

30<sup>th</sup>

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CALGARY MARRIOTT DOWNTOWN



# IECA KYC Whitepaper



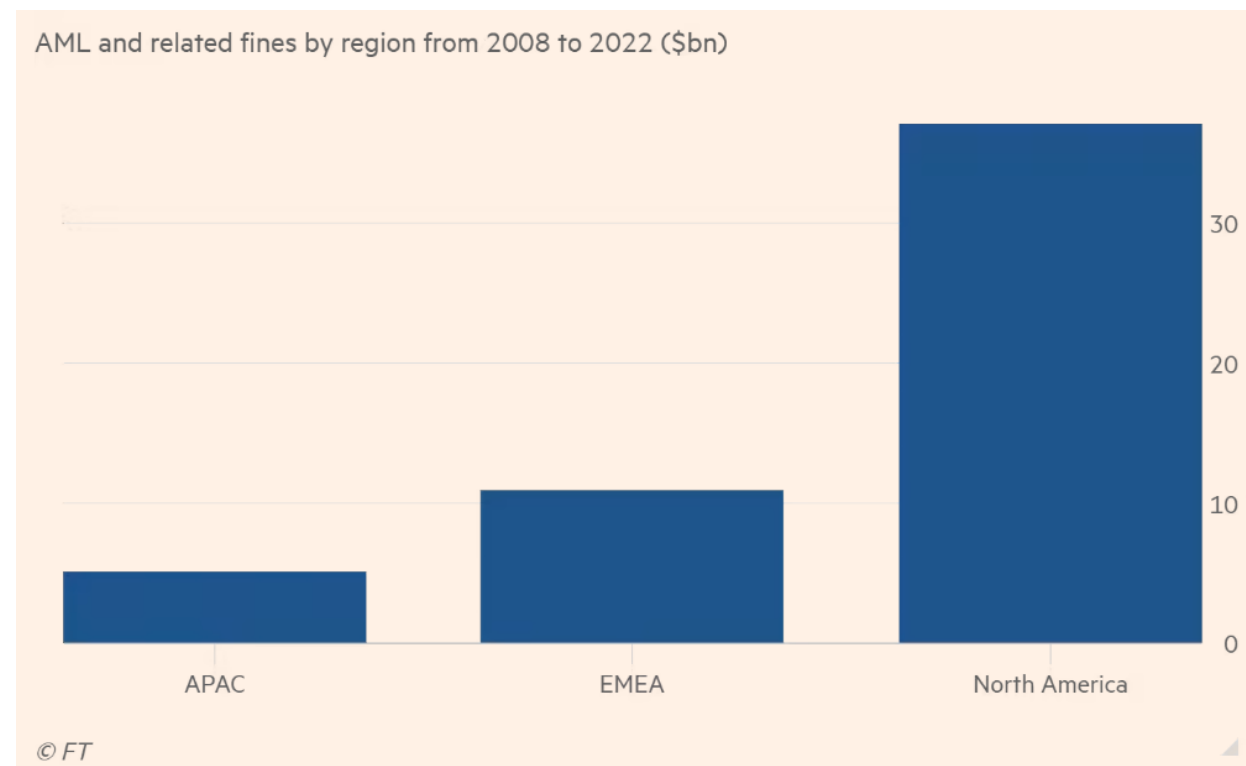
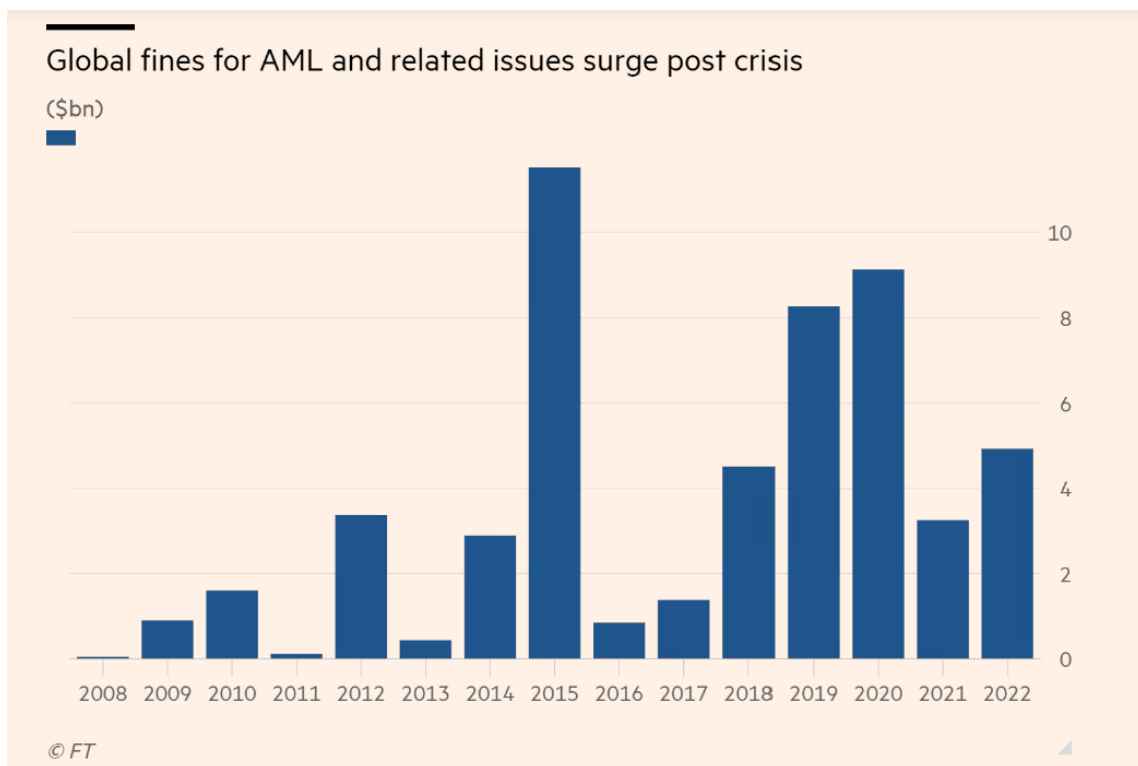
# Background

- KYC process is continuously evolving and has become disjointed
- Working Group is a collaboration between IECA's Contracts and Legal Education Group (CLEG) and IECA's Credit Analytics Education Group (CAEG)
- The objective of the KYC is to provide guidance on best standards and practices:
  - Robust and thorough KYC process
  - Legal and regulatory consequences
- Working Group has addressed multiple issues, including prohibitions of Funding Terrorism, Anti-Money Laundering (AML), and Fraud, as well as potential liabilities arising from changing Data Protection Rules and Cyber Security Concerns

## KYC Relevance

- Companies across all **industries** have an obligation to ascertain the identity of their customers and counterparties.
- The KYC process encompasses the internal controls and processes to adequately identify:
  - Complex company structures through creation of holding companies, tax optimization vehicles, etc.
  - the Ultimate Beneficial Ownership (“UBO”) of customers and counterparties;
  - the purpose of payments and the origins of the money; and
  - money laundering and any other unlawful practices when engaging in commercial transactions with these customers and counterparties.
- KYC process’ relevance is shared across jurisdictions, although the regulatory framework can greatly differ across jurisdictions
- Adherence to domestic laws and regulations as well as having to consider international regulations due to the increasing over-reaching nature of regulatory bodies.

# AML Fines through 2022



# International Banks – AML Penalties through 2022



## Changes to KYC Whitepaper since 2019

- Changed layout structure
  - General content
  - Appendices
- Deleted entries re: 2019 KYC penalty orders
- Removed of Canadian/Mexican Regulations (to be added as an Appendices by end of year)
- Finalized BOI rule by FinCEN for reporting requirements
- Updated Risk Based approach as appropriate
- Version release at least annually by IECA Working Group

## FinCEN Final Rule

- Require certain domestic entities as well as certain foreign entities doing business in the United States (Reporting Companies) to report BOI to FinCEN, both at the time of company creation (or when a foreign corporation becomes authorized to do business in the United States or a particular State of the United States) and when ownership information changes
- Create a repository of BOI to reduce the risk of money launderers using shell companies and other legal entities to hide the criminal activities of the beneficial owners of those shell companies and other legal entities



# FinCEN Final Rule

## ***Reporting Companies***

- A domestic reporting company is a corporation, limited liability company (LLC), or any entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.
- A foreign reporting company is a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office.
- Inclusive of limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs
- 23 exemptions under the Final Rule – exempt companies generally are large and federally regulated companies, such as banks, money services businesses, securities exchange or clearing agencies, and investment companies (*apply risk-based approach*)

# FinCEN Final Rule

## ***Beneficial Owners***

- **Beneficial owner** includes any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company
- **Substantial control**, the rule sets forth a range of activities that could constitute substantial control of a reporting company including anyone who is able to make important decisions on behalf of the entity
- Rule provides standards and mechanisms for determining whether an individual owns or controls 25 percent of the **ownership interests** of a reporting company

# FinCEN Final Rule

## ***Company Applicants***

- Rule defines a company applicant to be only two persons:
  - the individual who directly files the document that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States.
  - the individual who is primarily responsible for directing or controlling the filing of the relevant document by another

## ***BOI Reports***

- Rule requires a reporting company to identify itself and report four pieces of information about each of its beneficial owners: name, birthdate, address, and a unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document).
- If an individual provides their four pieces of information to FinCEN directly, the individual may obtain a “FinCEN identifier,” which can then be provided to FinCEN on a BOI report in lieu of the required information about the individual

# FinCEN Final Rule

## ***Timeline Applicability***

- January 1, 2024, for any domestic Reporting Company formed on or after January 1, 2024, to submit a BOI report to FinCEN within thirty days after it has been formed; similarly, any foreign Reporting Company that is authorized to do business in the United States or any State of the United States on or after January 1, 2024
- January 1, 2025, for any existing Reporting Company that was formed before January 1, 2024, and any foreign Reporting Company that was authorized to do business in the United States or any particular State before January 1, 2024



Questions?