

## **RAPID RESPONSE BRIEF**

### UNDERSTANDING RISK: AML VERSUS ECONOMIC SANCTIONS

Unprecedented multilateral sanctions against Russia, the eleventh largest economy in the world, have placed greater attention on sanctions and broader risk compliance efforts, including on anti-money laundering (AML) requirements. Sanctions and AML compliance are distinct, often conflated, and frequently convergent.

This brief unpacks the key practical similarities and differences between US economic sanctions and AML compliance regimes.

#### **How does this relate to the Ukraine crisis?**

- Russia's expanded invasion of Ukraine has increased popular understanding about economic sanctions and also forced many companies to develop or expand their sanctions compliance efforts.
- Sanctions in the United States apply to all US persons (including individuals and legal entities) as well as some non-US persons.
- Covered financial institutions in the United States are required to implement AML controls in addition, and often complementary, to sanctions controls.
- Misunderstandings often arise about the regulatory expectations for sanctions and AML compliance, so compliance professionals frequently must educate internal stakeholders about these different expectations and requirements.

## Context

### Scope of AML and sanctions compliance

1. AML requirements vary by country. In the United States, AML requirements apply to covered financial institutions under the Bank Secrecy Act (BSA), as amended. As such, the universe of entities subject to various forms of BSA/AML requirements under the BSA is orders of magnitude smaller than the universe of US persons who are required to comply with sanctions.
2. BSA/AML requirements focus primarily on information collection, records retention, and information sharing with the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and other government agencies.
3. In contrast to AML, economic sanctions apply to all US persons and some non-US persons. US persons include "US citizens and permanent resident aliens regardless of where they are located, all US incorporated entities and their foreign branches. Non-US persons include foreign subsidiaries owned or controlled by US companies... certain programs also require foreign persons in possession of US origin goods to comply."<sup>1</sup>
4. Compliance with economic sanctions generally prohibits US persons from engaging in transactions or dealings with designated individuals, entities, and jurisdictions. It also requires the blocking (freezing) of assets of these designated parties to control the targeted property.<sup>2</sup> Some limited information sharing requirements also exist with respect to custodial of blocked property through reporting to the Treasury Department's Office of Foreign Assets Control (OFAC).

### BSA/AML compliance program fundamentals

5. FinCEN administers the BSA, as amended. While the BSA/AML framework is grounded in domestic legislation, many of its principles draw from recommendations provided by the intergovernmental Financial Action Task Force (FATF).

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<sup>1</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, Frequently Asked Question No. 11 "Who must comply with OFAC regulations?", <https://home.treasury.gov/policy-issues/financial-sanctions/frequently-asked-questions/ofac-consolidated-frequently-asked-questions>

<sup>2</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, Frequently Asked Question No. 9 "What do you mean by 'blocking?'", <https://home.treasury.gov/policy-issues/financial-sanctions/frequently-asked-questions/ofac-consolidated-frequently-asked-questions>

6. The BSA/AML framework “is designated to simultaneously prevent criminals from using private individuals, banks, and other financials to launder the proceeds of their crimes and to detect those criminals who have successfully used the system to launder those proceeds.”<sup>3</sup>
7. Different covered financial institutions have different regulatory requirements under the BSA.<sup>4</sup> The BSA/AML framework for banks<sup>5</sup> focuses on several key elements: customer due diligence, various regulatory reporting requirements, a compliance program, and information sharing and record keeping obligations.
8. The five primary pillars of an effective AML compliance program include 1) internal controls, 2) the designation of a BSA officer, 3) periodic training, 4) independent testing, and 5) ongoing customer due diligence (CDD).

## OFAC compliance program fundamentals

9. OFAC administers economic sanctions. Regulations for sanctions compliance apply broadly to all US persons and some non-US persons. This can create some confusion when sectoral or jurisdictional targets of OFAC sanctions are conflated with *obligations* for sanctions compliance by US persons and others.
10. In 2019, OFAC released a “A Framework for OFAC Compliance Commitments”, to better equip organizations when developing, implementing, and updating their sanctions compliance programs (SCPs)<sup>6</sup>. OFAC described the SCP as containing five essential components: 1) management commitment, 2) risk assessment, 3) internal controls, 4) testing and auditing, and 5) training. In 2021, OFAC released a similar guide specifically for the virtual currency industry.<sup>7</sup>

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<sup>3</sup> U.S. Government Accountability Office, September 2020, GAO-20-574, “Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks’ Costs to Comply with the Act Varied”, at 8, <https://www.gao.gov/assets/gao-20-574.pdf>

<sup>4</sup> For a complete list of statutory financial institutions under the BSA, see 31 U.S.C. 5312(a)(2) <https://bsaaml.ffiiec.gov/docs/manual/regulations/31USC5312.htm#31USC5312a2>

<sup>5</sup> The BSA/AML frameworks vary based on the type of covered financial institution and their implementing regulations, where applicable.

<sup>6</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, May 2, 2019, “A Framework for OFAC Compliance Commitments”, [https://home.treasury.gov/system/files/126/framework\\_ofac\\_cc.pdf](https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf)

<sup>7</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, October 2021, “Sanctions Compliance Guidance for the Virtual Currency Industry”, [https://home.treasury.gov/system/files/126/virtual\\_currency\\_guidance\\_brochure.pdf](https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf)

## AML and sanctions interplay: complementary or converging?

11. Fundamentally, both OFAC sanctions and FinCEN BSA/AML compliance regimes are grounded in a risk-based approach (RBA). An RBA means that entities assess their risk factors and implement appropriate controls based on those risks. The regulatory expectations also share common attributes, like requiring senior management commitments to set the appropriate “tone from the top” on compliance.
12. For financial institutions covered under the BSA, sanctions compliance often exists as an element of a broader BSA/AML and risk compliance program. For these institutions, the Russia-Ukraine crisis likely puts added burdens on existing compliance structures and resources. For instance, BSA/AML contains requirements to apply heightened customer due diligence (CDD) for politically exposed persons (PEPs), while recent OFAC sanctions designated hundreds of members of Russia’s Duma (lower parliament) and expanded designations against Russian oligarchs.<sup>8</sup>
13. Many non-financial institutions may have just begun to understand their sanctions compliance obligations and potential sanctions exposure. These entities should work quickly to implement an appropriate SCP based on the factors identified by OFAC such as their size and sophistication, products and services, customers and counterparties, and geographic location.<sup>9</sup> OFAC apparent violations are based on a strict liability legal standard.<sup>10</sup> While not required, drawing best practices from BSA/AML compliance can help inform a SCP, like reviewing FinCEN guidance for financial institutions.
14. Sanctions regulations may include an obligation to freeze/block the funds and other property of the persons and entities listed. In such scenarios, it will also be prohibited to make funds or economic resources available, directly or indirectly, to the sanctioned persons. To note,

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<sup>8</sup> U.S. Department of the Treasury, March 24, 2022, “U.S. Treasury Sanctions Russia’s Defense Industrial Base, the Russian Duma and Its Members, and Sberbank CEO”, <https://home.treasury.gov/news/press-releases/jy0677>; E.g., U.S. Department of the Treasury, March 11, 2022, “Treasury Sanctions Kremlin Elites, Leaders, Oligarchs, and Family for Enabling Putin’s War Against Ukraine”, <https://home.treasury.gov/news/press-releases/jy0650>

<sup>9</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, May 2, 2019, “A Framework for OFAC Compliance Commitments”, at 1, [https://home.treasury.gov/system/files/126/framework\\_ofac\\_cc.pdf](https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf)

<sup>10</sup> See, e.g., U.S. Department of the Treasury, September 21, 2021, “Updated Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments”, [https://home.treasury.gov/system/files/126/ofac\\_ransomware\\_advisory.pdf](https://home.treasury.gov/system/files/126/ofac_ransomware_advisory.pdf) (“OFAC may impose civil penalties for sanctions violations based on strict liability, meaning that a person subject to U.S. jurisdiction may be held civilly liable even if such person did not know or have reason to know that it was engaging in a transaction that was prohibited under sanctions laws and regulations administered by OFAC.”)

competent authorities (i.e. OFAC, the UK's Office of Financial Sanctions Implementation (OFSI), and other national authorities) may allow activity prohibited by financial sanctions through granting a license. The European Union identifies this as an exemption or derogation.

15. In comparison, under AML regulations in some jurisdictions outside of the United States, there exists a range of responsibilities which may require funds to be frozen. For instance, under the UK Proceeds of Crime Act (POCA), police and other authorities can seize cash and assets that they believe have been acquired through criminal activity. Furthermore, the U.S. Department of Justice has the ability to conduct civil and criminal asset forfeiture against property.<sup>11</sup>

### Practical Steps for Compliance

- Conduct a review of existing compliance programs to identify exposure to Russia-related sanctions and any attendant AML gaps, especially non-list-based sanctions such as comprehensive sanctions against the so-called Donetsk and Luhansk People's Republics.
- Prepare your AML and sanctions compliance programs to integrate additional sanctions and potential [secondary sanctions](#) against targets in third countries, including by identifying any personnel, information technology, or other resource needs.
- Integrate into your AML and sanctions compliance program the March 7, 2022, FinCEN Alert FIN-2022-Alert001 on Russian sanctions evasion attempts and the March 16, 2022, FinCEN Alert FIN-2022-Alert002 on real estate, luxury goods, and other high-value assets involving Russian elites, oligarchs, and their family members.
- Ensure that your organization has effective AML and sanctions monitoring, detection, and escalation capabilities, especially for non-list-based sanctions and to comply with OFAC's Fifty Percent Rule.
- Note that ACAMS' online training program includes a number of webinars that address AML/sanctions risk assessment. Also, see the [ACAMS Risk Assessment](#) tool.

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<sup>11</sup> U.S. Department of Justice, as of February 17, 2022, "Types of Federal Forfeiture", <https://www.justice.gov/afms/types-federal-forfeiture>

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**April 8, 2022**

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## **About ACAMS**

ACAMS is the largest international membership organization dedicated to providing opportunities for anti-financial crime (AFC) education, best practices, and peer-to-peer networking to AFC professionals globally. With over 90,000 members across 180 jurisdictions, ACAMS is committed to the mission of ending financial crime through the provision of anti-money laundering/counterterrorism-financing and sanctions knowledge-sharing, thought leadership, risk-mitigation services, ESG initiatives, and platforms for public-private dialogue. The association's CAMS certification is the gold-standard qualification for AFC professionals, while the CGSS certification is its premier specialist qualification for sanctions professionals. ACAMS' 60 Chapters globally further amplify the association's mission through training and networking initiatives. Visit [acams.org/sanctions](https://acams.org/sanctions) for more information.