

VENABLE[®]LLP

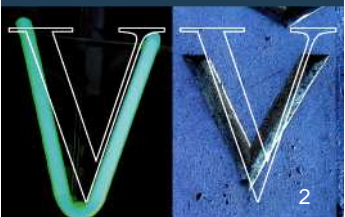
U.S. Financial Controls Applied to Real Estate Transactions

December 13, 2012)



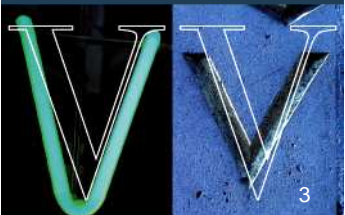
Agenda

- Define controls – Focus on three
 - Economic sanctions
 - Anti-money laundering
 - Foreign Investment
- Explain control structures
- Outline Scope of Controls
- Discuss application of controls to real estate transactions



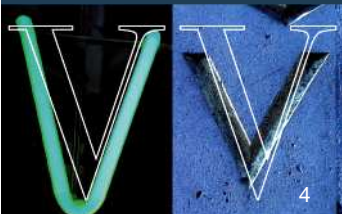
Purposes of Financial Controls

- Law Enforcement
- Foreign Policy
- National Defense
- Economic Controls
- Capital Flight



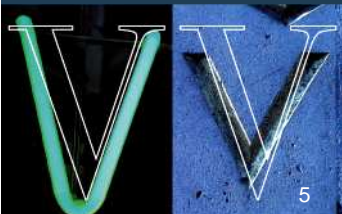
Financial Controls: U.S. Treasury

- Economic Sanctions -- Office of Foreign Assets Control (OFAC) (State sets policy)
- Money Laundering -- Financial Crimes Enforcement Network (FinCEN)
- Foreign Purchasers -- Committee on Foreign Investment in U.S. (CFIUS)



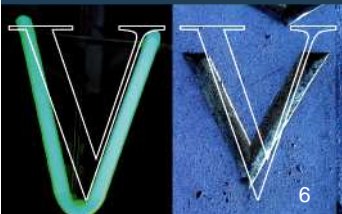
Economic Sanctions: Foreign Policy Controls

- Block assets for use as bargaining chips
- Freeze assets or refuse to deal to encourage change in behavior
 - Change in government
 - Change in actions
 - Change in policies
- Unilateral and multilateral sanctions



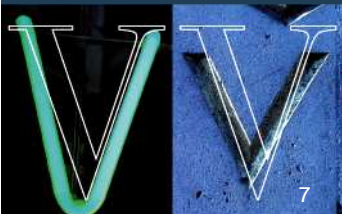
Foreign Policy Controls: Multiple Targets

- Economic sanctions programs imposed by the President or Congress against
 - Countries (Iran, Sudan, Cuba, N. Korea)
 - Foreign Groups or Persons
 - Terrorist Organizations & Terrorists
 - Political Parties
 - Drug Kingpins & Drug Traffickers
- Which or Who “pose a threat to the National Security of the United States”



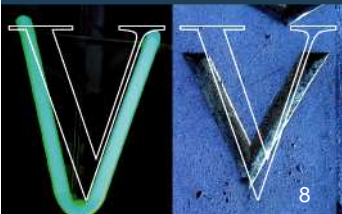
OFAC: Office of Foreign Assets Control

- Part of the Office of Intelligence and Terrorism Finance, U.S. Treasury:
 - Director Appointed by Secretary
 - Reports to Undersecretary for Intelligence and Terrorism Finance
- “Economic Warriors” of the U.S.



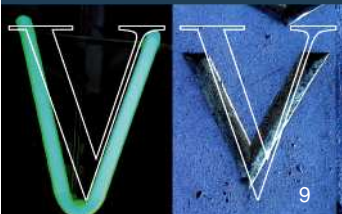
OFAC Compliance: Coverage

- All U.S. Persons, wherever located:
 - Legal Entities
 - U.S. Government and Government sponsored
 - U.S. Company, Partnership, wherever operating
 - Non-U.S. Subsidiaries of U.S. companies as to Cuba and North Korea only
 - U.S. Citizens, wherever located
 - U.S. Permanent residents, wherever located
 - Anyone in the U.S.
- Property in U.S. of Anyone on “List”



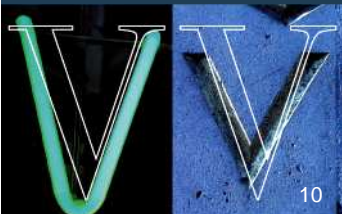
OFAC & Commercial Transactions

- “Property or Interest in Property”
 - Could not be defined more broadly.
 - Direct or indirect interest
- Responsibility for compliance may not be delegated
 - Reliance on lenders, suppliers, *etc.*, is not protection.
 - Down (and Up) stream due diligence required
- Important distinction from anti-money laundering controls



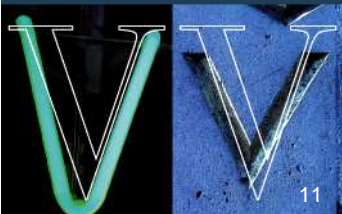
Minimum OFAC Compliance:

- Routine Procedures for Screening all Transactions, Investors, Counterparties against SDN List
- Clear Representations and Warranties
- Swift, Accurate Reporting to OFAC
- Lack of Electronic Systems at Company's Peril
- Attorney Responsibilities

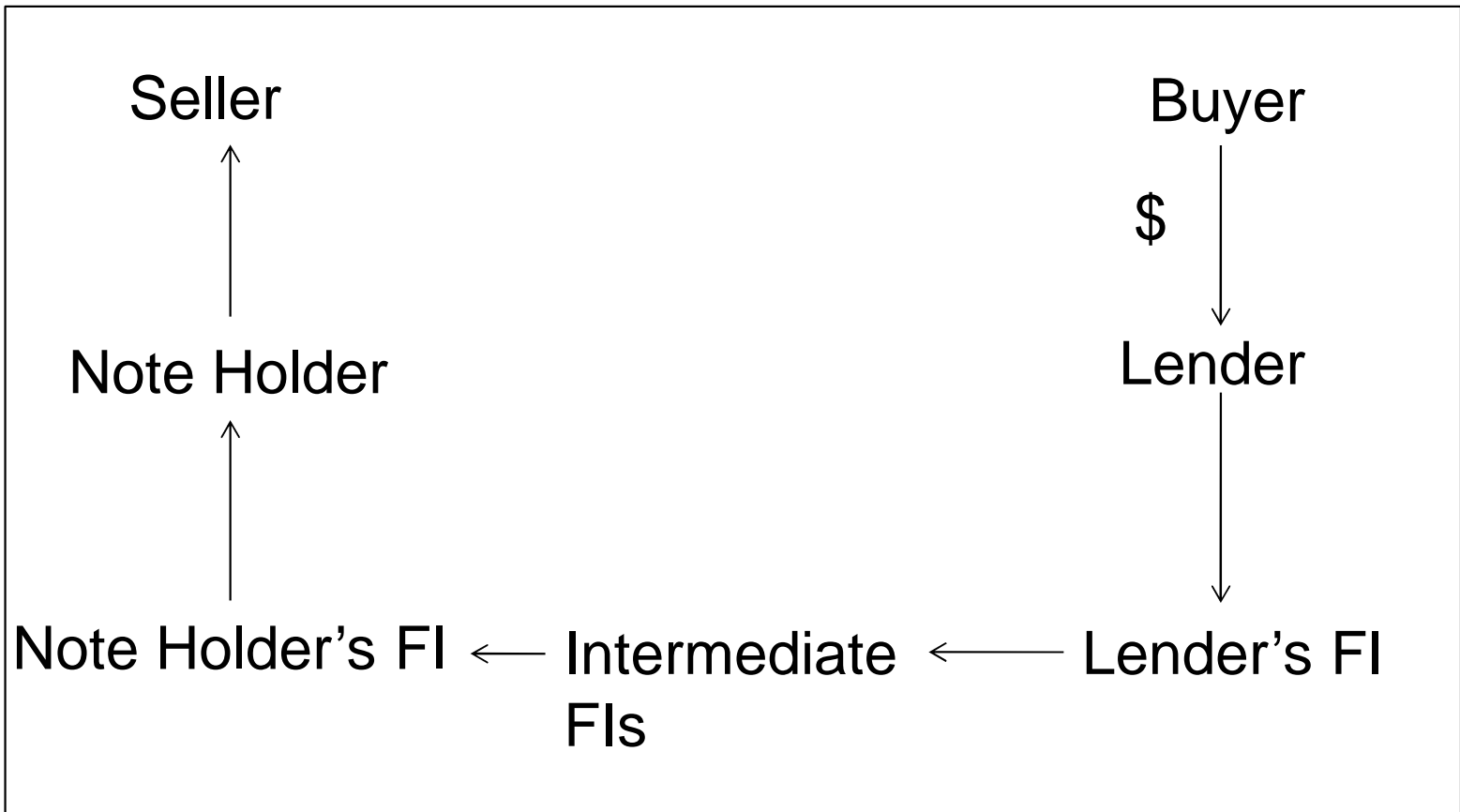


OFAC: Compliance Objective

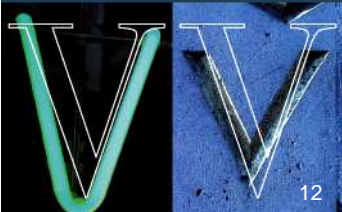
- Exclude contact with a person or entity on the List of Specially Designated Nationals (SDN List) or State List
- Push obligation to check and responsibility for compliance as far away from our clients as possible (risk reduction)
- BUT: Strict liability statutes



OFAC: Risk Assessment & Checking the List



FI= Bank, Brokerage, etc., see AML Slides



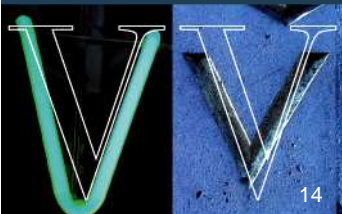
Anti-Money Laundering: Drug Wars to 9/11

- Politics of Contraband
- Kilo of Cocaine v. US Street Money equivalent
- Layering & Integration = Clean Money
- Enormous Quantities to Very Finite Amounts
- Result is complex compliance structure



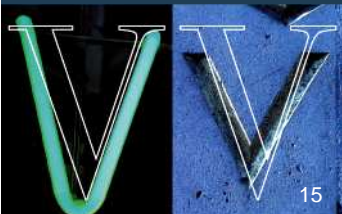
Drug Money Characteristics

- Bulk Cash -- \$20 bills
- Problem in Entry into Financial System
- Dirty Money Cycled to Legitimacy
- To Fund “Clean” Businesses
- HSBC Example
 - USD deposited in Mexican branches
 - EFT to US as clean money
 - Cash sent to Fed Reserve Bank in El Paso, Houston, San Antonio or Dallas



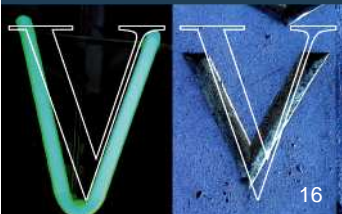
Terrorist Money Characteristics

- Small amounts
- Plain vanilla transactions using normal channels
- A needle in a needle stack
 - 9/11 attacks \$<200,000



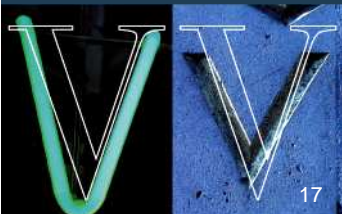
AML Controls: Financial Institutions

- Bank, thrift, credit union, trust company;
- Dealer in securities;
- Money services business (exchange, money orders, *etc.*);
- Insurance company;
- Prepaid access;
- Dealer in precious metals and stones; and,
- PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS



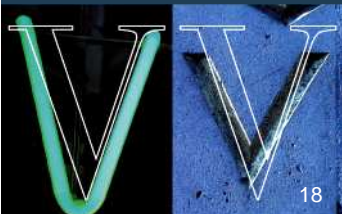
AML: Minimum Compliance

- AML Rules apply to “Financial Institutions”
- Compliance Representation/Warranty
- General Rules:
 - All funds through reputable financial institutions
 - No payments to third parties
 - No payments to third countries
- Attorney Responsibility & Gatekeeper Issues
- Next Issue: Beneficial Owners & Corporate Transparency



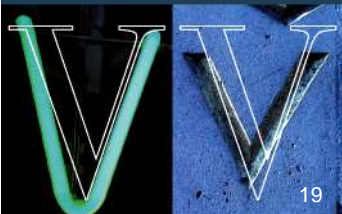
AML & Real Estate Transactions: Red Flags

- Location of Property in Relation to Buyer
- Economic purpose of transaction
- Buyer
 - Identification
 - Location (country, address (P.O box))
- Intermediaries, family members, shell companies
- Relationship of Buyer and Seller
- Payment
 - Source
 - Type



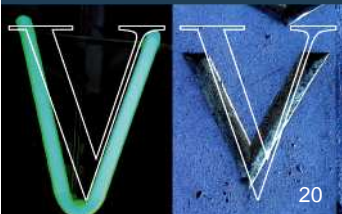
OFAC/AML: Transactional Language

- Avoid:
 - “USA PATRIOT Act”
 - Executive Order having any number, such as 13221, 13224
 - Limiting economic sanctions language to the U.S. Treasury
 - Limiting to Anti-terrorism “programs”
- “Prohibited Parties:” Definition very important
- Examples



Draft Rep/Warrant Language (Minimal) Seller

[Seller] represents and warrants that it is in compliance with all applicable laws, including those governing U.S. economic sanctions, anti-money laundering, and anti-corruption.



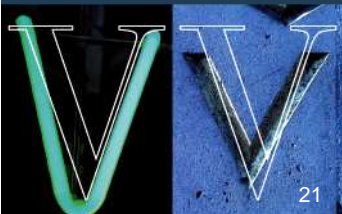
Draft Rep/Warrant Language (Minimal) Buyer

[Buyer] represents and warrants that it is [and will remain] in compliance with all applicable laws, including those governing U.S. economic sanctions, anti-money laundering, foreign investment in the U.S., and anti-corruption.

Term sale/lease: Obligation to notify.

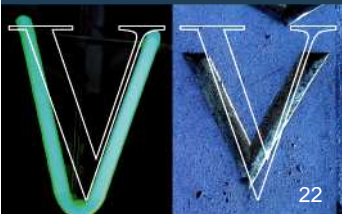
Mortgage: Obligation to notify.

Definition of “Buyer”, “Tenant”, etc.



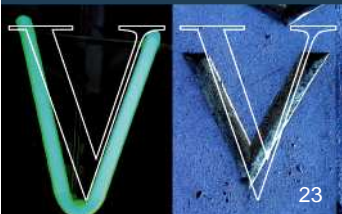
CFIUS: What is It?

- U.S.' method of regulating foreign direct investment ("FDI") in the U.S. and protecting critical U.S. assets from foreign control.
- Interagency committee chaired by the Treasury Secretary and staffed by career civil servants.



CFIUS: Closing Considerations

- Failure to Subject Transaction to CFIUS Review Means CFIUS may review and unwind at any time.
- Process is informal, but structured:
 - Time lines are enforced unless extension requested/granted.
 - Penalties for non-compliance with information requests are substantial (\$250,000 civil, criminal referral)
 - Confidentiality is guaranteed, but as of yet, not tested.



Venable Team

■ OFAC

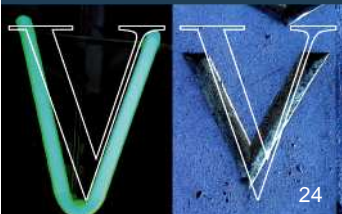
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- Ashley Craig
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- Tara Potashnik
- Maura Marcheski

■ CFIUS

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- Diz Locaria
- Andrew Bigart
- Carrie Kroll
- Liz Lowe



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