

RIN 1506-AB50, Docket Number FINCEN-2021-0006.

Subject: This ANPRM seeks comment on various issues to assist FinCEN in preparing proposed rules to implement Section 6110(a)(1) of the AML Act.^[1] AML Act Section 6110(a)(1) amends the BSA by adding to the BSA's definition of "financial institution" "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, subject to regulations prescribed by the Secretary."^[2]

Deadline for comments: 25 October 2021

<https://www.federalregister.gov/documents/2021/09/24/2021-20731/anti-money-laundering-regulations-for-dealers-in-antiquities>

Submission by: CINOA – Confédération Internationale des Négociants en Œuvres d'Art

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As representatives of the art and antiquities trade, CINOA¹ supports effective measures against money laundering and terrorist financing. CINOA is ready to work with US institutions to help provide information and insight into the art market sector and the sector's business practices. CINOA encourages reasonable policies that do not add disproportionate regulatory burdens, which have the potential to negatively impact businesses in the trade. CINOA's submission focuses on micro-businesses trading in antiquities.

We understand that FinCEN will be guided by specific parameters in their assessment of the antiquities market sector when making decisions on the legislation. CINOA believes that through further dialogue with all stakeholders, a workable policy using criteria such as risk, cost and effectiveness should be used to determine by whom, when and how the new measures should be carried out.

¹ Established in 1935, CINOA is the principal international confederation of Art & Antique art market professional associations. Affiliated dealers, from 30 leading dealer associations, cover a wide array of specialties from antiquities to contemporary art. CINOA's associate members, include leading associations of auction houses and the International League of Antiquarian Booksellers (ILAB), which alone represents an additional 22 book seller associations.

CINOA, and all of its member organizations, have a strict application process to ensure acceptance for peer-vetted art professionals that have established businesses, reputable galleries and/or practices. CINOA affiliated groups abide to a high standard of business practices and to codes of ethics which includes strict due diligence. Membership does not include people involved in low-grade internet sales. During the past nearly 70 years, dealers have been changing their practices to abide by biodiversity, cultural property, and heritage legislation. The CINOA Code of Conduct is updated regularly to reflect these changes.

The vast majority of CINOA's members are businesses of 4 people or less who work hard to cultivate their clientele: www.cinoa.org.

We call for a proportionate, risk-based approach to AML legislation implementation. The cost of compliance with BSA requirements would represent a significant financial burden as well as threaten the survival of many micro-businesses. To mitigate the damage to the sector, clear risk criteria and a monetary transaction threshold should be established by regulators, otherwise all businesses dealing in antiquities, which are for the most part micro-businesses involved in low risk transactions, would be subject to BSA compliance. Without reducing the scope of the regulation, these micro-businesses consisting on average of two to four individuals, would be required to comply with the same anti-money laundering obligations as a large financial institution.

It is clear that the scope of ‘illicit activity’ involving antiquities has been highly exaggerated by advocates of implementing such controls. Sensationalized headlines about illicit trade abound. However, they are not supported by the data on the trade in general, or specific details of cases of illicit trade. It is important to understand the actual workings of legitimate antiquities market and current established business practices in order to clearly identify suspect or illicit practices. Regulatory choices should be made based on factual economic data and actual evidence of crime. Instead of relying on unfounded information, FinCEN should utilize the work of recognized, independent sources such as the RAND report.

We request that policy makers take the time to sift through the data to base any new regulations on hard facts and figures and understand fully the businesses their policy would directly affect, and how.

As the largest representatives of the art market professionals, we have tried to answer as completely as possible the consultation questions. Our suggestions, criteria, and recommendations for the inclusion of “antiquities” to the Bank Secrecy Act (BSA) are the result of market analysis and discussions with relevant market stakeholders.

CINOA encourages FinCEN, or any trade-regulating body, to contact us directly should there be any follow up questions regarding our analysis of the information available to us. We would be keen to illustrate in detail all aspects of the antiquities business and discuss them with you.

In response to FinCEN’s proposed scope of investigation as indicated in consultation’s SECTION II Background : B. Application of the BSA To Trade in Antiquities, CINOA has provided input under each consideration being investigated:

A. The appropriate scope for the rulemaking, including determining which persons should be subject to the rulemaking, by size, type of business, domestic or international geographical locations, or otherwise.

We believe it would be unrealistic to subject all antiquities dealers to similar documentation requirements as banks or for example, bullion or diamond dealers, as neither the asset class, nor market liquidity comparisons, are valid in this case.

Antiquities dealers have very slow turnovers in the objects they offer for sale and auction results confirm that even at the highest echelons of the market, where there is an international clientele, approximately 25% of antiquities still do not find a buyer. Antiquities are not considered an investment vehicle and purchasers of high value items cannot expect a financial return. Buyers tend to be scholarly and very well informed of the legal issues surrounding them.

Therefore, in defining the scope of new regulations, the BSA would be most effective by taking into account that:

(a) Size matters: Today's antiquities market is made up almost entirely of bricks-and-mortar businesses which do not have access to the resources necessary to implement sophisticated compliance programs. These micro-businesses have thin margins and semi-illiquid assets. The only antiquities businesses today which could be considered "sizable" are auction houses. These established businesses follow customer and item due diligence rules tailored to the origin and value of the item, the client, the market demands, available data, and resources. Dealers have codes of professional standards and auction houses implement voluntary compliance protocol worldwide, both of which are aligned with AML practices.

It would be an unreasonable burden if micro-businesses were required to take up the same regulatory requirements drawn-up for much larger financial institutions, such as banks or those selling highly-liquid, transformable commodities. These low-risk micro-businesses should not be subject to the regulation.

(b) Business credentials matters: Many established antiquities businesses belong to professional trade groups which insist on professional and ethical standards, that are reflected in written codes, and vet members based on professional criteria. Members of trade associations can be easily identified as they are listed on websites and affiliation is seen as a badge of honor. These businesses usually dealing in mid-ranged works, have limited cash transactions which are already subject to restrictions and all other transactions pass through a financial institution which monitors for AML.

If higher risk sales are being made then they occur outside the recognized antiquities market. It appears, that there are two scenarios which potentially could, although highly unlikely, be involved in money laundering or terrorist financing. At one end of the market, it is possible—although probably very infrequent—that sellers and buyers could deliberately make high value antiquities sales and purchases outside of the recognized market and under the legal radar. At the other end, there are the small, low-quality artifacts, often fakes or worthless which are claimed by some to be recently looted or smuggled ancient artifacts. These artifacts, which are often fragments, are generally offered by sellers on internet auctions and sales websites that do not utilize vetting services, to unknowing potential buyers in the United States. It is unlikely that these low or no value items will be used for money laundering. It is unlikely that there is a third scenario for mid-level works, as the vast majority of mid-level objects have been in circulation for years, and suffer from a lack of interested buyers, slow sales and an uncertain financial return.

It is, therefore, reasonable to assume that the higher risk sellers and buyers might be involved in either high value ad hoc sales or unrecorded low value sales, generally on the internet and via online auction services, by persons or businesses which are not part of a professional trade organization, and therefore would not be evaluated as higher risk and subject to the regulation.

(c) Geography matters: Objects which can be linked to a conflict zone, either by the objects' origin or through direct links of the purchaser and seller to a conflict zone, are already considered a 'higher-risk' object for transaction by the art trade. Although the circulation of such objects is limited by current due diligence practices followed by both buyers and sellers.

Categories of antiquities, the sale of which we agree should be restricted, are also already subject to import controls in the United States. Such items are generally offered by overseas sellers to uninformed buyers, and if they were purchased by U.S. buyers, they would already be subject to seizure at Customs for lack of documentation under Memoranda of Understanding with virtually every country surrounding the Mediterranean, including not only countries such as Iraq, Syria or Libya but also transit points such as Turkey or those in North Africa.

CINOA recognizes that it could be appropriate to subject to the BSA regulation transactions involving objects or persons from these higher risk geographical areas, because of the potential links to financing of conflicts.

(d) Price matters: Virtually all medium to high level transactions (from \$10,000 and above) are already processed by financial institutions that carry out proper due diligence compliance on their customers. Transactions on the very high end of the spectrum (over 6 digits) are also processed and subjected to a sophisticated customer due diligence search by financial institutions. Sales of this size for micro and small businesses are extremely rare.

It is reasonable and appropriate for any sector, regardless of its focus, to accept that very high value transactions should be more regulated, and thus transactions of antiquities over \$500,000 could be subject to such regulation.

B. The degree to which the regulations should focus on high-value trade in antiquities, and on the need to identify the actual purchasers of such antiquities, in addition to the agents or intermediaries acting for or on behalf of such purchasers.

Taking into account our response to question 1 regarding the exemption of micro-businesses, and the higher risk due to conflict-zones and individuals or businesses without credentials, we believe that the AML focus should be on high-value trade in antiquities.

There is a high cost of known compliance for small businesses (estimates range from \$2,000-5,000 per year for small businesses²). Businesses must be prepared to adhere to any new obligations. Therefore, staff must be trained, or new staff must be hired, procedures must be in place, either in house or outsourced, to immediately fulfill obligations. The practicalities of these obligations require dedicated resources and an adequate infrastructure to implement them, neither of which most micro-business have available.

Given the consideration of the costs of government oversight, CINOA believes the concerns raised above pose legitimate questions regarding requirements for time-consuming reporting by small businesses (selling low- or medium-priced antiquities). The costs would far outweigh any of the proposed benefits. Businesses already keep accurate records of items handled and purchasers, and in most cases the contact details of clients. A goal of any serious art market professional is to develop long-term relationships with their clients especially as new clients are relatively rare for antiquities businesses.

Therefore, to mitigate any unnecessary BSA obligations for antiquities, a concentration on only higher-risk and 'high-value' transactions would seem to be applicable. We see that a reasonable price threshold should be set above \$500,000. For amounts under \$500,000, additional compliance implemented would be unlikely to help in the detection of elaborate high-value cover up schemes.

² Cultural Property News: <https://culturalpropertynews.org/congressman-wants-bank-secrecy-act-to-regulate-art-trade/>.

With such a threshold, micro-businesses will not be overburdened by additional regulatory applications in their ordinary course of business, and any risk associated with high value antiquities transactions would be addressed (especially in conjunction with existing reporting required by a third-party facilitator, such as banks or insurers).

With regards to agents and intermediaries, regulation should only impact people who have a direct financial involvement in a sale such as the seller, buyer, agents, direct financiers, auctioneers, dealers, etc. People not directly involved in a transaction (who may be paid for providing specific knowledge about authenticity, past restorations, or value) such as appraisers and restorers should be outside the scope of regulations.

C. The need, if any, to identify persons who are dealers, advisors, consultants, or any other persons who engage as a business in the trade in antiquities.

In order to answer this question, one needs to know what would this identification be used for? What are the advantages of identifying businesses or persons engaged in the trade of antiquities? Is identification based on direct and/or indirect involvement in transactions? Without knowing why this question is being asked, it is impossible to evaluate the need.

Antiquities are a niche collectible, circulating in a relatively small market of professionals that are generally familiar with one another. Most auction houses, dealers and experts can easily be identified through the membership to professional organizations. Identifying advisors and consultants might be more difficult.

As stated previously, businesses typically keep client records of their transactions and item records with descriptions of the items in their stock or of those being handled on behalf of someone else for accounting purposes.

There are other types of professions which can be indirectly involved in a sale such as advisors and consultants whose roles in the buying and selling of antiquities can widely vary from simply giving advice to helping locate a buyer or seller. Other professions such as appraisers and restorers are rarely associated with the direct sale of an object, their work is usually preformed before the object is sold and are not directly involved in the transaction.

We recommend that the best approach should be to focus on those directly involved in the purchase or sale of antiquities, whether acting as principal or as agents for buyers and sellers. This would therefore include those who are auctioning antiquities and those who buy and sell them in their own right or offer them for sale on behalf of their owners, because these are the people who engage “as a business in the solicitation or the sale of antiquities”.³

D. Whether thresholds should apply in determining which persons to regulate.

Financial thresholds should be used in determining which persons to regulate as explained in the previous questions, because the vast majority of U.S. antiquities purchases are by check, credit card,

³ See paragraph B, <https://www.federalregister.gov/documents/2021/09/24/2021-20731/anti-money-laundering-regulations-for-dealers-in-antiquities>

or wire transfer, all of which pass through banks and financial institutions already subject to FinCEN tracking and reporting requirements.

Thresholds could be tailored to different perceived risks and business types. This could help to filter out the majority of lower risk transactions and heightened attention would be focused on high value higher risk transactions.

It is not sure how to apply a threshold for low-quality selling that takes place on unvetted auction internet services, however, most so-called ‘antiquities’ on eBay were of very low quality and many were fakes being sold by entrepreneurs in economically depressed parts of the word.(p.78-79)

E. Whether certain exemptions should apply to the regulations.

Exemptions should be available to established business with credentials that fulfill a number of criteria, such as:

1. Business with an annual turnover of less than \$1 million;
2. Businesses that are a member of a professional trade organization, such as CINOA;
3. The antiquities or transaction participants are not linked to a conflict zone.

We believe that the above credentials constitute a fair approach to vetting businesses for exemption from regulation per the BSA.

It will also help mitigate against unintended consequences of AML as highlighted by the 2019 research *Anti-money Laundering Regulation and the Art Market* such as:

“So, for example, dealers might become more risk averse leading to ‘de-risking’.¹⁴² In other sectors, there is evidence of, inter alia, remittance firms being de-banked and correspondent banking accounts being closed due to banking sector concerns as to AML compliance.¹⁴³”⁴

F. Any other matter the Secretary determines appropriate.

- (a) We believe that any further AML regulation should be based on a combination of established business practices, thresholds, and identifiable risk. Economic and resource allocation for all stakeholders must be considered, as well as the ultimate benefit and efficiency of any new rules or regulations.
- (b) CINOA recommends that regulators implement a help desk, or phone line, for reporting any suspicious behavior so antiquities sellers and buyers who might otherwise be subjected to steep penalties for trading in something that they do not have the resources to research on their own. If one aim of the regulation is to minimize the potential for illicit activity in the trade of antiquities, we believe this would be a sound approach.

⁴ p.146, *Anti-money Laundering Regulation and the Art Market* by Saskia Hufnagel and Colin King Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK.*Corresponding author. Email: colin.king@sas.ac.uk

(c) The art market would welcome actual data on money laundering transactions involving antiquities that is known to date being made publicly available. Data on past seizures in Europe, particularly in Italy, is not available to the art market, to museums or to consumers even 15-20 years after seizures have been made. The withholding of this information is a serious barrier to due diligence actions by the market and consumers.

Additional Observations Regarding Antiquities Policy Implementation

1. **Proportionate legislation based on AML risk:** Countless studies have been carried out in the last ten years finding time and time again that the justifications put forth for applying specific AML controls to the antiquities trade have been found to be exaggerated. Illicit activity in the trade, as it has been described has been based upon assumptions, not facts. Money laundering regulation should be based upon actual evidence of money laundering or terrorism financing and should be tailored to the size and types of businesses regulated. Micro-businesses should not be expected to perform the same compliance procedures that a banking or financial institution applies.
2. **Antiquities, Cultural Property, and Illicit Trade have different interpretations:** The new BSA changes apply to art dealers, auction houses and others who trade in ‘antiquities.’ CINOA believes that the term ‘antiquities’ must be more clearly defined to avoid misunderstanding and to facilitate adherence. Antiquities usually refer to artifacts, that date from ancient times. As antiquities are considered an integral category of cultural property, the UNESCO Convention 1970, the most ratified international convention dealing with cultural property, must be taken into account, particularly when targeting illicit trade. Furthermore, the term and use of ‘illicit trade’ of antiquities needs to be analyzed in order to have an accurate picture of its potential relationship to the antiquities market and to develop effective legislation to combat/mitigate illicit transactions wherever necessary.
 - (a) **Antiquities:** This document uses the term antiquities in their most common European usage to mean artifacts, circulating from private collections in today’s market, that originated in ancient civilizations surrounding the Mediterranean basin, including the Classical civilizations of Ancient Greece and Rome, the ancient civilizations of the Arabian Peninsula and Mesopotamia, North African cultures, and those of Eastern, Western and Northern Europe. It is estimated that this trade accounts for less than 0.5% of the global art market, with Middle Eastern antiquities—the focus of terrorism financing claims—accounting for 15% of global antiquities figures, or less than 0.020% of the global art market. (See **question 3** for details on the economic figures.)
 - (b) **Cultural Property:** The 1970 United Nations Educational, Scientific and Cultural Organization(UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is an international treaty implemented in order to establish measures to prohibit and prevent the illicit import, export and transfer of cultural property across the committed 141 state parties’ borders. The Convention defines cultural property as “*property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science*” and belonging to a pre-determined object category. As a general guideline, in the

Convention, 'cultural property' relates to objects subject to national legislation. While State Parties may define this term based upon their 'importance', per the Convention, the definition is left up to State Parties, which have often adopted legislation that covers all objects over 50-100 years of age, from ancient statues to prints and manufactured items such as postage stamps. It should be noted that despite enacting legislation to classify this wide range of objects of different ages as 'national patrimony', requiring a government permit for export, many nations never adopted permitting systems at all, and many tolerated an open domestic trade and failed to enforce export prohibitions.

In the US "Convention on Cultural Property Implementation Act", the Senate Committee Report 97-564 (1982) states in section 208 that "*Cultural property is defined to include the categories of articles listed in article 1 of the Convention, whether or not the article is specifically designated by the State Party for this purpose. The term thus is broader than but inclusive of "archaeological or ethnological material."*" In section 202(2i) definitions of "archaeological or ethnological materials of the State Party" are provided. Furthermore, it is also important to note that Congress placed constraints on executive power hoping to ensure that the United States exercises its "independent judgment" in defining cultural property. As the Senate Committee Report 97-564 at 6 (1982) explains,

"The Committee intends these limitations to ensure that the United States will reach an independent judgment regarding the need and scope of import controls. That is, U.S. actions need not be coextensive with the broadest declarations of ownership and historical or scientific value made by other nations.

U.S. actions in these complex matters should not be bound by the characterization of other countries, and these other countries should have the benefit of knowing what minimum showing is required to obtain the full range of U.S. cooperation authorized by this bill."

(b) Illicit Trade: Measuring the illicit trade in cultural property by monetary figures is virtually impossible by its very nature. Illicit trade reports from INTERPOL also include burglary, looting or theft of antiquities or anything which can be considered 'cultural property.' which not only refers to handmade objects such as art, antique furniture, silver and decorative objects of all kinds but also can include such items as coins, LP records and WWII bullet cases. Therefore, often times published figures surrounding cultural property and/or antiquities are extremely misleading.

3. Business transparency concerns: There is legitimate concern that, with new corporate transparency laws also being implemented on a much larger scale, the government would be in a position to potentially misuse data collected on legitimate collectors and dealers. More specifically, that information collected to prevent money laundering could be acquired by parties exclusively interested in forcing the repatriation of objects to countries with a reputation for authoritarian governance and broad cultural patrimony laws which treat any man-made object from within their state borders as 'cultural property.' Since some nations with a history of licensed trade up to 1983 (for example, Egypt) now claim objects exported in the 19th century, this is a legitimate concern.

4. Methods of documenting either the import or export: (Through any nation) of either 'cultural

property' or 'antiquities' prior to 1970 very rarely included corresponding paperwork, putting many completely legal antiquities currently in US collections in a legal bind due to poorly structured regulatory measures affecting historically legitimate acquisitions. As a result, the UNESCO Convention has in fact created new problems for objects collected legitimately prior to 1970, just as it has helped clarify and resolve subsequent issues in the marketplace for antiquities that have been in circulation since 1970. In sum, legal issues that arise because of the Convention are unique in that they address cultural patrimony and should therefore be treated as a separate issue from other questions of title, trade, or ownership altogether.

In response to FinCEN's proposed scope of investigation as indicated in consultation's **SECTION III Issues for Comment, CINOA has provided input under each question.**

A. The Antiquities Market

- 1. Please identify and describe the roles, responsibilities, and activities of persons engaged in the trade in antiquities, including, but not limited to, advisors, consultants, dealers, agents, intermediaries, or any other person who engages as a business in the solicitation or the sale of antiquities. Are there commonly understood definitions of particular roles within the industry? Who would be considered within or outside such definitions?*

To determine who is subject to BSA regulations, the roles, responsibilities and activities that matter for BSA regulations should be those people that have a direct financial link to the transaction. Advisors, consultants, dealers, agents, intermediaries or any other person who is directly involved in buying or selling antiquities could be considered within the scope however, when they are only indirectly involved in a transaction, for example receiving payment for making an introduction, providing information or specific knowledge, then they should be regarded as outside scope.

- 2. How are transactions related to the trade in antiquities typically financed and facilitated? What are the typical sources and types of funds used to facilitate the purchase of items in the antiquities market? How common are leveraged or financed purchases in the antiquities market? How common are cash transactions in the trade in antiquities?*

Generally business transactions are financed out of working capital. The vast majority of U.S. antiquities purchases are by check, credit card, or wire transfer, all of which pass through banks and financial institutions already subject to FinCEN tracking and reporting requirements. Leveraged or financed purchases of specific antiquities are rare. Cash transactions happen but like all US businesses, cash transactions are already subject to reporting requirements.

- 3. Can the antiquities market be broken down to show the percentage of transactions that fall in a given monetary range (e.g., 50% of all transactions fall below \$X-value)? If so, please provide a breakdown of those ranges.*

We do not have precise data on the monetary ranges within the antiquities market. The most reliable information, we are aware of, on prices in antiquities can be found in the 2020 RAND Report: *Tracking and Disrupting the Illicit Antiquities Trade with Open-Source Data.* https://www.rand.org/pubs/research_reports/RR2706.html

Chapter five; "Measuring the International Trade in Antiquities" (page 69 and further)

Page 71: "We gathered data about antiquities sales by major auction houses by collecting data from all available online auction catalogues for the auction houses that are members of the International Association of Dealers of Ancient Art. From this larger data set, we focused our analysis on only the three largest houses—Bonhams, Sotheby's, and Christie's—because smaller firms did not list all their sales online. We collected data

on 21,020 successful sales that, after excluding the handful of famous pieces that sold for more than \$10 million, averaged about \$21,300.”

Page 72; “Excluding the few items that sold for more than \$10 million, the total value of the items sold was \$30 million–\$68 million per year. The market appears to have been quite weak in 2008 and 2009 (Figure 5.2), presumably as the global financial crisis weakened the market for high-end luxuries. It has since stabilized at an annual figure of about \$45 million in total per year.”

Page 73: “If we focus our analysis on the year 2015, the last complete year in our data, sales of Greek, Roman, and Egyptian antiquities amounted to \$41 million. Among these sales were artifacts whose provenance could be traced back as far as 1732, and only \$326,000 of these sales were objects whose provenance could not be established before 2000. Moreover, 25 percent of all the items offered at auction were not sold, either because there was no bidder or because the reserve price was not met. “

To add context to the figures, the US antiquities market is estimated to be under \$100 million, which is about 33% of the global antiquities market. Below is a table and key facts:

Estimated Figures Regarding Art Market Sales and Antiquities

MARKET	(\$) 2020	(\$) 2013
ART SALES (GLOBAL)	\$50 billion	\$65 billion
ART SALES (U.S.)	\$21 billion	\$25 billion
ANTIQUITIES SALES (GLOBAL)	~\$275 million	~\$275 million
ANTIQUITIES SALES (U.S.)	~\$100 million	~\$100 million

- a)** The last known study of the antiquities portion of the global art market was compiled in 2013 by the IADAA. The IADAA study was able to identify a worldwide antiquities market total of about €133 million EUR (~\$184 million USD as of December 31, 2013). This figure arose from canvassing IADAA members, analyzing auction results, and assessing sales by dealers with physical premises in 2013. Per a consideration that perhaps the total antiquities market had not been accounted for, IADAA brought their approximation up from €133 million EUR (~\$184 million USD as of December 31, 2013) to a range of between €150-200 million EUR (~\$200-275 million USD as of December 31, 2013).
- b)** Of the €133 million EUR global antiquities figure identified by the IADAA, U.S. sales accounted for €50 million EUR (~\$70 million USD as of December 31, 2013). By applying the same ‘consideration’ metric—which brought the total from €133 million EUR up to €150-200 million EUR—we can round the €50 million EUR (~\$70 million USD) portion of U.S. antiquities sales up to about €55-75 million EUR (~\$75-\$100 million USD as of December 31, 2013) to account for a high-end estimate of the U.S. market’s total sales in antiquities in 2013 dollars.
- c)** The TEFAF Art Market Report of 2014 calculated global art market sales in 2013 to be around €47 billion EUR (~\$65 billion USD as of December 31, 2013). According to the data, the U.S. accounted for approximately 38% of the 2013 global art market (~\$25 billion USD as of December 31, 2013).

- d) According to the Art Market Report of 2021, global art market sales in 2020 were roughly \$50 billion USD, in 2021 dollars. U.S. art sales accounted for approximately \$21 billion USD, or 42% of this. (Both the Art Market Report of 2021, and the TEFAF Art Market Report of 2014 utilized similar methods of data aggregation).
- e) Given the close quantitative approximation of U.S. art market total share value between 2013 (~\$25 billion USD as of December 31, 2013) and 2020 (\$21 billion USD in 2021 dollars), combined with the qualitative understanding that overall market growth for antiquities, as both a global and U.S. marketplace, has stagnated over the same period of time, would indicate that—at the high end—figures for the U.S. antiquities marketplace (~€75 million EUR / ~\$100 million USD as of December 31, 2013) supplied by the IADAA in 2013 can be considered a valid high-end estimate of the size of the legitimate antiquities market in the U.S. today.

4. *What, if any, information does a buyer typically learn about the seller, cosigner, or intermediary involved in the sale of antiquities? When a seller, cosigner, or intermediary offers an item for sale, why might a person involved in the antiquities trade withhold the name of the seller, consigner, or intermediary from the buyer? What, if any, business purpose does this serve? Should the buyer have the right to learn this information to determine whether the provenance of an item is legitimate? Why or why not?*

The information that a buyer learns about the seller, cosigner or intermediary involved in the sale varies on a case by case basis. At auction and in a private sale, the seller, cosigner or intermediary who is involved in the sale is not generally revealed. Sometimes for commercial reasons, such as when the item comes from a well-respected collection or individual which could add prestige and value to the item, the name of the seller is revealed. If the name is communicated, it has been agreed in advance with the seller.

Withholding the identity of a source is considered important for business and for clients for several reasons:

- a) Security: For both businesses and clients withholding the name of a source or buyer, helps ensure that they are not putting their clients at risk for burglaries.
- b) Privacy: For clients, selling or purchasing antiques is a personal choice reflecting their taste and financial means which they might not want public.
- c) Protection against competitors: For businesses, keeping the name of the seller, cosigner or intermediary confidential helps to avoid that their businesses are bypassed in a sale. By providing the name of the source or buyer of an antiquity, it would be much easier for these clients, or potential clients, to be easily contacted and poached by other competitors.

If US auction houses and dealers had to disclose the identities of their sources, this would put US art market professionals at a disadvantage to those in other countries that do not require or allow the identity of the seller to be communicated. For example, in the EU and UK, art market professionals must abide by very strict General Data Protection Regulations (GDPR) which protects EU citizens from having their personal information disclosed without their permission. Clients, who have many legitimate reasons for keeping their collecting private, might be less inclined to sell at a US auction and might prefer to sell abroad. For more information on GDPR https://ec.europa.eu/info/law/law-topic/data-protection_en

5. *How do foreign-based participants in the antiquities market operate in the United States? Do they operate directly as advisors, consultants, dealers, agents, intermediaries, or others? Or do they work with domestic advisors, consultants, dealers, agents, intermediaries, or others?*

Most foreign-based art market professionals operate remotely using modern means of communication just like many other sectors. They can fulfill any number of roles such as advisors, consultants, dealers, agents, intermediaries and auctioneer by operating directly with clients or indirectly via domestically based art market professionals.

6. *When advisors, consultants, dealers, agents, intermediaries, or others receive payment from overseas accounts, what steps do they take, if any, to determine whether the payment comes from a legitimate source?*

All payments, including overseas payments, are scrutinized by both the business and the financial institution that handles the transaction. Art market professionals follow customer and item due diligence rules tailored to the origin and value of the item, the client, the market demands, available data, and resources.

Dealers have codes of professional standards and auction houses implement voluntary compliance protocol worldwide, both of which are aligned with AML practices.

(a) Due Diligence Guidelines for antiquities dealers, written by IADAA have been adopted by the trade in general.⁵ The Guidelines, posted on the IADAA website, are:

- 1) Require a vendor to provide their name and address and to sign and date a form identifying the item for sale and confirming that it is the unencumbered property of the vendor which they are authorized to sell;
- 2) Verify the identity and address of new vendors and record the details;
- 3) Pay particular attention in the case of any item offered for sale where the asking price does not equate to its market value;
- 4) If you are offered an item you suspect to be stolen
 - (4a) Attempt to retain the item while enquiries are made
 - (4b) Contact the appropriate authorities
 - (4c) Check with the relevant stolen property registers;
- 5) Look critically at any instance when requested to pay in cash and avoid doing so unless there is a strong and reputable reason to the contrary. In the absence of such a reason pay by cheque or other method that provides an audit trail;
- 6) Be aware of money laundering regulations;
- 7) Ensure that staff are aware of their responsibilities in respect of the above code;
- 8) You should be particularly careful only to acquire well provenanced objects from actual trouble spots and adhere to national laws and international regulations regarding the above.

(b) Auction houses have policies to fulfilling due diligence, as an example, the list below is posted on Christie's financial information webpage⁶:

- 1) AML program managed by a global Compliance Team;

⁵ <https://iadaa.org/about-us/>.

⁶ Christie's Financial Information: <https://www.christies.com/selling-services/selling-guide/financial-information>.

- 2) Compliance programs at the auction house include client, transaction, and artwork due diligence, monitoring and record-keeping;
- 3) Christie's enforces strict cash payment limits and a no third-party payment policy;
- 4) All company staff trained to be vigilant when dealing with unusual transactions;
- 5) Christie's AML program is subject to regular audit to ensure the proper functioning of all procedures.

7. *What are the money laundering, terrorist financing, sanctions, or other illicit financial activities risks associated with the trade in antiquities? What is the industry experience with money laundering, terrorist financing, and other illicit financial activity?*

This risk and experience of terrorist financing and money laundering involving antiquities are insignificant when the data is analyzed. The results of the analysis can be classified under 5 main headings.

1. *Lack of evidence on the extent of antiquities trafficking:* It is important to understand and examine the evidence regarded as the rationale for including the sale of antiquities in the AML legislation and the truth regarding claimed illicit trade in antiquities used to launder money and fund terrorism. Antiquities have not been found, by any significant measure, to be used as a vehicle to launder criminally obtained finances. Below we examine the underlying basis for what we understand to be the rationale for the inclusion of antiquities in the AML Act of 2020.

(a) *Statistics are misunderstood:* “Billion-dollar” figures used to quantify the annual aggregate of illicit sales in antiquities come from various applications of poorly understood statistics, with some suggested values exceeding almost \$3 billion annually. In 2013, the FBI Art Crime unit estimated all art crime globally—concerning everything from Contemporary Art to stamps—at around \$4-6 billion (www.FBI.gov, Art Theft Program & Transcript, 2013). These ‘billion-dollar’ exaggerations result from the uncritical repetition of unsupported claims and failure to distinguish between ‘cultural property’, ‘art’, and ‘antiquities.’⁷ Further research by CINOA on this all-too-common misrepresentation in the media has been debunked in the CINOA paper titled *CINOA Fact Sheet on Fighting Bogus Information about the Art Market – 02/2021* which analyses the data and traces back the sources of the misinformation. The document is available on the CINOA website and can be accessed here: ([CINOA Perspectives, 02/2021](#)).

(b) *RAND's non-biased study concludes current theories are wrong:* In May of 2020, a study, commissioned by the U.S. Department of Defense, into the ‘Illicit Antiquities’ was published by RAND, which is considered the leading independent research organization in the United States, with a 75-year history of ground-breaking studies. Titled ‘*Tracking and Disrupting the Illicit Antiquities Trade with Open-SourceData*’, it concludes that the most widely held assumptions and current theories are wrong about antiquities trafficking, and the role of antiquities in terrorist financing. According to the study, available research suffers from analytical weaknesses, in part due to a lack of stable definitions. “Researchers have sought to compensate for the lack of specialized data on antiquities trafficking by borrowing theoretical models, statistical data, and

⁷ This error has already in part been mitigated by the FBI by their implementing a team of ‘art crime’ experts. We hope that such initiatives have served to better cement the understanding that ‘cultural property’ has a broad definition; it is not a synonym for the specific category ‘antiquities’ which have been inappropriately associated with them.

empirical evidence from the literature on cultural goods—a field that includes antiquities but often focuses on the visual arts. Greater care is needed to explain the specific characteristics of the antiquities trade, define the limitations of the available data, and avoid unintentional or misleading conflations between distinct categories of trade.” (RAND, p. 9).

(c) No evidence linking illegal excavation and/or smuggling to legitimate US market: CINOA agrees that there is a logical correlation between instability in the Levant region, and low level semi-organized, or opportunistic looting attempts in or around nearby ancient archaeological sites. However, no organized relationship between the found-coins, pottery fragments, etc., in war-torn countries (or nations with strict cultural patrimony laws) and the legitimate trade in circulated antiquities across the West has been found. Pertaining to the link between excavation and market reception, the RAND report points out how the “effective policy responses are hindered by the lack of data and evidence on two fronts: the size of the [illicit] market and the network structure of participants.” The authors pointedly highlight how: “Much research has focused on documenting the destruction and looting of archaeological sites and museums in Iraq, Syria, and Egypt, but relatively little analysis has focused on the problem of where the looted antiquities go, what markets exist for the looted material, or what the size of these markets might be.” (RAND, p. 2).

2. **Recently looted objects are not surfacing on the market:** An informal survey by the International Association of Dealers in Ancient Art (IADAA), found that there has been no increase in offers to member dealers of possibly looted antiquities. We believe that such items are not likely surfacing on the U.S. or European market.

Some advocates claim that illicit antiquities are being stored for a decade or more later. We believe this is not a logical conclusion, as there is no history of the art trade sequestering such items ever in the past. More research needs to be done to determine if criminals are storing items somewhere and waiting for time to pass, as suggested by some. Examples of some of these claims have been debunked in an article written by the lawyer P. Tompa.⁸ Aspects such as where are they stored, in what conditions, and why it is a valid assumption that criminal excavators/smugglers are so patient should be questioned. One must also bear in mind that antiquities are fragile; proper, acclimated storage conditions are necessary for most antiquities. Object condition assessments are likely able to determine if an object has been cared for properly. As a result, any speculation regarding the long-term illicit storage of an object for the purpose of eventual distribution in the legitimate market need to take such object information (easily retrievable by way of appraisal or expert assessment) into account.

CINOA fully supports efforts to deter or help eliminate illegal excavation and vandalism. We urge that more resources be put towards educating customs officers and international law enforcement to ensure that any material in transit found to have been illegally excavated is intercepted.

3. **The US and Europe are not a significant ‘market’ for illicit antiquities:** RAND researchers conclude that it was unlikely that looted, or illegally excavated, artifacts (from their survey in Iraq and Syria) ever go beyond neighboring countries in the Middle East. The evidence for this is that items appear to be sold for their ‘international market price’ very early in the supply chain. The RAND Study notes that if “collectors in Turkey and Iran are buying these items for prices similar to what they would attract

⁸ <https://culturalpropertyobserver.blogspot.com/2016/01/2015s-questionable-claims-on-isis-and.html>.

in the United States, then there is less opportunity for importers and dealers to make money through arbitrage than has traditionally been assumed.” (RAND, p. 26-27). On the demand side, RAND’s analysis supported by research published through the University of Chicago Law School’s *Journal of Law and Economics* in 2016, which illustrated how, since at least 2005, objects with a strong, well-documented provenance command a significant premium over those which the provenance (or evidence of an extensive history of circulation in the legitimate market space) does not exist. (University of Chicago, *Journal of Law and Economics*, vol. 59; 2016, p. 2). All this confirms that there is little to no correlation between the looting, or illicit excavation of ancient objects, and the market demand for objects which can be defined as ‘antiquities.’

4. **Evidence of terrorist financing are anecdotal:** Claims linking terrorism financing to artifacts, from a data perspective, are anecdotal, not based upon evidence. RAND researchers cite an article in the *Wall Street Journal*, which included “estimates placing the value of the Islamic State’s antiquities trafficking in the “low tens of millions” annually, while a French security official placed the figure at \$100 million. The Antiquities Coalition estimated that “[c]oming out of Syria, it is \$2 billion” and “[w]ith Egypt, it is probably \$3–10 billion, globally it has to be a much more significant number.”⁹ (RAND, p.10-11). Although CINOA established that ‘billion dollar’ valuations are farfetched as explained in the document CINOA Fact Sheet on Fighting Bogus Information About the Art Market – 02/2021, we acknowledge the RAND findings that it is apparent that organized terrorist groups (such as the Islamic State) have been “looting museums and historic sites in Iraq, Syria, Egypt, Libya.” RAND continues that it is also clear that the later stages of the supply chain for illicit antiquities remain poorly understood. (RAND, p. 15-16).

One example that such purported ‘evidence’ has not been accurately analyzed is the documentation presented publicly by the US State Department in 2015. As reported in *The New Yorker*, eight receipts, retrieved by US special forces in a raid on property occupied by ISIS member Abu Sayyaf, maintained that ISIS had a “marginally profitable ‘antiquities division.’” According to the *New Yorker* article, Abu Sayyaf served ISIS as the director of the oil-smuggling division, and later was also put in charge of the group’s ‘antiquities trafficking’ division. The oil and artifact operations conducted by the Islamic State were therefore under the same bureaucratic umbrella by that time, known as the “Diwan al-Rikaz,” or “*Department of precious things that come out of the ground*.” The confiscated records from Sayyaf’s holdings is the only evidence we are aware of for true archaeological excavation and smuggling with their relation to the Islamic State (when IS was at its height in 2014-2015) but provide inconclusive evidence of a serious antiquities operation being carried out by ISIS.¹⁰ The confiscated documents highlight the opportunistic nature of antiquities excavation, in contrast to ISIS more organized operations such as their destruction of priceless artifacts in Mosul, Nimrud, Palmyra, among other ancient sites in the Iraqi Syrian region. Their primary threat to cultural heritage has been vandalism and

⁹ For perspective, RAND researchers also point out the following: “Egypt’s gross domestic product (GDP) is about \$336 billion, which, according to these estimates, suggests that antiquities trafficking accounts for 0.9–3 percent of Egypt’s GDP. By comparison, opium production in Afghanistan is estimated at \$1–4 billion per year, which accounts for about 90 percent of illicit heroin and opiate production worldwide.” (RAND, p. 11).

¹⁰ According to the reporting of the receipts by *The New Yorker* in 2015: 1) The IS established a 20% tax on the sale of related “Diwan al-Rikaz” property found in their jurisdiction, accounting for anything of value unearthed, man-made or otherwise; 2) In less than half a year (the time of the raid), this tax generated about \$265,000 in revenue, according to the reporting by the State Department; 3) Two of the eight receipts accounted for 80% of all the ‘antiquities’ sales, according to the figures—implying either two large hauls that were undescribed, cumulative tallies of a large number of unidentifiable small objects, or simply poor accounting; 4) The document-receipts described various roles within the division, in Arabic, that the excavation teams should extract not only antiquities by also metals and minerals. (*The New Yorker*, 2015).

destruction—not market exploitation. For example, according to the New Yorker in one document produced by the IS, the group warns of consequences for anyone caught “dealing in idolatrous antiquities and ephemeral statues.” (*The New Yorker*, 2015.)

There is no evidence that objects generated by the activities of Abu Sayyaf and others ever came to the U.S. or European legitimate antiquities market and no looted object of value has even been identified in the U.S.¹¹

5. **No publicly available cases of money laundering using antiquities:** The primary motive for new BSA regulations to be passed for persons engaged in the sale of antiquities has been put forth as an effort to combat money laundering. Although anecdotal evidence exists for artifact looting, and localized smuggling networks, there is no actual evidence that antiquities have been successfully used for money laundering or terrorist financing. There are no confirmed publicly available cases of antiquities being used as the vehicle-instrument in an orchestrated effort to launder criminally obtained funds.¹² This is only further evidenced by the case examples that were brought forth during Senate hearings to support the new legislation—none of which involved antiquities.

These 4 Key Factors render antiquities difficult to sell making them unsuitable for money laundering

1. **The majority of antiquities in the market left their country of origin many decades ago before record keeping was needed:** Most artifacts have not recently left their country of origin. The majority of artifacts in the market place left their country of origin many years ago including items which formed collections in the 19th century. This was before there was an emphasis on provenance record keeping. Nowadays, buyers require evidence of export or the history of where the item has been kept. Buyers insist on a solid provenance. Without a solid provenance, antiquities are very difficult to sell. To qualify the data on price discrepancy found in relation to provenance, one US based antiquities dealer explains how a finite supply of antiquities within the market is better for dealers and collectors in terms of maintaining the monetary value of their holdings. He went on to explain that old collection material continually reemerges from the estates of the prior generation’s collectors. Most of these objects however are mundane, undocumented, and, therefore, of little interest to today’s collectors who are hypersensitive to issues of cultural patrimony, provenance, and value. He stresses that all of the focus within the market has moved to important pieces with unimpeachable pedigree
2. **Market saturation affects demand:** Dealers turn away hundreds of objects for every piece that they acquire. The rate of turnover is very slow for such a capital-intensive business. For example, when a dealer is offered a large collection of ancient oil lamps, Roman glass, coins, terracotta fragments, or plain pottery, they often turn it away regardless of the cost as the effort to catalog, photograph, and market this material exceeds its worth in the marketplace. Another aspect which contributes to a slow turnover is that there simply are not enough new collectors to absorb the large collections formed in the last century (Hixenbaugh, 2019).
3. **The Process of acquisition to sale is slow, laborious and results in rejection of many offered items.**

¹¹ Objects found in Sayyaf’s bunker at the time of the raid consisted of: Gold coins, silver dirhams, old beads, terra-cotta fragments, an ivory plaque, an ancient manuscript, and heavily corroded copper bracelets—mixed with fakes—all more or less considered “junk” (*The New Yorker*, 2015).

¹² Conversation with Randall Hixenbaugh, April 2021.

The typical steps within the process of acquiring antiquities are described below:

- 1) The buyer, either a dealer, collector, or institution, peruses an auction catalog and the hundreds of lots for a few pieces that seem to represent opportunities or the buyer receives an offer to purchase from a seller;
- 2) The buyer inquires for additional details regarding the pieces' provenance and condition, carry out their own investigative research to confirm the details;
- 3) If the buyer is an art market professional, they will cross-reference the work with their client database to see if there is a collector that the piece may suit;
- 4) Research, conservation, mounting, photography, and advertising completed by the auction house (or seller) also add significant expense to the initial acquisition;
- 5) The buyer often travels at considerable expense to examine pieces and purchase them in person, as the market is usually competitive for objects that are desirable in the marketplace and supported by well-documented provenance. (Countless works on offer are of interest to no one—it is not unusual for as much as half of the lots in a major antiquities auction to go unsold or dealers to have an object for years as they do not fit the criteria that the potential buyer demands);
- 6) After the sale, objects will await export licenses if they are to be shipped abroad. For objects sold at auction, they have been publicized and therefore are subject to all manner of foreign claims and disparaging press prior to the sale;
- 7) A dealer will carry out his own research on the pieces against databases like the INTERPOL Database of Stolen Art or the Art Loss Register. This process can take months, and once again, the artwork is subject to potential claims;
- 8) Once shipped, the acquisitions will again be subject to further checks as they undergo import processes that will involve strict customs controls and an additional round of scrutiny regarding their legal status.

4. **There are typical hurdles experienced by art market professionals when selling antiquities:**

Typically, some six months after a piece was purchased by an art market professional, it may end up being offered for sale. If a potential buyer materializes, they will ask to see the accumulated paperwork for the piece(s) and if dissatisfied with a lack of documentation, will reject the object. Export documents, import documents, written statements, publication in an auction catalog, and Art Loss Register search certificates are all touchpoints by today's collector. When such documents are available, such as a handwritten receipt from a licensed Cairo dealer of the 1970s it rarely accurately describes the object in detail. The vast majority of legally acquired antiquities that reemerge from old collections no longer have any paperwork regarding the original importation. The last refuge of the inheritor of antiquities seeking to disperse a collection is to donate it to a local museum. However, the current guidelines of the Association of Art Museum Directors prohibit many museums from accepting donations of archaeological material that was not published photographically prior to 1971 (Hixenbaugh, 2019).

Continuation of question 7. Which parts of the market are most vulnerable to these risks? In which geographical locations do those vulnerabilities tend to take place? Are there certain types of persons engaged in the trade in antiquities whose activities present lower money laundering, terrorist financing, and other illicit financing risks and for whom the application of BSA requirements is less critical? Are there certain types of persons engaged in the trade in antiquities whose activities present greater money laundering, terrorist financing, and other illicit financing risks and for whom

the application of BSA requirements is more critical?

In order to understand which parts and types of persons are the most vulnerable and risky, it is imperative that the long standing nature of the trade of antiquities over hundreds of years be considered. The RAND report states “While law enforcement seizures and ongoing investigations provide anecdotal documentation of the flow and sale of goods, our aggregate data suggest that the market for all antiquities, both licit and illicit, is on the order of, at most, a few hundred million dollars annually rather than the billions of dollars claimed in some other estimates... One takeaway from our analysis is that the difficulty of marketing and selling classical art and artifacts should not be understated. Much of the analysis in the field that has focused on the illicit supply of looted artifacts has assumed that they are easily sold. However, even in well-advertised auctions for museum-quality goods, 25% of the lots fail to sell. The figure is even higher for lower-value goods. More generally, the sales volumes transacted through the channels that we analyzed are relatively modest compared with the scale of the looting visible in aerial surveys and claimed by high-end estimates of the size of the illicit market... Our analysis suggests that it is unlikely that large volumes of looted antiquities are being sold through observable channels in Europe or the Americas” (RAND, p. 84-85).

The legitimate trade of antiquities has been going on through various established channels for 100s of years, which practice due diligence as described in **Question 6**, such as:

(a) *Auction Houses – small to large businesses facilitating the sales of antiquities:* Data was gathered by the RAND Corporation on antiquities sales by major auction houses from 2007-2015. By surveying all available online auction catalogues for the auction houses, they were able to approximate that total volume of the auction market for antiquities was about 2,000–3,000 pieces per year. Excluding the few items that sold for more than \$10 million, the total value of the items sold at auction was about \$30–68 million per year. After some economic recovery post-recession in 2010, the market stabilized at an annual figure of about \$45 million/year.¹³ Of the 21,000 items canvased in their sample, 518 (3%) had a provenance that could be traced to before 1900, including one piece that had been part of known collections since 1450. A total of 6,200 (30%) of the items had a provenance of 1970 or earlier, and 11,200 (53%) could be traced to 1980 or earlier, 15,000 (72%) from prior to 1990, and 17,500 (83%) prior to 2000. A total of 606 items, or 17% of the RAND sample, did not have collection histories that could be traced back further than 2000. These 606 items totaled \$4.4 million, with an average price-per-lot of \$7,260—by contrast, the average price-per-lot of all items sold (excluding works that sold for more than \$10 million) was \$21,300. Although there are many factors that could account for this ~2/3rd correction in price difference, RAND surmises that one important factor is the premium that collectors place on provenance, both as a sign of authenticity and as an assurance that the items were not looted and can be bought with a clear title. By this calculus, newer goods are discounted by the market because of the greater uncertainty that surrounds their authenticity and legality (RAND, p. 69-73).¹⁴ Moreover, 25% of all the items offered at auction were not sold, either because there was no bidder or because the reserve price was not met. The statistics for the overall market suggest that auctions could, in a worst-case scenario, act only as a very limited conduit for illicit sales.

¹³ RAND points out how auction sales began to increase in 2011 while exports from the Middle Eastern region did not begin to increase until after the rise of the Islamic State in 2012, suggesting that there is no direct relationship between the two.

¹⁴ This analysis conducted by the RAND Corporation is consistent with the research funded by the University of Chicago Law School over a similar period which found that items which have been proven to be reliably legitimate command a premium at auction.

(b) Established Dealers – there are a very limited number of established antiquity dealers and most are micro-businesses: According to the study conducted by RAND, a survey of dealers in the United Kingdom suggests that there are roughly 25 high-end antiquities dealers operating in the UK. The UK's Antiquities Dealers Association lists 24 affiliated dealers selling or buying antiquities throughout England. This list can be taken to exclude some smaller, unaffiliated dealers. An international professionals' group, the International Association of Ancient Art Dealers (IADAA), lists 26 members—located in Europe and North America—on their website. Although these are rough estimates, and the search parameters could be improved to potentially better capture galleries that deal in antiquities, these numbers suggest that there may be fewer than 100 principal antiquities dealers operating in the whole of North America and Europe (RAND, p. 73).¹⁵ Moreover, RAND researcher interviews with antiquities dealers in both the United States and Europe and nonsystematic surveys of their collections both in person and online suggested that the turnover of their stock was relatively slow. While the exact number of micro-businesses in antiquities remains to be determined, the lack of evidence of larger businesses points to a substantial proportion of dealers in the trade likely falling into the micro-business category.

(c) Online auction services engaged in the trade of antiquities:

A recent sales channel which tends to be very loosely vetted:

- (i) By comparing sales of major auction houses with sales of the prominent online service “Liveauctioneers.com” (which provides a platform for sellers to offer goods), RAND researchers were able to determine that online auctions highlight a relatively weak demand for antiquities¹⁶—that while perhaps at the highest end of the global antiquities trade there is scarcity and demand, most mid-and lower tier objects (virtually everything found online) struggle to find buyers (RAND, p. 73-76).
- (ii) RAND found many ancient objects of very low quality being offered for sale on eBay. Researchers concluded that, due to a wide range of international sellers and the low cost of advertising on eBay, there was a universal difficulty in finding buyers for the collectable objects. They also noted that much of the property for sale appeared to be fakes. eBay ‘antiquities’ sales, according to RAND, are largely attempts by entrepreneurs in economically depressed parts of the world trying to make a profit by duping foreign buyers. (RAND, p. 78-79).

If higher risk sales are being made, they occur outside the recognized antiquities market. It appears, that there are two scenarios which potentially could be involved in money laundering or terrorist financing. At one end of the market, it is possible—although probably very infrequent—that sellers and buyers could deliberately make high value antiquities sales and purchases outside of the recognized market and under the legal radar. At the other end, there are the small, low-quality artifacts, often fakes or worthless which are claimed by some to be recently looted or smuggled ancient artifacts. These artifacts, which are often fragments, are generally offered by sellers on internet auctions and sales

¹⁵ RAND does not distinguish between ‘antiquities’ and ‘ancient artifacts’ and so dealers principally associated with antiquities as the term is understood in Europe and the UK are even lower in number.

¹⁶ By collecting data from 9,394 auctions on Liveauctioneers.com between 2015 and 2018, 4,120 (44%) of all items listed failed to sell. Of the 5,090 items that did sell, the average price was \$400, for an overall value of just over \$2 million. The 44% buy-in rate for low quality goods, in contrast to the 25% buy-in rate for desirable goods at the high end of the market in the traditional auction format, would imply that lower quality objects (both legitimate and illegitimate) are very illiquid, and presumably an inefficient vehicle for money laundering.

websites that do not utilize strict vetting services, to unknowing potential buyers in the United States. It is unlikely that these low or no value items will be used for money laundering. A third scenario consisting of mid-level works is very unlikely, as the vast majority of mid-level objects have been in circulation for years, and suffer from a lack of interested buyers, slow sales and an uncertain financial return.

Therefore, it is reasonable to assume that the higher risk sellers and buyers might be involved in either high value ad hoc sales or unrecorded low value sales, generally on the internet and via online auction services, by persons or businesses which are not part of a professional trade organization, and therefore would not be evaluated as higher risk and subject to the regulation.

Objects which can be linked to a conflict zone, either by the objects' origin or through direct links of the purchaser and seller to a conflict zone, are already considered a 'higher-risk' object for transaction by the art trade. Although the circulation of such objects is limited by current due diligence practices followed by both buyers and sellers, CINOA recognizes that it could be appropriate to apply BSA regulation to transactions involving objects or persons from these higher risk geographical areas, because of the potential links to financing of conflicts.

It is reasonable and appropriate for any sector, regardless of its focus, to accept that very high value transactions should be more regulated, and thus transactions of antiquities over \$500,000 could be subject to such regulation.

Please refer to our response in **Question B** which provides a more detailed explanation of the above.

8. Which participants involved in the trade in antiquities are in positions in which they can effectively identify and guard against money laundering, the financing of terrorism, and other illicit financing risks in connection with the transactions they conduct? For example, do these participants have access to information regarding the nature and purpose of the transactions at issue and the participants' involvement in completion of the transactions?

Today's antiquities market is made up almost entirely of bricks-and-mortar businesses which do not have access to the resources necessary to implement sophisticated compliance programs. These micro-businesses have thin margins and semi-illiquid assets. The only antiquities businesses today which could be considered "sizable" are auction houses. These established businesses follow customer and item due diligence rules tailored to the origin and value of the item, the client, the market demands, available data, and resources. Dealers already have codes of professional standards and auction houses already implement voluntary compliance protocol worldwide, both of which are aligned with AML practices.

In the 2019 research paper, *Anti-money Laundering Regulation and the Art Market*, researchers from Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK, and discusses the appropriateness of imposing AML on the art market and art dealers, in particular. The abstract reads:

"Following concerns that the art market is being used to launder criminal money and fund terrorist activities, measures have recently been introduced to subject the market to the anti-money laundering (AML) regime – such as the EU 5th Money Laundering Directive (2018) and the US Illicit Art and Antiquities Trafficking Prevention Bill (2018).

The expansion of the AML regime to include art dealers has been attributed to the failure of regulation and the vulnerabilities inherent in the market to laundering. This paper considers vulnerabilities to money laundering and examines the types of regulation that apply in the art market. The paper then goes on to analyse the application of AML criminal law and preventive measures in the UK context, demonstrating that art dealers can be criminally prosecuted for engaging in normal commercial activities. Even if dealers do comply with AML reporting rules, such compliance can significantly impact upon their business. These are important considerations given the government's emphasis on striking a balance between the burdens on business and deterring money laundering activities. Drawing upon the AGILE analytical framework, we remain sceptical about the continued expansion of the AML regime.”¹⁷

“Moves to include art dealers within the AML framework are further evidence of a wider trend, in ‘policing beyond the police’⁹⁰ or the ‘responsibilization strategy’,⁹¹ whereby private actors act as ‘frontline workers’ in efforts to tackle money laundering.⁹² In her study involving bank compliance officers, Verhage reports that ‘compliance and AML can be seen as a type of outsourcing by the government’.⁹³ Indeed the UK AML/CTF Action Plan specifically emphasises that: ‘The private sector forms the first line of defence against money laundering and terrorist financing’.⁹⁴ Given that private actors act as gatekeepers to the financial system, then – so the reasoning goes – they ought to be required to play a role in protecting the integrity of the financial system.⁹⁵ But is it really their responsibility? Banks and others have performed this role for over two decades but, as Verhage reports, there is no consensus as to whether AML is a private sector task.^{96,18}

It would be unreasonably burdensome for micro-businesses to have the same regulatory requirements drawn-up for much larger financial institutions, such as banks or those selling highly-liquid, transformable commodities. These low-risk micro-businesses should not be subject to the regulation.

9. What, if any, safeguards does the industry currently have in place to protect against business loss and fraud? For example, how, if at all, do market participants currently identify and verify the identity of the buyer, seller, or ultimate beneficial owner of an antiquity to guard against money laundering, terrorist financing, or other illicit financial activity? To what extent do market participants conduct due diligence on agents and other intermediaries involved in purchases and sales of antiquities? To what extent do safeguards vary depending on the size, nature of the transactions, and whether the transaction involves foreign jurisdictions? To what extent are the safeguards voluntary or required by contractual arrangements, trade associations, or other forms of industry self-regulation? Could these safeguards be leveraged and modified to detect and prevent money laundering, terrorist financing, and other illicit financial activities, or to better detect and prevent such activities?

¹⁷ *Anti-money laundering regulation and the art market* by Saskia Hufnagel and Colin King
Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK.*Corresponding author. Email: colin.king@sas.ac.uk

¹⁸ p.140, *Anti-money laundering regulation and the art market* by Saskia Hufnagel and Colin King
Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK.*Corresponding author. Email: colin.king@sas.ac.uk

As indicated in previous questions, the majority of art market professionals are micro-businesses. They employ the same safeguards against business loss and fraud similar to other sectors made up of micro-businesses by limiting their financial and legal risk and exposure.

Art market participants in general have small client bases which actively buy. There is a tendency to build and cultivate a relationship with those with whom they are buying or selling and therefore, their identity has been verified and confirmed. It is rare that someone, without any references, makes a purchase from an art market professional. Due to the nature of the sales process at an auction houses, bidders must submit their identification prior to the sale.

Due diligence is practiced on all transactions involving antiquities and to an extent that will depend on the size, nature of the transaction and whether the transaction involves foreign jurisdictions. High-value, new clients linked to foreign jurisdictions will merit more stringent due diligence than for transactions of low-value items by long-term domestic clients. It must be pointed out that most transactions are handled and monitored by a financial institution which objectively scrutinize all transactions using its own set of red flags and alert mechanisms regardless of how an art market professional evaluates the risk.

Safeguards are encouraged by trade associations and information is shared to help protect businesses. Besides a few rogue individuals that have been reported in the papers for illicit financial activity involving the antiquities market, there has not been a need for the sector to leverage and modify safeguards because the cases are so rare. See response to **question 6**.

B. Regulation of the Industry

10. How should “antiquities” be defined for the purposes of FinCEN’s regulations? Should jurisdictional or territorial considerations be taken into account when determining how antiquities should be defined (e.g., foreign cultural heritage laws)?

The terms “antiquity” and “antiquities” are defined in the Oxford English Dictionary. “Antiquities”, in the sense of objects means the “remains or monuments of antiquity; ancient relics.” The term “antiquity” is used in a general sense to refer to “ancient” or “olden times” and specifically to mean “the period before the Middle Ages, the time of the ancient Greeks and Romans”, corresponding roughly to the period before the fall of the Western Roman Empire, circa AD 500.

The Wikipedia entry for “antiquities” describes them similarly: “antiquities are objects from antiquity, especially the civilizations of the Mediterranean: the Classical antiquity of Greece and Rome, Ancient Egypt and the other Ancient Near Eastern cultures. Artifacts from earlier periods such as the Mesolithic, and other civilizations from Asia and elsewhere may also be covered by the term.” Wikipedia also goes on to note the definition of the term is not always precise. On occasion the term is used in a less specific sense to include periods after AD 500.

We suggest the term “antiquities” should be interpreted in its more specific and commonly understood sense, to refer to objects created prior to circa AD 500. The antiquities/ancient art market deals in ancient (over 1000 years of age) cultural artifacts (excluding coins) from Europe, the Classical world and the pre-Islamic MENA region. It does not include the Asian Art market, the Islamic & Indian Art market, the Ethnographic market, the Arms & Armor or Works of Art markets etc. In fact the art trade does not consider any of these other specialist areas to be part of the antiquities trade, in spite of the

newspaper headlines.¹⁹

Antiquities, as understood and defined by the art market, account for less than 0.5% of the global art market. With often repeated claims made about the antiquities trade funding terrorism, it can be assumed the principle concern arose because of the activities of ISIS in the Middle East.

It should not be forgotten that antiquities, including those from the MENA region have been circulating on the art market for well over a hundred years. For those not involved with the antiquities market this is often little understood.

The definition of the term “antiquities” should not refer to foreign cultural patrimony laws. Countries with restrictive and nationalistic cultural patrimony laws sometimes use the term “antiquities” to refer to all items that are subject to a country’s legal restrictions, in other words all items (or archaeological items) more than 50 or 100 years old. In standard English, these more recent archaeological items would not be referred to as “antiquities” but as “antiques”.

Objects less than several hundred years old are never described as “antiquities” either in standard dictionary definitions or in modern trade usage.

The requirement to apply foreign cultural heritage laws would add substantial complexity for both dealers and regulators and could also often be in conflict with US laws, creating additional confusion. The term should explicitly exclude coins and ethnological objects. These items are traded separately from antiquities and are serviced by different trade associations and are the subject of separate academic treatment.

11. How is an antiquity distinct from a work of art?

The Cambridge Dictionary defines “a work of art” as: “an object made by an artist of great skill, especially a painting, drawing, or statue”.

While the Wikipedia entry defines a work of art as: “a physical two- or three- dimensional object that is professionally determined or otherwise considered to fulfill a primarily independent aesthetic function. A singular art object is often seen in the context of a larger art movement or artistic era, such as: a genre, aesthetic convention, culture, or regional-national distinction. It can also be seen as an item within an artist’s “body of work” or oeuvre. The term is commonly used by museum and cultural heritage curators, the interested public, the art patron-private art collector community, and art galleries.”

So it would seem the difference between “antiquities” and “works of art” is not just defined by era but by the professionally determined artistic and aesthetic function of the object. Antiquities /ancient artifacts would seldom have been defined in these terms and in the context of the era of their creation would have been objects for everyday use, also with religious and political functions not primarily an aesthetic function.

¹⁹ The Observer, Helen Holmes, Antiquities Dealer Nancy Wiener Has Pled Guilty to Charges of Conspiracy, 10 June 2021, <https://observer.com/2021/10/antiquities-dealer-nancy-wiener-has-pled-guilty-to-charges-of-conspiracy/>

12. How should “trade of antiquities” be defined for the purposes of FinCEN’s regulations? Should FinCEN distinguish between the commercial, for-profit trade of antiquities and non-commercial, not-for-profit activity? If so, how?

If this is to apply to the trade, then the definitions must be understood by the trade.

Once there is absolute clarity as to what is meant by “antiquities”, anyone or any institution who buys or sells/exchanges money for antiquities should be considered as trading in them.

If the intention is to target possible terrorist activity and money laundering then a risk-based approach should be taken. This should apply to both commercial and non-commercial activity where similar levels of due diligence should apply.

The “trade in antiquities” should not only cover antiquity sales, but the exploitation of antiquities for commercial gain, particularly where in countries where there is a high risks of corruption, money laundering and terrorist activities.

The risks inherent in commercial, for-profit trade in antiquities may on occasion be less significant than the risks inherent in non-commercial, not-for-profit activity. For example, archaeological groups, which successfully lobbied Congress to make “antiquity dealers” subject to Bank Secrecy Act (“BSA”) requirements, represent archaeologists who are seeking government approvals to excavate antiquities particularly in MENA countries where there are heightened dangers of bribery, money laundering, terrorist financing and other illicit activity. Moreover, some of these advocacy groups have partnered with MENA governments which are fraught with corruption. This is not to suggest these groups are involved in illicit activity, rather that archaeologists and advocacy groups often operate in geo-political environments where corruption is rife and who therefore may have a conflict of interest.

In contrast, the art and antiquities market conduct the vast majority of their business with other dealers, either domestically or with the heavily regulated markets of Europe. A dealer has everything to lose, most significantly their reputation if they become embroiled in money laundering or other nefarious activities.

13. Are there any other terms that FinCEN should consider addressing and defining as part of a rulemaking on the trade in antiquities? If so, what are those terms, why should they be addressed, and how should they be defined?

Take a risk based approach. If antiquities originate from a region where terrorism is rife or where there is political conflict, greater due diligence should be applied. There should not be a blanket application to all “antiquities” however they are defined. All laws should be proportionate to the problem or perceived problem.

Any laws enacted must be workable and targeted to make a difference rather than rolled out across low-risk sectors to make a political point.

While any funding streams to terrorists need to be shut-off, responses to the problem must be

proportionate and not influenced by untruths; this is why accurate data matters.²⁰

While no-one can suggest the art market has had no cases of money laundering, cases are extremely rare and statistics rarer still. Anyone who understands the antiquities market (in the narrowest sense as defined within the art trade) would tell you this is the least attractive sector through which to launder money. There are few dealers remaining in business and those who are, would tell of the considerable provenance checks required on the objects and by implication their owners. The antiquities trade already has the highest standards of due diligence. Of all the sectors in the art market, the antiquities market comes under closer scrutiny than any other and has done so for many years.

AML regulation will impact those dealers who are known and who have a public presence exhibiting at fairs of various sizes and are invariably a member of one or other trade association. These dealers in the highly visible art sector in market countries are not the ones who present the problem. Little is known about what happens in non-market countries in other parts of the world – in China or India for example.

Further to this, the highest value antiquities tend to attract enormous publicity, frequently accompanied by claims from foreign governments with often successful demands for restitution – the Christie’s Stargazer (Turkey)²¹, Rupert Wace Achaemenid relief (Iran)²², Christie’s head of Tutankhamun²³ to highlight just a few recent cases.

For a money launderer to use objects which might be seized or be subject to an expensive court case, it would appear to be the least attractive sector through which to launder illicit funds. It is the most complex and difficult sector in the art market and already under the greatest scrutiny.

It should be appreciated that a lack of evidence of provenance or previous ownership documentation should not automatically create suspicion. There are well documented reasons why this is often the case²⁴ which can be applied to antiquities as well as to coins²⁵.

14. Should FinCEN establish a monetary threshold for activities involving trade in antiquities that would subject persons involved in such activities above that threshold to FinCEN’s regulations, but exempt persons whose activities fall below that threshold? What is an appropriate dollar value for such a threshold and should it be set as an annual or per-transaction threshold? Should there be a different threshold—including potentially a zero-dollar threshold—for legal entities as opposed to natural persons?

²⁰ As the RAND Corporation Report also concludes, false data leads to poor policy: “The result is that, to the extent that policy solutions have been guided by these beliefs, existing policy frameworks may be poorly suited to addressing the decentralized nature of the problem.” Policy Responses Based on Findings, page xiii.

²¹ Stargazer case: <https://www.artnews.com/art-news/news/turkey-stargazer-sculpture-christies-lawsuit-1234589493/>

²² Wace relief: <https://news.artnet.com/market/relief-seized-tefaf-new-york-1132610>

²³ Head of Tutankhamun: <https://www.bbc.co.uk/news/world-middle-east-48922555>

²⁴ Cultural Property News, Joanna van der Lande, The Antiquities Trade: A reflection on the past 25 years, parts 1, 2 & 3, (May 2021).<https://culturalpropertynews.org/the-antiquities-trade-a-reflection-on-the-past-25-years-part-1/> ; <https://culturalpropertynews.org/the-antiquities-trade-a-reflection-on-the-past-25-years-part-2/> & <https://culturalpropertynews.org/the-antiquities-trade-a-reflection-on-the-past-25-years-part-3/> .

²⁵ Cultural Property News, Peter K Tompa, Recovering Old Provenances for Ancient Coins, (June 2020), <https://culturalpropertynews.org/rediscovering-old-provenances-for-ancient-coins/> .

FinCEN should help establish regulations which are risk-based and proportionate to the perceived risk. FinCEN should take into account the burdens imposed on micro-businesses plus the costs of government oversight. CINOA believes the concerns raised throughout this submission reinforce legitimate questions regarding any requirements for time-consuming reporting by small businesses (selling low- or medium-priced antiquities). The costs would far outweigh any of the proposed benefits.

Businesses already keep accurate records of items handled and purchasers, and in most cases the contact details of clients. A goal of any serious art market professional is to develop long-term relationships with their clients especially as new clients are relatively rare for antiquities businesses.

Taking into account our response to question 1 regarding the exemption of micro-businesses, and the higher risk due to conflict-zones and individuals or businesses without credentials, we believe that the AML focus should be on high-value trade and higher-risk antiquities.

Therefore, to mitigate any unnecessary BSA obligations for antiquities, a concentration on only ‘high-value’ transactions and higher-risk ‘conflict zone’ associated antiquities would seem to be applicable. Transaction of amounts under \$500,000 should not be subject to BSA obligations. For transactions under this threshold, the additional BSA compliance implemented would be unlikely to help in the detection of elaborate high-value cover up schemes.

A reasonable price threshold should be set at above \$500,000. With such a threshold, micro-businesses will not be overburdened by additional regulatory applications in their ordinary course of business, and any risk associated with high value antiquities transactions would be addressed (especially in conjunction with existing reporting required by a third-party facilitator, such as banks or insurers).

15. Should there be any other exemptions for categories or types of Start Printed Page 53024 persons engaged in the trade of antiquities beyond the consideration of a monetary threshold?

As previously stated, those subject to the regulation should be risk-based. There should be exemptions for low-risk business conducted by check, bank wire, or credit card within the US, and with countries with well-developed banking and regulatory systems. Based on the rationale provided throughout this submission, we recommend the following exemptions for antiquities traders who meet the following three criteria:

1. Business with an annual turnover of less than \$1 million;
2. Businesses that are a member of a professional trade organization, such as CINOA;
3. The antiquities or transaction participants are not linked to a conflict zone

Transactions involving any country listed by the FAFT as having strategic deficiencies in their regimes to counter money laundering, terrorist financing, often referred to as the “grey list”²⁶ should not benefit from exemption. As previously indicated, claims that art and antiquities are a major terrorist funding source have been debunked by RAND and others, but it would make sense to focus on large transactions from MENA countries and other areas in conflict.

²⁶ <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2021.html>

16. Which aspects of the current regulatory framework applicable to financial institutions should apply to persons engaged in the trade in antiquities?

a. Should FinCEN consider extending all or only some elements of AML/CFT program requirements now applicable to financial institutions to the trade in antiquities, including: (i) A system of internal controls to ensure ongoing compliance, (ii) independent testing for compliance to be conducted by internal financial institution personnel or by an outside party, (iii) designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance, or (iv) training for appropriate personnel?

It is important that FinCEN recognizes that most entities selling antiquities comprise small dealers who are in effect small store keepers, buying and selling objects for inventory. As micro businesses it is therefore appropriate that the regulatory framework allows those entities to take a risk-based approach in respect of their AML/CFT program requirements.

As mentioned elsewhere in this response this risk based approach should extend therefore not only to deciding which businesses should be in scope for regulation (through their exclusion on the grounds of annual turnover/revenue/sales), but also to determining the size and types of transactions in respect of which a business's AML/CFT program should apply, and the extent of those controls.

For practical reasons the controls which might be appropriate for an international auction house selling very high priced antiquities and which has the resources to employ a fully-staffed compliance department should not be the same as those which apply to a small business buying and selling one or two high priced antiquities each year.

We note that certain retail businesses selling jewelry, precious metals and precious stones are excluded from the scope of regulation, based on the conclusion that retailers simply do not face the same level of risk as those handling gold and diamonds as a commodity, due presumably to the latter being more liquid than the former. The same distinction and removal from scope should be made in respect of antiquities at the lower financial level for reasons explained elsewhere in this submission.

(i) A system of internal controls to ensure ongoing compliance

Our understanding is that dealers in jewels, precious metals, and precious stones are required to develop and implement written anti-money laundering programs appropriately tailored to the risk of money laundering or terrorism financing presented by their businesses. We believe that this approach should be taken to internal control programs for those dealing in antiquities, within certain parameters. These programs should allow such dealers to have policies which limit the extent of customer due diligence measures that need to be carried out on certain types of transactions, for example those falling below a certain financial threshold.

(ii) Independent testing for compliance to be conducted by internal financial institution personnel or by an outside party

Where the business size exceeds a given threshold we acknowledge that it would be appropriate for a business to have to engage an independent auditor to conduct a review of the entity's compliance with BSA regulatory requirements and to assess their compliance program.

Whether or not independent testing should be conducted by internal personnel or by an outside party very much depended on the size of the entity and therefore the overall risk of ML or TF activity presented by that entity.

Should it be the case that FinCEN determines that only large entities should be within scope of the BSA, then we believe it would be reasonable for such entities to be expected to appoint an external compliance testing party. These entities would have the resources to be able to do so.

However, should it be decided that micro and small entities are to be in scope, it would be disproportionate to burden such businesses with the additional cost of paying for an outside party and the disruption of engaging them, particularly when we understand that the finance industry's best practice guidance is for independent testing to be carried out every 12 to 18 months. How can it be appropriate for a small business selling only a handful of "in scope" antiquities each year, on which their gross profit may amount to no more than \$5,000 in any given year, to have to pay out most of that profit to an external consultant?

Consequently, if micro and small entities are placed in scope – which we do not believe they should be – then the burden of independent testing should be reduced through one or more of the following measures:

- Testing for small entities to be carried out no more frequently than every 3 years
- Internal personnel to carry out the assessment. In entities comprising sole proprietors or partnerships which have no other employees, the proprietors or partners should be required to document and certify testing themselves, with a requirement that external testing occurs every 6 years.

(iii) Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance

Such designation needs to take account of the fact that micro entities in the antiquities trade may comprise only one or two proprietors or a handful of employees.

Whilst it is understood that the directors or proprietors of a business should ultimately be responsible for compliance, the requirement for designation of individuals responsible for compliance on a day to day basis needs to take account of the size of the business concerned. In some small or micro businesses, particularly in the case of sole traders, the person responsible for day-to-day compliance and for customer due diligence measures may well be the business proprietor themselves. We therefore recommend that any regulations governing the sector should either allow the appointment of day-to-day compliance officers who are also the proprietor, or not require there to be a separate nomination for the day-to-day responsibility function where proprietors believe that it is inappropriate or impractical for such designation to be made.

(iv) Training for appropriate personnel

It will come as no surprise that small businesses, whose principal expertise lies in the study and acquisition of ancient artifacts are not experts in financial sector regulation.

To explain how such regulation can work in the context of the sale of antiquities it will be necessary for the Treasury Department to provide user-friendly training, tailored to the sector. Such training could be made available online and be updated periodically.

It would also be appropriate for a written guidance manual to be made available to all in scope entities. For such a manual to be understood it will need to be written in conjunction with

representatives of the sector. Guidance which is structured and written in a way suited only to financial institutions whose business is not the purchase and sale of inventory will be of very little help to the antiquities trade.

b. How could know-your-customer requirements, such as customer due diligence or customer identification programs, apply in the transaction process in the trade in antiquities? What would be the effect on industry of imposing customer verification and identification requirements on sellers, purchasers, and others involved in the trade in antiquities?

The application of the BSA requirements to the selling of antiquities represents a considerable diversion from the business activities for which BSA AML measures were primarily designed, which are characterized as being relationships of some duration in length with customers to whom financial services are provided.

Although antiquity dealers will try to encourage customers who have bought from them to make further purchases from them, there are no guarantees they will do so. A buyer may simply make a one-off purchase from one dealer and never return to them again. This is often the case with purchases made at auction. For this reason, unlike the financial services sector where a person will have an agreement to use certain services over a duration of time, the nature of the relationship between an antiquities dealer and a buyer of an antiquity is essentially short-term in nature, and entirely focused on the financial exchange regarding the change in ownership of a single object.

We recommend that the approach that should be taken to customer due diligence must make absolutely clear who the customer is and therefore on whom due diligence measures should be carried out. The simple approach that we recommend is that of regarding the “customer” of a person handling antiquities and therefore the person on whom CDD should be carried out as being the person from whom payment is received for the goods. This is the approach that has been taken in the United Kingdom in relation to works of art. To expect a small antiquities business to have to carry out customer due diligence on sellers and others who may have been involved with a transaction would be over-bureaucratic. The effect of having to spend time carrying out due diligence on all these parties would be inefficient, particularly if a decision is made to keep low value transactions in scope of the BSA. If a risk-based approach is to be taken then it would be more efficient to focus on the most important element in a potential money laundering transaction: the person from whom the dealer receives the payment for the antiquity. As previously mentioned in this submission, antiquities represent one of the least liquid forms of cultural property, but if the funds being used to acquire an antiquity originated from illegal activity and the purchase represents an attempt at “cleaning up dirty money” then it should be on the purchaser that effort should be expended.

How would the application of know-your-customer requirements to this industry assist in preventing money laundering, terrorist financing, and other illicit financial activity?

As explained elsewhere in this document, we are not aware of any evidence that the antiquities sector is one into which individuals are investing ill-gotten gains. Because of the focus in recent years on the possibility of the illegal export of antiquities from their country of origin, any collector of such items these days places a high standard on sellers and expects detailed information evidencing the previous history of ownership of an item, for example evidence that the item formed part of a collection. Of all cultural artifacts antiquities are among the slowest to be sold – meaning that the time between acquisition for stock by a dealer and purchase by a customer can take several years. Unlike precious metals and gemstones, antiquities are relatively illiquid – they could not be further from the concept of

a readily exchangeable commodity. Furthermore, the median value of antiquities transactions is lower than that for the market in cultural property as a whole. Investigations already carried out by Congress into the possibility of works of art as a vehicle for money laundering have related to transactions whose average value far exceeds the size of most transactions involving antiquities. All these factors mean that we do not foresee the widespread carrying out of “know-your-customer requirements” on thousands of low value antiquities transactions as preventing money laundering.

Whilst it is acknowledged that some antiquities have been removed from certain countries contrary to those countries’ laws:

- (i) the numbers of such items is very small in contrast to the numbers of antiquities which left their country of origin legally many, many years ago – for example to be part of 19th-century collections.
- (ii) the matter of illicitly removed cultural property is not the primary purpose of the BSA and there are already Federal laws in place that address the issue: The Cultural Property Implementation Act, Section 308, prohibits the import of cultural property actually stolen from a documented collection after the date on which the source country and the US have both signed the 1970 UNESCO Convention. Attempted importation of a covered object (a type of object listed as at-risk on a “designated list” associated with an agreement between the US and a foreign country) from any one of the 16 countries that has signed a Memorandum of Understanding with the US, also constitutes unlawful importation.
- (iii) The evidence of antiquities being sold by terrorist groups as a significant source of financing is extremely limited and open to question. The RAND report noted that “the scale, scope, and significance of the antiquities trade and its role in terrorist, criminal, and militant financing remains poorly understood,” but states that, “In the absence of grounded data, journalists, researchers, and policy experts regularly inflate the importance of antiquities trafficking in funding for international terrorism and organized crime.” (RAND, p.10)

For this and other reasons given elsewhere in this document, there is no evidence that imposing CDD measures on those trading in the United States in antiquities will have any impact on the funding of terrorism.

c. What, if any, difficulties are associated with requiring the disclosure of or otherwise obtaining beneficial ownership information for legal entities engaged in the trade of antiquities, including foreign legal entities that may be outside the scope of current or future U.S. beneficial ownership reporting requirements?

Obtaining beneficial ownership information in respect of legal entities based outside the United States will be particularly problematic for small entities employing one or two people, when there is no-one in those entities who is experienced in obtaining such information. Large financial bodies or international auction houses employ permanent compliance staff, many with qualifications in the law, who are in a far better position to know how and where to find such beneficial ownership information. Consequently beneficial ownership information involving overseas-registered legal entities will be problematical for the majority of antiquities traders, a problem that would only be resolved if small entities are to be excluded from the scope of these BSA requirements.

d. What should be the requirements for filing SARs related to antiquities? What should FinCEN

consider in implementing any requirements for filing SARs related to antiquities?

It is hard for businesses that have had no experience in completing and filing SARs to be in a position to comment on the requirements. For the antiquities sector to be able to answer this question would require a detailed explanation from FinCEN as to the purpose and intended aim of SARs relating to antiquity transactions.

In any event tailored training in the completion of SARs would need to be made available by FinCEN to antiquities dealers. Such training will need to use examples to which antiquities dealers can relate. Generic training better-suited to those working in the financial services sector would not be appropriate.

e. How many natural persons and legal entities might be affected by FinCEN's application of BSA requirements to persons engaged in the trade in antiquities, and what is the estimated hourly and annual burden, if any, for each such person, for each of the obligations described above? How could FinCEN minimize the burdens associated with these obligations, if any, through its decisions about the form or content of the rule while still ensuring the appropriate management and mitigation of AML/CFT risk?

Although only rough estimates are available, and the search parameters could be improved to potentially better capture galleries that deal in antiquities, these numbers suggest that there may be fewer than 100 principal antiquities dealers operating in the whole of North America and Europe (RAND, p. 73).²⁷

How many of these people affected and the cost would depend on the scope and exemptions of the BSA. As recommended, low risk antiquities micro-businesses meeting certain criteria should be outside the scope. See **question E**.

²⁷ RAND does not distinguish between 'antiquities' and 'ancient artifacts' and so dealers principally associated with antiquities as the term is understood in Europe and the UK are even lower in number.

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