

15th ANNUAL INTERNATIONAL ANTI-MONEY LAUNDERING CONFERENCE

The Westin Diplomat – Hollywood, Florida



OFAC
Office of Foreign Assets Control



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IEEPA Enhancement Act



IEEPA Enhancement Act - October 16, 2007
(P.L. 110-96, 121 Stat 1011)

- IEEPA Penalty Increase to Greater of:
 - \$250,000 or
 - 2x Transaction Amount
- Retroactive Application
- Congressional Intent



Enforcement Guidelines



**Economic Sanctions
Enforcement Guidelines**

November 9, 2009
~~September 8, 2008~~

Economic Sanctions
Enforcement Procedures
for Banking Institutions

January 12, 2006



Enforcement Guidelines – General Factors

B. Awareness of Conduct at Issue

- Actual Knowledge
- Reason to Know
- Management Involvement



Enforcement Guidelines – General Factors

C. Harm to Sanctions Program Objectives

- Economic or Other Benefit to the Sanctioned Individual, Entity, or Country
- Implications for U.S. Policy
- License Eligibility
- Humanitarian Activity



Enforcement Guidelines – General Factors

D. Individual Characteristics

- Commercial Sophistication
- Size of Operations and Financial Condition
- Volume of Transactions
- Sanctions Violation History



Enforcement Guidelines - General Factors

E. Compliance Program

- Existence and nature of OFAC compliance program
- Views of regulators



F. Remedial Response

- Steps taken
 - Conduct stopped?
 - Compliance program implemented/improved?
- Thorough review to identify other possible violations?



Enforcement Guidelines – General Factors

G. Cooperation with OFAC

- Voluntarily Self-disclosure?
- Provide all Information?
- Other Related Violations?
- Subpoena Required?
- Prompt Response?
- Tolling Agreement?



Enforcement Guidelines – Clarification

Voluntary Self-Disclosures

“good faith standard” would be administratively unworkable

“whether OFAC would otherwise have learned” = more readily administrable

“Regardless of ~~whether or~~ when OFAC actually receives ... notice from the third party”



Enforcement Guidelines – Clarification

Non-VSD, but substantial cooperation...

“in cases involving substantial cooperation with OFAC but no voluntary self-disclosure... but the Subject Person provides substantial additional information regarding the apparent violation and/or other violations, the base penalty amount generally will be reduced between 25 and 40%”



Enforcement Guidelines – Clarification

Tolling Agreements

“The final rule ... clarifies that while a Subject Person’s willingness to enter into a tolling agreement may be considered a mitigating factor, a Subject Person’s unwillingness to enter into such an agreement will not be considered against the Subject Person...”



Enforcement Guidelines - General Factors

H. Timing of Apparent Violation in Relation to Imposition of Sanctions



I. Other Enforcement Action



J. Future Compliance/Deterrence Effect



K. Other Relevant Factors on a Case-by-Case Basis



Pre-Penalty Notices and Settlements



The "Other" Matrix - Base Penalties

		Egregious Case	
		No	Yes
Voluntary Self-Disclosure	Yes	1 One-Half of Transaction Value <small>Capped at \$125,000 per violation</small>	3 One-Half of Statutory Maximum
	No	2 Applicable Schedule Amount <small>Capped at \$250,000 per violation</small>	4 Statutory Maximum

** This table generally assumes full and accurate disclosure of the applicable statutory maximum amount.

Applicable Schedule

Applicable Schedule Amount means...

Amount	Transaction Value
\$1,000	
\$10,000	
\$25,000	
\$50,000	
\$100,000	
\$170,000	
\$250,000	

TWEA cases capped at \$65,000

The "Other" Matrix - Base Penalties

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		Egregious Case	
		No	Yes
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	No	2 Applicable Schedule Amount <small>Capped at \$250,000 per violation</small>	4 Statutory Maximum

* This does not generally represent what will be assessed. See applicable statutory maximum amount.



Sample Adjustments

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Substantial Cooperation non VSD (25 -40%)

First Violation (up to 25%)

Other General Factors

Result is Proposed Penalty Amount



Enforcement Guideline - Priorities

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- Limited resources
- Target most significant cases
- Intentional/reckless conduct
- Value of transactions at issue
- Nature of practices
- Foreign policy/national security goals
- Joint settlements with other agencies



Recent Cases

Compliments to Norman Rockwell...

Sometimes the bloggers don't know what they're talking about!



Exhibit A

Australia and New Zealand Bank Group, Ltd., Settles Allegations of Violations of the Sudanese Sanctions Regulations and Cuban Assets Control Regulations: Australia and New Zealand Bank Group, Ltd., Melbourne, Australia ("ANZ"), entered a \$5,750,000 settlement with OFAC to settle allegations of violations of the Sudanese Sanctions Regulations, 31 C.F.R. Part 538, and the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

ANZ – USD5.7M settlement

SUDAN

16 Sudanese transactions were egregious because the lack of transparency was purposeful, but the number paled by comparison to other cases before OFAC

3 large transactions accounted for 88% of the base penalty amount. Payments typically related to agriculture; they were ANZ's 1st violations of such a nature; there was substantial cooperation & prompt remedial action

ANZ – USD5.7M settlement

CUBA

Transactions involved a non-egregious voluntary self-disclosure... The evidence did not suggest that ANZ deliberately acted to conceal information or establish procedures to deliberately circumvent the CACR.

ANZ – USD5.7M settlement

CUBA contd.

14 complex transactions involved USD/EUR bridge loans, Forex conversions & swaps - settling offshore payments for Cuban nickel

1 crossed-check Cuba / Nigeria

Dealing in blocked property



CREDIT SUISSE – USD536M settlement

- Global aggregate – OFAC, DOJ, DANY
+ FED C&D w/ FINMA assistance
- IEEPA / TWEA – Iran, Sudan, Cuba, Libya, Taylor's Liberia
- Aug '03 – Dec '06 5,138 transfers c.USD645M thru US banks (not VSD)
- Sep '02 – Jun '06 176 securities transactions c.USD152M London thru United States using code names (VSD)



CREDIT SUISSE – USD536M settlement

“Credit Suisse used cover payments to avoid referencing parties subject to U.S. sanctions and omitted, removed, or provided incorrect information in payment messages to conceal the identities of U.S. sanctions targets in electronic funds transfers executed through the United States and in securities transactions executed in the United States.”



CREDIT SUISSE – USD536M settlement

Total combined **base penalty** for all apparent violations
= USD1.7 billion

"OFAC mitigated the total potential penalty based on CS's extensive and substantial cooperation, its remediation, the fact that OFAC had not issued a penalty notice or FOV against CS in the 5 years preceding the transactions at issue, and CS's willingness to enter into tolling agreements with OFAC. CS substantially cooperated with OFAC by engaging an independent consulting firm to conduct an extensive review of all applicable incoming and outgoing payment messages during the review period and providing that information to OFAC in a comprehensive and well organized manner. Mitigation was also extended because CS agreed to settle the allegations of violations. "



LLOYDS – USD217M settlement

- Obligation to pay was deemed satisfied by prior payment of USD350M to DOJ / DANY arising out of the same pattern of conduct.
- Lloyds had a policy of intentionally manipulating & deleting information about U.S. sanctioned parties— notably Iran, Sudan, & Libya—in wire transfer instructions executed on behalf of its bank & non-bank customers.



LLOYDS – USD217M settlement

- Jun '03 – Aug '06: at least 4,200 transfers USD36,988,457
- Lloyds indicated it terminated activities, including ceasing USD clearing for Iranian bank customers in 2003 & cooperated fully with OFAC.
- Substantial lookback regarding USD payments performed. Annual prospective review for 2 years w/ 3rd party & scope of review approved by the FSA.



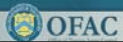
LLOYDS – USD217M settlement

“Although not a VSD, OFAC mitigated based on substantial cooperation, prompt & thorough remedial response, & no OFAC enforcement actions over the previous 5 years. “



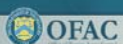
DHL – USD9.4 M Settlement

- OLD GUIDELINES w/BIS
- Iran, Sudan, Syria & recordkeeping
- single reject report filed by a bank indicated that a U.S. company had shipped goods to Iran
- Documents from company pursuant to “602” included DHL air waybill



DHL – USD9.4 M Settlement

- 6 year investigation (began in Oct. '03) focused on Iran, but DHL's recordkeeping lapses accounted for most of USD9.4 M Settlement
- In more than 14,000 instances over 5 years, DHL could not document what it sent to Iran; in many instances, the air waybills were missing; in other instances, the air waybills did not contain a description of the goods sent



"E-Gold" – USD2.9M Penalty

- **Gold & Silver Reserve, Inc.** exported financial services to Iran, without a license, by activating 56,739 "e-currency" accounts through its website for persons located in Iran and dealt in blocked property in the form of 69 "e-currency" accounts in which Cuban Nationals had an interest
- It was **not** a voluntary self-disclosure.



"E-Gold" – USD2.9M Penalty

- Penalty amount could have been substantially higher, but was reduced to account for payments under other USG enforcement actions (criminal forfeiture - money judgment of USD1,750,000 + a criminal penalty of USD300,000)
- OFAC payment = USD2,950,000
- The Penalty Notice, as with all such notices, was web-posted.



Coordinated Enforcement



- More coordinated enforcement actions coming
- OFAC, DOJ, DANY, BIS, Domestic/Foreign Regulators
 - Particularly in major cases



Effective September 1995

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The way the Fed plays hardball,



you better have the right equipment.

The Office of Financial Crimes Enforcement (OFAC) is a division of the U.S. Department of the Treasury. It is responsible for administering economic and financial sanctions against individuals and entities that threaten the national security, foreign policy, or the economy of the United States. OFAC is also responsible for administering the U.S. embargo against Cuba and the U.S. embargo against Iran.



Transparency Issues Are Not New

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SECURITY SCRUTINY EXTENDED BY BANK

Reserve Unit Here Establishes Foreign Property Control Department for Work

UNDER TREASURY'S ORDER

Cooperation Required
The United States Treasury, in an effort to block the sale here of securities seized abroad by German and postal authorities, has required that the Reserve Bank operate closely with the Federal Reserve in order that all securities brought into this country by mail be examined closely as to actual ownership. Under the procedure all the customs and postal authorities where the consignees must establish the true ownership to the satisfaction of the bank. If there is any suspicion of irregularity, the consignee of whose huge vaults has been set aside for this purpose, All foreign mail, registered and ordinary, that may contain securities is sent by the Postoffice Department to the Reserve Bank, where it is opened in the presence of the consignee, upon whom is placed the burden of proof of ownership. Where the mail is addressed to a commercial bank, representatives of the bank must establish their client's identity. The only exemptions made by the Treasury on foreign mail are those from Canada, England, Newfoundland and Bermuda. France was also in the exemption class until the German invasion.

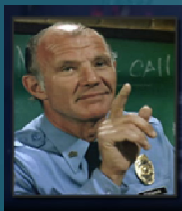


Now What?

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Read the Guidelines...

Structure your Compliance Programs accordingly!



... and ... be careful out there!

