

ENABLERS Act: Further Developments in Anti-Money Laundering Regulations Affecting Art and Antiquities Transactions

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At the end of June, Congress took a big step toward passing anti-money laundering regulations that will profoundly affect the art and antiquities market. The bipartisan-proposed Establishing New Authorities for Businesses Laundering and Enabling Risks to Security Act (the “ENABLERS Act”) was approved to be included in the annual National Defense Authorization Act, which provides the budget for the Department of Defense. By backdoor-ing the ENABLERS Act into the National Defense Authorization Act, Congress will likely enact it later this year as part of its approval of the Defense Authorization Act.

The creation of the ENABLERS Act is rooted in the Anti-Money Laundering Act of 2020 (the “AMLA”) that went into effect on January 1, 2021. AMLA provides massive updates to the 52-year-old Bank Secrecy Act and is the largest overhaul of money laundering regulations since the Patriot Act. It vastly expands the reach of the Bank Secrecy Act by applying to many more types of companies, persons, and intermediaries in hopes of cracking down on money laundering. For the first time in the United States, the list of parties subject to these regulations include art and antiquities dealers.

In November of 2021, Paula Trommel, Compliance and Sanctions Consultant for Christie’s and Deputy Director of Corinth Consulting in London, joined me to speak about the AMLA and provide our predictions on how this new act would impact the art and antiquities markets. But since the implementation of the AMLA, Congress has provided little guidance on the exact regulations to be imposed, leaving significant uncertainty among those in the art and antiquities markets. While the ENABLERS Act helps clear the fog a little, there continue to be more questions than answers.

If the ENABLERS Act passes, any person or company engaged in the trade and sale of works of art, antiquities, or collectibles – specifically including dealers, advisors, consultants, custodians, galleries, auction houses, and museums – will be deemed to be “financial institutions” and must comply with certain portions of the Bank Secrecy Act. This list of impacted parties in the art and antiquities markets is incredibly larger than originally proposed in the ALMA. Not only will international auction companies like Sotheby’s and Christie’s now be subject to the Bank Secrecy Act, but also small galleries that may only have one to two employees.

The ENABLERS Act will effectively require all art, antiquities, and collectibles dealers, advisors, consultants, custodians, galleries, auction houses, and museums to comply with four due diligence requirements described in

more detail in Section 5318 of the United States Code: (1) report suspicious transactions, (2) establish an anti-money laundering program, (3) establish due diligence policies, procedures, and controls, and (4) identify and verify account holders (i.e., individual buyers and sellers). If the ENABLERS Act is passed, these compliance requirements will become effective on or after June 24, 2024, providing some time for those impacted to prepare.

Though these specifics shed light on the reporting requirements intended to combat money laundering in art, antiquities, and collectibles transactions, there are still crucial issues that remain unresolved. Like the AMLA, the ENABLERS Act fails to define what dollar value of art, antiquities, or collectibles transactions will be subject to disclosure to the federal government as well as what constitutes “art, antiquities, or a collectible.” It is frustrating that these vital financial protections are not only unclear, but also thus far unimplemented. That said, we remain hopeful that the progress will continue, and we will soon have robust and well-defined regulations in place to ensure appropriate transparency in the marketplace.

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