

Testimony on “Terrorism Financing in the Global Art Industry”

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Chairman Fitzpatrick, Ranking Member Lynch, and Members of the Committee and Task Force:

Thank you for inviting me to testify regarding the problem of terrorism financing through conflict-zone looting of cultural objects. You will hear from other witnesses about the prevalence of this problem, which relates to a broader problem of money laundering in the global art industry. I have been asked to address the attributes of the art industry that enable these problems. If we remove the ability of terrorists to launder stolen and looted objects, then we will remove the economic motive to loot them, cut off a key source of terrorism financing and make great strides toward protecting our global cultural legacy.

ARIS’s lens on these issues stems from its role as the leading title insurer to the art industry. ARIS underwrites the same kind of insurance, which the real estate industry relies on to assure beneficial ownership of real estate property, for financial institutions lending against art as collateral; capital markets investing in art through various investment structures; the consuming public; the trade comprised of dealers and auction houses; not-for-profit museums and foundations; and government stakeholders, for instance, U.S. Bankruptcy Courts overseeing the liquidation of art assets as part of their managing art industry financial collapses.

With respect to the issues described in more detail below, over the past two years ARIS has been actively reviewing these issues with trade and financial regulators in the U.S., U.K., Switzerland, Luxembourg and Belgium at the EU Commission including regulators specifically charged to oversee art industry tax-free Freeports and Free Trade Zones.

I will conclude by commenting on industry solutions now underway to address these problems at the core of the market.

The Root of the Problem

Terrorism financing by the Islamic State of Iraq and al-Sham/the Levant (ISIS/ISL) and other groups through the plundering of cultural objects and selling these illicit objects for funding is made possible because of an overall systemic problem of traditional and trade-based money laundering in the global art industry. Cultural and archeological objects are part of this broader tangible property asset class.

At over \$60B in annual sales worldwide¹, the art industry is the single largest, lawful, unregulated industry in the world. It is a fully globalized yet opaque industry in which objects for a given transaction can move across multiple international borders, often several times, before the transaction concludes.

Artwork is a high-value highly portable asset traded in a market defined by discretion. Protecting the identity of art market participants is customary, which makes money laundering in the art industry both possible and ubiquitous. As a result, for years the multi-billion-dollar illicit trade in fine art and antiquities has provided a lucrative scheme for organized criminal enterprises. A lack of record-keeping for transactions in both source and market nations as well as the private nature of many of the transactions obscures the legal status and beneficial ownership of the sourcing of the antiquity and often results in an unverifiable ownership history.

These regulatory difficulties, combined with the spread of economic and political conflict in regions rich with ancient treasures and the market demand for such artifacts, will make it highly likely that more terrorist groups will engage in illicit antiquities trafficking.

One court has summarized that the core of these problems is the art industry's ubiquitous lack of transparency which prevents anyone from discerning *patterns* in illegal schemes.² Identifying patterns is the *de rigueur* of AML enforcement and compliance, whether to combat terrorism or other trade regulation problems. This common core exists for each subsector of the art industry as further illustrated by the illegal trade of artifacts made from ivory. As a 2014 report of the International Fund for Animal Welfare (IFAW) issued during a then-wave of attention to this trade-based problem explained: "American customers . . . have no way of knowing [the] origin [of what are contraband ivory objects]; [there is a lack of] industry documentation showing that the ivory . . . was legal, with the industry standard response, 'You don't need that.'"³

The Intersection of Money Laundering in the Art Industry

According to the United Nations Office on Drugs and Crime, 2%-5% of the global GDP takes the form of laundered money – \$800 billion to \$2 trillion. In the art market or art industry a staggering amount of this criminal activity takes place – where "dirty" money obtained from illegal activity is laundered into clean currency and where trade-based assets are directly laundered as a more complex and growing form of international money laundering.⁴

The problem of money laundering in the art world has garnered attention from the economics field as well. At the 2015 World Economic Forum meeting in Davos, Switzerland, acclaimed economist and NYU Stern School Professor Nouriel Roubini explained: "Whether we like it or not, art is used for tax

avoidance and evasion. It can be used for money laundering. You can buy something for half a million, not show a passport, and ship it. Plenty of people are using it for laundering,” Roubini said.⁵

Worldwide cases of money laundering and illegal activity conducted through the purchase and sale of artwork – equally applicable to the laundering of stolen or looted cultural objects – are common with examples ranging from high profile figures such as Edemar Cid Ferreira, the Brazilian ex-banker who laundered millions of dollars through a collection of 12,000 works, to the art dealer Helly Nahmad of the international art world family of the same name, who was arrested for similar activities undertaken alongside a gambling ring.

In Monaco last year, Swiss businessman Yves Bouvier, who owns tax-free zones (Freeports) for storing art and other high value property based in Switzerland, Singapore and Luxembourg (and another similar facility then in planning for Paris), was detained on Monaco government-investigated initial findings of art “price-fixing” and money laundering. Freeport facilities are large, maximum security storage facilities that allow individuals to store valuables while avoiding customs duty and sales tax for the intermediate stage (staging-storing) of a final purchase or sale transaction.

Many artworks find their way to Freeport facilities, often attached to international airports. These units are intended as temporary storage for goods in transit, but in practice valuables are often kept in these facilities for years. Keeping artwork in duty-free limbo raises thorny questions for governments anxious to squash money laundering and tax dodging. The Financial Action Task Force on money laundering has been concerned about the integrity of Freeport facilities since 2010,⁶ and money laundering is one of the charges alleged against Bouvier, who, in addition to owning these facilities, also deals in the trade of art. In February 2015, a client paid Bouvier \$118 million for a piece of art, more than \$22 million above the market value.⁷ Scrutiny of Bouvier's network of duty-free, high-security bonded warehouses has reignited to international levels not seen before the debate over why the global art business escapes any form of regulation.

To be sure, responsible operators of Freeports and Free Trade Zones and regulators alike welcome better, systemic means to close the gap between enforcement protocols and practicalities – a gap which can be closed only by access to accurate, comprehensive and cohesive information.

Swiss regulators, for example, have commented in meetings with ARIS that even with Switzerland's recent changes in its regulations to require enhanced disclosures for objects entering Swiss Freeports having a value as low as 100,000 CHF, these regulatory changes do little when, as can be readily accomplished in the art industry, a transaction is broken into fractional ownership pieces each having a declared value below the enhanced threshold, or when a deflated price is recorded in customs papers for an entire object only to be restated after the object leaves a Freeport or Free Trade Zone.⁸ Other regulators comment on the inability to know whether any of the information reported by market participants for Freeport or Free Trade Zone compliance purposes is accurate even if made in good faith by intermediaries, because there is not an ability to cross-reference independently reported and organized pieces of information to identify anomalies and suspicious activity, as is the norm in the global financial markets.

In point of fact, under- and over-invoicing is one of the key methods utilized in trade-based money laundering typically through misrepresentation of price, quantity or quality. FATF has recognized that “the more complex the good being traded, the greater the difficulty that customs agencies will have in identifying over- and under-invoicing and correctly assessing duties or taxes” because in part “many customs agencies do not have access to data and resources to establish the ‘fair market’ price of many goods.”⁹ FATF’s example was “[h]igh-value goods, such as *works of art*, which have limited markets and highly “speculative” values” and therefore “present significant valuation difficulties.”¹⁰

Appendix A to this testimony offers a simple schematic illustration of how trade-based money laundering can occur in art industry in its current information environment.

Money laundering through the art trade is of course not limited to art collectors and art dealers as participants in a larger supply-distribution chain.

Evidence now tells us that ISIS as with the other parties to the Syrian civil war are looting and trafficking antiquities as a source to fund its fighting.¹¹ ISIS is directing much of its destructive activity towards cultural heritage targets in Iraq and damage extending to museums, libraries and universities across its occupied territory. Several governmental bodies and organizations including the United States have announced efforts to spare cultural heritage sites in the fight against ISIS. The UN Security Council has adopted a resolution to curb traffic of illicit antiquities from the region and in turn to prevent ISIS from profiting off the sale of stolen art works.¹²

Such measures, while helpful, standing alone are not likely to stop looted art from entering the market. Anti-money laundering as well as counter-terrorism financing laws are limited when it comes to the trade of cultural property because the cultural property markets in art and antiquities are not explicitly covered by AML and counter-terrorism financing standards. Although the laws of some countries cover art, antiquities and antiques dealers directly such as Argentina, Brazil, Japan and Lithuania, most do not.¹³

The private sector yields further important information on these issues. A January 2015 PricewaterhouseCoopers report highlights the significant rise in global trade-based money laundering and the regulatory shift in focus from traditional money-laundering compliance oversight to assessing the ability to spot trade-based money laundering, e.g., money laundering executed through international trade of legitimate goods through nefarious means (one of the key methods of money laundering of art and cultural objects in the global art industry).¹⁴ PricewaterhouseCoopers cites lack of data-sharing among relevant stakeholders as among the factors exacerbating trade-based money laundering in particular.

An earlier 2014 report released by the auditing firm KPMG finds that financial market stakeholders are achieving limited or no improvement in the efficacy of their AML compliance efforts even though they are spending increasingly significant portions of annual operating budgets on AML compliance, with the same conclusion necessarily applicable to art industry assets and transactions.¹⁵

Compounding the Problem

There is a relative under-recognition of the kind of information that is needed in the art industry to solve the problems detailed above including specifically terrorism financing through the movement of these objects.

In March 2015, Comptroller of the Currency Thomas J. Curry commented on the critical role of information-sharing in the financial sector, emphasizing the need for “more accurate and timely information” and the use of technology to close “the [information] gaps” that can be exploited to fund terrorist operations.¹⁶ In February 2015, New York’s Department of Financial Services then-Commissioner Benjamin Lawsky in a speech given at Columbia Law School highlighted the ever-advancing need for improved AML compliance in one of the world’s major financial centers, adding that “[m]oney is the oxygen feeding the fire that is terrorism. Without moving massive amounts of money around the globe, international terrorism cannot thrive.”¹⁷ In February 2016 UK Home Secretary Theresa May echoed the same need for improved information and information-sharing in addressing the Security Alliance Partners in Washington, D.C., at the same time FATF was meeting on more robust, global, interlinked AML strategies.¹⁸

Improved Art-Financial Industry Information Sharing for AML and Anti-Terrorism-Financing Purposes

In a different vernacular, solving the problem of terrorism financing through conflict-zone looting of cultural objects and the broader problem of money laundering in the global art industry will turn on moving from “Big Data” to “Smart Data” to identify suspicious activity in art industry transactions. It is the difference between information that is otherwise “noise” to the art and financial industries and meaningful data on which industry stakeholders can rely to identify suspicious patterns of activity in global art industry transactions.

Consider the following example of a major U.S. financial institution “A” being asked to lend \$50 million dollars against a pool of art or cultural objects offered as collateral by offshore owner “XYZ Holding Company.” The borrower’s intermediary provides to the financial institution certain information that ostensibly accurately details the transfer of legal ownership of the assets (for example, submitted copies of bills of sale) and beneficial ownership. Put aside the already familiar market challenges of piercing beneficial ownership disclosures and information to test the integrity of this information as a stand-alone AML compliance inquiry. Today’s most vexing data problem at the intersection of the global art and financial industries is that financial institution A will have no way to know whether the same transaction was presented to financial institutions “B,” “C,” “D” and “E” in different countries each time under different beneficial owner names and through use of different bills of sale documentation (which itself can be forged), or that before the putative beneficial owner presented the collateral to financial institution “A” for financing the objects were sold – or “flipped” as the art industry coins the term – from one party to another six times in four countries in the prior sixty days.

ARIS has been actively discussing with the U.S. Treasury and FinCEN improved ways to address this current inability of financial institutions to detect anomalous *patterns* of behavior in art industry-financial sector transactions which can signal trade-based money laundering in general and terrorism financing through looted art and cultural objects in particular.

This includes a request that ARIS submitted to FinCEN in September 2014 and supplemented in July 2015, following after a number of meetings with senior officials in FinCEN and U.S. Treasury, to place ARIS and other art title insurance entities under the Bank Secrecy Act (“BSA”) for improved information-sharing with financial institutions in art and cultural-object related transactions with the same safe-harbor protections established under 31 C.F.R. § 1010.540 pursuant to Section 314b of the BSA. One avenue to accomplish this is through FinCEN’s exception authority pursuant to Section 1010.970 of the BSA Regulations to determine narrowly that providers of title insurance for art and similar high value collectibles can rely on the information-sharing and safe harbor protections of the BSA.

Such an approach will enable financial institutions to share art and cultural object-specific and beneficial-ownership-specific information with ARIS as a regulated title insurance company. ARIS already maintains privacy-protected information in compliance with the industry’s rigorous data privacy and protection requirements.¹⁹ This in turn will enable ARIS to take each participating institution’s limited and incomplete information that is otherwise noise to the institutions and turn it into actionable information. ARIS can then provide privacy-protected, curated responsive information back to all financial institutions as a single cohort for systemic AML compliance purposes specific to art-asset art industry-financing transactions. The net effect would be to make substantial strides in detecting patterns of suspicious activity and countering terrorism financing through conflict-zone looting of cultural objects.

Through such a form of U.S. leadership – U.S. Treasury and FinCEN and interfacing with law enforcement such as Homeland Security and U.S. Customs and Border Protection – the same kind of financial-sector information linking and sharing in relation to art and cultural heritage objects can be implemented in other sectors of the financial industry. ARIS’s discussions with trade and financial regulators in the U.K., Switzerland, Luxembourg and Belgium at the EU Commission level have set the stage for this purpose.

Related Art Industry Solutions Which Are Now Underway

As detailed earlier, the lack of accurate and reliable information in the art industry impacts all art industry stakeholders in multiple ways. This includes the world’s living artists whose artistic legacy during each generation becomes the accumulated record of our society’s culture.²⁰ These problems take the form, among other forms, of the now significant industry-wide problem of faked and forged artworks. This problem not only impacts our cultural legacy it financially impacts the industry from a fundamental asset valuation standpoint and industry-wide friction cost. The problem is rising at alarming rates as values of objects increase, as technologies advance enabling at ever lower cost replication of artistic and cultural objects in ways that leave them virtually indistinguishable from their

authentic counterparts and as forensic examination of objects each time objects change hands becomes untenable because of the cost.²¹

At the State University of New York and its flagship campus at Albany an initiative is underway – the Global Center of Innovation for the i2M Standards²² – whose purpose is to develop industry standards comparable those more broadly promulgated by NIST, ANSI and ISO that will support technology-based, object-identification solutions. Initially anchored in bio-engineered DNA, nanotechnology and forensic informatics, these solutions will enable the art industry to mark or identify artworks when the artworks are created by a living artist or at defined later point of intervention for artworks which already exist and which were not marked when created – including ancient cultural objects – and link accurately, conclusively, safely and permanently the verified information about an object to an exact, unique, identified object. This form of solution is a nanoscale equivalent to VIN (vehicle identification) numbers used in the global automotive industry.

This is a global initiative with both academic and scientific partners in the U.S. and EU. The solutions of this initiative, which are in development, can be applied to cultural objects that are located in conflict zones which are at-risk and before the looting occurs.

This kind of accurate physical identification of art and cultural heritage *objects* and the conclusive linkage of accurate *information* to the objects, combined with the kind of regulated, privacy-protected information-sharing protocols I have outlined above, can become a key means to combat terrorism financing through conflict-zone looting of cultural objects and the broader global art and financial industry problem of trade-based money laundering.

[Testimony End]

[Endnotes]

¹ See Clare McAndrew, *TEFAF Art Market Report 2016*. Helvoirt: TEFAF; available at <http://www.tefaf.com/DesktopDefault.aspx?tabid=281>.

² Patricia Cohen, *Selling a Fake Painting Takes More Than a Good Artist*, N.Y. TIMES, (May 2, 2014), http://mobile.nytimes.com/2014/05/03/arts/design/selling-a-fake-painting-takes-more-than-a-good-artist.html?_r=0&referrer=, citing J. Shorter in *Porter v. Wertz*, 1978 WL 23505 (1978) (N.Y. Sup. Ct. Mar. 13, 1978).

³ *The Elephant Poaching Crisis and the Role of Auctions in the U.S. Ivory Market*, THE INTERNATIONAL FUND FOR ANIMAL WELFARE [IFAW] (Aug. 12, 2014), http://www.ifaw.org/sites/default/files/IFAW-Ivory-Auctions-bidding-against-survival-aug-2014_0.pdf. The report addressing the market before and after changes in U.S. laws banning trade in commercial elephant ivory in the U.S., see generally <https://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combating-wildlife-trafficking-commercial-b>, which details the global multi-million dollar problem of illegally imported and transacted ivory (under the jurisdiction of the U.S. Fish and Wildlife Service), and cites the State of New York as the largest U.S. market for ivory objects. *Id.* at 26. “[There is a lack of] industry documentation showing that the ivory . . . was legal, with the industry standard response, ‘You don’t need that;’ [indeed one] prestigious auction house investigated indicated that it [simply] trusted what its sellers saw about the provenance and legality of their ivory, rather than requiring paperwork or any proof of provenance or age.” *Id.* at 20; see also *Ivory and Insecurity: The Global Implications of Poaching in Africa: Testimony before the Subcomm. on Foreign Relations*, 112th Cong. (2012) (statement of Tom Cardamone, Managing Director, Global Financial Integrity, Center for International Policy), available at <http://www.ciponline.org/research/entry/ivory-insecurity-poaching-africa> (“organized crime syndicates, militias, and even terrorist elements have taken notice of the profits that can be made in the illegal trafficking of wildlife, generating an alarming up-tick in the scale of the industry and posing serious national security concerns”); *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, UNITED NATIONS OFFICE ON DRUGS AND CRIME [UNODC] (Jan. 13, 2014), [www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet EN HIRES.pdf](http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf) (discussing counterfeit goods broadly). As of Director’s Order 210, the U.S. Fish and Wildlife Service employees must now strictly implement and enforce all criteria under the Endangered Species Act (“ESA”) antique exception (16 U.S.C. 1539 (h)). The ESA requires that any person claiming the benefit of a statutory exemption has the burden of proving that the exemption is applicable (16 U.S.C. 1539 (g)) so the burden of proof is on the importer, exporter, or seller to definitively show that an item meets all of the criteria under the exception. The burden of proof standard is high to ensure that items that people claim are antiques under the ESA exception are authentic and qualify for the exception.

⁴ *Money-Laundering and Globalization*, UNODC, <http://www.unodc.org/unodc/en/money-laundering/globalization.html> (last visited Apr. 14, 2016).

⁵ John Gapper & Peter Aspden, *Davos 2015: Nouriel Roubini says art market needs regulation*, FINANCIAL TIMES (Jan. 22, 2015), <http://www.ft.com/intl/cms/s/0/992dcf86-a250-11e4-aba2-00144feab7de.html#axzz45oz431IN>.

⁶ *Money Laundering vulnerabilities of Free Trade Zones*, FINANCIAL ACTION TASK FORCE [FATF] (Mar. 2010), <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>; see also *Best Practices on Trade Based Money Laundering*, FATF (June 20, 2008), <http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf>.

⁷ Cynthia O'Murchu, *Swiss businessman arrested in art market probe*, FINANCIAL TIMES (Feb. 26, 2015), <http://www.ft.com/intl/cms/s/0/bd248468-bde7-11e4-8cf3-00144feab7de.html#axzz45oz431IN>; Agustino Fontevicchia, *Steve Cohen's Modigliani In The Middle Of An Art Market War: Billionaire Rybolovlev vs Yves Bouvier*, FORBES (Mar. 12, 2015), <http://www.forbes.com/sites/afontevicchia/2015/03/12/steve-cohens-modigliani-in-the-middle-of-an-art-market-war-billionaire-rybolovlev-vs-yves-bouvier/#482e43fc179a>.

⁸ Announced in mid-2015, and effective January 2016, Switzerland's new laws to address money laundering in Freeports represent a significant advancement. See Isabelle Eichenberger, *Art: the new frontier in the fight against money laundering*, SWISSINFO.CH (Jun. 1, 2015), http://www.swissinfo.ch/eng/culture/opaque-art_art-the-new-frontier-in-the-fight-against-money-laundering/41461526; see also Henri Neuendorf, *Switzerland's Tough New Stance on Freeports Will Shake the Art World*, ARTNET.COM (Nov. 19, 2015), <https://news.artnet.com/market/switzerland-freeport-regulations-367361>. Luxembourg has enacted similar legislation. See Recueil de Legislation 29 juillet 2015 (Lux.), available at <http://www.legilux.public.lu/leg/a/archives/2015/0145/a145.pdf> (extending Luxembourg AML regulatory requirements to the Luxembourg Freeport).

⁹ *Trade Based Money Laundering*, FATF 5 (JUNE 23, 2006), <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf>.

¹⁰ *Id.* at n.7.

¹¹ Amr Al-Azm, Salam Al-Kuntar & Brian I. Daniels, *ISIS' Antiquities Sideline*, N.Y. TIMES (Sept. 2, 2014), <http://www.nytimes.com/2014/09/03/opinion/isis-antiquities-sideline.html>; Justine Drennan, *The Black-Market Battleground: Degrading and destroying ISIS could take place in the halls of auctions houses, not the Pentagon*, FOREIGN POLICY (Oct. 17, 2014), <http://foreignpolicy.com/2014/10/17/the-black-market-battleground/>.

¹² United Nations Security Council [SCOR], *Russian Federation: draft resolution*, SCOR Res. S/2015/100 (Feb. 10, 2015), available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/UN_SC_RESOLUTION_2199_EN.pdf.

¹³ See *2013 International Narcotics Control Strategy Report (INCSR)—Volume II: Money Laundering and Financial Crimes Country Database—Comoros through India*, U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs (July 1, 2013), <http://www.state.gov/j/inl/rls/nrcrpt/2013/database/211181.htm>; *Global Anti-Money Laundering Research Tool*, KNOWYOURCOUNTRY.COM, <http://www.knowyourcountry.com/index.html> (last visited Apr. 14, 2016). The risks become acute in Free Trade Zones and Freeports. The 2010 FATF report found that Freeports were “a unique money-laundering and terrorist-financing threat.” Free Trade Zones have proliferated from approximately 3,000 located in 135 countries worldwide in 2010 to an estimated 4,300 in 2013. Although Freeport and Free Trade Zone users benefit from confidentiality, exemption from duties/taxes and simplified administrative procedures as well as decreased scrutiny, these facilities are systemically vulnerable to abuse and highly attractive places for illicit activities including money laundering and terrorism financing especially through over- and underpricing. See FATF 2010 Report, *supra* note 6; see also Angela Shah, *Free Trade Zones Attract Criminals*, N.Y. TIMES (Nov. 10, 2010), <http://www.nytimes.com/2010/11/11/world/middleeast/11iht-m11mtrade.html>; *Special economic zones: Not so special*, THE ECONOMIST (Apr. 4, 2015), <http://www.economist.com/news/leaders/21647615-world-awash-free-trade-zones-and-their-offshoots-many-are-not-worth-effort-not>; *Über-warehouses for the ultra-rich*, THE ECONOMIST (Nov. 23, 2013), <http://www.economist.com/news/briefing/21590353-ever-more-wealth-being-parked-fancy-storage-facilities-some-customers-they-are>.

Because of the opaque nature of Freeports and Free Trade Zones, the exact valuation figure for art stored in in these facilities by country or globally is unknown but is estimated to be in the hundreds of billions of dollars. THE ECONOMIST, *supra* 2013 article. The main building of the Freeport Geneva is estimated to hold art worth \$100 billion. Connassances des Arts in 2013 estimated that the Geneva Freeport held around 1.2 million artworks. Simon Bradley, *The discreet bunkers of the super-rich*, SWISSINFO.CH (Jul. 9, 2014), http://www.swissinfo.ch/eng/free-ports_the-discreet-bunkers-of-the-super-rich/40474208. In the global art industry many dealers, galleries and art lenders have offices at Freeports so that clients can conveniently view, buy, lend and sell their art all within the Free Trade Zones without the art moving. Cynthia O'Murchu, *Art: A market laid bare*, FINANCIAL TIMES (Apr. 7, 2015), <http://www.ft.com/intl/cms/s/2/a91a1608-d887-11e4-8a23-00144feab7de.html#axzz45oz431IN>.

The development of anti-money laundering and counter-terrorism finance compliance standards, oversight and regulations governing Free Trade Zones worldwide has not kept pace with the legal, regulatory and technological advances in AML and counter-terrorism financing compliance in other sectors, for instance, the global financial sector. AML and counter-terrorism finance compliance standards in Free Trade Zones are inconsistent across jurisdictions, non-existent in some jurisdictions and, where applicable standards apply, largely ineffective for art and cultural property assets. FATF 2006 Report, *supra* note 9; *Goods gone bad: Addressing money-laundering risk in the trade finance system*, PRICEWATERHOUSECOOPERS (Jan. 2015), <http://www.pwc.com/us/en/risk-assurance-services/publications/trade-finance-money-laundering.ihmt>; see also Rachel Louise Ensign, *The Morning Risk Report: Trade-Based Money Laundering Proves Tricky*, THE WALL STREET JOURNAL (Jan. 9, 2015), <http://blogs.wsj.com/riskandcompliance/2015/01/09/the-morning-risk-report-trade-based-money-laundering-proves-tricky/> (discussing the PwC report and citing U.S. and U.K. regulatory authorities).

¹⁴ See PRICEWATERHOUSECOOPERS, *supra* note 13; see also Ensign, *supra* note 13.

¹⁵ See *Global Anti-Money Laundering Survey 2014*, KPMG (Feb. 2014), <https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Documents/Global-Anti-Money-Laundering-Survey-O-201402.pdf>.

¹⁶ Thomas J. Curry, Comptroller of the Currency, Remarks at the Institute of International Bankers 3, 5 (Mar. 2, 2015), available at <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-32.html>.

¹⁷ See Kaja Whitehouse, *Regulator warns of 'Armageddon' cyber attack on banks*, USA TODAY (Feb. 25, 2015), <http://www.usatoday.com/story/money/business/2015/02/25/lawsky-goldman-sachs-banks/23995979/>, quoting Ben Lawsky, Superintendent of Financial Services, New York Department of Financial Services (DFS), Address at Columbia Law School (Feb. 25, 2015).

¹⁸ See Kinglsey Napley, *Fifth Money Laundering Directive on the horizon?*, LEXOLOGY (Feb. 18, 2016), <http://www.lexology.com/library/detail.aspx?g=b52f2693-2b55-4137-8a36-168a09970558>.

¹⁹ Under U.S. insurance laws, title insurance companies must maintain regulated "title plants" or databases on beneficial ownership and risk information for underwriting purposes under strict data privacy laws. In the case of ARIS and similar art title insurers, the title plant is art-asset versus real estate property-related and is comprised of global information versus geographic specific information given the global nature of the art industry and the high portability of art assets compared to non-movable real estate property of the real estate title insurance industry.

²⁰ The comments of President John F. Kennedy echoed fifty years ago, when building support for a national foundation on arts and humanities and emphasizing the need for a nation to represent itself not only through its strength but also through its art (two years later President Lyndon Johnson signed the National Foundation on the Arts and the Humanities Act creating the National Endowment for the Arts), are instructive: *[T]he nation which disdains the mission of art invites the fate of Robert Frost's hired man, the fate of having 'nothing to look backward to with pride, and nothing to look forward to with hope.'*" President John F. Kennedy, United States, Convocation Address at Amherst College (Oct. 26, 1963). Other world leaders have echoed the same. See Interview with André Malraux, First Minister of Culture, France, in *Promenades imaginaires dans Floence* ("in a world in which everything is subject to the passing of time, art alone is both subject to time and yet victorious over it."); and *Culture and Local Development* 2005 report published by Organization for Economic Co-operation and Development (member countries including Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, etc.) (measurable and beneficial impact that creativity, art and culture have on societies and economies), http://www.paca-online.org/cop/docs/OECD_Culture_and_Local_Development.pdf.); see also Monika Grütters, Federal Commissioner for Culture and the Media, Germany, Address at *Cultural Heritage in Danger: Illicit excavations and trade* (Dec. 11-12, 2014) ("[art is] the cultural heritage of all humanity") (addressing plundering of museums, graves and other archaeological sites and illegal export of stolen objects at Berlin).

²¹ Many of these technological advances are being developed for entirely non-nefarious purposes. However, the same technologies become readily available to nefarious actors, who are always less than a step behind the good faith market, to create and distribute fake and forged art. See, e.g., Alessandra Potenza, *This 3d-printed Rembrandt is the new frontier in forgery*, THE VERGE (Apr. 5, 2016), <http://www.theverge.com/2016/4/5/11371566/the-next-rembrandt-3d-printed-painting-ing-microsoft> (discussing the sophistication of art-replicating technology).

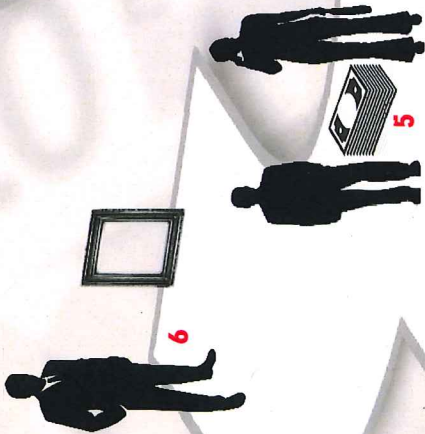
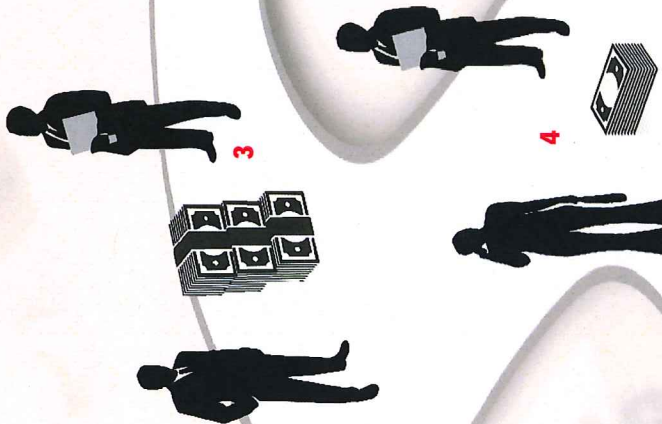
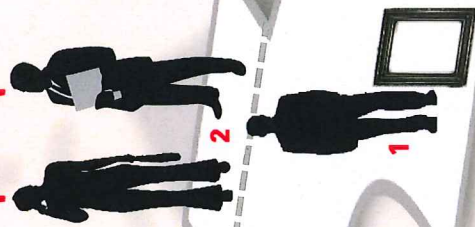
²² See *Global Center of Innovation on Standards and Solutions for Object Identification Technologies in the Global Art and Collectibles Industry*, UNIVERSITY AT ALBANY, <http://www.albany.edu/centerofinnovation/> (last visited Apr. 14, 2016); *i2M Standards*, I2MSTANDARDS.ORG, <https://www.i2mstandards.org/> (last visited Apr. 14, 2016); *i2M Standards: Governments' Regulatory Aid*, I2MSTANDARDS.ORG, https://cdn.i2mstandards.org/wp-content/uploads/20151013130037/Governments_Regulatory_Aid.pdf.

[Endnotes End]

GLOBAL ART TRANSACTION

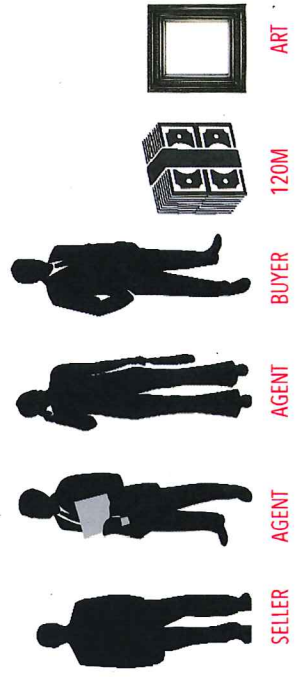
THE HIDDEN RISKS

EXISTING RELATIONSHIP



THE ACTORS

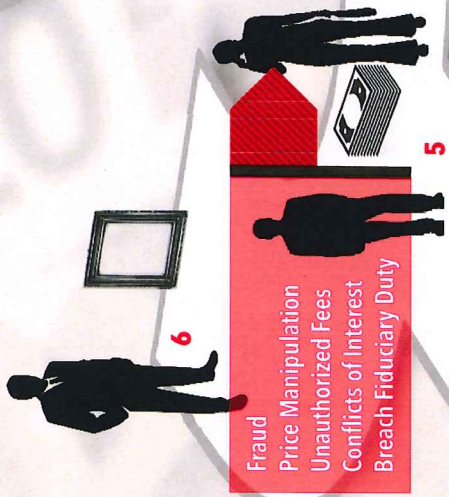
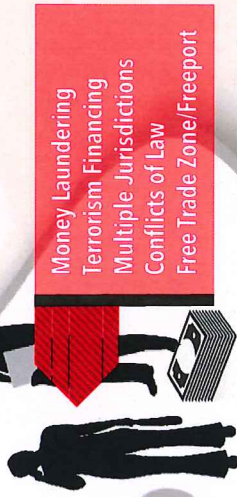
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2. AGENTS FACILITATE SALE
3. BUYER PAYS AGENT 120M
4. AGENT PAYS AGENT 93.5M
5. AGENT PAYS SELLER 93.5M
6. BUYER KEEPS PAINTING



GLOBAL ART TRANSACTION

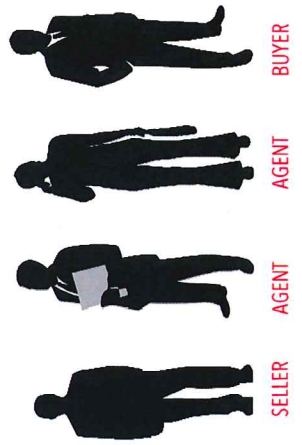
THE HIDDEN RISKS

EXISTING RELATIONSHIP



THE ACTORS

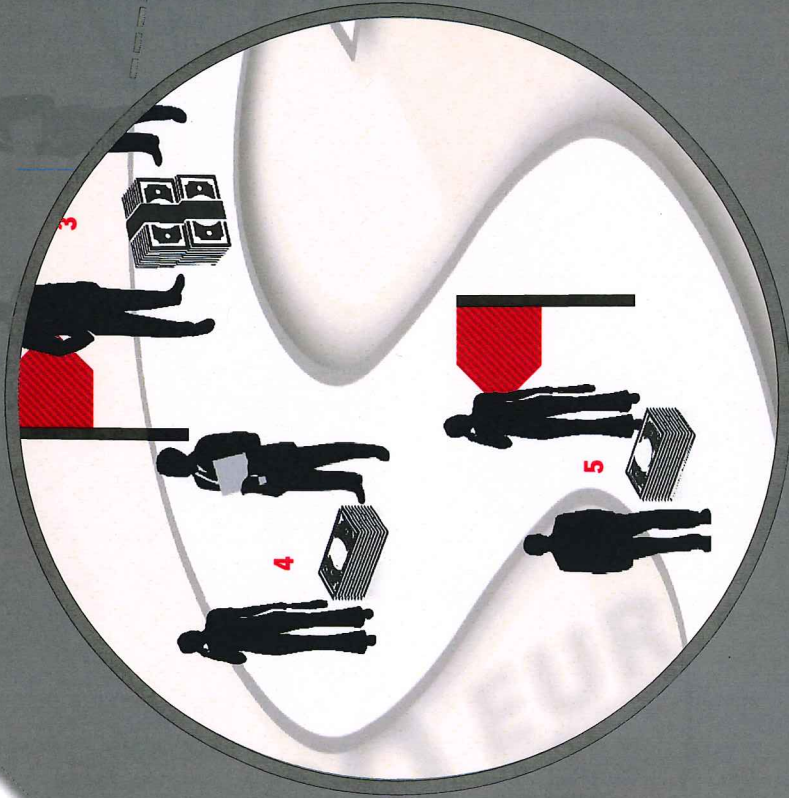
1. PAINTING FOR SALE
2. AGENTS FACILITATE SALE
3. BUYER PAYS AGENT 120M
4. AGENT PAYS AGENT 93.5M
5. AGENT PAYS SELLER 93.5M
6. BUYER KEEPS PAINTING



GLOBAL ART TRANSACTION

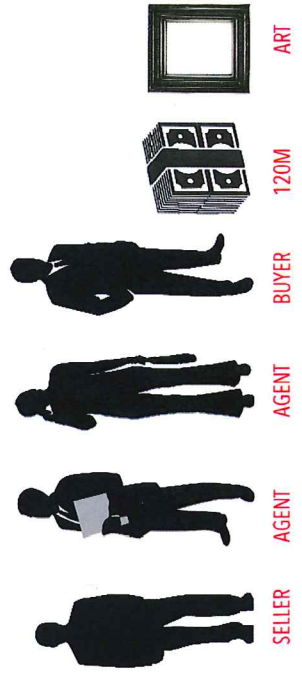
THE HIDDEN RISKS

A REGULATED, NEUTRAL, INDEPENDENT THIRD-PARTY TITLE INSURANCE COMPANY WITH A 360° VIEW OF THE ART INDUSTRY CAN ADDRESS THE HIDDEN RISKS IN THE GLOBAL ART TRANSACTION.



THE ACTORS

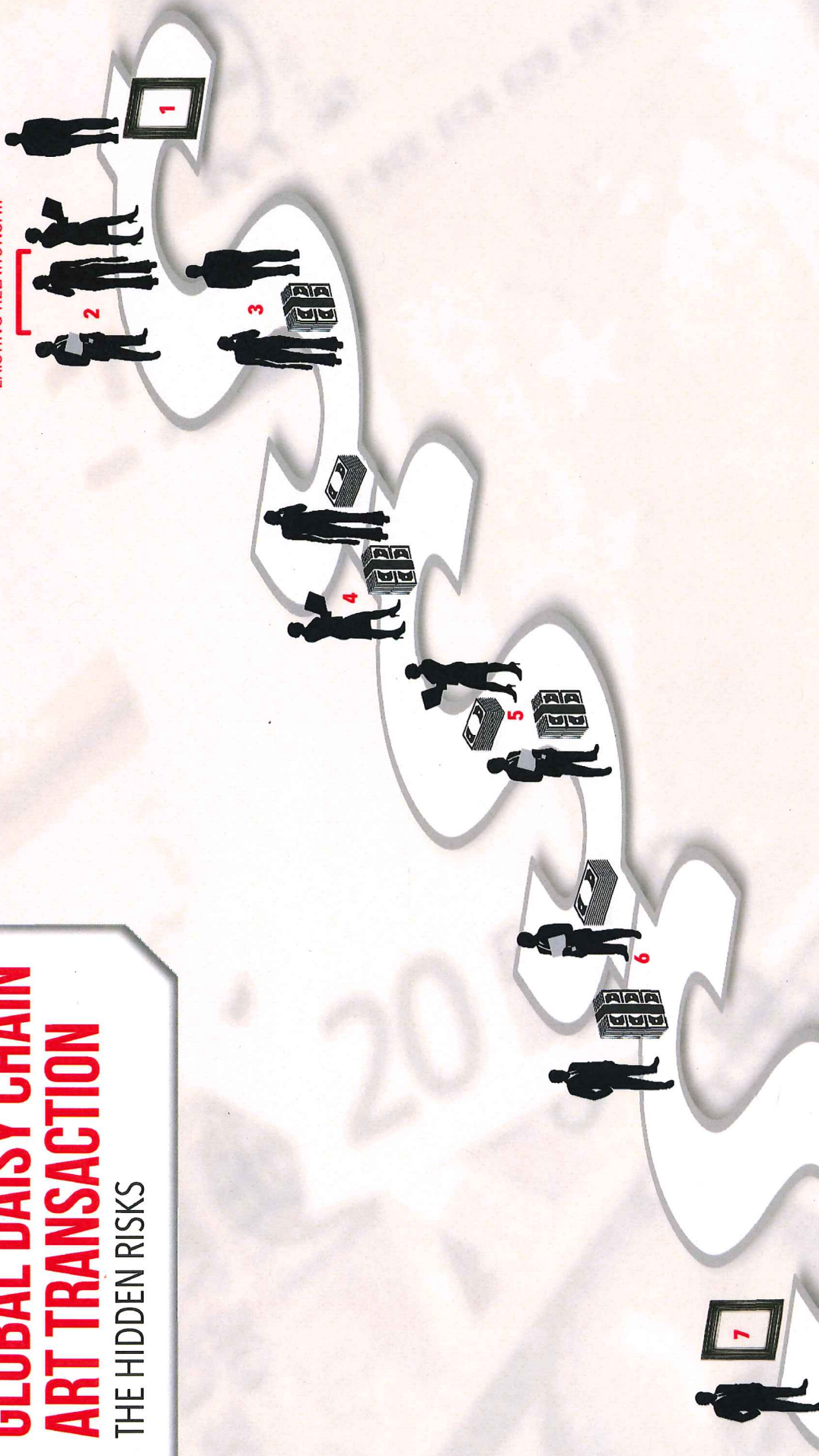
1. PAINTING FOR SALE
2. AGENTS FACILITATE SALE
3. BUYER PAYS AGENT 120M
4. AGENT PAYS AGENT 93.5M
5. AGENT PAYS SELLER 93.5M
6. BUYER KEEPS PAINTING



GLOBAL DAISY CHAIN ART TRANSACTION

THE HIDDEN RISKS

EXISTING RELATIONSHIP



THE ACTORS

1. Painting for sale
2. Multiple agents facilitate sale
3. Seller sells painting to Agent 1
4. Agent 1 resells painting to Agent 2
5. Agent 2 resells painting to Agent 3
6. Agent 3 resells painting to Buyer
7. Buyer keeps painting

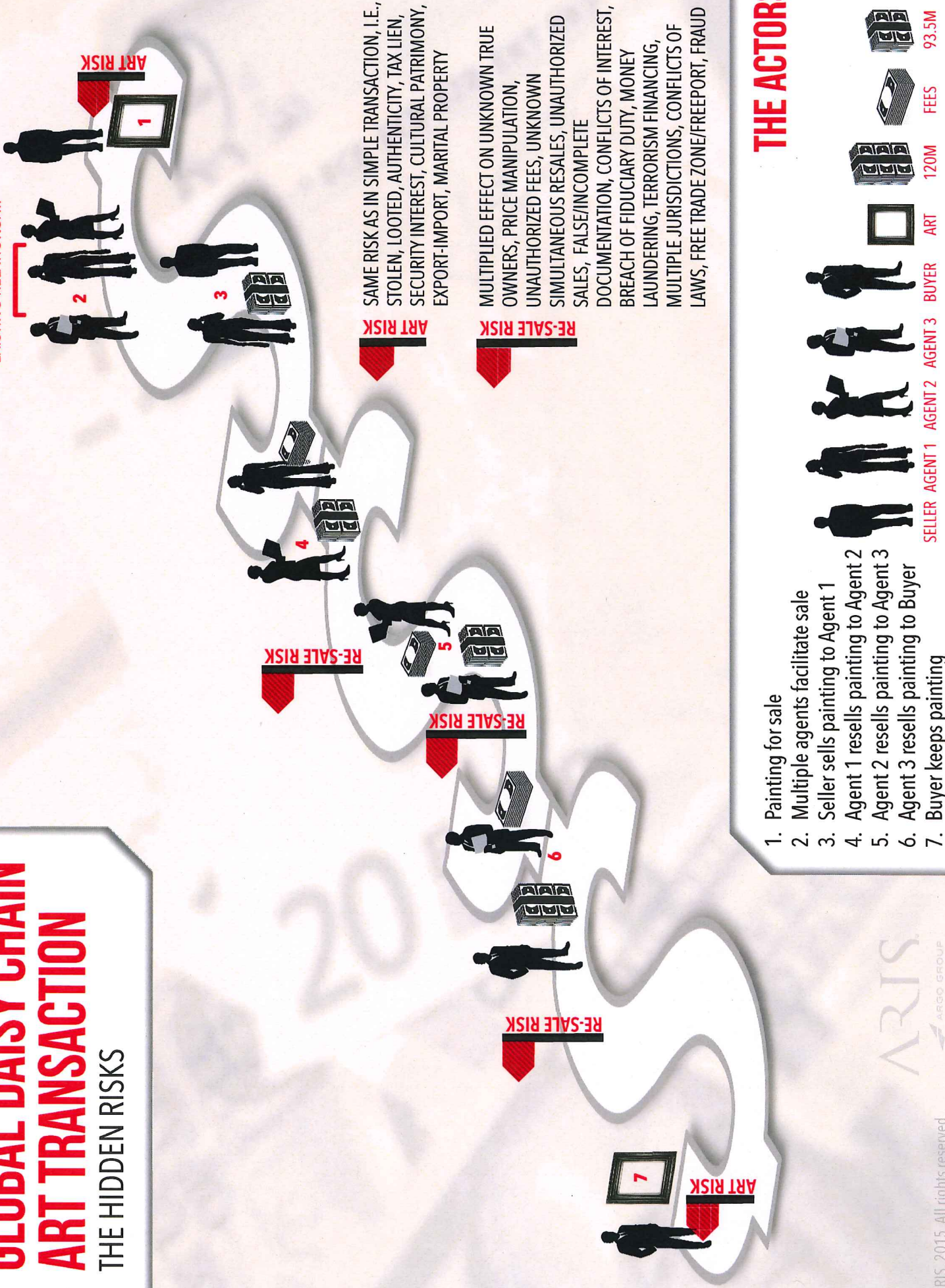
SELLER AGENT 1 AGENT 2 AGENT 3 BUYER ART 120M FEES 93.5M



GLOBAL DAISY CHAIN ART TRANSACTION

THE HIDDEN RISKS

EXISTING RELATIONSHIP



ART RISK
SAME RISKS IN SIMPLE TRANSACTION, I.E.,
STOLEN, LOOTED, AUTHENTICITY, TAX LIEN,
SECURITY INTEREST, CULTURAL PATRIMONY,
EXPORT-IMPORT, MARITAL PROPERTY

RE-SALE RISK
MULTIPLIED EFFECT ON UNKNOWN TRUE
OWNERS, PRICE MANIPULATION,
UNAUTHORIZED FEES, UNKNOWN
SIMULTANEOUS REALES, UNAUTHORIZED
SALES, FALSE/INCOMPLETE
DOCUMENTATION, CONFLICTS OF INTEREST,
BREACH OF FIDUCIARY DUTY, MONEY
LAUNDERING, TERRORISM FINANCING,
MULTIPLE JURISDICTIONS, CONFLICTS OF
LAWS, FREE TRADE ZONE/FREEPORT, FRAUD

THE ACTORS

1. Painting for sale
2. Multiple agents facilitate sale
3. Seller sells painting to Agent 1
4. Agent 1 resells painting to Agent 2
5. Agent 2 resells painting to Agent 3
6. Agent 3 resells painting to Buyer
7. Buyer keeps painting

