Art, Antiquities and Cultural Heritage Law Expertise
Trends in the art and antiquities market

In recent years, there has been a heightened focus on the looting of art and cultural heritage property and the sale of stolen art and artifacts. The demand by individuals, families, foreign governments and law enforcement for the return of such property likewise has increased.

The art market also has drawn attention from U.S. authorities. The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), its Financial Crimes Enforcement Network (FinCEN), and Congress have made it clear that galleries, museums, private art collectors, auction companies, agents, brokers and other participants in the art market need to take measures to address potential exposure to AML and sanctions violations.

Sullivan & Cromwell has particular expertise with art and cultural heritage matters, and extensive experience addressing the broad range of legal issues that may arise in these cases. Highlights of our experience and resources that we hope you will find helpful are included on the following pages.

S&C “[f]ields a standout criminal defense team with strong cross-border capabilities, which is frequently retained in internal and external investigations, as well as high-stakes litigation. Acts for both individual and institutional clients from industries such as manufacturing, technology and energy and frequently advises on emerging areas of criminal law, including spoofing and AML.”

Chambers USA
Trends in the art and antiquities market

Risks in High-Value Artwork Dealings

OFAC issued “Advisory and Guidance on Potential Sanctions Risks Arising from Dealings in High-Value Artwork” in October 2020. The alert spotlights how galleries, museums, private art collectors, auction companies, agents, brokers and other participants in the art market are exposed to risk for sanctions violations that OFAC deems inherent in the market for high-value art.

The OFAC advisory notes the lack of transparency and the high degree of anonymity and confidentiality in the high-value art market which make it attractive to individuals engaged in sanctions evasion or other illegal financial activity.

Violations may be subject to strict liability, meaning OFAC may impose penalties even if the person or entity did not know or have reason to know it was engaging in prohibited conduct. A risk-based compliance program to mitigate exposure is important to OFAC in considering whether civil penalties should be imposed.

Expansion of Anti-Money Laundering Laws

The Anti-Money Laundering Act of 2020, which took effect in January 2021, constitutes the most sweeping set of reforms to U.S. AML law over the last 20 years. The Act generally provides authorities with more tools and greater enforcement power through a number of mechanisms and specifically addresses the art and antiquities market by extending the BSA to apply to dealers in antiquities and directing the Secretary of the Treasury to perform a study of the facilitation of money laundering and the financing of terrorism through the trade in works of art.

The Act expands the traditional definition of financial institutions to include “a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities.” It also requires the government to prepare a study within one year that assesses money laundering and terrorist financing risks in the art market and whether and to what extent the Bank Secrecy Act should be applicable to the fine arts market.

Increased Scrutiny

FinCEN issued a notice in March 2021 to highlight certain provisions of the Anti-Money Laundering Act of 2020, in particular its amendments to the Bank Secrecy Act which expand the BSA’s coverage to dealers in antiquities, as well as the AML Act’s requirement for FinCEN to issue proposed rules to carry out the amendments. The notice also provides specific instructions to financial institutions for filing SARs related to trade in antiquities and art. Illicit activity related to antiquities and art has been linked to transnational criminal networks and international terrorist organizations, which have increasingly taken up trafficking in antiquities not only to generate income for their operations, but also to erase the cultural heritage of persecuted groups. Financial institutions and participants in the antiquities market should prepare to implement AML measures designed to address the risks of that market.
Experience

S&C’s practices include expertise across a wide range of legal areas and leading practitioners in the areas most important to addressing art and cultural heritage matters. Art and antiquities matters often operate at the intersection of multiple legal areas. These matters can give rise to litigation, investigations and compliance questions involving anti-money laundering, sanctions, asset forfeiture, trusts and estates and other areas of law.

Our generalist approach to training fosters collaboration across practice groups and encourages teamwork that makes us ideally suited to handle matters that raise cross-disciplinary questions that require a coordinated response. The Firm’s integrated network of 13 offices located in financial capitals around the world allows our lawyers to collaborate efficiently with clients and regulators across borders and practices.

Economic Sanctions & Financial Crime
- The only firm ranked in Band 1 in Chambers USA Nationwide for Financial Services Regulation: Banking Enforcement & Investigations
- Has provided counsel in nearly every high-profile AML and economic sanctions-related regulatory enforcement action and law enforcement action involving a financial institution in the last decade
- Extensive experience ideally positions us to assist clients in navigating AML and economic sanctions program challenges
- Deep regulatory knowledge, investigatory skills, practical experience, and the capacity to adapt and adjust in the face of a changing regulatory environment

Criminal Defense & Investigations
- Particularly adept at resolving issues on the cutting edge of enforcement and regulatory activity
- Known for handling cross-border enforcement actions and investigations
- Handles the full spectrum of white collar and investigatory matters, including money laundering, fraud, customs violations, AML, sanctions, asset forfeiture, anticorruption, FCPA and internal investigations
- Includes more than a dozen former government lawyers who understand how prosecutors and regulators approach investigations and litigation

Trusts & Estates
- Provides advice to major charitable and cultural institutions and private foundations worldwide
- Regularly involved in disputes regarding contested wills, trust administration, challenged gifts and forced inheritance laws
- Reputation for negotiating the resolution of such disputes in creative, tax-efficient ways that minimize family strife, expense and publicity
- Assists clients with structuring and restructuring family businesses in the pursuit of long-term family goals

Compliance & Training
- Advise financial institutions and art market participants on the creation and management of AML and sanctions compliance programs, policies and procedures
- Work with trade associations and industry representatives on establishment of industry standards and guidelines for AML and sanctions compliance
- Conduct reviews of companies’ worldwide compliance policies and procedures, design and advise on the implementation of compliance policies and programs
- Evaluate companies’ record-keeping and documentation procedures
- Provide risk assessment analyses and advice on identifying and responding to “red flag” warnings of potential compliance issues
- Conduct training for employees

“[S&C] can field an extraordinary team that knows everything there is to know about finance, AML and OFAC issues. For nuanced questions, they bring out the biggest guns in the industry.”

Chambers USA Client Comments
Sharon Cohen Levin is known nationally and internationally for her expertise in cultural heritage law and for her work as a prosecutor in the recovery of stolen and looted art and cultural heritage property.

Since entering private practice, Sharon has represented collectors, dealers, non-profit organizations, universities, financial institutions, galleries and auction houses on a variety of matters related to the art market, including issues of ownership, theft, fraud, authenticity and breach of contract, as well as in criminal investigations and asset forfeiture proceedings. She also has represented individuals, families and governments with respect to the recovery of stolen art and cultural property, as well as in responding to claims by cultural ministries and foreign governments. Most recently, she represented a client in the U.S. Senate’s Permanent Subcommittee on Investigations’ ("PSI") investigation of money laundering and sanctions evasion in the art market.

As a prosecutor, Sharon successfully recovered more than 100 pieces of priceless art and cultural property that have been repatriated to countries around the world, including Italy, Turkey, Switzerland, Belgium, Mexico, France, Brazil, Peru, Egypt, Iraq, China, Poland, Russia, Sweden, Israel, Cambodia and Mongolia.

Sharon developed novel applications of federal forfeiture law to achieve the recovery of numerous pieces of art and cultural property stolen during the Holocaust. She was the lead prosecutor on United States v. Portrait of Wally and spent more than 12 years litigating this forfeiture action to restore a painting by Egon Schiele stolen by Nazis from Viennese Jewish gallery owner Lea Bondi. The case was settled in 2010 for $19 million, recognition of Bondi’s ownership and a permanent plaque displayed with the painting, explaining the provenance, the theft and civil forfeiture action. Wally is widely acknowledged as the leading case for revision in practices by the museum community for Holocaust art. Sharon was awarded the Gold Medal from the Jewish Community of Vienna for her work on the case and featured in the documentary “Portrait of Wally.”

Sharon's other prominent cases include a forfeiture action for illegal importation of a 10th century Khmer statue resulting in the return of the statue to Cambodia, and the voluntary repatriation of Khmer statues held by museums and private auction houses. For her efforts, she was awarded the Grand Officer, Royal Order of Sahametrei by the Kingdom of Cambodia. Sharon also forfeited and repatriated numerous dinosaur skeletons to Mongolia for which she received the Mongolian Presidential Medal.
Nicole Friedlander prosecuted multiple high-profile cases involving fraud, embezzlement and other white-collar offenses relating to art, rare antiquities and cultural heritage artifacts during her eight-year tenure at the U.S. Attorney’s Office for the Southern District of New York prior to joining S&C.

As Chief of the SDNY’s Complex Frauds Unit, Nicky served as lead prosecutor in the case against Ralph Esmerian, the former owner of Fred Leighton, who was convicted of fraud and embezzlement related to a collection of rare jewelry, artifacts and antiquities, including a 13-carat Burma ruby and diamond ring with an estimated worth of nearly $3 million.

She led the prosecution of Rabbi Menachem Youlus, securing a guilty plea for multiple counts of mail and wire fraud in connection with a fake charity Youlus ran, through which he sold “lost Torah scrolls” that he falsely claimed to have recovered from Eastern Europe. She also supervised a case involving illicit trafficking in rhino horn and ivory artifacts, and two cases involving long-running counterfeiting operations—an art fraud case against Spanish art dealer Bergantino Diaz, who orchestrated the production and sale of counterfeit artwork and laundered over $33 million in proceeds from the counterfeiting operation overseas; and the prosecution of Rudy Kurniawan, who perpetrated an elaborate counterfeiting scheme selling fake bottles of purportedly rare and expensive wines, which became the subject of the 2016 documentary “Sour Grapes.”

Nicky received the National Association of Former U.S. Attorneys’ Exceptional Service Award (2015); the Federal Executive Board’s Distinguished Teamwork Award (2013); and the Federal Law Enforcement Foundation’s “Prosecutor of the Year” award (2012) for her accomplishments at the U.S. Attorney’s Office.

As a partner in S&C’s Criminal Defense & Investigations Group, Nicky has continued to handle criminal cases involving all areas of white-collar crime, including fraud, money laundering, and tax matters, among others. Recently, Nicky was engaged by the high-profile buyer of ultra-high-value artwork from a consortium of art dealers after payment for the artwork was unlawfully diverted by hackers. Nicky led multinational tracing efforts to identify and secure the return of a portion of the funds, and led a forensic investigation with outside cybersecurity experts in coordination with U.S. and international law enforcement.
Experience

Recent Awards

Compliance Practice Group of the Year, Law360 (2020)
White Collar Practice Group of the Year, Law360 (2020, 2018)
White Collar Department of the Year Finalist, The American Lawyer (2019)

Chambers USA 2021
Banking Compliance
Banking Enforcement & Investigations
FCPA
White-Collar Crime & Government Investigations

Chambers Global 2021
Banking & Finance
Corporate Crime & Investigations
FCPA
International & Cross-Border Disputes
International & Cross-Border Investigations & Enforcement

S&C is the most active law firm on Global Investigation Review’s 2020 Enforcement Scorecard, having handled 17 of the 100 largest government settlements—more than double that of the second most active firm.

S&C is ranked in the 2020 6th Annual GIR 30 as one of the world’s leading firms for internal and government-led investigations and has been included on the list in each of the last six years.
Client Resources

Selected S&C Client Memos

- **FinCEN Notice on Efforts Related to Trade in Antiquities and Art**
  FinCEN Informs Financial Institutions of New AML Measures to Combat the Illegal Trade in Antiquities and Art

- **Anti-Money Laundering Act of 2020**
  Corporate Transparency Act: Beneficial Ownership Reporting and Disclosure

- **Anti-Money Laundering Act of 2020**
  New Legislation to Implement Comprehensive Modernization and Reform of the US AML/CFT Regime

- **OFAC Advisory on Sanctions Risks Arising From Transacting in High-Value Artwork**
  Advisory Highlights Risks Relating to the Involvement of “Blocked Persons” in Transactions in the High-Value Art Market

Relevant Publications and Podcasts


Click [here](#) to view a full list of recent S&C publications, or [sign up](#) to receive publications related to specific industries, global regions or practice areas.
Key Contacts

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Sharon Cohen Levin is a partner in S&C’s Criminal Defense & Investigations Group. Her practice focuses on white collar and regulatory enforcement defense, internal investigations, and compliance counseling. Sharon is a leading expert in anti-money laundering (AML), Bank Secrecy Act (BSA), economic sanctions and asset forfeiture matters. She represents collectors, dealers, non-profit organizations, universities, financial institutions, galleries and auction houses on a variety of matters related to the art market, and financial institutions, multinational companies, and individuals in connection with criminal, regulatory, and civil enforcement actions. Sharon led the Money Laundering and Asset Forfeiture Unit in the U.S. Attorney’s Office for the Southern District of New York for almost two decades, directing many of the Southern District’s most significant BSA/AML and sanctions prosecutions. She has been recognized by Chambers USA, Who’s Who Legal: Investigations and Benchmark Litigation, and named to Global Investigations Review’s Top 100 Women in Investigations worldwide and The National Law Journal’s “Top Women in Law” and “Outstanding Women Lawyers.” Full bio >

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Nicole Friedlander is co-head of S&C’s Cybersecurity Group and a partner in the Criminal Defense & Investigations Group. She represents clients in complex internal investigations, regulatory enforcement proceedings and criminal matters involving every aspect of white-collar crime, including fraud, FCPA, insider trading, theft of trade secrets, money laundering and tax matters. Nicky also advises major corporations and boards of directors in cybersecurity planning, incident response and investigations. She joined S&C in 2016 from the U.S. Attorney’s Office for the Southern District of New York, where she was Chief of the Complex Frauds and Cybercrime Unit, and served for over eight years. She has been recognized by Chambers USA; as one of Global Investigations Review’s Top 100 Women in Investigations worldwide; featured in Cybersecurity Docket’s “Incident Response 30”; and named a Law360 Rising Star. She currently serves as co-chair of the New York Chapter of the Women’s White Collar Defense Association and as a member of the New York City Bar Association’s White Collar Crime Committee. Full bio >

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Aisling O’Shea is co-head of S&C’s FCPA and Anti-Corruption Group and a member of the Criminal Defense & Investigations Group. Aisling advises clients on a wide range of white-collar defense and investigations matters, including anti-money laundering, FCPA, securities fraud and cross-border tax issues. Aisling is a former trial attorney in the FCPA Unit of the Fraud Section of the U.S. Department of Justice’s Criminal Division. As a federal prosecutor, Aisling handled numerous FCPA and corruption-related money laundering cases, including as the lead prosecutor on a complex FCPA and money laundering investigation related to Venezuela’s state-owned oil company, for which she received Homeland Security Investigations’ Outstanding Financial Investigations award in 2016. Aisling has been recognized by Chambers Global, Chambers USA and Who’s Who Legal: Investigations, and she was named an “FCPA Practitioner to Watch” in GIR’s inaugural survey of “The Top FCPA Practitioners.” Full bio >
One Firm Worldwide

Sullivan & Cromwell LLP provides the highest quality legal advice and representation to clients around the world. The results the Firm achieves have set it apart for 140 years and have become a model for the modern practice of law. Today, S&C is a leader in each of its core practice areas and in each of its geographic markets.