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## Gold and Money Laundering

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On April 17, 2019, the United States Attorney's Office for the Southern District of Florida (the "Government") announced its non-prosecution agreement entered into with a Miami-based gold refinery, Republic Metals Corp. ("RMC"), related to the refinery's failure to maintain a robust anti-money laundering ("AML") program. RMC is the second American refinery whose AML program has been identified as deficient by the Government as part of its ongoing probe into gold imports from South American countries such as Peru, Bolivia, and Ecuador (dubbed "Operation Arch Stanton"). The Government's decision to decline prosecution against RMC stands in stark contrast to its prosecution last year of another refinery, Texas-based Elemetal LLC ("Elemetal"), arising from the same probe.

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### **AML Program Requirements for Precious Metals Dealers**

Similar to art (which we recently blogged about [here](#)), gold is a potentially attractive vehicle for money laundering in part because it can be transported easily. The Government has emphasized the international gold trade as a common method for laundering illegally mined gold, narcotics, and other criminal proceeds. Criminals frequently trade illegal gold through illicit shell or front companies using false or incomplete documents. The gold is often then smuggled through third-party countries and ultimately sold to refineries in the United States.

Seeking to combat this practice, the Bank Secrecy Act ("BSA") requires precious metals dealers to establish AML programs with certain minimum requirements under [31 U.S.C. § 5318\(h\)](#) and [31 C.F.R. § 1027.210](#). Specifically, dealers are required to develop and implement a written AML program "reasonably designed" to prevent dealers "from being used to facilitate money laundering and the financing of terrorist activities" through the purchase and sale of precious metals.

### **Operation Arch Stanton**

Operation Arch Stanton, which remains ongoing, is being spearheaded by the Organized Crime Drug Enforcement Task Force, or [OCDEF](#), a partnership between federal state, and local law enforcement agencies focused on identifying, investigating, and prosecuting high-level members of drug trafficking enterprises.

In deciding not to prosecute RMC, the Government acknowledged that the refinery's AML program had failed to prevent the onboarding of several suppliers who ultimately proved suspicious. But the Government emphasized that the refinery: (1) proactively took steps to address its AML vulnerabilities, such as by severing ties with these suppliers, before it even became aware of the investigation; and (2) fully cooperated with and will continue to cooperate with the Government's ongoing probe. As part of its cooperation, which has spanned years and extended to other investigations, the Government noted, RMC turned over an extensive amount of evidence to investigators, including over 100,000 emails and WhatsApp messages.

RMC already has spent more than \$1 million hiring and training a five-person compliance team and implementing a sourcing model that, according to the Government, "has effectively eliminated metal aggregators" from its supply chain, thereby reducing the risk that RMC will be used for money laundering activities in the future. The refinery also has agreed to make certain unspecified improvements to its AML and compliance programs.

In contrast to RMC, Elemetal pled guilty in March 2018 to its failure to maintain an adequate AML program and, as part of its plea, agreed to a \$15 million forfeiture, five years of probation, and a five year ban from purchasing

precious metals outside of the U.S. Elemetal also agreed to implement a court-approved compliance and ethics program and hire a full-time AML compliance director, with at least five years of AML compliance experience at a banking or broker/dealer financial institution, who would report directly to the company's highest-ranking executive. In addition, three of the refinery's employees pled guilty to conspiracy to commit money laundering and received prison sentences ranging from 72 – 90 months.

The Government's Factual Proffer relating to Elemetal's plea agreement, available [here](#), provided that the refinery's AML failures spanned from August 2012 through November 2016. During this period, Elemetal maintained a written AML policy and had a designated compliance officer, but it "willfully" failed to tailor its AML program to the risks it faced. For example:

- Elemetal received approximately \$114 million in gold directly from about 43 different, non-customer entities or persons in Peru and on "consignment" to third-party Elemetal customers. Elemetal neither requested nor obtained any information about the identity of the individuals providing this gold or the source of the gold.
- Elemetal's United Kingdom operations purchased gold and other precious metals from 111 customers without any AML compliance vetting. The refinery knowingly allowed this practice to continue for over a year after one of its AML compliance officers listed the failure as a reason for his resignation to company executives.
- In 2014 and 2015, Elemetal purchased approximately \$250 million in gold from one Bolivia-based company with no information as to the source of the gold. The Government determined that this company was selling smuggled gold from Peru.
- Elemetal accepted gold from specific customers and suppliers despite publicly-available information indicating that these customers and suppliers likely were supplying criminally-derived gold.
- Internal emails indicate that the refinery's executives were aware that the gold it received from Ecuador and Bolivia was being smuggled from Peru following Peru's crackdown on illegal gold.

The Government emphasized that, because of Elemetal's AML failures, "hundreds of millions if not billions of dollars of laundered gold entered into the U.S. financial system."

Highlighting the drastically different outcomes faced by RMC and Elemetal, the Government stated in its press release: "This office's investigation into the gold importation and refining industry will continue and the resolution with Republic Metals Corporation, as well as the guilty plea of [Elemetal], should place others on notice that there are benefits to cooperating and there are grave consequences for those who engage in money laundering or fail in their legal requirement to prevent it."

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