basis of trusts in the UK.”¹³⁵ This is a very “complex task” especially when “confronted with data protection and privacy requirements.”¹³⁶ In fact one citizen in France argues that “the publication of her personal data infringed on the right to a private life.”¹³⁷

AML Compliance in the US

FATF stands for The Financial Action Task Force, an “intergovernmental organization” who serve as “gatekeepers ... who are in a position to facilitate or inhibit money laundering and terrorism financing.”¹³⁸ FATF assists with the monitoring of “soft-law developments,” to encourage “U.S. legal professionals to follow” in response to new regulations, applicable to

¹³³ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³⁴ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³⁵ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³⁶ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³⁷ Colleen Stretch, Brexit – What Now for the UK’s AML Regime?, (September 2016), <https://www.riskscreen.com/kyc360/special-report/brexit-what-now-for-the-uks-aml-regime/>.

¹³⁸ 2010 ABA Prof. Law. 3

English speaking countries, where FATF exists, “endorsed by more than 180 jurisdictions, the World Bank and the International Monetary Fund.” (Does FATF exist in non English speaking countries?) FATF’s current objective are:

“1) revising and clarifying the global standards for combating money laundering and terrorism financing; 2) promoting global implementation of its standards; 3) identifying and responding to new money laundering and terrorist financing threats; and 4) engaging with stakeholders and partners throughout the world.”¹³⁹

According to *FATF* “the greatest risks should receive the most attention.”¹⁴⁰ Their guides use a “risk-based approach” which is “founded on the premise that there are finite resources available to combat money laundering and terrorism financing ... [to] be used in the most efficient manner possible.”¹⁴¹

The 2008 Lawyer Guidance, identifies three different kinds of risk factors: client risk, and service risk.¹⁴² STR is a recommendation, not required, but up for later discussion, upon agreement by FATF and legal professionals, not designated as “truly [a] part of a risk-assessment process.”¹⁴³ STR stands for “suspicious transaction reporting” which is a “risk-based approach for the financial sector and those other sectors include[ing] a number of provisions.”¹⁴⁴ AML is not limited to legal professionals alone, who may be “subject to universal criminal liability, when

¹³⁹ 2010 ABA Prof. Law. 3

¹⁴⁰ 2010 ABA Prof. Law. 3

¹⁴¹ 2010 ABA Prof. Law. 3

¹⁴² 2010 ABA Prof. Law. 3

¹⁴³ 2010 ABA Prof. Law. 3

¹⁴⁴ 2010 ABA Prof. Law. 3

acting as a notary public or as a financial or corporate broker, [as well as] disciplinary rules designed specifically for legal professionals and administered by regulatory bodies.”¹⁴⁵

AML Compliance in the UK versus the US

The AML/CFT “legislation implemented [in] the EU’s money laundering directives ... were based in large part of the FATF recommendations.”¹⁴⁶ Risk assessment by the U.S. and U.K. are very similar in their “risk assessments ... [which have] provid[ed] a stronger understanding of how two leading economies Better identify, analyze, and mitigate the challenges that they face.”¹⁴⁷ They both use the “risk-based approach under” FATF, there are both “similarities and differences in how the two nations view various threats.”¹⁴⁸ FAFT helps stakeholders identify risks as well as recognize their “obligations to combat laundering using [this] risk-based approach.”¹⁴⁹ The UK takes a more empirical approach to measuring risks per industry, however when it comes to assessing “money laundering and terrorist financing risk assessments” the US separated the “two topics into separate assessments: the National Money Laundering Risk Assessment and the National Terrorist Financing Risk Assessment.”¹⁵⁰

¹⁴⁵ 2010 ABA Prof. Law. 3

¹⁴⁶ 2010 ABA Prof. Law. 3

¹⁴⁷ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁴⁸ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁴⁹ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵⁰ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

The UK “focused on money laundering, with only the final chapter devoted to terrorist financing.”¹⁵¹ Whereas the US focused on terrorist financing, and “the many ways that terrorist obtain financing – including kidnapping ... drug trafficking, and individual fundraising not affiliated with a charitable organization” which were not included in the “U.K. Report.”¹⁵² In addition both the US and the UK reports discussed beneficial ownership, “a beneficial owner is [an] individual who owns or controls a bank account.”¹⁵³ The UK focused on the many threats posed by “money laundering” and that such “arrangements ... [could be] made [through] companies, trusts, and partnerships with hidden owners.”¹⁵⁴

The US recently signed a *G-20 Beneficial Ownership Action Plan*, which mentions risk assessments to be undertaken by *The White House* through its “renewed commitment to advocate for comprehensive legislation to impose a beneficial owner requirement.”¹⁵⁵ One political issue raised is whether “stronger requirements would undermine client confidentiality ... [which] state-level officials claim collecting the information would be burdensome.”¹⁵⁶

¹⁵¹ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵² Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵³ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵⁴ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵⁵ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵⁶ Alex Zerden, Sarah Freuden, *BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering*, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

“AML and CFT ris[k]” reports have been evaluated by both the “US and the UK.”¹⁵⁷ The UK questioned “whether government regulation was necessary” and by March 2015 decided that there was a ““strong case” for introducing AML regulations.”¹⁵⁸ The UK report found the current risk to be low, when it comes to “money-laundering [and] virtual currencies.”¹⁵⁹ “The Report concluded that criminals ... were not currently using virtual currencies to raise funds, pay for infrastructure or move money into and out of the country.”¹⁶⁰ Those who use digital currency also known as money transmitters are “obligate[d] ... to comply with the AML and CFT regulations.”¹⁶¹ While the US is “ahead of the UK in terms of regulating digital currencies” there is still more work to be done, “according to the US money laundering report.”¹⁶²

Money Laundering in the UK – Prosecuting Offences

In the UK money laundering offences are “investigated by the National Crime Agency (NCA) and the police and Her Majesty’s Revenue and Customs (HMRC).”¹⁶³ As a general rule, the “Crown Prosecution Services” prosecute offenses, and those “cases involving serious fraud

¹⁵⁷ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵⁸ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁵⁹ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁶⁰ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁶¹ Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁶² Alex Zerden, Sarah Freuden, BankThink How U.S., U.K. Are Together and Apart on Fighting Laundering, American Banker, (November 17, 2015), <https://www.americanbanker.com/opinion/how-us-uk-are-together-and-apart-on-fighting-laundering>.

¹⁶³ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

or corruption” are investigated by the “Serious Fraud Office.” Overall the “Financial Conduct Authority (FCA)” has the power to investigate and prosecute offenses under POCA.”¹⁶⁴ POCA applies whenever there is “money laundering [that] has taken/is taking place in another jurisdiction” such as outside of the UK, such criminal conduct is punishable upon “disclosure [of the] offence under POCA. POCA may also apply to “criminal conduct” if elements met, if the act is done in the UK, and wherever there is “failure to disclose knowledge or suspicion (or where there were reasonable grounds for knowing or suspecting” that too may give rise to an offence under POCA.¹⁶⁵ However, a money laundering offence is not considered punishable if occurring within or outside the territory of the UK, and if the relevant conduct when it occurred was not unlawful under criminal law that applies to that country or territory, if at the time of the offence reasonable grounds were held to believe the conduct occurred outside of the UK or in another country, thus counting as an “overseas conduct defences, in relation to the disclosure offences.”¹⁶⁶ Then POCA would not apply, or be used in those cases to prosecute.

Both individuals and corporations can be prosecuted for money laundering. In fact, most “offences in POCA apply to corporations as well as individuals.”¹⁶⁷

¹⁶⁴ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

¹⁶⁵ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

¹⁶⁶ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

¹⁶⁷ Joel M. Cohen, Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>

New AML Laws in the UK 2017

New as of 2017, are The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) ([look up on google.](#))¹⁶⁸ The purpose of these regulations are to provide for some “written assessment of money laundering risk and prescribe ... internal controls.”¹⁶⁹ These new regulations not only enable written assessments but also encourage due diligence on the behalf of compliance officers, including the requirement to specify beneficial ownership that trusts provide.¹⁷⁰

“The principal AML requirements are contained in the MLR 2017 ... require relevant persons to, among other things, carry out appropriate levels of risk assessment, implement adequate policies, controls and procedures, and carry out appropriate levels of customer due diligence (CDD).”¹⁷¹

There are penalties for failure to comply with MLR 2017, which include failure to: “(1) carry out risk assessments, (2) apply policies and procedures, (3) appoint a nominated officer, (4) keep required records, (5) apply customer due diligence measures when required, (6) conduct

¹⁶⁸ Karolos Seeger, Alex Parker, Ceri Chave, & Andrew Lee, [UK Implements New Anti-Money Laundering Rules](#), Compliance & Enforcement, (June 26, 2017), https://wp.nyu.edu/compliance_enforcement/2017/06/29/uk-implements-new-anti-money-laundering-rules/.

¹⁶⁹ Karolos Seeger, Alex Parker, Ceri Chave, & Andrew Lee, [UK Implements New Anti-Money Laundering Rules](#), Compliance & Enforcement, (June 26, 2017), https://wp.nyu.edu/compliance_enforcement/2017/06/29/uk-implements-new-anti-money-laundering-rules/.

¹⁷⁰ Karolos Seeger, Alex Parker, Ceri Chave, & Andrew Lee, [UK Implements New Anti-Money Laundering Rules](#), Compliance & Enforcement, (June 26, 2017), https://wp.nyu.edu/compliance_enforcement/2017/06/29/uk-implements-new-anti-money-laundering-rules/.

¹⁷¹ Joel M. Cohen & Stephanie Brooker, [Anti-Money Laundering Laws and Regulations 2019](#), ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>.

ongoing monitoring of a business relationship; and (7) take additional measures in relation to a Politically Exposed Person (PEP).”¹⁷²

New AML Laws UK 2018

The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is working with the private sector “to tackle illicit finance whilst minimizing the burdens on legitimate business.”¹⁷³ OPBAS is one of the newest implementations in the UK acting as a watchdog, made up of “legal professional[s] and supervisors in the UK. High standards have been set, due to the “Money Laundering Regulations of 2017.” There is a “2016 Action Plan” which will be used in the delivery of the government’s commitment to deepen partnerships with the private sector.¹⁷⁴ The purpose of this organization is to “investigate and penalize,” while strengthening cooperation following the expansion of “law enforcement powers through the Criminal Finances Act” which helped to update the Money Laundering Regulations, which have helped to set international standards, “rais[ing] awareness of financial crime and how to guard against it.”¹⁷⁵

¹⁷² Joel M. Cohen & Stephanie Brooker, Anti-Money Laundering Laws and Regulations 2019, ICLG, (September 5, 2019), <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/uk>.

¹⁷³ John Glen, UK launches new anti-money laundering watchdog, (January 23, 2018), <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog>.

¹⁷⁴ John Glen, UK launches new anti-money laundering watchdog, (January 23, 2018), <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog>.

¹⁷⁵ John Glen, UK launches new anti-money laundering watchdog, (January 23, 2018), <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog>.

The History of AML in the US

AML stands for Anti-Money Laundering. There are three stages: placement, layering, and integration.¹⁷⁶ “Placement is the movement of cash from its source ... [which] can be easily disguised or misrepresented.”¹⁷⁷ This occurs by putting back into the “financial system” monies to appear clean, “sometimes through the wiring or transferring [of money] through numerous accounts.”¹⁷⁸ The Bank Secrecy Act (BSA) was created in 1970 and is administered by the Financial Crimes Enforcement Network, in the US, “provid[ing] law enforcement and regulatory agencies with the most effective tools to combat money laundering.”¹⁷⁹ The BSA has since been “enhanced and amended.”¹⁸⁰ The Bank Secrecy Act included: (1) the establishment of requirements for recordkeeping and reporting by private individuals, banks, and other financial institutions; (2) Designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the US or deposited in financial institutions; (3) and Requires banks to (a) report cash transactions over \$10,000, using the Currency Transaction Report, (b) properly identify persons conducting transactions; and (c) maintain a paper trail by keeping appropriate records of financial transactions.¹⁸¹

AML Enforcement in the US

¹⁷⁶ Money Laundering in the EU: Methods and Stages of Money Laundering, <https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm>.

¹⁷⁷ Money Laundering in the EU: Methods and Stages of Money Laundering, <https://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm>.

¹⁷⁸ History of Anti-Money Laundering Laws, <https://www.fincen.gov/history-anti-money-laundering-laws>.

¹⁷⁹ History of Anti-Money Laundering Laws, <https://www.fincen.gov/history-anti-money-laundering-laws>.

¹⁸⁰ History of Anti-Money Laundering Laws, <https://www.fincen.gov/history-anti-money-laundering-laws>.

¹⁸¹ History of Anti-Money Laundering Laws, <https://www.fincen.gov/history-anti-money-laundering-laws>.

It is a crime to engage in “any type of financial transaction [where there is] ... knowledge that the funds were proceeds of “criminal activity.””¹⁸² AML/CFT laws are specifically designed to combat the financing of terrorism. The following laws pertain to anti-money laundering: (1) Money Laundering and Financial Strategy Act 1998, (2) USA Patriot Act 2001, (3) Suppression of the Financing of Terrorism Implementation Act 2002, and (3) Intelligence Reform and Terrorism Prevention Act 2004.¹⁸³ Legislation, such as the Bank Secrecy Act “appl[ies] to “financial institutions,” [such as] ... banks, broker-dealers, casinos, futures commissions merchants, money services business, mutual funds and other persons.”¹⁸⁴ Although there are “criminal prohibitions on terrorism financing [to individuals]. Legal entities [can] be held liable for violations of the Bank Secrecy Act.”¹⁸⁵

AML/CFT laws are “extraterritorial.” This effects means that’s the laws apply to activities conducted “in, with, or involving the United States.”¹⁸⁶ International agreements, or “multilateral agreements” that “include AML/CFT provisions Facilitate [both the] exchang[e] of banking and other financial records [as well as] in money laundering cases involving other countries.”¹⁸⁷

The Financial Crimes Enforcement Network (FinCEN) “issu[es] and enforce[es] regulations with respect to AML/CFT laws ... facilitate[ing] [the processing of] information

¹⁸² USA: Anti Money Laundering 2019, ICLG, <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/usa>.

¹⁸³ Cadwalader Wickersham & Taft LLP, Anti-money laundering and fraud in the USA, Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

¹⁸⁴ Cadwalader Wickersham & Taft LLP, Anti-money laundering and fraud in the USA, Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

¹⁸⁵ Cadwalader Wickersham & Taft LLP, Anti-money laundering and fraud in the USA, Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

¹⁸⁶ Cadwalader Wickersham & Taft LLP, Anti-money laundering and fraud in the USA, Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

¹⁸⁷ Cadwalader Wickersham & Taft LLP, Anti-money laundering and fraud in the USA, Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

sharing among law enforcement agencies and the federal financial regulatory authorities.”¹⁸⁸

With regards to compliance, FinCEN 314 list, 314(a), “enables law enforcement to solicit information from financial institutions related to such investigations.”¹⁸⁹ There are three elements to making a FinCEN list, executed by Federal, state, local, and foreign law enforcement: (1) the sending of requests for information regarding subjects suspected of terrorism or money laundering, (2) the review of requests every two weeks, sent via a secure internet website to financial institutions across the country, and (3) the prompt search by financial institutions of their entire customer database for any accounts maintained within the last 12 months and any transactions conducted within the last 6 months by named subjects on the list.¹⁹⁰ The primary purpose of maintaining a FinCEN list is to “enhance law enforcement’s ability to identify FinCEN sanctioned countries and fight terrorism and money laundering.”¹⁹¹

The Bank Secrecy Act

FinCEN is a “bureau within the Treasury Department” responsible for “implement[ing], administer[ing], and enforce[ing] compliance with authorities by what is “known as the Bank Secrecy Act [“BSA”].”¹⁹² The BSA provides the “legislative framework” for preventing money laundering, and is also known as “The Currency and Foreign Transactions Reporting Act of

¹⁸⁸ Cadwalader Wickersham & Taft LLP, *Anti-money laundering and fraud in the USA*, Lexology, <https://www.lexology.com/library/detail.aspx?g=330bdf46-1eb9-4a14-8d7e-9851feb2839e>.

¹⁸⁹ FinCEN Regulations, CSI, <https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance>.

¹⁹⁰ FinCEN Regulations, CSI, <https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance>.

¹⁹¹ FinCEN Regulations, CSI, <https://www.csiweb.com/industries-we-serve/financial-institutions/regulatory-compliance/federal-regulations/fincen-compliance>.

¹⁹² *FinCEN’s Mandate From Congress*, 31 U.S.C. 310, <https://www.fincen.gov/resources/fincens-mandate-congress>.

1970,” and “sometimes referred to as an “anti-money laundering” law (“AML”) or jointly as “BSA/AML.””¹⁹³

In order to enforce violations, The Bank Secrecy Act relies upon a “BSA E-Filing System in order to submit Suspicious Activity Reports.”¹⁹⁴ The Bank Secrecy Act governs the activities of financial institutions, who are “required to assist U.S. government agencies in detecting and preventing money laundering.”¹⁹⁵ Under this act, financial institutions are required to: (1) “keep records of cash purchases of negotiable instruments,” (2) file reports of cash transactions exceeding \$10,000,” and (3) “report suspicious activity that might signal criminal activity.”¹⁹⁶ The BSA also includes a “provisio[s] of the USA Patriot Act, which requires every bank to adopt a customer identification program.”¹⁹⁷ Financial institutions include: “national banks, federal savings associations, federal branches, and agencies of foreign banks.”¹⁹⁸

Under the Bank Secrecy Act (BSA), banks are required to:

- “Establish effective BSA compliance programs
- Establish effective customer due diligence systems and monitoring programs
- Screen against Office of Foreign Assets Control (OFAC) and other government lists
- Establish an effective suspicious activity monitoring and reporting process

¹⁹³ FinCEN’s Mandate From Congress, 31 U.S.C. 310, <https://www.fincen.gov/resources/fincens-mandate-congress>.

¹⁹⁴ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

¹⁹⁵ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

¹⁹⁶ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

¹⁹⁷ Suspicious Activity Reports (SAR), Office of the Comptroller of the Currency, (April 1, 2013), <https://www.occ.treas.gov/topics/bank-operations/financial-crime/suspicious-activity/index-suspicious-activity.html>.

¹⁹⁸ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

- Develop risk-based anti-money laundering programs”¹⁹⁹

The OCC

The OCC “conducts regular examinations of” these financial institutions “to determine compliance with the BSA” in the US.²⁰⁰ There are alert systems, advisories, and rulemakings provided by the US Department of Treasury, who along with the OCC determine “who may be engaged in fraudulent activities” as well as find those “deemed to be of high-risk for money laundering or terrorist financing activities.”²⁰¹ There are BSA/AML risk management programs, which are supported by US law enforcement who “provid[e] banks with access to resources and tools” to help them with the “fil[ing] [of] money laundering and terrorist financing investigations.”²⁰² They are responsible for “provid[ing] the requisite notices to law enforcement to deter and detect money laundering, terrorist financing and other criminal acts and the misuse of our nation’s financial institutions.”²⁰³

What is AML, and the 5 Pillars

In the US, there are 5 pillars governing AML “Anti-Money Laundering” and BSA Compliance under FinCEN, the most recent pillar being “the establishment of a risk-based,

¹⁹⁹ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁰⁰ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁰¹ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁰² Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

²⁰³ Bank Secrecy Act, Office of the Comptroller of the Currency, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>.

customer due diligence procedure.”²⁰⁴ The “Bank Secrecy Act compliance program (collectively “AML”) rests upon four pillars: (1) written policies and procedures; (2) a designated AML compliance officer; (3) independent testing of the institution’s AML program; and (4) implementation of an adequate employee training program.”²⁰⁵ This new rule not only amends the “Bank Secrecy Act ... effective July 2016, [but also required full compliance] by May 11, 2018.”²⁰⁶

At a minimum a proper BSA/AML program must include the following:

- A system of internal controls to ensure ongoing compliance;
- Independent testing of BSA/AML compliance;
- The designation of an individual responsible for day-to-day compliance; and
- Training for appropriate personnel.²⁰⁷

The purpose behind the fifth pillar, implemented by FinCEN, the US Treasury Department Financial Crimes Enforcement Network, is to impose a “new requirement” that requires “banks, broker-dealers, mutual funds, futures commission merchants, and brokers in commodities” to “identify and verify the identity of the natural persons behind the legal entity

²⁰⁴ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁰⁵ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁰⁶ FinCEN Adds Fifth BSA Compliance “Pillar.” The NCUA Report National Credit Union Administration, <https://www.ncua.gov/newsroom/ncua-report/2017/fincen-adds-fifth-bsa-compliance-pillar>.

²⁰⁷ FinCEN Adds Fifth BSA Compliance “Pillar.” The NCUA Report National Credit Union Administration, <https://www.ncua.gov/newsroom/ncua-report/2017/fincen-adds-fifth-bsa-compliance-pillar>.

customers – [i.e] the beneficial owners.”²⁰⁸ FinCEN provided a “two-year implementation period.”²⁰⁹ So that whenever “an account is opened by a new or existing legal entity customer” the financial institution would have to identify its true owners based upon the following criteria, which would include anyone who owns 25% or more equity interest either directly or indirectly, or includes any individual who has a “significant responsibility to control, manage, or direct a legal entity customer Who regular performs similar functions.”²¹⁰

In order to identify the beneficial owners a CIP Program, has been established to “verify the identity of individual customers under the financial institution’s customer identification program (CIP).”²¹¹ Whereby financial institutions are required to “verify that information using reasonable and practicable risk-based procedures.”²¹² Factors involved in this process, require examination of the “reliability of the information” to make sure a true and accurate identification of the beneficial owners, and if necessary determine whether a financial institution must rely on a financial institutes “affiliates” to identify and verify a legal entity’s beneficial owners. Entities excluded from this fifth pillar, include “entities registered with the SEC or the CFTC,” insurance companies, non-US financial institutions established in jurisdictions who’s regulators maintain

²⁰⁸ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²⁰⁹ FinCEN Adds Fifth BSA Compliance “Pillar.” The NCUA Report National Credit Union Administration, <https://www.ncua.gov/newsroom/ncua-report/2017/fincen-adds-fifth-bsa-compliance-pillar>.

²¹⁰ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²¹¹ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²¹² Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

beneficial ownership information, and non-US governmental entities engaging in non-commercial activities.”²¹³ Furthermore, “CIP procedures and risk-based monitoring [have been used] to identify suspicious transactions.”²¹⁴ However there are deficiencies to these programs ability to adhere to BSA/AML regulatory requirements. Under the new CDD rule, each financial institution must not only review new account policies and procedures, updating them with the new beneficial ownership identification requirements, but they must also determine the beneficial owners ie the current legal entity customers, as well as ensure compliance with all “CIP, CDD. And risk-based monitoring requirements.”²¹⁵

AML Compliance in the US

According to the “Paris-based Financial Action Task Force (FATF), which sets international anti-money laundering (AML) standards” rated the US as having the “lowest possible ratings for preventing criminals from laundering money using shell companies, and the oversight attorneys and real estate agents, black marks tarnishing the country’s overall powerful framework to counter financial crime.”²¹⁶ On a more positive note, the same FATF evaluators also gave the “US high marks tied to its oversight of banks, sharing of information and tackling

²¹³ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²¹⁴ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²¹⁵ Stuart P. Lott, The “Fifth Pillar” of AML/BSA Compliance FinCEN Issues Final Rule for New Customer Due Diligence Requirements under the Bank Secrecy Act, Bradley, (July 20, 2016), <https://www.financialservicesperspectives.com/2016/07/the-fifth-pillar-of-amlbsa-compliance-fincen-issues-final-rule-for-new-customer-due-diligence-requirements-under-the-bank-secrecy-act/>.

²¹⁶ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCFS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

terrorist financing.”²¹⁷ Overall in the battle for achieving effectiveness, and to combat deficiencies to current systems in place, since the “Panama Papers scandal” regarding “how terrorists, criminals and the corrupt ... hide illicit assets behind murky ownership structures” came out, the US has since been put “under more stringent evaluations focusing on effectiveness rather than technical compliance.”²¹⁸ Compared to the UK (*see below*), the US “system has serious gaps that impede timely access to beneficial ownership information,” and poorly ranked in terms of “corporate ownership.”²¹⁹ Overall the US does impose a range of sanctions, and “remedial measures, including informal supervisory actions.”²²⁰ In addition, the US has been praised by FATF for their Financial Institutions (FIs) “evolved understanding of ML/TF risks and obligations” as well as their “systems and processes for implementing preventative measures” such as, “onboarding customers, transaction monitoring and reporting suspicious transactions.”²²¹ The greatest “burden” to the US financial sector lies in the “required measures under the Bank Secrecy Act (BSA).”²²²

US Action Plan: (needs work) >>> <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/> (See: “Action plan

²¹⁷ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²¹⁸ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²¹⁹ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²⁰ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²¹ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²² [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

focuses on eliminating SAR thresholds, ownership gaps // In an action plan that the U.S. must complete before it's next FATF evaluation, the group laid out several priorities for the country to buttress outstanding vulnerabilities. They are:"²²³

- -Make beneficial ownership information available to competent authorities.
- -Implement beneficial ownership requirements under AML, collect company formation details.
- -Issue guidance to clarify SAR reporting requirement, while conducting “focused risk review of the existing SAR reporting thresholds, and the 60/30 day reporting deadlines.”
- -Improve visibility of AML and State level activities and statistics, improve data collection and sharing, to determine on a nation-wide level AML efforts.
- -FinCEN “should continue to expand its use of tools such as GTO and 314(a) requests.
- -Create a new law that would strengthen value-based asset forfeiture, so if investigators cant find money, but know the value, they can seize a corresponding piece of value and assets from criminal entities, without having to prove the house or cars were bought with illicit assets.”²²⁴

(a) Corporate Transparency in the US According to FATF

²²³ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCFS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²⁴ FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing, ACFCFS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

(See: <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>)

One of the biggest problems when it comes to corporate transparency is that “as long as certain states exist in [a] way [that] sell[s] corporate secrecy the US will be singled out by FATF.”²²⁵ In a troubled sense, “those working behind the scenes with power, wealth and political influence” are the “real ones controlling US tax havens ... protect[ing] their interest and keep[ing] their secrecy.”²²⁶ The Obama administration “proposed legislation to mandate companies to disclose beneficial owners” ... however Congress had yet to introduce the bill, “according to *Reuters*.”²²⁷ Although “Federal authorities have a good understanding of the risks of complex structures of legal persons and arrangements being used to hide ownership and lauder money”²²⁸ there are still “serious gaps” and “the US will continue to lag behind our global partners.”²²⁹ According to FATF the “US [is] non-compliant, [receiving the] lowest rating, tied to beneficial ownership and oversight as designated non-financial business, such as those involved in company formation.”²³⁰ It seems as though it doesn’t matter that the “US Treasury

²²⁵ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²⁶ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²⁷ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²⁸ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²²⁹ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

²³⁰ [FATF chastises U.S. on beneficial ownership, oversight of attorneys, real estate, Swiss on sharing](https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/), ACFCS, (December 8, 2016), <https://www.acfcs.org/fatf-chastises-u-s-on-beneficial-ownership-oversight-of-attorneys-real-estate-swiss-on-sharing/>.

finalized rules requiring banks to request and capture beneficial ownership details at account opening, but institutions have no way to verify what they are told.”

How Does AML in the US Work?

The basic tenants of an AML compliance program under FINRA 3310.²³¹ Along with compliance with the Bank Secrecy Act and the implementation of “Anti-Money Laundering rules” the primary purpose of AML is to “detect and report suspicious activity” such as “securities fraud and market manipulation.” Under FINRA 3310, AML compliance may include the following: an approved program, reasonably designed to detect and report suspicious activity, reasonably designed to achieve compliance with the AML rules (including “a risk-based customer identification program (CIP) that enables firms to form a reasonable belief that it knows the true identity of its customers,”²³² that can be “independently tested to ensure proper implementation of the program,” that requires “each FINRA member firm to submit contact information for its AML Compliance Officer through the FINRA Contact System (FCS), and requires “ongoing training [be conducted] and provided to appropriate personnel.”²³³

There are four pillars to an effective AML program.

- (1) Development of internal policies, procedures, and related controls.
- (2) Designation of a compliance officer.
- (3) A thorough and ongoing training program.

²³¹ Anti-Money Laundering (AML), <https://www.finra.org/rules-guidance/key-topics/aml>.

²³² Anti-Money Laundering (AML), <https://www.finra.org/rules-guidance/key-topics/aml>.

²³³ Anti-Money Laundering (AML), <https://www.finra.org/rules-guidance/key-topics/aml>.

(4) Independent review for compliance.²³⁴

In addition, there are CDD compliance measures, some of which have been added recently. CDD, is “Customer Due Diligence” which is “the process ... [by which] relevant information about the customer is collected and evaluated for any potential risk for the organization or money laundering/terrorist financing activities.”²³⁵

AML Compliance in the UK

In recent news, the UK has been criticized as “professional enablers,” a system which is “highly fragmented.”²³⁶ -Whereby “80% ... lack appropriate governance arrangements to tackle dirty money” their primary government sponsored source OPBAS, oversees 22 professional bodies, “and meant to ensure consistent supervision among the bodies,” however not only do they (1) “fail to gather full basic information on members (as a first step)” but they also (2) do not undertake any form of money laundering supervision at all.²³⁷ -The “Celmenti reforms in 2006 demanded legal bodies separate their regulatory and other functions” however that has yet to take place among the accountancy professions, an “overlap” was found by “62% of accountancy trade associations ... between their lobbying and regulatory functions.”²³⁸ Currently,

²³⁴ James M. Deltch & Anthony Nguyen, CPA, On compliance: Four pillars of an effective BSA/AML program, CUInsight, (April 28, 2016), <https://www.cuinsight.com/compliance-four-pillars-effective-bsaaml-program.html>.

²³⁵ Customer Due Diligence: the Process and It's Types, (November 20, 2018), <https://sumsub.com/blog/customer-due-diligence/>.

²³⁶ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

²³⁷ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

²³⁸ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

the “Institute of Chartered Accountants in England and Whales Oversee money laundering rules for accountants.”²³⁹

The UK is a “global leader in promoting corporate transparency and it is using the results of its risk assessment to further strengthen the reporting and registration of corporate structures.”²⁴⁰ At the “UN and EU level” the “UK has been highly effective in investigating, prosecuting and convicting a range of terrorist financing activity ... tak[ing] on a leading role in designating terrorists,” as well as “target[ing] financial sanctions ... domestically.”²⁴¹ Note that “the UK was one of the first jurisdictions to introduce a public register of company beneficial ownership and a register of trusts with tax consequences, going well beyond FATF’s own recommendations in some respects.”²⁴² UK is “one of two countries” to be “fully compliant with its beneficial ownership recommendations ... [and] meet that standard.”²⁴³

AML in the UK v. US – Primary Differences

The “international AML standard-setter” is the “Financial Action Taskforce (FATF).”²⁴⁴ FATF is responsible for assessing the “United Kingdom’s anti-money laundering and counter

²³⁹ UK professional groups criticized over money laundering prevention, Financial Times, <https://www.ft.com/content/318490a0-44ad-11e9-a965-23d669740bfb>.

²⁴⁰ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

²⁴¹ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

²⁴² UK global leader in fight against money laundering, International Investment, (December 11, 2018), <https://www.internationalinvestment.net/news/4000149/uk-global-leader-fight-money-laundering>.

²⁴³ UK global leader in fight against money laundering, International Investment, (December 11, 2018), <https://www.internationalinvestment.net/news/4000149/uk-global-leader-fight-money-laundering>.

²⁴⁴ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

terrorist financing (AML/CFT) system.”²⁴⁵ The UK is “one of the largest financial services provider in the world.”²⁴⁶ As such, through a series of public-private partnerships, as well as the implementation of “AML/CFT polices, strategies and proactive initiatives” the UK has been able to combat money laundering “achieving 1400 convictions each year,” that includes utilizing tools to “obtain beneficial ownership and other information,” despite needing to modernize and increase “its resources and the[ir] suspicious activity reporting.”²⁴⁷

However, the UK has a “multiplicity of players involved in AML supervision.”²⁴⁸ In the UK’s “regulated sector” there are several components to “an effective anti-money laundering (AML) program.”²⁴⁹ Its important to note that the quality of intelligence determines the pace at which those “operating on the coalface” can determine whether there has indeed been a violation. Within the “regulated sector” there are several internal controls which have been set up to control and “identify suspected money-laundering.”²⁵⁰ First off, all suspected money-laundering reports must be sent to the UK’s financial intelligence unit (FIU) in the dorm of a suspicious activity report (SARs).²⁵¹ Its not just be chance that these crimes are reported, and

²⁴⁵ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

²⁴⁶ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

²⁴⁷ The United Kingdom’s measures to combat money laundering and terrorist financing, FATF, (December 7, 2018), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>.

²⁴⁸ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁴⁹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵⁰ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵¹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

many report are due to simple adherence to “doing the right thing,” however in “non-financial sectors” the same is not true, in fact such “patchy ... reporting” has been complained about by the government, and states that there is a need for a “credible deterrent” to help “drive widespread compliance with AML regulations.”²⁵²

Improving standards “in AML supervision” required the UK to implement another body of legislation, the “Office for Professional Body Anti-Money Laundering Supervision (OPBAS), based within the Financial Conduct Authority (FCA)”²⁵³ As stated earlier, quality intelligence has been needed, and one thing OPBAS does is that it helps to “improve[s] consistency of professional body AML supervision in the accountancy and legal sectors.”²⁵⁴ There are “22 professional body supervisors on the one side and three statutory supervisors.”²⁵⁵ The three statutory supervisors are “the Financial Conduct Authority, HM Revenue and Customs (HMRC), and the Gambling Commission.”²⁵⁶ OPBAS has the power to not only enable regulations, but also has the power to offer some direction, “official direction,” when it comes to “publicly

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵² Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵³ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵⁴ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵⁵ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵⁶ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

censur[ing] a professional body supervisor ... ultimately, to recommend to HM Treasury that they consider removing the supervisor's AML role."²⁵⁷

According to the OPBAS Annual Report: "80% of professional body supervisors lacked adequate governance arrangements and 92% lacked adequate 'whistleblowing' channels."²⁵⁸ Even where there is no AML supervision, which is at about 23%, a "risk-based approach" is still undertaken, some professional body supervisors, simply "lack the requisite skills and resources in their overall approach."²⁵⁹ In part, some approaches to "taking robust AML enforcement action" have been influenced by "their ability to attract membership," not wanting to run the "risk of repelling members."²⁶⁰

There are no plans for a more unitary approach to AML, "nor a universally state-led one."²⁶¹ Overall in the UK there is a "need to demonstrate adequate understanding of risk, perform[ance] of sophisticated compliance assessments and an [under]tak[ing] of an intelligence-led approach to favour larger supervisors with more resources within their grasp."²⁶²

²⁵⁷ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵⁸ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁵⁹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁶⁰ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁶¹ Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019), <https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁶² Helena Wood, Supervising the UK AML Supervisors: The Office for Professional Body Anti-Money Laundering Supervision First Annual Report, Centre for Financial Crime and Security Studies, (March 29, 2019),

OPBAS was created in 2017, along with the introduction of money laundering regulations, the primary purpose of this organization is “intended to give effect to the requirement of _____, and to strengthen UK’s anti money laundering supervisory regime.”²⁶³ In effect the OPBAS, is like the “supervisor of supervisors” with the aim of ensuring that professional body anti-money laundering supervisors comply with the UKs anti-money laundering obligations.”²⁶⁴ The creation of the OPBAS followed, due to concerns that with only 22 SROs ie “self-regulatory organisations” there would be a significant “deficienc[y] in information sharing. According to “Article 48 of the Fourth Money Laundering Directive (MLD4) ... Member States [in the UK are] oblige[d] [and] require[d] [to allow] competent authorities [to] effectively monitor and take necessary steps to ensure compliance with the Directive.”²⁶⁵ OPBAS, as part of the FCA, has the power to review and issue directions to SROs.²⁶⁶ With that power, they can determine whether there was a failure to comply with their “obligations under the Money Laundering Regulations” and if any “false or misleading information” was provided, then, and only then can the “OPBAS ...have the ability to publicly censure ... or recommend it be removed as a designated SRO.”²⁶⁷ Its important to note that

<https://rusi.org/commentary/supervising-uk-aml-supervisors-office-professional-body-anti-money-laundering-supervision>.

²⁶³ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

²⁶⁴ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

²⁶⁵ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

²⁶⁶ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

²⁶⁷ Calum Macdonald, OPBAS, the UK’s new anti-money laundering supervisor, becomes operational, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

“confidential information gathered by OPBAS will be subject to protections.” The FCA has “information gathering powers” which block and make it a criminal offense to “inappropriate[ly] disclose ... [any] SRO’s confidential information.”²⁶⁸

Examples of SROs and How They Been Affected?

Building a better “risk-based approach” to supervisors provisions, would be to find a “credible deterrent” to the “sharing of information both among supervisors and between supervisors and law enforcement.”²⁶⁹ The FCA is basically in a new role “overseeing the anti-money laundering and counter terrorist financing (“AML” and “CTF”) supervision by the 22 SROs in the accountancy and legal sectors.”²⁷⁰ The UK government, “intends that the FCA and SRO ... engage collaboratively ... [to] strengthen the AML supervisory regime ... focus[ing] on outcomes.”²⁷¹

²⁶⁸ Calum Macdonald, *OPBAS, the UK’s new anti-money laundering supervisor, becomes operational*, Allen & Overy Investigations Insight, (January 16, 2018), <http://www.aoinvestigationsinsight.com/opbas-uk-anti-money-laundering-supervisor/>.

²⁶⁹ *The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017*, 2017 No. 1301, http://www.legislation.gov.uk/ukxi/2017/1301/pdfs/ukxiem_20171301_en.pdf.

²⁷⁰ *The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017*, 2017 No. 1301, http://www.legislation.gov.uk/ukxi/2017/1301/pdfs/ukxiem_20171301_en.pdf.

²⁷¹ *The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017*, 2017 No. 1301, http://www.legislation.gov.uk/ukxi/2017/1301/pdfs/ukxiem_20171301_en.pdf.

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