



THE COMPATIBILITY OF PROPOSED AML REQUIREMENTS WITH EXISTING LEGAL ETHICS RULES

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INTRODUCTION

The U.S. Congress is currently considering legislation¹ that would require certain professional service providers who serve as key “gatekeepers” to the United States financial system to adopt anti-money laundering (“AML”) procedures that can help detect, flag, and prevent the laundering of corrupt and other criminal money into the United States. This legislation covers certain functions or roles that have traditionally been provided by lawyers, such as corporate and trust formation services, among others.

At the same time, the U.S. Department of the Treasury has issued an Advance Notice of Proposed Rulemaking (“ANPRM”)² for new real estate sector reporting requirements aimed at disrupting the movement of corrupt and other criminal funds into the U.S. real estate sector. While the AML requirements discussed in the ANPRM may apply to non-lawyer professionals involved in real estate transactions (such as title insurance companies, escrow agents, and realtors) before or instead of falling to lawyers, the final rule may require lawyers to fulfill such requirements (see #1 below).

The specific AML requirements prescribed by the legislation and the ANPRM have yet to be determined, but may include:

- + identifying and verifying the true owners of their corporate clients;
- + collecting and reporting to the U.S. Treasury Department certain information that can be used to guard against corruption, money laundering, the financing of terrorism, and other forms of illicit finance;
- + establishing AML programs;
- + reporting suspicious transactions to the U.S. Treasury Department; and/or
- + establishing due diligence policies, procedures, and controls in order to “know their customers.”

This memo discusses how requiring lawyers to perform such AML checks on clients is consistent with the attorney-client privilege and rules regarding client confidentiality.

¹ Establishing New Authorities for Businesses Laundering and Enabling Risks to Security (ENABLERS) Act, available at https://amendments-rules.house.gov/amendments/GATEKEEPERS_NDAA_xml%20v3220711190941114.pdf

² Financial Crimes Enforcement Network, “Anti-Money Laundering Regulations for Real Estate Transactions,” Dec. 8, 2021, available at <https://www.regulations.gov/document/FINCEN-2021-0007-0001>.when they travel to the West to spend and launder their ill-gotten gains.”)

As background, the analysis herein follows principally from the relevant American Bar Association (“ABA”) Model Rules of Professional Conduct, which set forth the ABA’s determinations regarding the obligations of lawyers with respect to confidentiality and ethical representation of clients. These include:

- + ABA Rule 1.1, which requires a lawyer to “provide competent representation to a client,” including “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” The comments to the rule clarify that competent handling of a client matter “includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.” As relevant here, the Rule lends support to the conclusion that a lawyer’s factual investigation should include a determination of whether indicia of money laundering are present.
- + ABA Rule 1.2(d), which provides that a lawyer “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent[.]” Comment 8 makes clear that “agreements concerning a lawyer’s representation of a client must accord with the Rules of Professional Conduct and other law.” Comment 9 requires attorneys “to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing may be concealed,” and that where the lawyer discovers after the representation has begun that the client’s conduct is criminal or fraudulent, the lawyer must withdraw from the representation. Comment 10 further provides that, in some instances, it may be necessary to give notice of the withdrawal and disaffirm previous statements or documents. Particularly relevant here is that Comment 12 clarifies that “a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability.”
- + ABA Rule 4.1, concerning the truthfulness of the attorney’s statements to others, which provides that a lawyer shall not knowingly “fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited

by Rule 1.6.” Comment 3 explicitly contemplates situations where “substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client’s crime or fraud.”

- + ABA Rule 1.6, which governs confidentiality of client information, provides that a lawyer generally shall not “reveal information relating to the representation of the client” absent certain exceptions, including where the lawyer “reasonably believe[s] that doing so is necessary” to “prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services” (Rule 1.6(b)(2)). Comment 7 notes that “[s]uch a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule.” Similar disclosures by the attorney are authorized “to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services” (Rule 1.6(b)(3)) and “to comply with other law” (Rule 1.6(b)(6)). Comment 12 contemplates situations in which laws may supersede an attorney’s duty of confidentiality, permitting “the lawyer to make such disclosures as are necessary to comply with the law.”

Thus, while Rule 1.2 sets forth the circumstances in which a lawyer’s representation of a client is impermissible, Rules 1.6(b) and 4.1 address the circumstances in which a lawyer’s disclosure of confidential client information is appropriate or mandatory. Rule 4.1 supports the argument that the duty of confidentiality does not preclude attorneys from disclosing confidential client information to the federal government if not doing so effectively renders them accomplices to the client’s criminal or fraudulent conduct. In addition, in circumstances where a lawyer may not have actual knowledge of a criminal or fraudulent act, Rule 1.6 allows attorneys to disclose confidential information as set forth above. Thus, by requiring attorneys to adhere to AML requirements such as filing suspicious activity reports (“SARs”), the legislation and ANPRM would be making already permissible disclosures mandatory. **Accordingly, such new requirements would not go far beyond the existing ABA rules governing client confidentiality.**

1. WRIT LARGE, THE SERVICES COVERED BY THE LEGISLATION AND ANPRM CAN BE, AND TYPICALLY ARE, PROVIDED BY NON-LAWYERS.

- + Overall, the services described in the legislation and ANPRM do not require the involvement of, and typically are not performed by, legal professionals. For example, the hierarchical, cascading approach proposed in the ANPRM—wherein non-lawyer professionals involved in real estate transactions (such as title insurance companies, escrow agents, and realtors) might be assigned the relevant AML requirements before those requirements fall to lawyers, if at all³—evidences that such services do not necessitate the involvement of a legal professional or the provision of legal advice. This demonstrates that such services, as well as the services covered by the legislation (such as forming or registering a corporation, wiring money, or acting as a trustee) require substantially less legal guidance than more-complex legal services or transactions, and are conventionally provided with no accompanying standardized protections regarding client confidentiality, privilege, or other related ethical considerations.
- + The legal services expressly included in the legislation would extend only to a limited subset of legal services—specifically, those that involve financial activities that facilitate (a) corporate or other legal entity arrangement, association, or formation services, (b) trust services, or (c) third party payment services that are not connected to representation in civil or criminal defense matters. **Thus, the legislation would not affect such traditional legal representation calling for a lawyer’s unique skill and judgment.**

2. AML REQUIREMENTS WOULD NOT DISCOURAGE CLIENTS FROM ENGAGING IN NECESSARY, CANDID DISCUSSIONS AND CONSULTATIONS WITH THEIR COUNSEL.

- + Requiring lawyers to file SARs or disclose certain client information would not discourage clients from engaging in candid and necessary discussion with counsel. Many, if not most, of these prospective clients are likely already aware of their legal obligations and may simply be seeking legal advice in order to avoid detection of money laundering or other suspicious activities. As a result, AML requirements would not discourage potential clients from engaging in candid discussions and consultations with their counsel because such requirements target a group of people who largely do not seek to—and do not need to—engage in these types of conversations. Any concerns about impeding lawyer-client communications are further minimized by the express language of the legislation, which limits the scope of communications affected by expressly excluding legal services in connection with civil or criminal defense matters.

³ See Financial Crimes Enforcement Network, “Anti-Money Laundering Regulations for Real Estate Transactions,” Dec. 2, 2021, available at <https://www.regulations.gov/document/FINCEN-2021-0007-0001> (“FinCEN seeks comments on whether to assign a hierarchical, cascading reporting obligation on different entities depending on which are involved in a particular covered transaction, in a manner similar to the IRS’s regulation for submitting Form 1099-S (‘Proceeds from Real Estate Transactions’). For that IRS regulation, the ‘person responsible for closing the transaction,’ which may be a settlement agent or attorney, for instance, depending on the nature of the transaction, is required to file the Form 1099-S. And if there is no ‘person responsible for closing the transaction,’ the reporting requirement then falls to other persons involved in the transaction, such as the purchaser’s broker. In that way, the IRS regulation ensures that for every transaction, some entity involved is required to report. FinCEN is considering, and invites comments on, such an approach. FinCEN also solicits comments on whether and how to assign a reporting requirement to any or all of the following entities: Title insurance companies, title or escrow companies, real estate agents or brokers, real estate attorneys or law firms, settlement or closing agents, as well as other entities listed below in the comments section.”)

3. AML REQUIREMENTS WOULD NOT BE INCONSISTENT WITH A LAWYER'S ETHICAL DUTY TO PRESERVE THE CONFIDENTIALITY OF INFORMATION RELATED TO THE REPRESENTATION OF THEIR CLIENT.

- + The circumstances in which the AML requirements would require disclosure of potential money laundering and other financial crimes are not markedly different from those in which ABA ethics rules permit disclosure of such misconduct.
- + ABA Rules 1.1, 1.3, and 1.4 require lawyers:
 - prior to advising or assisting in a course of action, to develop sufficient knowledge of the facts and the law to understand the client's objectives, identify means to meet the client's lawful interests, to probe further, and, if necessary, persuade the client not to pursue conduct that could lead to criminal liability or liability for fraud.⁴

Indeed, the Comment to ABA Model Rule 1.1 makes explicit that "competent handling of a particular matter requires inquiry into and analysis of the factual and legal elements of the problem."⁵
- + At the same time, ABA Rule 1.6 allows lawyers to disclose a client's confidential information—to the extent the lawyer reasonably believes necessary—to (among other things):⁶
 - + prevent reasonably certain death or substantial bodily harm;
 - + prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - + prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; or
 - + comply with other law or a court order.

Thus, the second and third categories in Rule 1.6 are applicable to contemplated, planned, or past money laundering activity.
- + Moreover, ABA Rule 4.1 (discussed above) requires the disclosure of confidential client information under certain circumstances. Specifically, it prohibits an attorney from failing to disclose material information to a third party during the course of a client's representation when the attorney knows that disclosure is necessary to avoid assisting the client with criminal or fraudulent activity. Thus, the Rule directly supports the disclosure requirements under the legislation and ANPRM where attorneys know that their clients are using their services to engage in fraudulent or criminal activity.
- + Furthermore, ABA Rule 1.1 (also discussed above) supports the broader AML measures set forth in the legislation and ANPRM, in that it already obligates lawyers to acquaint themselves with facts "reasonably necessary" for the representation. Here, a factual inquiry to determine whether or not a client is engaged in money laundering can be viewed as reasonably necessary for the representation because the attorney cannot otherwise determine whether the representation is permissible under Rule 4.1 above.
- + In addition, ABA Rule 1.2(d) (also discussed above), prohibits lawyers from assisting clients to engage in conduct a lawyer knows to be criminal or fraudulent. The Rule thus reflects the ABA's recognition that it is improper for attorneys to further money laundering and other criminal activity where indicia of such misconduct are present. As such, it is consistent with and supportive of the legislation and ANPRM.
- + Finally, due to concerns that individuals might be using U.S. lawyer services to facilitate money laundering and terrorist financing, in 2010 the ABA House of Delegates adopted the *ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing* ("Good Practices Guidance").⁷ The Good Practices Guidance identifies "risk categories and offer[s] voluntary good practices designed to assist lawyers in detecting money laundering while satisfying their professional obligations."⁸
- + Taken together, the ABA Model Rules and the Good Practices Guidance show that the ABA permits (and sometimes requires) disclosure of confidential client

⁴ ABA Comm. on Ethics & Pro. Resp., Formal Op. 491 (2020).

⁵ Model Rules of Professional Conduct r. 1.1 cmt. 5 (Am. Bar Ass'n 2020).

⁶ Model Rules of Professional Conduct r. 1.6 (Am. Bar Ass'n 2020).

⁷ ABA Comm. on Ethics & Pro. Resp., Formal Op. 491 (2020).

⁸ American Bar Association Task Force on Gatekeeper Regulation and the Profession, "Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing," 8 (2010).

information in circumstances that are similar to those in which financial institutions would be required to disclose confidential client information under the FinCEN ANPRM. As set forth in the FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Instructions,⁹ a financial institution must report any transaction that, as per 31 CFR Chapter X, is conducted or attempted by, at, or through the financial institution and involves or aggregates at least \$5,000 (\$2,000 for money services businesses) and the financial institution knows, suspects, or has reason to suspect that the transaction or pattern of transactions of which the transaction is a part:

- + Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;
 - + Is designed, whether through structuring or other means, to evade any requirement of 31 CFR Chapter X or any other regulation promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;
 - + Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction, or
 - + Involves the use of the financial institution to facilitate criminal activity.
 - + In sum, a lawyer is required to understand all the facts relevant to representation of a client—including indicia of fraud or other criminal conduct—and is permitted to disclose such information under Rule 1.6 as set forth above. Those circumstances generally align with the circumstances
- under which financial institutions are required to file SARs under the Bank Secrecy Act (“BSA”). In addition, Rule 1.6 allows these disclosures when an attorney has to comply with a law or court order, such as the legislation and AMPRM. Thus, the legislation and AMPRM would simply be making mandatory the disclosures that the ABA already considers permissible.
- + To this end, the legislation and ANPRM are consistent both with the ABA’s prior guidance that attorneys should proactively identify indicia of money laundering and with the recognition under Rule 1.6 that the lawyer’s duty of confidentiality does not extend to such crimes.
 - + As alluded to above, with regard to real estate transactions, there is an available, alternative approach that would help mitigate concerns regarding client confidentiality. Namely, as there are typically multiple actors involved in a real estate transaction who are privy to the same information regarding a given transaction, it may be sufficient for only one actor in the group of participants to have reporting obligations (i.e., filing a SAR).
 - + Based on this thinking, the U.S. Treasury Department proposes in the ANPRM a hierarchical, cascading approach, whereby there would be a hierarchy of typical actors in a real estate transaction, and where the actor at the top of the hierarchy would have the duty to report (or file a SAR), while the ones in lower positions would not. In the event the person or entity at the top of the hierarchy cannot report, for some justifiable reason, the reporting requirement attaches to the next actor in the hierarchy and so on.
 - + In situations where lawyers happen to be at the top of the hierarchy (i.e., are the ones with the reporting obligation), the alternative approach would allow the lawyer to ask someone else who is lower in the hierarchy to report. If they cannot do so, only then would the lawyer be required to report.

⁹ Financial Crimes Enforcement Network, “FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Instructions,” October 2012, available at <https://www.fincen.gov/sites/default/files/shared/FinCEN%20SAR%20ElectronicFilingInstructions-%20Stand%20Alone%20doc.pdf>.

4. AML REQUIREMENTS WOULD NOT CONFLICT WITH PROFESSIONAL CONDUCT RULES IMPOSED UPON LAWYERS BY STATE SUPREME COURTS OR UNDERMINE LONGSTANDING STATE SUPREME COURT JUDICIAL REGULATION AND OVERSIGHT OF LAWYERS AND THE LEGAL PROFESSION.

- + Most importantly, as well as for practical purposes, the legislation contains express language that would override any relevant conflicting state regulation. Section 7 of the legislation states that “Nothing in this Act may be construed to be limited or impeded by any obligations under State, local, territorial, or Tribal laws or rules concerning privilege, ethics, confidentiality, privacy, or related matters.”
- + With regard to the ANPRM, the ABA submitted a comment that cites both a D.C. District Court and a D.C. Circuit case (“D.C. cases”) for the proposition that the language of the BSA does not authorize the Secretary of the Treasury to promulgate rules that regulate attorney conduct. Yet these cases, which involved different statutes and regulatory regimes, can be distinguished.
- + In the D.C. Circuit case, *ABA v. FTC*, 430 F.3d 457 (D.C. Cir. 2005), the Federal Trade Commission (“FTC”) sought to enforce privacy regulations under the Gramm-Leach-Bliley Financial Modernization Act (“GLBA”) against lawyers, among other actors. The GLBA authorized the FTC to regulate “financial institutions,” defined under the relevant provisions to include “any institution the business of which is engaging in financial activities,” as described in a lengthy and specific list of financial activities. The D.C. Circuit rejected the FTC’s position that lawyers, whom it found are not “in the business” of financial activities, came within the statutory definition. It also stressed that where Congress seeks to regulate an area traditionally regulated by the states, such as attorney conduct, it must say so clearly, and it did not do so in the GLBA.
- + In the D.C. District Court case, *American Bar Ass’n v. FTC*, 671 F. Supp. 2d 64 (D.D.C. 2009), the FTC promulgated a “Red Flags Rule,” which required certain creditors to implement identify theft programs, and again, sought to include lawyers under the rule. The court found that neither of the statutes under which the “Red Flags Rule” was promulgated (the FACT Act and the ECO ACT) contained “an ‘unmistakably clear’ grant of statutory authority allowing the Commission’s venture into the regulation of the practice of law.” The court also concluded that lawyers were not part of the intended statutory scheme, noting that “[t]he selection of ‘financial institution’ along with ‘creditor’ as the targets of the legislation implies that the FACT Act was created to apply to entities involved in banking, lending, or other finance

related business.” The court also noted that the ECO Act, from which the definition of “creditor” was derived, was designed to protect credit applicants from specified forms of discrimination. It therefore reasoned that the statutes at issue did “not aim their reach expressly to the legal profession.”

- + Significant distinctions exist between the rulemaking at issue in the D.C. cases and the legislation and real estate ANPRM. First, the BSA makes explicit at 31 U.S.C. § 5311 that a core purpose of the Act is to require reports to assist in criminal and other investigations and prevent money laundering.¹⁰ In contrast to the statutes at issue in the D.C. cases, there is nothing about this goal that would make lawyers peripheral to or outside the scope of the conduct that Congress is seeking to combat. Rather, attorney conduct can be described as central to the BSA, the legislation, and the ANPRM. Thus, unlike the statutory aims at issue in the D.C. cases, it is necessary to include lawyers and other non-bank entities within the scope of the BSA in order to effectuate its purposes.

Second, the definition of “financial institution” under the BSA at 31 USC § 5312(a)(2) is broader, and affords significantly more discretion to the U.S. Treasury Department, than the statutes in the D.C. cases. The BSA definition includes at subsection (Y):

any business ... which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage;¹¹

And at subsection (Z): “any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.”¹² Moreover, the proposed amendment to the definition via the legislation would expressly apply to “legal or accounting services” within specified parameters, eliminating any question as to whether Congress intended the BSA to apply to lawyers.

The statutes discussed in the D.C. Circuit case, however, define “financial institution” much more narrowly, as “any institution the business of which is engaging in financial activities as described in” a separate statute (12 USC § 1843).¹³ 12 USC §

¹⁰ 31 U.S.C. § 5311(1)-(2).

¹¹ 31 USC § 5312(a)(2)(Z).

¹² 15 USC § 6809(3)(A).

¹³ 12 USC § 1843(k)(4).

- 1843(k)(4), in turn, provides a highly specific list of activities that are financial in nature (e.g., lending or acquiring shares or ownership interests),¹⁴ and 12 USC § 1843 (k)(3) contains a list of factors that the Board of Governors of the Federal Reserve System should consider in determining whether an activity is financial in nature or incidental to a financial activity.¹⁵ None of those provisions mention lawyers or legal services, and none of the statutory language in those cases contained broad provisions comparable to those in the BSA at § 5312(a)(2)(Y) and (Z). Hence Congress may have intended to give Treasury some discretion to reach lawyers, among other actors, as necessary for carrying out the goals of the BSA.
- + Moreover, there is authority to support the position that state attorney-client confidentiality rules should give way where broader disclosure is necessary to effectuate federal law enforcement goals. In 2003, the Securities and Exchange Commission (“SEC”) adopted Part 205, which contains the standards of conduct for lawyers representing public companies before the Commission, which was promulgated under the Sarbanes-Oxley Act of 2002. Part 205 provides, in relevant part, that a whistleblowing lawyer “may reveal to the Commission, without the issuer’s consent, confidential information related to the representation to the extent the attorney reasonably believes necessary” in order to, among other reasons, “rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney’s services were used.”¹⁶ State ethics rules, on the contrary, generally do not permit disclosure under such circumstances.
 - + A number of courts have held that lawyers who were terminated after reporting wrongdoing to the SEC could pursue retaliation claims based on the confidential or privileged information they disclosed to the SEC. These courts have reasoned that disclosure is permissible under federal common law, which controls the analysis as to federal claims, despite conflicting state laws or rules.¹⁷ These cases support the view that to the extent the legislation and real estate ANPRM require lawyers to divulge privileged communications or information, and such information is necessary for the government to combat money laundering, state rules should not be a barrier.¹⁸
 - + Finally, as noted, the legislation carves out services in connection with civil or criminal defense matters. The bill thus strikes an appropriate balance between encouraging full and frank communication between attorneys and clients on the one hand, and the compelling national interest in deterring money laundering through the discrete categories of legal services to which the legislation would apply.

¹⁶ 17 C.F.R. 205.3(d)(2)(iii).

¹⁷ See, e.g., *Wadler v. Bio-Rad Labs, Inc.*, 212 F. Supp. 3d 829, 847-48 (N.D. Cal. 2016) (citing *Van Asdale v. Int’l Game Tech.*, 577 F.3d 989 (9th Cir. 2009)).

¹⁸ However, these cases are arguably distinguishable in that they involve lawyers disclosing confidential information on their own behalf—*i.e.*, to prove that they were retaliated against for disclosing wrongdoing. State ethics rules and the ABA Model Rules permit lawyers to reveal information to establish a claim in a dispute between the lawyer and the client (a point the *Wadler* court noted).

5. THE LEGISLATION AND REAL ESTATE ANPRM ARE NECESSARY BECAUSE VOLUNTARY MECHANISMS HAVE NOT BEEN ADEQUATE TO ADDRESS THIS PROBLEM.

- + The pervasive and widely-reported exploitation of professional service providers and non-financed real estate transactions to launder money shows that the steps that the legal profession has taken to address these issues to date have been insufficient. Contemporary examples make this clear:
 - + Reporting by the International Consortium of Independent Journalists (“ICIJ”) discusses¹⁹ Mossack Fonseca, the law firm whose leaked files formed the bases of the 2016 Panama Papers investigation. The Government of Panama arrested and briefly detained the law firm’s founders for money laundering. And in 2020, German prosecutors issued an arrest warrant against them for aiding tax evasion and forming a global criminal enterprise.
 - + An analysis of a 2021 report published by the Organisation for Economic Cooperation and Development (“OECD”) notes how independent reports have revealed that the United States, from where lawyers, accountants, and real estate agents routinely assist criminal schemes, has a particularly poor track record.²⁰ In 2016, for example, the Financial Action Task Force (“FATF”), which sets global standards for anti-money laundering laws, described the U.S.’ weak regulation of gatekeepers as “the most significant supervisory gap” in its fight against financial crime.²¹
 - + Recent reporting related to the Russian invasion of Ukraine discusses²² how “[l]eaked records show for each luxury plaything they bought, Russians now under sanctions relied on the services of a small army of professionals in Europe, Asia and North America: attorneys to write contracts, brokers to sell insurance, bankers to move the money, accountants, ship builders to hand over the keys—all without asking too many questions about where the money came from.”

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¹⁹ Will Fitzgibbon, “Germany seeks arrest of senior Panama Papers lawyer,” International Consortium of Investigative Journalists, Nov. 11, 2021, available at <https://www.icij.org/investigations/panama-papers/germany-seeks-arrest-of-senior-panama-papers-lawyer/>.

²⁰ Will Fitzgibbon, “Lawyers, accountants and other professionals play key role in cross-border financial crime, OECD warns in new report,” International Consortium of Investigative Journalists, Feb. 25, 2021, available at <https://www.icij.org/investigations/paradise-papers/lawyers-accountants-and-other-professionals-play-key-role-in-cross-border-financial-crime-oecd-warns-in-new-report>.

²¹ *Id.*

²² Will Fitzgibbon & Antonio Cucho Gamboa, “Who helps Russian oligarchs secretly buy jets, yachts, and other luxury playthings?” International Consortium of Investigative Journalists, Apr. 11, 2022, available at <https://www.icij.org/investigations/pandora-papers/oligarchs-jets-yachts-luxury/> (emphasis added).

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