

Art market participants, AML regulations and financial crime vulnerabilities

Extract from NCA Amber ALERT of February 2021 (Reference 0631 - NECC)

Overview

Accountants with art market participant (AMP) clients may find this briefing informative as it introduces the money laundering risks of the art industry as well as typologies and activities to consider when conducting CDD.

Note that the full alert is available on the NCA website [here](#)

Background

AMPs were included in the AML supervised sector for the first time on 10 January 2020. The Money Laundering Regulations (MLRs) define an AMP as a firm or sole practitioner who either trades in, or acts as an intermediary in the sale or purchase of, works of art. AMPs must register with HMRC for AML supervision by 10 June 2021. The NRA rated AMPs as high risk for money laundering.

Characteristics of the art market that can be exploited by criminals

- **Anonymity** – the art market has traditionally operated in a way that provides anonymity to both buyers and sellers, often for legitimate reasons such as preventing bias in the bidding process. Criminals can exploit this to purchase art with illicit funds, purchase art on behalf of PEPs or individuals sought by law enforcement, hide beneficial ownership to evade tax or use art as a store of value for easy transport.
- **Value** – the value of art in the UK market is attractive to money launderers due to the wide-ranging values of individual artwork, the accessibility of high value items and the stability of prices. Some artwork is subjective, and it is difficult to ascertain whether a transaction was for fair value or manipulated to disguise and realise funds. Because impressionist and post-war art is increasing in value and don't attract attention, it is likely to be a popular vehicle for disguising criminal property.
- **Comparatively unsupervised** – AMPs are a newly supervised sector meaning that the risks and vulnerabilities are less well understood and mitigated. Furthermore, there is inconsistency in global supervision (AMPs are not included within FATFs definition of DNFBPs).
- **Easily transported** – Art is attractive for money launderers owing to the ease with which items can be transported within the UK and across borders.
- **Freeports** – A freeport or freezone is a geographical area designated by the government as being outside a country for customs purposes, where goods can be stored/move through. Some freeports act as high-security storage facilities and offer a high degree of secrecy but allowing goods to enter without disclosing the UBO, relying on self-declaration of the value and allowing high value items to be sorted and sold outside of the remit of regulators or tax authorities.
- **Third party facilitators** – Third party facilitators have a deep knowledge of art and are well-connected within the art market. They can access the market on a client's behalf, undertaking all the necessary arrangements and logistics, whilst maintaining client confidentiality and anonymity. Third party facilitators are now within the scope of the MLRs and must conduct CDD and submit SARs and will need to balance the challenge of meeting their AML obligations whilst acting with discretion and in confidence.

Money laundering risks

Criminals exploit both the purchaser and seller roles.

As purchaser, the criminal can use illicit funds to purchase artwork from AMPs in the UK market. The AMPs accept the illicit funds, knowingly or unknowingly, and processes them through the regulated financial sector as an apparently legitimate transaction. The criminal may then seek to realise the profit by selling the item for profit to obtain 'cleaned' money. They may also use the art as a method of storing an investment.

Criminals can exploit sellers who are willing to be complicit in, or turning a blind eye to, illicit finance entering their business. Some sellers may rig sales to ensure bidding takes place at artificially altered prices or between pre-arranged parties. Further examples of how money launderers exploit the selling role are:

- The use of genuine art businesses to move illicit finance through business accounts, disguising them amongst legitimate transactions.
- Criminals setting up fake art companies to act as a front to move illicit finance, or to trade in illicit goods unrelated to the art market such as banned substances.
- Businesses, real or fake, that trade in stolen or fake assets in these markets to both generate and move illicit finance as part of a money laundering mechanism.

Red flags for money laundering in the art market

The following red flag indicators are common indicators for most money laundering mechanisms. They may reflect legitimate business on their own, but the risk increases when more than one red flag is present.

- The following activity can be associated with bank accounts linked to businesses in the art sector involved in money laundering:
 - Quick movements of funds out of the account.
 - Debit covering the purchase, followed quickly by a credit for the proceeds of the subsequent sale by the purchaser, particularly where there is a significant discrepancy in price and transaction amounts.
 - High volumes of third-party transactions, particularly to move funds offshore.
 - High volumes of cash deposits.
 - Bland transaction references such as 'artwork', 'sale of painting' and 'xxx name of auction house or gallery' could be used to provide a seemingly legitimate reason for funds being sent to or received from other accounts.
 - Regular / excessive / unexpected / prolonged payments to freeports.
- Many money launderers are also unlikely to be tax-compliant and may therefore make no or very low payments to HMRC. A lack of compliance with HMRC's taxation can be an indication that wider illicit activity is occurring.
- Sellers involved in laundering money may use both business and personal accounts to deposit and receive business transactions. This is done to disguise illicit funds and activity, whilst also making it harder for financial institutions and law enforcement to detect illicit activity.
- Transactions completed via intermediaries acting as a middle layer between the buyer and seller, so that the end ultimate buyers/ sellers remain unknown to each other. Such intermediaries can take the form of corporate secretaries, private buyers, nominees, official representatives or concierge companies.
- Front companies may have poor or unprofessional websites and suspicious business models. This can include finances differing from those expected or seen, or websites with very little information or professional graphics included. They may also include information which could give the impression that they are linked to a legitimate business, such as the use of an expert's name.
- Businesses may have unusual activity such as unusual turnover or exclusive relationships (where they appear to be trading with one or two other businesses that also do not trade with any other businesses).
- Shell companies may be used to purchase and sell art to distance and disguise the ultimate beneficial owner.
- In respect of antiquity dealers, regular travel to source countries combined with shipping costs to the UK may be indicative of possible smuggling. The International Council of Museum red list is a useful source.

Suspicious Activity Reporting [SARs]

If you know or suspect ML or TF activity you should make a SAR and include the alert reference **0631-NECC** within the text *in addition* to the ongoing use of the Glossary of Terms. Guidance on reporting is available at: www.nationalcrimeagency.gov.uk

Data Protection Considerations

Please consider your obligations under the relevant data protection regulations and where necessary remove any related personal data from your systems securely and within a satisfactory timeframe.

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