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## **Is Financial Crime Going Viral? Money Laundering, Fraud and Ponzi Schemes in the Pandemic Era**

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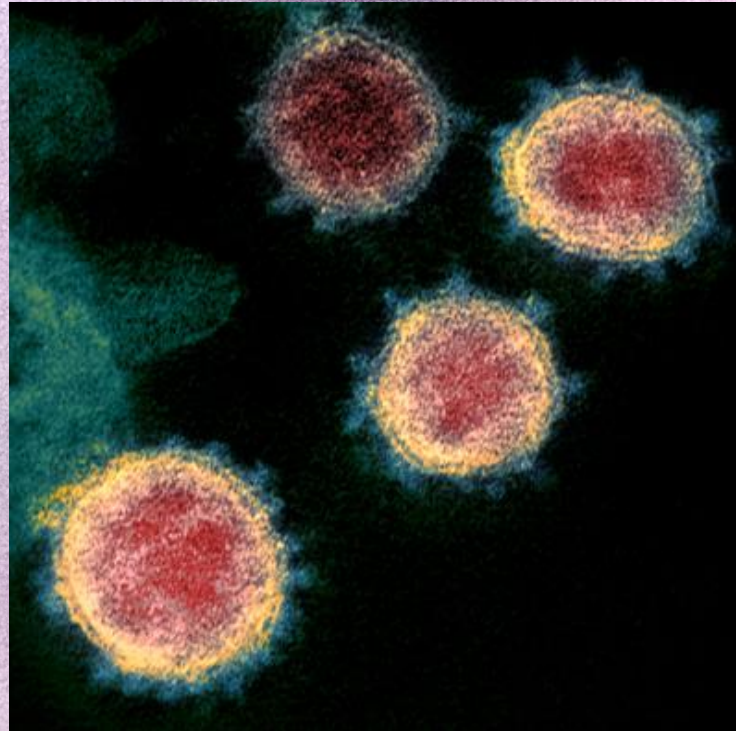
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# Is Financial Crime Going Viral?

Money Laundering, Fraud and Ponzi Schemes in the Pandemic Era

Ross Delston, CAMS | Tim Dunfey, CAMS, CFE



Webinar | Celesq AttorneysEdCenter

January 26, 2020





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## ATTORNEY + EXPERT WITNESS

- \* Specializing in BSA/AML compliance since July 2000
- \* Expert witness on AML compliance and fraud in 15 civil cases including on behalf of US Attorney's Office (SDNY)
- \* Consultant to IMF since 1997 on AML/CFT and banking; participated in nine OFC AML/CFT assessments
- \* Participated in two major U.S. compliance monitorships after imposition of an enforcement penalty: AIG and BNP Paribas
- \* Formerly Consulting Counsel, IMF; Of Counsel, Jones Day; Assistant General Counsel, FDIC; and Counsel, U.S. Export-Import Bank
- \* Co-authored two law review articles on TBML: "Strengthening Our Security: A New International Standard is Needed Now" (2012), and "Reaching Beyond Banks: How to Target TBML and Terrorist Financing" (2009) both in *Case Western Journal of International Law*
- \* Quoted in the New York Times, Washington Post, Wall Street Journal, USA Today, the New Yorker, Bloomberg, American Banker
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# TIMOTHY DUNFEY, CAMS, CFE

## ATTORNEY + BANK COMPLIANCE OFFICER

- \* Independent investigator hired by multiple financial Institutions to investigate complex fraud cases and employee misconduct as well as investigating potential money laundering carried out by customers.
- \* Financial Crimes Compliance Officer for a Credit Card Company.
- \* Certified Anti-Money Laundering Specialist (CAMS) and Certified Fraud Examiner (CFE).
- \* Member of a team of advisors representing the Board of Directors at one of the world's largest banks regarding anti-money laundering control deficiencies.
- \* Compliance Officer at a US based global bank managing a team of 50 analysts conducting annual due diligence reviews for the highest risk customers across five lines of business – private banking, international banking, brokerage, retail and correspondent banking.
- \* Advisor to multiple global banks regarding the implementation of process improvements to address regulatory criticism.

[www.bankregulatory.com](http://www.bankregulatory.com)

## Agenda: Five types of pandemic fraud

1. Stockpile fraud [advance fee fraud]
2. TBML using PPEs (or other goods in high demand)
3. Coronavirus-related fraud trends
4. Testing and vaccination fraud
5. Ponzi schemes in the pandemic

**Bonus segments:** Red flags for fraud and CDD tips



# 1. Stockpile fraud using PPEs

Yes to mask and gloves but cape not mandatory!





It's a good idea for PPEs to be worn correctly, however



# Background: Shortages and price gyrations

- Prices of traditional commodities are gyrating given the global recession
- Shortages of some consumer products developed at the start of the pandemic
- Panic buying drove up prices (e.g., wheat and rice globally, eggs in the US)



# Background: Even greater challenges with PPEs and other medical equipment

- Personal protective equipment (masks, gloves, gowns, in short supply)
- Traditional suppliers such as China were hard hit initially, India currently
- PPEs needed everywhere at once since global disaster, unlike most epidemics that are localized (SARS, Ebola, hurricanes, typhoons)

# Background: Other pricing challenges

- Certain medicines (e.g., chloroquine, hydroxychloroquine, sometimes combined with azithromycin (Z-Pak) have been recommended by public figures in the US, Brazil and Nigeria
- And a combination of panic buying, stockpiling by governments and public clamor have consumed large numbers of doses for these mundane drugs





**This is a lot  
to swallow**

# 1. PPE Stockpile Fraud

- Business has a ‘secret source’ of Personal Protective Equipment (PPEs) such as N95 masks, gloves and gowns.
- Or demands payment up-front to expedite delivery (advance-fee fraud).



# 1. Stockpile Fraud: Advance Fee Fraud

- According to the FBI: “An advance fee scheme occurs when the victim pays money to someone in anticipation of receiving something of greater value—such as a loan, contract, investment, or gift—and then receives little or nothing in return.” <https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/advance-fee-schemes>
- “Type of fraud in which businesses or individuals are required to pay a fee before receiving promised stocks, services, money, or products, which ultimately are never given. The targets of the fraud—which include businesses and individuals—receive a solicitation . . . promising that a large sum of money will be deposited into the target’s bank account. To ensure this, the recipient of the letter is asked to pay a percentage of the total amount that purportedly will be wired or transferred.” <https://www.britannica.com/topic/advance-fee-fraud>

# PPE Stockpile Fraud, cont.

- \* But legitimate banking customers have one or more of:
  - An existing business in the PPE field;
  - An operating website;
  - Ratings or reviews on Amazon or Google; and
  - CEO with relevant experience.



# Other types of PPE fraud: Quality issues

- \* N95s vs. KN95s, American vs. Chinese:  
According to a September 2020 report, up to 70% of imported KN95s don't meet US standards, see <https://www.ecri.org/press/up-to-70-of-chinese-kn95-masks-tested-by-ecri-dont-meet-minimum-standards>
- \* Counterfeit 3M N95s
- \* The refugee life vest example, see <https://www.who.int/bulletin/volumes/94/6/16-020616/en/>

## 2. Let's talk about TBML



Container ships get bigger all the time

Source: Wikipedia



## What is TBML? The FATF Definition

“The process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins. In practice, this can be achieved through the misrepresentation of the price, quantity or quality of imports or exports.”

## 2. TBML using PPEs

- Can involve over- or under-invoicing
- Therefore pricing always a factor in assessing transaction
- But prices of PPEs, along with crude oil, foodstuffs and other products have been gyrating in the pandemic



**Are we  
having fun  
yet?**

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# TBML using PPEs: Hypothetical case

- \* Import/Export company and value transfers –
  - Mask costs .10 cents;
  - Company buys 1,000,000 (\$100,000);
  - Then sells the same masks to a Panamanian company for \$10 each (\$10,000,000).



# TBML using PPEs

- Company's stated rationale: "I already have a buyer lined up in Brazil. I'm going through Panama to take advantage of the free trade zone."
- The first company has just shifted \$9,900,000 to the Panamanian company.

### 3. COVID-related fraud trends are worth studying

These so-called schemes change all the time!





# Coronavirus Cocktail 'Cures'

- \* Prescriptions for unproven 'cures' such as chloroquine and hydroxychloroquine paired with an antibiotic such as azithromycin (Z-Pak).
- \* These are real drugs used for real maladies: Chloroquine an anti-malarial; hydroxychloroquine for auto-immune diseases such as lupus; and antibiotics for bacterial infections, not viruses.
- \* Company may actually provide medications, treatments or prescriptions but still a scam.



# Fraud Trends: CARES Act and PPP Fraud

## \* CARES Act Fraud –

\$650 Billion Program where false tax returns, fake income documents and 20 minutes online can return millions. It will take years for the fraud to be uncovered as disgruntled ex-partners, ex-employees, ex-wives and accountants will turn violators in.

Special Inspector General for Pandemic Recovery ([www.sigpr.gov](http://www.sigpr.gov)) - Online portal where anyone can report fraud. Expectation is that an estimated \$65 Billion in fraud will be detected and possible recovered.

## \* Cyber Crime –

As broader range of consumers become more comfortable paying online (older, less educated) and increasingly use public networks to access personal information. “Hacking rings” backed by organized crime in Eastern Europe and state actors in Asia will take advantage.

NY FRB on 6-25-20: FI’s have to sustain and in some cases improve cyber security and anti-money laundering programs. The pandemic is no excuse to lower your guard... **There is a heightened need for cyber-vigilance.”**

NY FRB Cyber Risk and the US Financial System: A Post Mortem Analysis (June 2020) See.

[https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr909.pdf?mod=article\\_inline](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr909.pdf?mod=article_inline)

# 4. Testing and vaccines

- \* Approx. 137 different types of tests (as of 12/29/2020) for COVID have been approved by FDA, changing by the minute.
- \* All the other companies marketing test kits should be viewed with great skepticism.
- \* DOJ's first pandemic fraud case was about vaccination kits supposedly from the WHO (see next slide). The moral of the story? No criminal deed is too odious.
- \* According to the NY Times, DHS agents are targeting websites purporting to offer vaccines by masquerading as real pharma companies called "Operation Stolen Promise," see <https://www.nytimes.com/2020/12/18/us/politics/homeland-security-vaccine-scams.html?searchResultPosition=6>
- \* Illegally distributing the vaccine has already occurred in New York - administering the vaccine to patients ahead of the prescribed distribution priority – call it line jumping.

# DOJ's First Pandemic Fraud Case

 An official website of the United States government [Here's how you know](#) ▾



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FOR IMMEDIATE RELEASE

Sunday, March 22, 2020

## Justice Department Files Its First Enforcement Action Against COVID-19 Fraud

### Federal Court Issues Temporary Restraining Order Against Website Offering Fraudulent Coronavirus Vaccine

The Department of Justice announced today that it has taken its first action in federal court to combat fraud related to the coronavirus (COVID-19) pandemic. The enforcement action filed today in Austin against operators of a fraudulent website follows Attorney General William Barr's recent direction for the department to prioritize the detection, investigation, and prosecution of illegal conduct related to the pandemic.



## 4. Testing and vaccines, cont.

According to the NY Times (12/18/2020), “ICE, best known for its division that deports unauthorized immigrants, has investigated more than 500 cases involving counterfeit protective gear, test kits, medications or websites offering illegal vaccines and treatments. The agency conducted another nearly 240 investigations into loan fraud when online fraudsters shifted this summer to schemes claiming to issue pandemic unemployment assistance.

The work of the operation has resulted in more than 180 arrests and in the seizure of more than \$27 million in illicit profits. Most of those efforts have been focused on personal protective equipment, but about two months ago, Mr. Francis called together companies that were expected to develop the vaccine to prepare for the next stage of fraud.

\* \* \*

But most of the online fraudsters are setting up on traditional websites, seeking customers who want to be safe from the coronavirus.”

<https://www.nytimes.com/2020/12/18/us/politics/homeland-security-vaccine-scams.html?searchResultPosition=6>

Be careful –  
There are  
pirates out  
there!





# 5. Ponzi Schemes – The Basics

- \* A Ponzi scheme is an investment fraud that pays existing investors with funds collected from new investors. With little or no legitimate earnings, Ponzi schemes require a constant flow of new money to survive. When it becomes hard to recruit new investors these schemes tend to collapse.
- \* After the 2008 financial crisis a number of large Ponzi schemes collapsed (e.g. Madoff, Stanford and Rothstein). All of these fraudsters were “well respected” in their communities or industry and received numerous “awards” from charities. <https://www.sec.gov/files/oig-526.pdf>
- \* It is very possible that the COVID-related economic downturn, like 2008, will reduce the flow of new funds into current Ponzi schemes and result in a number of large collapses.



# 5. Ponzi Schemes – RED FLAGS

- \* **High returns with little or no risk.** Every investment carries some degree of risk, and investments yielding higher returns typically involve more risk. Be highly suspicious of any “guaranteed” investment opportunity.
- \* **Overly consistent returns.** Investments tend to go up and down over time. Be skeptical about an investment that regularly generates positive returns regardless of overall market conditions.
- \* **Unregistered investments.** Ponzi schemes typically involve investments that are not registered with the SEC or with state regulators. Registration is important because it provides investors with access to information about the company’s management, products, services, and finances.
- \* **Unlicensed sellers.** Securities laws require investment professionals to be licensed. Most Ponzi schemes involve unlicensed individuals.
- \* **Secretive, complex strategies.** Avoid it if you don’t understand them or can’t get complete information about them.
- \* **Issues with paperwork.** Statement errors may be a sign that funds are not being invested as promised.
- \* **Difficulty receiving payments.** Ponzi scheme promoters sometimes try to prevent participants from cashing out by offering even higher returns for staying put.

# Ponzi Schemes

- \* If it's too good to be true, it probably isn't.

“Madoff’s returns really are **too good to be true.**” said an independent investigator who submitted a complaint to the SEC’s Boston field office 8 years before the Ponzi scheme collapsed.

<https://www.sec.gov/files/oig-509-exec-summary.pdf>

- \* Trust your gut – don’t talk yourself out of a healthy skepticism.
- \* Ask questions, and question all of their answers!



# Selected **red flags** for fraud

Did  
you  
say  
**red?**



# Common Red Flags for Fraud

- \* Extremely rapid growth – often after only a few years in business.
- \* Sales or asset growth and above-market ROI regardless of market conditions.
- \* Use of an accounting firm that doesn't match the size and complexity of the business (Madoff, Stanford).



# Common Red Flags, cont.

- \* Frequent transfers to and from related third parties – including other businesses they own using their bank or other banks.
- \* A disproportionately high level of compensation or compensation is derived from bonuses and/or family members employed by business at high salaries.
- \* Inappropriate investments given degree of risk – or no discernable investments at all.

# Common Red Flags, cont.

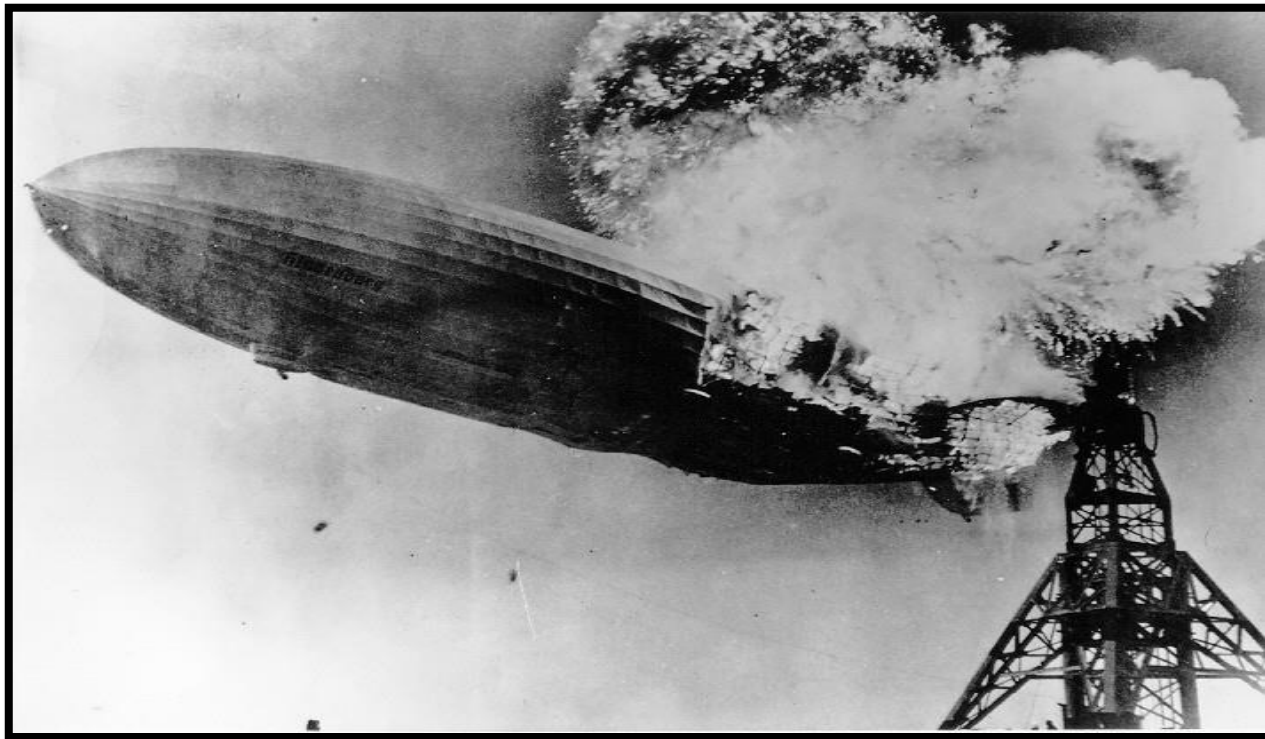
- \* Journal entries (within same bank) or outgoing transfers to accounts at other banks that don't make sense:
  - The non-investment scheme – lots of transfers but no investments.
  - Taking of excessive profits, off the top.
  - Multiple incoming and outgoing transfers involving multiple shell companies, often located in offshore financial centers.



# The solution: Customer Due Diligence (CDD)

- \* Use Google, LexisNexis, public databases, local criminal court records and PACER (Federal courts).
- \* Conduct negative news searches.
- \* Google home and business addresses:  
Commensurate with type of position and/or stated income?

# Compliance failures **burn**, then crash and **burn**



1937 Hindenburg Disaster [Source: Wikipedia]



# Conclusions

- \* Any individual or firm who buys, sells or distributes PPEs, meds or equipment that is specifically targeted to the pandemic should receive E2D2 (Extra EDD).
- \* Any investment scheme that is marketing consistent above-market returns and/or is aimed at foreign investors also problematic.
- \* Criminals will always find new ways to steal money or use the financial system to disguise illicit funds. In this regard COVID-19 has created an opportunity for more cyber fraud, loan fraud and consumer fraud. Likewise, those who seek to launder money will use the sense of urgency created by the pandemic to more effectively launder funds.
- \* Financial crime risks have changed due to COVID-19. Examine how your bank has responded to the pandemic and make a sober assessment of your controls after the crisis. Make changes where needed.

# Question time

“We’ve got questions  
for all your answers”

Philosophy Dept., University of Missouri – St. Louis



No need  
to wring  
your hands  
– just ask  
a question

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# Resources – Pandemic Fraud

## Pandemic fraud:

- \* R. Delston, “Five Typologies for Fraud During the Coronavirus Pandemic and How to Avoid Them” (April 5, 2020), see [https://www.martindale.com/legal-news/article\\_law-office-of-ross-delston\\_2525009.htm](https://www.martindale.com/legal-news/article_law-office-of-ross-delston_2525009.htm)
- \* Financial Crimes Enforcement Network (FinCEN), “Advisory on Medical Scams Related to the Coronavirus Disease 2019 (COVID-19)” (May 18, 2020). See: <https://www.fincen.gov/sites/default/files/advisory/2020-05-18/Advisory%20Medical%20Fraud%20Covid%2019%20FINAL%20508.pdf>
- \* Financial Crimes Enforcement Network (FinCEN), “FinCEN Asks Financial Institutions to Stay Alert to Covid-19 Vaccine-Related Scams and Counterattacks” (December 28, 2020), see <https://www.fincen.gov/sites/default/files/shared/COVID-19%20Vaccine%20Notice%20508.pdf>
- \* NY State Executive Order No 202.86: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency, (December 28, 2020), see <https://www.governor.ny.gov/news/no-20286-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>
- \* NY FRB Cyber Risk and the US Financial System: A Post Mortem Analysis (June 2020) See. [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr909.pdf?mod=article\\_inline](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr909.pdf?mod=article_inline)
- \* Special Inspector General Report to Congress (August 3, 2020) see, [https://www.sigpr.gov/sites/sigpr/files/2020-09/SIGPR-Initial-Report-to-Congress-August-3-2020\\_0.pdf](https://www.sigpr.gov/sites/sigpr/files/2020-09/SIGPR-Initial-Report-to-Congress-August-3-2020_0.pdf)
- \* U.S Securities and Exchange Commission. Protect Your Investment <https://www.investor.gov/introduction-investing/investing-basics/glossary/ponzi-schemes>



# Resources – Trade Based Money Laundering (TBML)

- \* R. Delston, “The 41<sup>st</sup> FATF Recommendation: Why preventive measures targeting trade-based money laundering should reach beyond banks,” *ACAMS Today* (July/August 2008), originally published in *Money Laundering Bulletin* (London, March 2008), available at: [https://www.martindale.com/legal-news/article\\_law-office-of-ross-delston\\_2522171.htm](https://www.martindale.com/legal-news/article_law-office-of-ross-delston_2522171.htm)
- \* R. Delston & S. Walls, “Reaching Beyond Banks: How to Target Trade-based Money Laundering and Terrorist Financing Through Preventive Measures Outside the Financial Sector,” 41 *Case Western Reserve Journal of International Law* 85 (2009), see [www.martindale.com/international-trade-law/article\\_Ross-S-Delston\\_738600.htm](http://www.martindale.com/international-trade-law/article_Ross-S-Delston_738600.htm)
- \* R. Delston & S. Walls, “Strengthening Our Security: A New International Standard on Trade-Based Money Laundering is Needed Now,” 44 *Case Western Reserve Journal of International Law* 737 (2012), see: [https://www.martindale.com/legal-news/article\\_law-office-of-ross-delston\\_2522163.htm](https://www.martindale.com/legal-news/article_law-office-of-ross-delston_2522163.htm)
- \* Financial Action Task Force (FATF), “Trade-Based Money Laundering,” (June 2006), see <http://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundersing.html>
- \* Financial Action Task Force (FATF), “Best Practices Paper on Trade-Based Money Laundering” (June 2008), see <http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf>
- \* Bankers Association for Finance and Trade (BAFT), *Combatting Trade Based Money Laundering: Rethinking the Approach* (August 2017), see [https://baft.org/docs/default-source/marketing-documents/baft17\\_tmbl\\_paperf246352b106c61f39d43ff00000fe539.pdf?sfvrsn=2#\\_ga=2.83898777.1292929771.1609189188-1314415149.1609189188](https://baft.org/docs/default-source/marketing-documents/baft17_tmbl_paperf246352b106c61f39d43ff00000fe539.pdf?sfvrsn=2#_ga=2.83898777.1292929771.1609189188-1314415149.1609189188)
- \* Financial Action Task Force (FATF) and the Egmont Group, “Trade-Based Money Laundering: Trends and Developments,” (December 2020), see <http://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-based-money-laundering-trends-and-developments.html>



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