

# Chapter 1

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## Overview

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### § 1:1 Definition of Money Laundering

Money laundering<sup>1</sup> is “the processing of criminal proceeds to disguise their illegal origin.”<sup>2</sup> As the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) has explained, “money is ‘laundered’ to conceal illegal activity, including the crimes

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1. It is not clear when the term “money laundering” first entered the lexicon. The term appears in some cases in the mid-1970s. By the early to mid-1980s, courts were using it without explanation. *See, e.g.*, *United States v. Williams*, 809 F.2d 1072 (5th Cir. 1987); *United States v. Goldberg*, 756 F.2d 949 (2d Cir. 1985); *United States v. Massa*, 740 F.2d 629, 637 (8th Cir. 1984); *United States v. Browning*, 723 F.2d 1544 (11th Cir. 1984); *In re Grand Jury Proceedings (Bank of Nova Scotia)*, 740 F.2d 817 (11th Cir. 1984); *United States v. Tobon-Builes*, 706 F.2d 1092, 1095 (11th Cir. 1983); *United States v. Cauble*, 706 F.2d 1322, 1337 (5th Cir. 1983); *Halberstam v. Welch*, 705 F.2d 472, 487 (D.C. Cir. 1983); *United States v. \$4,255,625.39*, 551 F. Supp. 314 (1982); *United States v. Dean*, 666 F.2d 174 (5th Cir. 1982); *United States v. Rauhoff*, 525 F.2d 1170, 1172 (7th Cir. 1975). *See also* *United States v. Varbel*, 780 F.2d 758, 759 (9th Cir. 1986) (“Money laundering is common among narcotics traffickers, tax evaders and organized crime figures. The substantive crimes alleged in the indictment at issue involve the concept of “money laundering.”). Some state courts also used the term “money laundering” during the same period. *See, e.g.*, *McCarthy v. Yempuku*, 678 P.2d 11 (Haw. 1984); *State of Washington v. Cole*, 31 Wash. App. 501, 643 P.2d 675 (1982); *In re Fuhrer*, 100 Misc. 2d 315 (N.Y. Sup. Ct. 1979).
  2. Financial Action Task Force (FATF), <http://www.fatf-gafi.org/pages/faq/moneylaundering/>.

that generate the money itself, such as drug trafficking.”<sup>3</sup> The purpose of “laundering” funds is to “conceal the source of illegal proceeds so that the money can be used without detection of its criminal source.”<sup>4</sup>

While the scope of any illicit activity is hard to gauge accurately, money laundering is reckoned to involve some very large numbers. The United Nations Office on Drugs and Crime reports that the “estimated amount of money laundered globally in one year is 2–5% of global GDP, or \$800 billion–\$2 trillion in current US dollars.”<sup>5</sup> Regardless of the estimates, the numbers are staggering.

Moreover, while it is still a substantial contributor, narcotics trafficking is not the only criminal activity that generates illicit funds to be laundered. The illegal activities that produce dirty money are considerably broader than drug trafficking—which might be considered “traditional” money laundering. Offenders launder funds related to fraud schemes, tax violations, foreign bribery, terrorism, and environmental crimes, to name only a few of the predicate offenses designated as specified unlawful activities (SUA) under U.S. criminal anti-money laundering (AML) laws.<sup>6</sup> Other offenses are closely enough related to money laundering, and share many of the same characteristics, to be considered part of U.S. AML law. These include structuring financial transactions to avoid reporting requirements, transmitting funds without a license, and bulk cash smuggling. In each case, those responsible for the underlying offenses are motivated to launder their proceeds so that they may freely use the funds and avoid disclosure to the government of information that would lead to unwanted inquiries.

As is often the case, laws and regulations designed to prohibit the misuse of the financial system to conceal and launder illicitly derived funds lag the innovations developed by money launderers. Perhaps more than many other types of offenses, therefore, money laundering law and enforcement is something of a cat-and-mouse game between the government and perpetrators.

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3. See [http://www.fincen.gov/financial\\_institutions/msb/materials/en/prevention\\_guide.html](http://www.fincen.gov/financial_institutions/msb/materials/en/prevention_guide.html).

4. *Id.*

5. See United Nations Office on Drugs and Crime, [www.unodc.org/unodc/en/money-laundering/globalization.html](http://www.unodc.org/unodc/en/money-laundering/globalization.html).

6. Unlike many other criminal activities, money laundering is not a stand-alone crime. Instead, it requires the commission of a predicate offense or SUA which generates the funds to be laundered. Despite the requirement of a predicate offense, however, money laundering is a crime in itself, with its own elements and penalties.

## § 1:2 How Money Laundering Works

There are typically three stages in the process of laundering money, whether currency or non-cash funds,<sup>7</sup> so that it can be freely used. These are generally considered to be: placement, layering, and integration. At their simplest, they involve the following:<sup>8</sup>

**Placement**—Currency or non-cash funds are introduced into the financial system or retail economy by some means.

**Layering**—Using one or more financial transactions to camouflage the illegal source of the funds and conceal their origin.

**Integration**—Moving the laundered funds into apparently legitimate assets and funds.

These stages may overlap, particularly if there is a continuous source of “dirty” money to be laundered. Given the difficulty of laundering large sums of cash, and the decades-long efforts to combat it, laundering illicit funds is an enormous headache for criminal organizations.

## § 1:3 Overview of U.S. Anti-Money Laundering Laws

The United States takes a multi-pronged approach to combating money laundering, and the financing of terrorism. Together, these enforcement efforts are often referred to as anti-money laundering/counterterrorist finance, or “AML/CFT.”

AML laws are designed to prohibit, detect, deter, and punish money laundering and related reporting and recordkeeping violations through a system of complementary and overlapping regulatory, civil, and criminal prohibitions and penalties. Civil and criminal forfeiture laws, which long predate the money laundering and reporting laws, permit the government to recover tainted property, as well as any gains and in some cases substitute assets, and further remove the financial incentives motivating the underlying offenses. These

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7. The terms “cash” or “currency” or “money” may be used somewhat interchangeably to discuss the proceeds of illicit activity to be laundered. In many instances, the type of proceeds is significant, however, because the form of the proceeds may be relevant to how it is laundered. For example, bulk cash smuggling involves just that—large quantities of currency are moved in a physical form from one location another for purposes of laundering the currency. See section 5:10, for a discussion of bulk cash smuggling.

8. See FinCEN, [http://www.fincen.gov/financial\\_institutions/msb/materials/en/prevention\\_guide.html](http://www.fincen.gov/financial_institutions/msb/materials/en/prevention_guide.html); UN Office on Drugs and Crime, *The Money-Laundering Cycle*, [www.unodc.org/unodc/en/money-laundering/laundry\\_cycle.html](http://www.unodc.org/unodc/en/money-laundering/laundry_cycle.html); Roger C. Molander, B. David Mussington & Peter A. Wilson, *Cyberpayments and Money Laundering, Promises and Promises*, Rand Corp. 1998 at xi–xii, 5–6, [http://www.rand.org/pubs/monograph\\_reports/MR965.html](http://www.rand.org/pubs/monograph_reports/MR965.html).

laws and regulations have evolved over time, and continue to do so in response to new money laundering and terrorist financing methodologies. For example, as government controls on financial transactions began to impinge on money launderers' efforts to conceal the provenance of their funds, criminals returned to crude but effective mechanisms like smuggling currency across borders rather than laundering it through financial institutions or commercial activities. In response, Congress prohibited bulk cash smuggling.<sup>9</sup>

Initially, the focus of U.S. AML laws was on recordkeeping and reporting. As discussed in detail in chapter 4, the scope of federal AML/CFT statutes and regulations has been broadened over time as more activity has been captured under the AML regime. The reporting and recordkeeping requirements were first implemented in the Bank Secrecy Act of 1970 (BSA). The BSA's express purpose is to require banks to maintain records and make reports which "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings."<sup>10</sup> The BSA remains the cornerstone of AML reporting and recordkeeping legislation. However, since it was enacted, the law has evolved to define more entities than traditional banks as financial institutions subject to the reporting requirements, and to expand the types of information required to be reported. As a result, because the scope of AML/CFT regulations and reporting requirements has expanded far beyond traditional financial institutions to include money transmitters and other money service businesses (MSBs), casinos, sellers of luxury goods,<sup>11</sup> securities brokers, online payment systems, electronic currency, and more, it is entirely possible to launder funds that never touch the formal banking sector.

As discussed in detail in chapter 6, banks and other financial institutions are required to file various reports with the U.S. Treasury Department, including FinCEN, an agency of the U.S. Treasury

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9. The bulk cash smuggling statute was enacted as part of the USA PATRIOT Act in 2001. See section 4:4.10, discussing 31 U.S.C. § 5332 (prohibiting bulk cash smuggling to evade currency reporting requirements).
  10. *Cal. Bankers' Ass'n v. Shultz*, 416 U.S. 21, 26 (1974) (internal citations omitted).
  11. See *United States v. Blarek*, 7 F. Supp. 2d 192 (E.D.N.Y. 1998), in which two interior designers were convicted of racketeering and money laundering conspiracy in connection with laundering over \$30 million in cash from a Colombian drug lord. Among other things, they used these funds to purchase luxury goods that were shipped to Colombia to decorate the drug kingpin's many homes for his wife, mistresses, and children. One defendant was sentenced to a term of sixty-eight months in prison, and a \$305,000 fine which represented his entire net worth after he forfeited over \$2 million in cash and property; and the other was sentenced to forty-eight months imprisonment but no fine due to his negative net worth.

Department, and with the Internal Revenue Service (IRS). These reports include disclosures of transactions in currency (“currency transaction reports” or “CTRs”) in amounts greater than \$10,000, as well as reports of suspicious transactions (suspicious activity reports or “SARs”).<sup>12</sup> The reporting statutes are designed to give the government a window into the activities of money launderers, tax cheats, and others who are misusing the financial system. Violations of the reporting requirements may lead to administrative, civil, or criminal penalties, depending on the circumstances.<sup>13</sup> Intentionally violating the reporting requirements or causing someone else to fail to file a required report may result in criminal penalties. The list of reporting entities has expanded from traditional retail banks to include MSBs, casinos, sellers of luxury goods, securities brokers, and other businesses that may be used to launder funds.

Alongside these regulatory provisions, Congress has enacted criminal laws, discussed in detail in chapter 5, that prohibit money laundering and conspiracy to launder funds that are the proceeds of a wide range of offenses; financial transactions over \$10,000 with criminally derived property; structuring financial transactions below the \$10,000 reporting threshold; operating an unlicensed money transmitting business; bulk cash smuggling; and terrorist financing. Violations of these statutes may result in substantial prison time, fines, and forfeiture. Further, because a money laundering violation is a separate offense from the underlying criminal activity, a perpetrator of both the SUA and money laundering offense may be liable for multiple violations, each of which carries its own penalty.<sup>14</sup>

The primary federal criminal statutes used to prosecute money laundering are found in titles 18 and 31 of the U.S. Code.<sup>15</sup> The title 18 money laundering offenses are designed to prohibit and punish efforts to introduce “dirty” money into the financial system by persons who knowingly engage in financial transactions with the proceeds of

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12. Although SARs are confidential and there are penalties for improper disclosure, non-confidential information about SAR filings is available. FinCEN reports on the SARs it receives and issues analytic reports concerning trends and developments. *See* [www.fincen.gov](http://www.fincen.gov).
  13. *See, e.g.*, 31 U.S.C. § 5324 (prohibiting “structuring” financial transactions in amounts under \$10,000, with the objective of avoiding triggering a filing by a financial institution).
  14. *See* section 5:5.3[A]; *see also* *United States v. Johnson*, 971 F.2d 562, 569 (10th Cir. 1992); *United States v. Edgmon*, 952 F.2d 1206 (10th Cir. 1991); and *United States v. Lovett*, 964 F.2d 1029 (10th Cir. 1992).
  15. While many individual states have their own money laundering laws (*see, e.g.*, California, New York, and Illinois, respectively, CAL. PENAL CODE §§ 186.9–186.10; N.Y. PENAL CODE §§ 470.00 *et seq.*; 720 ILCS 5/Art. 29B-1), this Practice Guide focuses on federal law.

SUAs. Initially, the list of SUAs was focused on narcotics and certain other offenses. It has since grown to include a smorgasbord of federal crimes, including tax violations, environmental crimes, foreign bribery, and health care offenses.<sup>16</sup> Thus, it is hard to imagine a serious federal offense that is not a money laundering predicate.

There are two primary title 18 AML statutes—18 U.S.C. § 1956 and 18 U.S.C. § 1957. Section 1956 is a complex statute that prohibits domestic money laundering and international money laundering, as well as efforts to launder “illegal proceeds” that are actually the subject of a law enforcement sting operation.<sup>17</sup> Section 1956(a)(1) prohibits engaging in financial transactions with the proceeds of an SUA,<sup>18</sup> to promote an SUA or to evade taxes or commit tax offenses, or to conceal the illicit source of the funds, while knowing that the transaction was designed to conceal or disguise the nature, location, source, ownership, or control of the proceeds or avoid a reporting requirement.<sup>19</sup> Section 1956(a)(2) prohibits the transportation, transmittal, or transfer of monetary instruments or funds to or from the United States to promote an SUA, or to conceal or disguise the nature, location, source, ownership, or control of the proceeds, or to avoid a reporting requirement. Finally, section 1956(a)(3) prohibits conducting a financial transaction with the intent to promote an SUA, conceal a listed characteristic, or avoid a reporting requirement, where someone acting on behalf of law enforcement represented that the subject funds were proceeds of an SUA. The other key title 18 statute, 18 U.S.C. § 1957, involves many fewer elements. It prohibits “knowingly engaging” in a financial transaction in more than \$10,000 of criminally derived property.<sup>20</sup>

Title 31 addresses reporting and recordkeeping offenses, and includes a range of civil and criminal prohibitions and penalties. For example, 31 U.S.C. § 5324 provides that is a violation of federal law for anyone to “structure” a financial transaction for the purpose of evading the reporting requirements. Structuring offenses need not involve laundering “dirty” money; rather it is the effort to avoid reporting or to inaccurately report that is the violation.

Under U.S. law, the proceeds of illegal activity, as well as certain other tainted property, may be subject to forfeiture. As discussed in detail in chapters 8 and 9, civil and criminal forfeiture laws are

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16. See section 5:3.1, note 6.

17. See 18 U.S.C. §§ 1956(a)(1), (2), and (3), respectively.

18. See 18 U.S.C. § 1956(c)(7)(D) (listing SUAs).

19. In a law enforcement sting, the transaction may involve property represented to be the fictional proceeds of an SUA. See section 5:5.

20. See section 5:8.

designed to deprive violators of the proceeds of money laundering or certain other criminal activity and to return tainted property to the government.<sup>21</sup>

Finally, crimes relating to the financing of terrorism also implicate U.S. AML law. Terrorists and their supporters may commit financial and property crimes to generate proceeds to fund terrorist activities. Terrorist financiers and money launderers share the same objective of conducting financial transactions in the shadows to avoid law enforcement and regulatory scrutiny, in order to generate funds that they can freely spend. Chapter 5 at section 5:11 discusses the U.S. Antiterrorism Act of 1990, which was enacted to criminalize the financing of terrorism.

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21. See chapters 8 and 9, for a discussion of the forfeiture laws.

