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# Dealing with Laundering in the Swiss Art Market: New Legislation and its Threat to Honest Traders

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# DEALING WITH LAUNDERING IN THE SWISS ART MARKET: NEW LEGISLATION AND ITS THREATS TO HONEST TRADERS

*Katie L. Steiner<sup>1</sup>*

*On January 1, 2016, new regulations took effect in Switzerland that impact the country's art market. The laws aim to close channels for laundering money and illicit antiquities within the art trade. Because the art market's opacity provides attractive conditions for launderers, Switzerland's new regulations introduce greater transparency in transactions for high-value works of art and in duty-free art-storage facilities, such as the Geneva freeport. The Geneva warehouse serves an international clientele of art collectors, who have traditionally stored works of art in the facility anonymously and indefinitely, without adverse tax consequences. The freeport provides essential services for honest collectors who wish to protect their holdings secretly and securely. In addition, the freeports offer an ideal climate for an emerging class of art investors, who buy and store works until they appreciate in value. By requiring greater transparency within the Swiss art market in an effort to curb illicit activity, the new regulations threaten to undermine the conditions that support the interests of legitimate art traders. Because Switzerland introduced its regulations unilaterally, Swiss art traders should advocate for self-regulation within the international art market in order to level the competitive playing field and preserve the conditions of confidentiality that honest traders depend on.*

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I. INTRODUCTION

Switzerland is home to one of the world’s most robust art markets.<sup>2</sup> It serves an international clientele of collectors and collecting institutions by offering a broad range of amenities, including auction houses, important sale venues, and secure art storage. The Swiss art market, like the art market as a whole, has traditionally enjoyed little governmental regulation.<sup>3</sup> Recently, however, Switzerland has introduced new measures to combat laundering opportunities in the art trade. These efforts reflect broader international attempts to close avenues for terrorist financing, as well as the trade in illicit cultural

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2. Nadja Capus, *Country Report: Combating Money Laundering in Switzerland*, in *COMPARATIVE GUIDE TO ANTI-MONEY LAUNDERING* 114, 182 (Mark Pieth & Gemma Aiolfi, eds., 2004).

3. See Toby Hill, *The Art Market: Unregulated, Unscrupulous, and Worth Billions*, ARTLYST (Nov. 12, 2012), <http://www.artlyst.com/articles/the-art-market-unregulated-unscrupulous-and-worth-billions> [<https://perma.cc/5ZLM-QHLB>] (“Apart from drugs, art is the biggest unregulated market in the world.”).

property.<sup>4</sup> Yet Switzerland's new regulations, in effect as of January 1, 2016, may give rise to a number of unintended consequences.<sup>5</sup> Specifically, the measures threaten to undermine the valuable services and favorable legal and economic conditions that allow the country's legitimate art market to thrive. In addition, Switzerland's regulations could drive art collectors—including innocent ones—to similar but less controlled markets in other countries, thereby driving valuable business away, while doing little to stem laundering practices in the art market globally.<sup>6</sup>

This paper analyzes the delicate balance between curbing criminal activity and protecting the interests of honest buyers, sellers, and dealers in one of the world's most important art markets. It examines key aspects of the Swiss art trade, especially the role that secure, confidential, and duty-free storage facilities play in maintaining the market's vibrancy. It argues that Switzerland's new regulations, which aim to combat laundering by requiring greater transparency in cash transactions and storage warehouses, threaten to eliminate the conditions of secrecy and confidentiality that are vital to legitimate art-market actors. Finally, the paper proposes a way forward for the honest traders in the Swiss art market who face competitive disadvantages and diminished services in light of the legislation. By promoting self-regulation within the international art trade, Swiss art dealers stand the best chance of leveling the commercial playing field while curtailing illegal activity and preserving the confidentiality on which many collectors depend.

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4. See Financial Action Task Force, *Money Laundering Vulnerabilities of Free Trade Zones*, ¶ 7 (Mar. 2010), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf> [<https://perma.cc/4QZU-X92U>] (“Free trade zones . . . present a unique money laundering and terrorist financing threat.”).
  5. Isabelle Eichenberger, *Art: The New Frontier in the Fight Against Money Laundering*, SWISSINFO (June 1, 2015, 11:00 AM), [http://www.swissinfo.ch/eng/opaque-art\\_art--the-new-frontier-in-the-fight-against-money-laundering/41461526](http://www.swissinfo.ch/eng/opaque-art_art--the-new-frontier-in-the-fight-against-money-laundering/41461526) [<https://perma.cc/6R5Y-3PMX>]; Henri Neuendorf, *Switzerland's Tough New Stance on Freeports Will Shake the Art World*, ARTNET (Nov. 19, 2015), <https://news.artnet.com/market/switzerland-freeport-regulations-367361> [<https://perma.cc/5NKD-FW73>].
  6. Sophia Yan, *Where the Rich Stash Their Toys*, CNN MONEY (Apr. 8, 2014, 6:04 AM), <http://money.cnn.com/2014/04/08/news/economy/freeports-art-luxury/index.html?iid=EL> [<https://perma.cc/33R6-QCRN>].

## II. THE VALUE OF THE SWISS ART MARKET: TWO KEY FEATURES

### *A. Contemporary Art Sales*

A brief survey of the Swiss art market's distinguishing characteristics, and its economic value in general, demonstrates the high stakes involved in the country's new anti-laundering legislation. Switzerland plays a key role in the \$75 billion global art market, ranking among the world's top five trading centers, along with France, England, Germany, and the United States.<sup>7</sup> Major auction houses, including Christie's and Sotheby's,<sup>8</sup> as well as numerous private dealers, operate in Switzerland.<sup>9</sup> The country plays its most publicized role in the art market during Art Basel, the contemporary art fair staged in Basel each June.<sup>10</sup> The event has emerged as the world's most important venue for buyers and sellers of twentieth and twenty-first century art, attracting 284 galleries from 33 countries in 2015.<sup>11</sup>

### *B. Art Storage*

Switzerland attracts foreign collectors not only because of major events such as Art Basel, but also because of its political and financial stability, which produce favorable conditions for buying and storing valuable works of art.<sup>12</sup> In fact, one commentator has posited that "Switzerland's most important role on the international art market is probably as an interim depository for art objects."<sup>13</sup> Among the storage options available to collectors are the so-called freeports, or duty-free

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7. Capus, *supra* note 2, at 182; Eric Reguly, *The Link Between Art and Money Laundering*, GLOBE AND MAIL (Sep. 4, 2015, 10:24 AM), <http://www.theglobeandmail.com/report-on-business/international-business/european-business/economists-urge-tighter-regulations-to-curb-money-laundering-in-art-market/article26217852/> [https://perma.cc/4E8R-87ES] (providing the value of the global art market for 2014).
  8. *Salesrooms and Offices*, CHRISTIE'S, <http://christies.com/locations/> [https://perma.cc/964V-YTM6] (last visited Feb. 21, 2016); *Locations*, SOTHEBY'S, <http://www.sothebys.com/en/inside/locations-worldwide.html> [https://perma.cc/5SNE-VBFH] (last visited Feb. 21, 2016).
  9. See *Members*, SWISS ASSOCIATION OF DEALERS IN ANTIQUES & ART, [http://swissarttrade.com/site\\_gb/mitglieder.html](http://swissarttrade.com/site_gb/mitglieder.html) [https://perma.cc/32HP-WZY8] (last visited Mar. 13, 2016).
  10. *The Show*, ART BASEL, <https://www.artbasel.com/basel/the-show> [https://perma.cc/Z3BL-AWLTV] (last visited Feb. 21, 2016).
  11. Eichenberger, *supra* note 5; Maximiliano Durón, *Preview Art Basel 2015*, ARTNEWS (June 12, 2015, 10:02 AM), <http://www.artnews.com/2015/06/12/preview-art-basel-2015/> [https://perma.cc/775U-UBJM].
  12. Eichenberger, *supra* note 5.
  13. DIRK BOLL, ART FOR SALE: A CANDID VIEW OF THE ART MARKET 64 (2010).

warehouses located in Geneva, Basel, Zurich, and Chiasso.<sup>14</sup> Freeports emerged in Switzerland in the mid-nineteenth century to provide temporary storage for grain and other commodities in transit to a final destination.<sup>15</sup> Over time, the Geneva freeport has evolved to specialize in storing art and other valuables, often for extended durations.<sup>16</sup>

### 1. Freeport Mechanics

The canton of Geneva is the majority shareholder in the Geneva freeport.<sup>17</sup> Rather than managing it directly, the canton leases the facility to a private firm that operates it.<sup>18</sup> The cost of rental space in the facility varies, but estimates range from approximately \$1,000 for a medium-sized painting to \$5,000–\$12,000 for a small room that can accommodate multiple objects.<sup>19</sup>

The search for safe investments following the global financial crisis and the subsequent surge in art collecting means that demand for freeport space is high.<sup>20</sup> Business is strong in Geneva, where the freeport generates approximately CHF 10 million annually for the canton.<sup>21</sup> In 2014, the freeport expanded to a new building, which provides an additional “10,400 [square meters of] high security rental space” for clients.<sup>22</sup> The precise contents and value of the goods stored in the Geneva warehouse are unknown, but reports estimate that Switzerland’s freeports together house CHF 100 billion in property, approximately 40% of which is art and antiques.<sup>23</sup> New regulations

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14. *Free Ports*, WITHERS WORLDWIDE, <http://www.withersworldwide.com/news-publications/free-ports--2.pdf> [https://perma.cc/22F9-YRYW].
  15. *Free-ports, or the Elusive Treasure Chests of Art*, PRIVATE ART INVESTOR (Oct. 16, 2105), <http://www.privateartinvestor.com/news/free-ports-or-the-elusive-treasure-chests-of-art/> [https://perma.cc/YM5K-TVRT].
  16. BOLL, *supra* note 13, at 64.
  17. *Über-Warehouses for the Ultra-Rich*, ECONOMIST (Nov. 23, 2013), <http://www.economist.com/news/briefing/21590353-ever-more-wealth-being-parked-fancy-storage-facilities-some-customers-they-are> [https://perma.cc/HD8H-EAXU].
  18. *Id.*
  19. *Id.*
  20. *Message concernant la modification de la loi sur les douanes* [Message Concerning the Modification to the Law on Customs] Mar. 6, 2015, FF 2015 2657, 2667 (Switz.), available at <https://www.admin.ch/opc/fr/federal-gazette/2015/2657.pdf> [https://perma.cc/V4RK-N649].
  21. *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15.
  22. *About Us: Company Milestones*, GENEVA FREE PORTS & WAREHOUSES, LTD., <http://geneva-freeports.ch/en/> (last visited Feb. 21, 2016) [https://perma.cc/TE4X-S7DP].
  23. Eichenberger, *supra* note 5.

targeting the warehouses therefore have significant business interests at stake.

Freeports are designed to reduce barriers to trade by decreasing “the number of transactional events at which some customs or tax might be collectable.”<sup>24</sup> Because goods stored in freeports are understood to be “in transit,” an owner defers all customs duties and tax liabilities until the goods leave the warehouse.<sup>25</sup> The freeports are therefore “free” not only because of this deferral, but also because owners pay no value-added taxes on goods sold within the warehouses.<sup>26</sup> The tax advantages permitted by the freeports have “tend[ed] to transform [them] into long-term holding zones,” where owners store property indefinitely, and where it may change hands several times without attracting a levy.<sup>27</sup>

Although numerous freeports exist globally, only the Geneva freeport and five others—located in Singapore, Monaco, Beijing, Luxemburg, and Delaware—specialize in storing works of art.<sup>28</sup> These facilities cater to collectors not only because they offer tax advantages and deferred customs duties, but also because they provide tight security and other art-related services.<sup>29</sup> High-tech security measures are a hallmark of these facilities, whose clientele include museums, dealers, collectors, and art investors.<sup>30</sup> The Geneva freeport reportedly houses not only works of art, but also fine wine, precious metals, and automobiles.<sup>31</sup> Some dealers also operate galleries and showrooms in the freeport to facilitate the financially advantageous intra-warehouse sales, transforming the “temporary” storage site into a fixed retail space.<sup>32</sup>

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24. Nicholas O'Donnell, *Domestic Freeports Come to the U.S.*, PRIVATE ART INVESTOR (Oct. 29, 2015), <http://www.privateartinvestor.com/owning-art/domestic-freeports-come-to-the-us/> [https://perma.cc/NQT4-38K9].
  25. Simon Bradley, *The Discrete Bunkers of the Super Rich*, SWISSINFO (July 9, 2014, 11:00 AM), <http://www.swissinfo.ch/eng/the-discreet-bunkers-of-the-super-rich/40474208> [https://perma.cc/7EMR-VEP2].
  26. *Id.*
  27. *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15; *Über-Warehouses*, *supra* note 17.
  28. *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15; DELAWARE FREEPORT, <http://www.delawarefreeport.com/> [https://perma.cc/EX3D-NZW6] (last visited Feb. 21, 2016).
  29. *Über-Warehouses*, *supra* note 17.
  30. *Über-Warehouses*, *supra* note 17.
  31. David Segal, *Swiss Freeports are Home for a Growing Treasury of Art*, N.Y. TIMES (July 21, 2012), [http://www.nytimes.com/2012/07/22/business/swiss-freeports-are-home-for-a-growing-treasury-of-art.html?\\_r=0](http://www.nytimes.com/2012/07/22/business/swiss-freeports-are-home-for-a-growing-treasury-of-art.html?_r=0) [https://perma.cc/6T6N-G4YB].
  32. *Id.*

Traditionally, the freeports have further catered to collectors by offering discrete and confidential storage.<sup>33</sup> The precise contents of the warehouses are unknown, due in part to the limited reporting requirements imposed on the warehouse managers.<sup>34</sup> Since 2009, Swiss law has required freeport managers to maintain inventories of the warehouse contents and the names of the individuals entitled to dispose of the property.<sup>35</sup> Customs officials also have the power to conduct inspections.<sup>36</sup> Yet neither measure facilitates meaningful disclosure: warehouse officials only share records with customs officials upon request, and customs officials have no obligation to share inventory information with foreign authorities.<sup>37</sup> As such, the freeports have traditionally afforded collectors with a high degree of confidentiality, requiring neither public disclosure of their identity nor the precise details of their holdings.

## 2. Benefits of the Freeports for Legitimate Art-Market Actors

The Swiss freeports benefit two main types of legitimate art collectors: those who wish to avoid the gratuitous risks of keeping valuable property at home by seeking secret and secure storage, and those who collect art for investment purposes.<sup>38</sup>

The first type of collector highlights the essential role that safe, confidential art storage plays in the legitimate marketplace. Secrecy can foster abuse, but it can also promote valid privacy objectives. In banking, for instance, Switzerland and other secrecy jurisdictions justify their practices in part based on the need to provide protections for political dissenters and persecution victims, whose assets may be confiscated by intolerant government regimes or other extortionists if known.<sup>39</sup> Discretion within the art market often benefits collectors for comparatively mundane reasons, such as avoiding embarrassing inquiries that might arise from the sale of a family heirloom in a time

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33. *Über-Warehouses*, *supra* note 17.

34. *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15.

35. LOI SUR LES DOUANES [LD] [Law on Customs] Mar. 18, 2005, SR 631.0, art. 66 (Switz.), available at <https://www.admin.ch/opc/fr/classified-compilation/20030370/index.html#app1> [<https://perma.cc/E39S-PX7S>]; *Über-Warehouses*, *supra* note 17.

36. LD, *supra* note 35, at art. 62.

37. *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15; *Über-Warehouses*, *supra* note 17.

38. Segal, *supra* note 31.

39. MARY ALICE YOUNG, BANKING SECRECY AND OFFSHORE FINANCIAL CENTERS: MONEY LAUNDERING AND OFFSHORE BANKING 135 (2013).



of economic distress.<sup>40</sup> Yet secrecy and discretion can protect art collectors from the designs of criminals as well. Valuable collections may be subject to undue risks of theft if kept at home, making private and secure storage a prudent option.<sup>41</sup> As one London dealer pointed out, “most of the learned societies in this country do not publish a list of their fellows or members . . . [b]ecause . . . such is the world that the burglars or whoever say ‘oh, that’s handy.’”<sup>42</sup> Keeping collections confidential therefore helps to thwart loss at the hands of thieves.

Critics who question the need to protect collector confidentiality often argue that collectors regularly compromise their own security by publishing catalogues of their holdings.<sup>43</sup> Although the practice may be common, not all collectors choose to pursue it, suggesting that privacy remains an essential commodity for many within the art market.

The second major category of legitimate collectors who benefit from the freeport system are art investors. This “new species of collector” often pursues lucrative opportunities in the rapidly expanding modern and contemporary art market.<sup>44</sup> As one collector has explained, “Monet and Picasso are like Microsoft and Coca-Cola,” providing secure investments akin to blue-chip stocks.<sup>45</sup> In fact, some data suggests that art and other collectibles have outperformed stocks since at least the 2008 market crash, contributing to the growing popularity of art investments.<sup>46</sup> At Art Basel, for example, “sharks” drawn to the contemporary art market, which has seen surging prices in the last five years, may speculate on a work by an emerging talent, store it in a tax-

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40. S. R. M. MACKENZIE, GOING, GOING, GONE: REGULATING THE MARKET IN ILLICIT ANTIQUITIES, 48 (2005).

41. Segal, *supra* note 31.

42. MACKENZIE, *supra* note 40, at 49.

43. MACKENZIE, *supra* note 40, at 50.

44. Mostafa Heddaya, *Does the Art Market Need Regulation?*, BLOUINARTINFO (Feb. 3, 2015), <http://www.blouinartinfo.com/news/story/1077893/does-the-art-market-need-regulation> [<https://perma.cc/3DHQ-LN8K>]; *see also* Daniel Grant, *Picture This Investment: Four Investing Pros Discuss the Risks and Rewards of Buying Art*, WALL ST. J. (Dec. 15, 2013, 4:01 PM), <http://www.wsj.com/articles/what-sort-of-return-are-you-getting-above-your-fireplace-1387056633?tesla=y> [<https://perma.cc/ZL93-HGWY>] (indicating that Old Master and contemporary works rank among the most profitable investments).

45. Susan Adams, *The Art of the Deal*, FORBES (Dec. 14, 2007, 7:20 PM), <http://www.forbes.com/global/2007/1224/076.html> [<https://perma.cc/Z239-CP95>].

46. *Über-Warehouses*, *supra* note 17.

free environment until it appreciates, and then resell it for a profit.<sup>47</sup> Freeport managers, well aware of the opportunities to support one-stop shopping and duty-free storage in Switzerland, regularly attend fairs to attract art-investor clients.<sup>48</sup>

Two main facets of the freeports—secrecy and financial advantages—support the business models that art investors pursue. Because stored works can be kept discretely and out of the public eye for an unlimited period of time, investors can introduce “fresh” works to the market that have not been shopped around or overexposed among collectors.<sup>49</sup> Freeports also allow investors to hold assets until they are profitable enough to sell without incurring tax or other financial liability along the way.<sup>50</sup>

Although the hospitable climate provided by the freeports allows investors to grow their personal wealth, the storage sites also play a role in promoting domestic tourism and charitable giving. For example, owners who remove works from the Swiss freeports but keep the objects in the country for public exhibition will suffer no adverse tax consequences.<sup>51</sup> In addition, works of art that remain on public view for ten of the previous twenty years are exempted from inheritance taxes.<sup>52</sup> Favorable art storage conditions and tax laws therefore work together to bring works of art to Switzerland, show them publicly, and attract tourists, all while continuing to stimulating private collecting.

To summarize, as one industry commentator has put it, “[t]here are legitimate reasons for freeports to exist . . . [Their growth] matches the growth of using objects as a store of value, as a reserve currency, they are essentially physical banks.”<sup>53</sup> In addition, the use of freeports “does not necessarily portend illegal activities.”<sup>54</sup> For speculators with “a very clear intention of reselling, it’s better to try to avoid VAT [Value-Added Tax] legally by putting it in a freeport.”<sup>55</sup> When interest rates are low and investors are looking for new ways to diversify, Swiss art

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47. Heddaya, *supra* note 44; Jeremy Howell, *Is the World’s Art Market Cooling Down?*, BBC NEWS (Dec. 30, 2015), <http://www.bbc.com/news/business-35160416> [<https://perma.cc/K8XC-6AB4>].
48. *Über-Warehouses*, *supra* note 17.
49. See Adams, *supra* note 45 (describing how the Nahmad dynasty of dealers slowly releases its inventory of works by major twentieth-century masters from the Geneva freeport to stimulate market demand).
50. *Über-Warehouses*, *supra* note 17.
51. BOLL, *supra* note 13, at 61.
52. BOLL, *supra* note 13, at 61.
53. Heddaya, *supra* note 44.
54. Heddaya, *supra* note 44.
55. Heddaya, *supra* note 44.

traders have strong incentives to maintain the climate that supports collecting within the domestic market.<sup>56</sup>

### III. LAUNDERING OPPORTUNITIES MADE POSSIBLE BY SWISS ART-MARKET OPACITY

The secrecy and financial advantages offered by the Swiss freeports create conditions that contribute to the health of the domestic art market. Yet the same conditions that support the activities of legitimate collectors also present opportunities for criminal actors.<sup>57</sup>

In recent years, financial authorities have focused greater attention on the art market as an ideal forum for laundering.<sup>58</sup> Laundering refers to the process of converting illegally-obtained assets—the proceeds of crime—into legitimate ones. The art market in particular is “custom-made” for laundering, as one reporter has observed, because “it is unregulated [and] opaque,” meaning that buyers and sellers can conduct transactions as anonymous “private collectors.”<sup>59</sup> This opacity is further enhanced by the fact that “many transactions are settled in cash or in kind.”<sup>60</sup>

In 2010, Switzerland’s Financial Action Task Force issued a report on laundering in the art market, finding that the freeports in particular “present a unique money laundering and terrorist financing threat because of their special status within jurisdictions as areas where certain administrative and oversight procedures are reduced or eliminated in order to boost economic growth through trade.”<sup>61</sup> Two forms of laundering in the art market, involving illicit antiquities and cash, merit further explanation, as does the likely scope of the problems.

#### *A. Laundering Illicit Antiquities*

Since the mid-1990s, a string of incidents involving the Geneva freeport has shed light on the methods used by criminals to launder art

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56. Cynthia O’Murchu, *Art: A Market Laid Bare*, FINANCIAL TIMES (Apr. 7, 2015, 7:49 PM), <http://www.ft.com/cms/s/2/a91a1608-d887-11e4-8a23-00144feab7de.html#axzz42jarNSak> [<https://perma.cc/2VMB-U2BC>].

57. Yan, *supra* note 6.

58. Reguly, *supra* note 7.

59. *Über-Warehouses*, *supra* note 17.

60. *Über-Warehouses*, *supra* note 17.

61. Financial Action Task Force, *supra* note 4, at ¶ 7. *see also* Ashley Fantz, *How ISIS Makes (and Takes) Money*, CNN (Feb. 19, 2015), <http://www.cnn.com/2015/02/19/world/how-isis-makes-money/index.html> [<https://perma.cc/UJ3M-5XXK>] (describing how ISIS maintains a “system of profiteering from antiques thieving” and illustrating that the art market can be used to fund terrorist activity).

objects obtained on the black market, especially looted antiquities.<sup>62</sup> The first major discovery of a laundering scheme managed within the Geneva freeport came to light in 1995, when Swiss police raided the storage unit belonging to the art dealer Giacomo Medici.<sup>63</sup> Authorities found around 3,000 antiquities that the dealer's associates had illegally excavated in Italy and smuggled over the Swiss border.<sup>64</sup> In the freeport, Medici attached a false provenance, or ownership history, to the objects, often claiming that they belonged to an anonymous Swiss private collection and that they were removed from Italy decades earlier, before the periods covered by the international agreements on the protection of cultural property.<sup>65</sup> Based on this false history, Medici secured legal Swiss export papers for the objects, which he regularly sent to the United States for sale on the legitimate art market.<sup>66</sup> There, he arranged for "straw man" buyers to repurchase the objects on his behalf and return them to Switzerland.<sup>67</sup> This elaborate process gave the works a documented provenance, effectively "laundering" them of their black-market origins so that Medici could easily resell them to unsuspecting collectors.<sup>68</sup>

In a similar incident in 2003, Geneva police discovered 200 ancient Egyptian artifacts in the freeport that were found to have been illegally exported to Switzerland.<sup>69</sup> Following this discovery, Switzerland made two important changes to control the illicit artifacts trade. First, in 2003, Switzerland became party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.<sup>70</sup> Before joining the Convention, Switzerland's good-faith purchaser laws imposed high

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62. *Über-Warehouses*, *supra* note 17.

63. *Giacomo Medici*, Cultural Heritage Resource (July 27, 2009, 6:08 PM), <https://web.stanford.edu/group/chr/drupal/ref/giacomo-medici> [<https://perma.cc/V85E-FLFR>].

64. *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15 (clarifying the ability of authorities to search the freeports; customs officers can conduct inventory checks anytime, but Swiss police "need proof of theft or smuggling before inspecting the warehouses.").

65. A. J. G. TIJHUIS, TRANSNATIONAL CRIME AND THE INTERFACE BETWEEN LEGAL AND ILLEGAL ACTOR: THE CASE OF THE ILLICIT ART TRADE AND ANTIQUITIES TRADE, 201-02 (2006).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Über-Warehouses*, *supra* note 17; *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15.

70. TIJHUIS, *supra* note 65, at 202 (indicating that Switzerland joined the 1970 UNESCO Convention in 2003 and that its domestic legislation enacting the Convention took effect in 2005).

barriers on claimants seeking to reconstitute stolen works of art sold in the country.<sup>71</sup> Afterwards, under Switzerland's Cultural Objects Transfer Law, which implemented the UNESCO Convention, good-faith purchaser rules changed to favor claimants.<sup>72</sup> Secondly, Switzerland introduced transparency into the freeport system by revising its customs laws, which took effect in 2009.<sup>73</sup> These laws brought the freeports into the customs territory for the first time (warehouse goods "in transit" had previously been treated as foreign goods) but subjected the facilities to a specific customs regime.<sup>74</sup> The requirements imposed by this regime include the duty of freeport managers to maintain inventories that customs officers can inspect on request.<sup>75</sup>

Despite the introduction of additional safeguards, problems have continued to arise. In 2010, Swiss customs officers discovered a Roman sarcophagus in the Geneva freeport, which was identified as loot from a site in southern Turkey.<sup>76</sup> The incident illustrates how laundered objects can evade the protections afforded by the international agreements on cultural property.<sup>77</sup> Customs inspections, when present, often fail to detect the true nature of imported or exported goods. This failure could stem from corruption, where customs officials accept bribes in exchange for turning a blind eye, or simply from the difficulty of recognizing an authentic antiquity that is being passed off as a fake.<sup>78</sup> Perhaps more importantly, however, the post-2009 sarcophagus discovery illustrates the limitations of a freeport regulatory system that relies on customs oversight alone. The primary duty of customs officials "is to make sure that goods don't get into Switzerland," not to keep tabs on owner identities or other criteria that might help to thwart laundering schemes.<sup>79</sup>

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71. BOLL, *supra* note 13, at 64.

72. BOLL, *supra* note 13, at 64.

73. *Über-Warehouses*, *supra* note 17; *Free-ports, or the Elusive Treasure Chests of Art*, *supra* note 15; LD, *supra* note 35, at arts. 62–67.

74. Caroline Stripp & Pierre Valentin, *Free Ports*, MARTINDALE (Apr. 20, 2010), [http://www.martindale.com/retail-trade/article\\_Withers-Bergman-LLP-Withers-LLP\\_984644.htm](http://www.martindale.com/retail-trade/article_Withers-Bergman-LLP-Withers-LLP_984644.htm) [<https://perma.cc/52CC-GVX5>].

75. LD, *supra* note 35, at art. 66; ORDONNANCE SUR LES DOUANES [OD] [Ordinance on Customs] Nov. 1, 2006, RS 631.01, art. 184 (Switz.), *available at* <https://www.admin.ch/opc/fr/classified-compilation/20052713/index.html#> [<https://perma.cc/3HMP-CJCF>] (elaborating on the requirements of LD, art. 66, to include key data points in the inventory, including an object's country of origin, measurements, value, and details on the person authorized to dispose of it).

76. Bradley, *supra* note 25.

77. TIJHUIS, *supra* note 65, at 125.

78. TIJHUIS, *supra* note 65, at 125.

79. O'Murchu, *supra* note 56.

*B. Money Laundering*

The freeport secrecy that benefitted Giacomo Medici and dealers like him also provides opportunities for money launderers to conceal the true origins of criminal proceeds. Although disclosure requirements govern other trades, buyers and sellers in the art market regularly conduct transactions as anonymous “private collectors.”<sup>80</sup> As such, the true origins of the cash and property exchanged are not always clear.<sup>81</sup>

Swiss officials are acutely aware of the growing international concern over the potential for freeports to support the financial operations of terrorist and illegal drug rings.<sup>82</sup> Laundering schemes vary, but the process could begin when an anonymous black-market buyer purchases a work of art with criminal proceeds paid in cash, which is common for art sales.<sup>83</sup> The buyer could then store the object in the freeports without disclosing her true identity, since she could simply name an agent with the “authority to dispose of the work” on the freeport inventory instead.<sup>84</sup> To recover the investment, the black-market actor could sell the object within the freeport, triggering no duties or reporting requirements and preserving anonymity.<sup>85</sup> Investing “dirty” money in freeport collectibles also decreases the likelihood that courts or other authorities will be able to locate, confiscate, or attach the assets, since customs regulations permit the true beneficial owner of the property to avoid being named on the warehouse inventory.<sup>86</sup>

Other potential money laundering opportunities in the freeports involve art dealers who inflate prices, robbing innocent customers who have no way of verifying the stated prices. For example, in 2015, the billionaire Russian collector and Geneva freeport tenant Dmitry Rybolovlev accused the art dealer Yves Bouvier, who formerly headed the Geneva freeport management company, of grossly overcharging him in a series of sales.<sup>87</sup> In one transaction, Bouvier paid a private collector \$93.5 for an important Modigliani, which he then sold to Rybolovlev

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80. Patricia Cohen, *Valuable as Art, but Priceless as a Tool to Launder Money*, N.Y. TIMES (May 12, 2013), <http://nyti.ms/124yKiT> [<https://perma.cc/3S9Q-J5ZC>].

81. *Id.*

82. Financial Action Task Force, *supra* note 4, at ¶ 7; Bradley, *supra* note 25.

83. Yan, *supra* note 6.

84. LD, *supra* note 35, at art. 66.

85. Yan, *supra* note 6.

86. Yan, *supra* note 6; *see also* *Message concernant la modification de la loi sur les douanes*, *supra* note 20, at 2668 (explaining that the 2016 customs regulations now require the name of the property’s beneficial owner, even though this requirement is easily skirted).

87. O’Murchu, *supra* note 56.

for \$118 million.<sup>88</sup> Rybolovlev accused Bouvier of simply pocketing the difference.<sup>89</sup> Bouvier, for his part, claimed that he bought and sold works for the best prices he could get, and that Rybolovlev himself determined the fair-market value by accepting the costs.<sup>90</sup> The dispute highlights the pronounced opacity of the art market, where prices can be raised and lowered at will and where buyers lack the normal consumer protections available in regulated markets.<sup>91</sup>

The rise of art investing and the expanding tenant clientele of the freeports have led anti-money laundering authorities like the Financial Action Task Force to suggest that criminal activity may also increase.<sup>92</sup> In addition, the non-profit Basel Institute on Governance reported in 2012 on “the high volume of illegal and suspicious transactions involving art.”<sup>93</sup> Concrete statistics on the amount of laundered money invested in the freeports, however, remains scarce.<sup>94</sup> Freeport managers, however, maintain that “the vast majority of their users are above board” and caution that the desire for discretion in storage or financial transactions should not automatically be confused with wrongdoing.<sup>95</sup>

#### IV. SWITZERLAND’S NEW ART MARKET REGULATIONS AND POSSIBLE CONSEQUENCES FOR HONEST TRADERS

Despite the uncertainty surrounding the extent of the laundering activity in the freeports, Switzerland has introduced two new measures to close the loopholes available to criminal actors. In general, the requirements aim to increase transparency in art storage and sales, reducing owner anonymity and increasing certainty over the legal origin of the objects and the proceeds used to purchase them. In an official statement, the Swiss legislature explained that it passed the new regulations for two reasons: first, “to ensure the required transparency towards domestic and foreign authorities on the stored goods”; and second, to strengthen “Switzerland’s position in the fight against money laundering.”<sup>96</sup>

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88. O’Murchu, *supra* note 56.

89. O’Murchu, *supra* note 56.

90. O’Murchu, *supra* note 56.

91. Cohen, *supra* note 80.

92. *Über-Warehouses*, *supra* note 17; *see generally* Financial Action Task Force, *supra* note 4.

93. Cohen, *supra* note 80.

94. Cohen, *supra* note 80.

95. *Über-Warehouses*, *supra* note 17.

96. Stacey Perman, *Freeports in Freefall?*, BARRON’S (Nov. 30, 2015, 10:29 AM), <http://blogs.barrons.com/penta/2015/11/30/freeports-in-freefall/> [<https://perma.cc/YM2Q-5947>].

The new rules represent a preemptive strike by the Swiss legislature to promote market transparency and curtail financial crimes. Other recent financial regulations have tended to be reactive, sometimes following embarrassing mistakes. For example, in 2009, Switzerland settled a dispute between the United States and the United Bank of Switzerland (“UBS”), where UBS admitted to advising American clients on methods of avoiding U.S. tax liability.<sup>97</sup> The settlement led to the signing of a treaty between the IRS and the Swiss Federal Tax Administration, requiring Swiss authorities to report directly to the IRS on American Swiss-bank-account holders.<sup>98</sup> Switzerland’s new regulations targeting the domestic art market represent an outgrowth of the broader crack-down on financial crimes. Yet the measures suggest Switzerland’s new willingness to anticipate, rather than react to, international concerns over laundering in an effort to repair its global reputation.

*A. Reporting Requirements on Art Purchases Could Chill Legitimate Sales*

Beginning January 1, 2016, the Swiss Anti-Money Laundering Regulation will require the involvement of a financial intermediary, such as a credit card company, in property transactions whose amount exceeds CHF 100,000.<sup>99</sup> Alternatively, the seller may perform due-diligence investigations into the buyer’s funds in order to determine the legitimacy of their origins.<sup>100</sup>

The law aims to introduce greater transparency into transactions over moveable property, including art, by providing traders with the choice of one of two options. Under the first option, traders involve a financial intermediary in their transaction, which eliminates the anonymity that cash transactions permit and reduces opportunities for launderers to conceal their identities.<sup>101</sup> The credit card company or bank used in the transaction obtains a record of the activity, which

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97. Carrick Mollenkamp, *UBS, U.S. Talk on Tax Case*, WALL ST. J. (July 12, 2009, 12:01 AM), <http://www.wsj.com/articles/SB124740851535228233>.

98. *Id.*

99. *Loi fédérale sur la mise en oeuvre des recommandations du Groupe d'action financière, révisés en 2012* [Federal Law on the Implementation of the Financial Action Task Force Recommendations, Revised in 2012] Dec. 12, 2014, FF 2014 9465, 9476, art. 9 (Switz.), available at <https://www.admin.ch/opc/fr/federal-gazette/2014/9465.pdf> [<https://perma.cc/FDX5-TZUJ>].

100. *Id.* at 9476, art. 8; Hili Perlson, *Switzerland Cracks Down on Art Market with Tighter Anti Money Laundering Laws*, ARTNET (June 2, 2015), <https://news.artnet.com/market/swiss-money-laundering-art-market-303976> [<https://perma.cc/E3Y3-EBFD>].

101. *Über-Warehouses*, *supra* note 17.



enters the payment system and its mechanisms for detecting fraud.<sup>102</sup> The second option allows the buyer and seller to keep their identities and transaction confidential, as long as the seller takes steps to ensure the legal origins of the buyer's funds.<sup>103</sup>

Though intended to target laundering, Switzerland's new law threatens to punish innocent participants on the art market. Collectors have many legitimate reasons to preserve their anonymity when conducting art transactions, such as not alerting the public at large to their wealth or purchasing activity in the name of safety.<sup>104</sup> In addition, the due-diligence obligations that Swiss dealers face when buyers and sellers wish to avoid the payment system could result in higher costs for all traders, since dealers could pass the expense onto their customers. These costs, as well as the limitations on secrecy, may drive collectors away from events such as Art Basel, and instead toward competing markets—particularly those in Asia—which are subject to fewer regulations.<sup>105</sup> In its commentary on the new regulations, the Swiss legislature recognized the growing competitive pressure on its domestic freeports from those in Luxembourg, Singapore, and elsewhere.<sup>106</sup> Because many of these warehouses are controlled by Swiss shareholders, the economic losses to Switzerland may be less severe.<sup>107</sup> Yet the Swiss art trade has strong incentives for remaining an attractive one-stop shop for art-fair purchases and duty-free storage, since these offerings allow Swiss dealers to capture a fuller range of valuable market opportunities.

*B. Customs Requirements and Time Limits Also Inhibit the Legitimate Art Market While Failing to Eliminate Laundering Opportunities*

1. Background

In late 2015, the Swiss Parliament amended the Swiss Customs Act to introduce additional measures to combat illegal activities in the

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102. Lindsay Clark, *How Banks are Detecting Credit Card Fraud*, COMPUTER WEEKLY, <http://www.computerweekly.com/feature/How-banks-are-detecting-credit-fraud> [https://perma.cc/2MZR-CLE5] (last visited Mar. 13, 2016).

103. *Loi fédérale*, *supra* note 99, at 9476, art. 8.

104. Segal, *supra* note 31.

105. *See Yan*, *supra* note 6 (describing the minimal customs requirements imposed on the Singapore freeport, whose tenants can satisfy inventory reporting obligations using vague terms, such as “painting,” rather than more descriptive indicators of an object's true origin or worth, such as “Van Gogh”).

106. *Message concernant la modification de la loi sur les douanes*, *supra* note 20, at 2667.

107. *Über-Warehouses*, *supra* note 17.

freeports.<sup>108</sup> The legislation stems from a report issued in 2014 by the Swiss Federal Audit Office, which made recommendations to Parliament regarding the freeports.<sup>109</sup> In its findings, the SFAO raised particular concerns regarding the unlimited duration for storing property in the freeports:

. . . the SFAO has found that several warehouses experience very little movement of merchandise, meaning that goods are stored for long periods of time, sometimes several decades. The function of this type of customs warehouse is the management of private or institutional assets and tax optimization for extremely valuable merchandise (artworks, precious metals), which is not in line with the main function of customs warehouses [as temporary storage facilities for goods in transit], or the spirit of the law. Licenses should only be granted for warehouses with regular movement of merchandise.<sup>110</sup>

These findings form the backdrop for the resulting legislation, which uses inventory turn-over in the freeports as a tool to promote greater transparency and reduce opportunities for crime.

## 2. The Rule

Starting January 1, 2016, the Swiss Customs Act will impose a six-month time limit on goods stored in the freeports.<sup>111</sup> The new rule represents a dramatic shift away from the unlimited time periods that tenants in the Swiss freeports have previously enjoyed. The law does, however, permit the Swiss Federal Customs Administration to extend the time limits on stored objects if it finds proper grounds.<sup>112</sup> In addition, the amendments to the Swiss Customs Act impose additional requirements on the freeport managers, who have a duty to identify beneficial owners in the warehouse inventory records, rather than

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108. Art Media Agency, *Switzerland Approves Stricter Regulations on Free Ports*, PRIVATE ART INVESTOR (Nov. 27, 2015), <http://www.privateartinvestor.com/owning-art/switzerland-approves-stricter-regulations-on-free-ports/> [https://perma.cc/KGE2-X2Z9].

109. Swiss Federal Audit Office, *Ports francs et entrepôts douaniers ouverts: Evaluation des autorisations et des activités de contrôle*, 14, CDF-12490 (Jan. 28, 2014), available at [http://www.efk.admin.ch/images/stories/efk\\_dokumente/publikationen/evaluationen/Evaluationen%20%2845%29/12490BE\\_Entrepots\\_douaniers\\_PUBLICATION\\_RAPPORT\\_FINAL.pdf](http://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/evaluationen/Evaluationen%20%2845%29/12490BE_Entrepots_douaniers_PUBLICATION_RAPPORT_FINAL.pdf) [https://perma.cc/J96F-G43G].

110. *Id.*

111. OD, *supra* note 75, at art. 53.

112. OD, *supra* note 75, at art. 157 (indicating that supply-chain problems or the non-conclusion of a sale contract constitute “proper grounds” for granting an extension).

simply the agents empowered to dispose of works of art.<sup>113</sup> The inventory-recording requirements also extend to additional forms of property stored in the freeports, such as wine, furniture, cars, and cigars, in order to curb the expansion of laundering activities into other collecting areas.<sup>114</sup>

While the new regulations on art sales use due diligence and financial intermediaries to improve transparency, the Customs Act amendments aim to reduce secrecy in the art market by encouraging a higher rate of inventory turnover. Tenants will have less freedom to store works of art indefinitely, or at least face more administrative hurdles to ensure long-term storage. As a result, unscrupulous dealers may have fewer opportunities to hide illegally obtained objects from customs authorities.<sup>115</sup>

The new time-limit and inventory-reporting regulations also threaten to impose costs on innocent collectors who use the freeports. The anonymity of honest traders wishing to limit their exposure to theft or loss could be compromised in light of the duty of warehouse managers to list beneficial owners in the inventory.<sup>116</sup> In practice, beneficial ownership is easily concealed by adopting pseudonyms or using agents as stand-ins, but the requirement could be concerning to some freeport tenants who place a premium on confidentiality. In addition, the regulations could deter art investors from doing business in Switzerland, since they require secure storage over long periods of time to allow appreciation to occur.

*C. Two Additional Problems: Punishing the Innocent and Racing to the Bottom*

Switzerland's new laws aimed at dishonest art market participants threaten to punish the innocent, who lose the security of confidential art storage and opportunities to grow art investments over time. The unintended consequences of Switzerland's anti-laundering regulations find an instructive parallel in the "de-risking" trend in banking. Governmental efforts to close loopholes available to terrorist financiers and other financial criminals have imposed new—and often costly—

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113. *Message concernant la modification de la loi sur les douanes*, *supra* note 18, at 2667.

114. Neuendorf, *supra* note 5.

115. OD, *supra* note 75, at art. 53; see also *About Us: Company Profile*, GENEVA FREE PORTS & WAREHOUSES LTD, [http://geneva-freeports.ch/en/\[https://perma.cc/7XHB-UA6T\]](http://geneva-freeports.ch/en/[https://perma.cc/7XHB-UA6T]) (last visited Mar. 13, 2016) (indicating that storage in the Geneva freeport "is not limited in time," and that the six-month time limits imposed under the revised customs laws may be extended indefinitely).

116. *Message concernant la modification de la loi sur les douanes*, *supra* note 20, at 2667.

due-diligence obligations on banks to vet potential customers.<sup>117</sup> Instead of managing the risks and the associated costs, banks instead have increasingly denied services to potential customers who live in countries, such as Somalia, that have higher incidents of terrorist activity and laundering.<sup>118</sup> Innocent individuals who have no connection to laundering, but who live in at-risk parts of the world, therefore lose access to important financial services.<sup>119</sup> Similarly, by closing the loopholes available to art-market launderers, Switzerland threatens to take vital aspects of its art storage services away from innocent customers who have relied on the conditions of secrecy for protection.

By cracking down on laundering unilaterally, without a coordinated international effort, Switzerland also creates anti-competitive conditions for its freeports that may drive tenants to other, less regulated markets. In response to the growing demand for secure art storage in the wake of the art investment boom, newer warehouses in Monaco, Beijing, and Delaware may have an incentive to retain unlimited storage terms and confidentiality policies that favor tenants.<sup>120</sup> In comparison to the European markets in particular, the Chinese art market enjoys comparatively lax regulations, which suggest that innocent collectors—as well as launderers—may migrate to Asia to avoid the disadvantages that Switzerland alone imposed.<sup>121</sup> The conditions create a “race to the bottom,” since the same laundering problems that occur in Switzerland will proliferate in other locations.<sup>122</sup> Laundering in the art market will continue on a global scale while Switzerland loses its valuable share of the art market to jurisdictions with fewer regulations.

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117. Lanier Saperstein & Geoffrey Sant, *Account Closed: How Bank ‘De-Risking’ Hurts Legitimate Customers*, WALL ST. J. (Aug. 12, 2015), <http://www.wsj.com/articles/account-closed-how-bank-de-risking-hurts-legitimate-customers-1439419093> [<https://perma.cc/SFM7-QA68>].

118. *Id.*

119. *Id.*

120. Silke Koltowitz & Paul Arnold, *Freeports Boom Highlights Risks of Shady Activities*, REUTERS (Sept. 22, 2016, 12:34 PM) <http://www.reuters.com/article/us-swiss-freeports-idUSKCN11S1OL> [<https://perma.cc/MW4D-T5MD>].

121. Reguly, *supra* note 7.

122. Thomas Christ & Claudia von Selle, *Basel Art Trade Guidelines*, BASEL INSTITUTE ON GOVERNANCE (Jan. 2012), [https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog\\_working\\_paper\\_12.pdf](https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_12.pdf) [<https://perma.cc/37BR-RHVZ>] (arguing that transactions refused by a regulated art-market actor will “be picked up later by a competitor” who is not).

## V. POTENTIAL SOLUTION: ART MARKET SELF-REGULATION

The new Swiss art-market regulations, having only recently taken effect, are likely to remain a fixture for the foreseeable future.<sup>123</sup> By taking unilateral action against art-market laundering, however, the Swiss legislature has complicated the landscape for honest art traders and produced potentially anti-competitive market conditions that could drive business elsewhere. To promote uniformity within the art market and restore a level, competitive playing field, Swiss art dealers should lead an effort among professional art dealers' associations to adopt industry-wide self-regulations. This solution promises to remove incentives for scattershot governmental intervention while restricting laundering and preserving secrecy for the honest.

Recently, some anti-laundering advocates and art traders have made increasingly vocal calls to establish some form of global art-market regulation. Among these advocates is the economist Nouriel Roubini, who discussed the need to curb "tax avoidance and evasion" and other "shady stuff" in the art trade at the 2015 World Economic Forum in Davos.<sup>124</sup> Roubini, who is also an art collector, provided few details on what the regulation should look like. One commentator has suggested that "[p]erhaps what [Roubini] is calling for is . . . an administrative agency that will be tasked with overseeing transfers of art."<sup>125</sup> Yet, particularly in America, "other Congressional priorities [make this] . . . a stretch right now."<sup>126</sup> Instead, a more practical approach for regulating the art market on an international scale is to rely on industry self-regulations.<sup>127</sup>

A strategy of self-regulation within the art market offers certain important advantages. By taking preemptive steps to adopt industry-wide due-diligence procedures that combat money laundering and the illicit art trade, the market can ward off governmental interventions that reduce confidentiality.<sup>128</sup> As one expert has observed, "[i]f the [industry does not] self-regulate, eventually the state will come and make the law, and the art trade will be worse off."<sup>129</sup>

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123. See, Eichenberger *supra* note 5 (discussing the regulations would take effect in 2016 and impact all traders).

124. Heddaya, *supra* note 44.

125. Heddaya, *supra* note 44.

126. Heddaya, *supra* note 44.

127. Heddaya, *supra* note 44.

128. Eichenberger, *supra* note 5 ("There must be real regulation of the art market, if only to protect the honest traders. The big players like Art Basel should think about it, because, once the question of banking secrecy is resolved, attention will turn to the art world and that will really hurt!").

129. O'Murchu, *supra* note 56.

Currently, the art market does self-regulate, albeit unevenly. Large auction houses with resources and valuable reputations to protect have adopted ethical codes that govern staff behavior. Sotheby's, for example, maintains a compliance department and publishes its Code of Business Conduct and Ethics on its website.<sup>130</sup> The auction house encourages its staff to report "potentially illegal, unethical or questionable conduct" by maintaining a 24-hour company hotline.<sup>131</sup> Although not published online, Christie's has adopted a comparable code.<sup>132</sup> Both auction houses carry out due-diligence on behalf of their clients in order to verify the legality of transactions, but not all art traders "have the means, or the appetite, to carry out" this research.<sup>133</sup>

Because Swiss traders face more restrictions than their international competitors, they have an incentive to lead the way in reintroducing uniformity into the market and correcting competitive imbalances. Fortunately, Swiss dealers have a set of art-market self-regulation guidelines that they can readily propose for adoption by professional organizations and their members.<sup>134</sup> These model guidelines, published by the Basel Institute on Governance in 2012, address the need for art dealers across the market to investigate the identity of buyers and sellers in order to reduce laundering risks.<sup>135</sup> This approach balances the need to limit opportunities for illicit activity in the market while protecting collector anonymity, since dealers perform the due diligence rather than reporting to financial intermediaries. The due-diligence policies in the model guidelines also address the need to use best efforts to identify the true beneficial owner of an art object, since an agent could be acting on behalf of a launderer.<sup>136</sup> The guidelines provide detailed instructions on performing due-diligence and how to resolve doubts.<sup>137</sup> The guidelines also address the conditions in which

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130. *Code of Business Conduct*, SOTHEBY'S (Oct. 2015), [http://www.sothebys.com/content/dam/sothebys/PDFs/JC\\_1416483\\_Legal\\_Code%20of%20Conduct%20Brochure.pdf](http://www.sothebys.com/content/dam/sothebys/PDFs/JC_1416483_Legal_Code%20of%20Conduct%20Brochure.pdf) [<https://perma.cc/4FSZ-JQ22>]; Henry Little, *Does the Art Market Need More Regulation?*, APOLLO (June 29, 2015), <http://www.apollo-magazine.com/does-the-art-market-need-more-regulation/> [<https://perma.cc/J52Q-5AHL>].

131. *Code of Business Conduct and Ethics*, *supra* note 130.

132. Little, *supra* note 130.

133. O'Murchu, *supra* note 56.

134. *About CINOA*, CONFÉDÉRATION INTERNATIONALE DES NÉGOCIANTS EN OEUVRES D'ART [International Confederation of Art and Antique Dealers' Associations], <http://www.cinoa.org/index.pl?id=2197> [<https://perma.cc/LR7X-J6NL>] (last visited Mar. 13, 2014) (claiming 5,000 dealers from 22 countries as members).

135. Christ & von Selle, *supra* note 122.

136. Christ & von Selle, *supra* note 122.

137. Christ & von Selle, *supra* note 122.

dealers should disclose a trader's identity to authorities in order to stop illegal actors.<sup>138</sup> By advocating for self-policing, Swiss art traders serve their own competitive interests by unifying the art market and the due-diligence obligations among traders. But in addition, uniform regulations within the art trade offer a better chance of curbing laundering internationally, since dishonest actors will have no unregulated corners of the market to seek out and exploit.

## VI. CONCLUSION

The Swiss art market provides numerous services that meet important demands among different types of collectors. The freeports in particular have traditionally afforded honest collectors with a secret and secure climate that serves legitimate priorities. In the wake of Switzerland's regulations that target laundering in the art market, dealers have powerful commercial incentives to unify regulations worldwide and preserve their ability to offer valuable, confidential services to their clientele.

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138. Christ & von Selle, *supra* note 122.