

Red Notice

A monthly update on global investigations and prosecutions

Akin Gump
STRAUSS HAUER & FELD LLP

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IN THIS ISSUE

- [Anticorruption Developments](#)
- [FCPA Resources](#)
- [Export Control Sanctions and Customs Enforcement](#)
- [Export Control and Sanctions Developments](#)
- [Global Investigations Resources](#)
- [Writing and Speaking Engagements](#)

ANTICORRUPTION DEVELOPMENTS

Brazil's Largest Telecommunications Operator Fined \$4.1 Million for World Cup Ticket Payments

On May 9, 2019, the Securities and Exchange Commission (SEC) announced that it had reached a settlement with Telefônica Brasil S.A. (Telefônica) for violations of the books and records provisions of the Foreign Corrupt Practices Act (FCPA) based on a failure by Telefônica to accurately record payments for tickets and hospitality at major soccer events in Brazil in 2013 and 2014. The tickets, including tickets to attend World Cup games, were awarded to Brazilian government officials, and an internal Telefônica email uncovered as part of the SEC's investigation indicated that these tickets were provided to the officials in exchange for their support or favors.

Telefônica, which does most of its business in Brazil under the brand name Vivo, is a subsidiary of the Spanish company Telefónica S.A., and its American Depositary Receipts are registered with the SEC and traded on the New York Stock Exchange. The SEC noted that that fine imposed took into account Telefônica's remedial actions and cooperation during the investigation, including developing a new anticorruption policy as well as enhanced internal accounting controls.

More information

- [SEC Press Release](#)
- [SEC Order](#)
- [Reuters](#)
- [The Wall Street Journal](#)
- [FCPA Blog](#)

Two Convicted in NCAA Basketball Corruption Probe

On May 8, 2019, Christian Dawkins, an aspiring sports agent, and Merl Code, a former Adidas consultant, were convicted by a jury in the Southern District of New York of conspiring to bribe various NCAA Division I basketball coaches. The jury deliberated for almost three days before finding both guilty of conspiracy to commit bribery, and Dawkins guilty of one count of bribery.

As previously covered in the Red Notice, [in October 2018](#), Code and Dawkins were also convicted of conspiracy and fraud charges in a pay-for-play scheme. As a result, each has already been sentenced to six months in prison, although both have appealed the verdicts.

Dawkins was facing six charges related to the scheme, while Code was facing four. The government accused Dawkins and Code of facilitating corrupt payments to three assistant basketball coaches at the University of Southern California, University of Arizona, University of South Carolina and Oklahoma State University. The now former basketball coaches have each pleaded guilty to one count of conspiracy to commit bribery. U.S. District Court Judge Edgardo Ramos presided over the trial and will sentence Code and Dawkins at a yet to be determined date.

More information

- [DOJ Press Release](#)
 - [The Wall Street Journal](#)
 - [Law360](#)
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Anticorruption Spotlight: Whistleblower Awards

SEC Whistleblower Awarded \$4.5 Million

On May 24, 2019, the SEC announced that it was issuing a whistleblower award of \$4.5 million to a whistleblower who first anonymously reported pertinent information internally—which led the company to launch an internal investigation—and then submitted the same information to the SEC and another agency within 120 days. The company ultimately reported the results of its internal investigation to the SEC, and the SEC then launched its own investigation and enforcement action. Notably, the whistleblower never communicated directly with the SEC after providing the tip; however, the company informed the SEC of the whistleblower's information.

Notably, this is the first time that the SEC has issued a whistleblower award where a company self-reported to the SEC following an internal investigation prompted by the whistleblower.

SEC Whistleblower Application Denied

On May 7, 2019, the SEC announced that it would deny a claimant's application for a whistleblower award on the ground that the claimant was not the source of any original information utilized by the SEC. In the order of denial, the SEC noted that information provided before the enactment of the Dodd-Frank Act in July 2010 could not form the basis of an award, that information provided verbally did not qualify due to a requirement that whistleblower information be provided in writing and that information provided by the claimant to his or her employer and then given to the SEC was deemed to come from the employer and not the claimant as an individual.

FTC Whistleblower Awarded \$5.1 Million

On May 6, 2019, the Commodity Futures Trading Commission (CFTC) awarded \$1.5 million to a whistleblower whose contributions assisted the CFTC in comprehending a "complex scheme." The whistleblower first reported the observations internally before alerting the CFTC, which led the whistleblower to receive an "enhanced award." The Director of the CFTC's Whistleblower Office, Christopher Ehrman, commented, "[w]hile there is no requirement that a whistleblower report internally before approaching the Commission, today's award demonstrates that the Commission may pay enhanced awards

to those that do—that is one of the positive factors set out in our rules for the Commission to consider in making its award determination.”

The CFTC rejected the award applications of four others because the information they provided “was not useful to the Commission’s investigation and, therefore, did not lead to the successful enforcement of the Covered Action.”

SEC Whistleblower Sues to Require SEC Make a Determination

On April 29, 2019, a whistleblower claimant sued the SEC seeking an ordering requiring the agency to make a determination on his application. The claimant—who is identified only as John Doe—filed his application for an award more than two years ago and claims that the agency had been unreasonably delayed in determining whether an award will be issued. The claimant further alleges he provided the SEC with information regarding FCPA violations that the SEC settled with Teva Pharmaceutical Industries Ltd. in December 2016 for \$519 million. The claimant has asked the court to require the SEC to make an award determination within 60 days.

As previously covered by Red Notice, [in June 2018](#), the SEC proposed amendments to its whistleblower program for the first time since the program was introduced. Among the proposals, the SEC recommended streamlining the review process to deny awards to claimants that were plainly ineligible.

General Whistleblower Information

Whistleblower awards—provided for under the Dodd-Frank Act—can range from 10 to 30 percent of the money collected when monetary sanctions from a successful enforcement exceed \$1 million. Notices of Covered Actions—enforcement actions with sanctions greater than \$1 million—are posted on the SEC’s website, and claims must be submitted within 90 days of such posting.

The SEC has made a total of 62 whistleblower awards since it first began the practice in 2012. Awards totaling approximately \$381 million have been paid for whistleblower information. Similarly, since issuing its first award in 2014, through 2018, the CFTC has awarded more than \$85 million to whistleblowers.

More information

- [May 24, 2019 SEC Press Release](#)
- [May 24, 2019 SEC Order](#)
- [May 6, 2019 CFTC Press Release](#)
- [May 6, 2019 CFTC Order](#)
- [May 7, 2019 SEC Order](#)
- [Complaint](#) (Whistleblower Suit)
- [The Wall Street Journal](#) (Whistleblower Suit)
- [Law360](#) (Whistleblower Suit)
- [FCPA Blog](#) (CFTC Whistleblower)

FCPA RESOURCES

For a complete record of all FCPA-related enforcement actions, please visit the following websites maintained by U.S. Regulators:

- [DOJ Enforcement Actions \(2019\)](#)
- [DOJ Declinations](#)
- [SEC Enforcement Actions](#)

EXPORTS, SANCTIONS AND CUSTOMS ENFORCEMENTS

OFAC Issues Finding of Violation to State Street Bank and Trust Co. for Iran Sanctions Violations

On May 28, 2019, OFAC issued a Finding of Violation to State Street Bank and Trust Co. (SSBT) for violating the Iranian Transactions and Sanctions Regulations (ITSR). Between January 1, 2012, and September 1, 2015, SSBT acted as a trustee to a customer's pension retirement plan. In its capacity as trustee, SSBT processed at least 45 pension payments totaling \$11,365.44 to a plan participant living in Iran who was a U.S. citizen with a U.S. bank account.

Factors contributing to the issuance of a Finding of Violation included that SSBT: (i) was alerted and should have been put on notice that the transactions to the individual in Iran were a violation of U.S. law; (ii) had actual knowledge that it was sending payments to an individual in Iran because its internal screening system flagged each of the 45 payments, which were subsequently escalated, reviewed and approved; (iii) had escalation and review procedures for potential sanctions list matches but failed to correctly address the issue on 45 occasions; (iv) had extended compliance screening issues regarding inadequate escalation procedures; (v) is a large and commercially sophisticated financial institution; and (vi) caused harm to the integrity and objectives of the ITSR.

Factors contributing to a Finding of Violation rather than a civil monetary penalty included that: (i) no SSBT supervisors or managers were aware of the conduct leading to the transfers; (ii) SSBT's screening process identified and alerted staff to the potential sanctioned transfer; (iii) the payments may not have been transferred to Iran, though they were made on behalf of a person in Iran; (iv) SSBT took remedial action; (v) it is possible the funds transfers could have become licensed; and (vi) SSBT voluntarily self-disclosed and entered into a tolling agreement with OFAC.

More information

- [OFAC Web Notice](#)
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U.S. Government Seizes North Korean Cargo Vessel Connected to Sanctions Violations

On May 9, 2019, the Department of Justice (DOJ) announced the first-ever seizure of a North Korean cargo vessel for violations of U.S. and international sanctions programs. The U.S. Attorney's Office for the Southern District of New York filed a civil forfeiture complaint against the bulk cargo carrier known as the M/V Wise Honest ("Wise Honest"), a 17,061-ton single-hull ship registered in North Korea. According to the complaint, the Wise Honest, one of North Korea's largest bulk carriers, was used to ship coal from North Korea and deliver heavy machinery to North Korea. Transactions related to the Wise Honest were processed through U.S. financial institutions in violation of U.S. sanctions against North Korea.

According to the complaint, from at least November 2016 through April 2018, Korea Songi Shipping Company ("Songi Shipping Company"), an affiliate of Korea Songi General Trading Corporation ("Songi Trading Company"), used the Wise Honest to export coal from and import machinery into North Korea. Songi Trading Company was designated by OFAC on June 1, 2017, for its involvement in the sale, supply or transfer of coal from North Korea. Additionally, Songi Shipping Company representatives allegedly made numerous payments for improvements, equipment purchases and service expenditures for the Wise Honest in U.S. dollars and through U.S. financial institutions. Payments made related to a March 2018 coal shipment through U.S. financial institutions totaled more than \$750,000. Those responsible for the Wise Honest and its activity allegedly attempted to conceal the ship's North Korea affiliation on shipping documentation by listing inaccurate nationalities and countries of origin for the coal.

More information

- [DOJ press release](#)
- [Complaint](#)
- [OFAC Web Notice - June 1, 2017 Designation of Songi Trading Company](#)

MID-SHIP Group LLC Settles Apparent WMDPSR Violations with OFAC for \$871,837

On May 2, 2019, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) announced a \$871,837 settlement with MID-SHIP Group LLC ("MID-SHIP"), a New York company, regarding five apparent violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR). According to the settlement agreement, MID-SHIP allegedly processed five electronic funds transfers, totaling approximately \$472,861, for payments associated with vessels on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List") in violation of §544.201 of the WMDPSR. MID-SHIP did not voluntarily self-disclose the apparent violations, and OFAC determined that the apparent violations constituted an egregious case.

In particular, between February and November 2011, MID-SHIP processed five payments associated with blocked vessels owned or controlled by the Islamic Republic of Iran Shipping Lines (IRISL), an entity designated by OFAC in 2008. Through a non-U.S. subsidiary, MID-SHIP acted as a shipbroker, negotiated charter party agreements and earned commissions on the sale of vessels to the IRISL. MID-SHIP performed accounting functions and received payment for the transactions through its New York office. MID-SHIP personnel were aware of compliance concerns related to the transactions, having been in possession of multiple documents identifying the vessels and their connections to Iran. MID-SHIP managers had also received rejections from financial institutions for the transactions due to "compliance issues" and discussed reissuance of payments with a counterparty in a non-U.S. currency to circumvent the financial institution's compliance efforts.

In determining the settlement amount, OFAC weighed various aggravating and mitigating factors. Aggravating factors included that: (i) MID-SHIP demonstrated reckless disregard for its obligations to comply with U.S. sanctions; (ii) MID-SHIP managers knew and participated in the conduct giving rise to the apparent violations; (iii) MID-SHIP's conduct harmed the integrity of the WMDPSR and its objectives by conferring economic benefit to the IRISL; and (iv) MID-SHIP is a sophisticated global company. Mitigating factors included that: (i) MID-SHIP had not received an OFAC penalty notice in the preceding five years; (ii) MID-SHIP represented that it undertook remedial measures to improve its compliance with U.S. economic and trade sanctions programs; and (iii) MID-SHIP cooperated with OFAC during the investigation.

More information

- [DOJ press release](#)
- [OFAC Recent Actions Notice](#)
- [FAQs](#)

EXPORTS, SANCTIONS AND CUSTOMS DEVELOPMENTS

Client Alert: President Trump Declares National Emergency to Secure the Information and Communications Technology and Services Supply Chain

On May 15, 2019, President Trump issued a long-awaited executive order (EO) designed to curtail the use of telecommunications items and services from certain countries and persons in U.S. networks. The EO does not impose immediate restrictions on persons subject to U.S. jurisdiction. Rather, it creates a new regulatory framework that the U.S. Department of Commerce (DOC) must implement within 150 days, a period ending in October 2019.

Once implemented, the new regime will broadly allow the government to block any type of transaction that involves information and communications technology or services provided by a "foreign adversary" that, among other considerations, poses an "unacceptable" risk to the national security of the United States or the security and safety of United States persons.

The EO does not set out which countries or entities fall within the scope of a “foreign adversary,” instead leaving it to the DOC to define this and other key terms.

The breadth of the new EO overlaps with the DOC Bureau of Industry and Security’s (BIS) Export Administration Regulations (EAR) and the separate foreign investment regime administered by the Committee on Foreign Investment in the United States (CFIUS). As a result, this new regime could create significant compliance challenges for companies in the context of their international business operations. For this reason, companies should begin assessing the potential impact of this new regime and consider engaging with the DOC as appropriate.

More information

- [Akin Gump Client Alert](#)
 - [Executive Order](#)
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Client Alerts: Commerce Adds Huawei, Its Non-U.S. Affiliates Worldwide and Others to the Entity List; Issues Temporary General License Authorizing Certain Transactions

On May 16, 2019, the DOC published a final rule adding Huawei and 68 other companies, mostly its non-U.S. affiliates worldwide, to the Entity List. According to the rule, effective May 16, 2019, at 4:15 p.m. Eastern Time, all commodities, software and technology “subject to the Export Administration Regulations” require a license to be exported, reexported or transferred (in-country) to a listed entity. In line with OFAC’s general licensing policy with respect to Entity List designees, applications for licenses involving listed entities will be presumptively denied.

Subsequently, on May 20, 2019, the DOC published a 90-day Temporary General License (TGL) authorizing limited categories of exports, reexports or transfers with the listed entities that were otherwise prohibited. The TGL will expire on August 19, 2019.

The TGL authorizes four specific types of activities including those: (1) necessary to support existing networks and equipment; (2) necessary to provide service and support to existing models of Huawei handsets; (3) involving the disclosure of information regarding security vulnerabilities of Huawei items; and (4) necessary for the development of 5G standards as part of an international standards body. The TGL further requires the entity exporting, reexporting or transferring items subject to the EAR under the TGL to create and keep record of a certification that the activity was authorized by the TGL. All other applicable EAR licensing requirements remain in place.

More information

- [Akin Gump Client Alert – Entity List Additions](#)
 - [Federal Register Final Rule – Entity List Additions](#)
 - [Akin Gump Client Alert – Temporary General License](#)
 - [Federal Register Final Rule – Temporary General License](#)
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Addition of Entities to BIS Entity List for Activities Contrary to the National Security or Foreign Policy Interests of the United States

On May 14, 2019, BIS announced the addition of 12 entities to the Entity List, comprising 16 entries, that are “reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States.” The added entities include six in China, four in Hong Kong, one in Pakistan and five in the United Arab Emirates (UAE).

Among the reasons for the listings included the following:

- Entities’ participation in prohibited exports of controlled technology related to syntactic foam manufacturing to state-owned enterprises, defense corporations, and military-

related academic institutions (China).

- Entities' attempt to procure U.S.-origin commodities for the purpose of providing material support to Iran's weapons of mass destruction and military programs (China, Hong Kong).
- An entity's involvement in proliferation to unsafeguarded nuclear activities (Pakistan).
- An entity's acts to prevent the DOC's end-user checks (UAE).
- Entities' procurement of U.S.-origin items for another entity on the Entity List (UAE).
- An entity's designation as a Specially Designated Global Terrorist by OFAC (UAE).

More information

- [Federal Register Final Rule](#)
-

Client Alert: President Trump Signs Executive Order Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran

On May 8, 2019, the one-year anniversary of the United States' withdrawal from the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran nuclear deal, President Donald Trump issued Executive Order 13871 (EO 13871), authorizing sanctions on Iran's iron, steel, aluminum and copper sectors. The EO states that its aim is to deny the Iranian government revenue from metals, and to counter nuclear development. Under the EO, the Secretary of the Treasury, in consultation with the Secretary of State, has authority to designate on OFAC's SDN List: (i) persons who operate in the iron, steel, aluminum or copper sector of Iran; (ii) persons that own or control entities in that sector; (iii) persons who knowingly engage in certain significant transactions in that sector; (iv) persons who materially assist blocked persons under the EO; and (v) entities owned or controlled by, or acting for, persons blocked under these sanctions. Non-U.S. financial institutions are also targeted by the EO, and may lose correspondent banking or payable-through account rights in the United States for knowingly conducting or facilitating certain significant financial transactions relating to the sector. A 90-day wind-down period applies to existing business in this sector, meaning that companies with existing contracts involving these metals have until August 6, 2019, to conclude their transactions, but new business is subject to sanctions.

EO 13871 expands existing sanctions on Iranian metals beyond those imposed since January 2013 under sections 1245-1246 of the Iran Freedom and Counter-Proliferation Act (IFCA). EO 13871 explicitly adds Iran's copper and iron sectors as potential sanctions targets, which were not previously included in the metals targeted. The new EO is also not restricted to particular circumstances as the sanctions under the IFCA were (i.e., sales to the IRGC, or in connection with Iran's nuclear or military capabilities), and it applies broadly to any person operating in the iron, steel, aluminum and copper sectors. Additionally, the new EO does not contain the due diligence exception present in the IFCA restrictions. Unlike the IFCA, no credit is given for conducting diligence or imposing controls to avoid targeted trade involving relevant Iranian metals.

This EO is the latest in a series of actions by the U.S. government in its "maximum economic pressure" campaign against Iran. Businesses currently operating in Iran's iron, steel, aluminum and copper sectors have 90 days to wind down their activities without risk of secondary sanctions, and new business in this space can immediately be subject to blocking sanctions. Non-U.S. financial institutions in this space are subject to the same 90-day wind-down period. Companies that choose to continue to engage in the iron, steel, aluminum and copper sectors of Iran face risk of secondary sanctions and could face SDN listing. In addition, the U.S. government is authorized to impose sanctions on non-U.S. persons who materially assist, sponsor or provide financial, material or technological support for, or goods or services in support of, blocked persons even if such material support is provided unknowingly. This is a departure from the sanctions provisions under the IFCA, and greatly widens the scope and risk of sanctions for non-U.S. persons doing business that intersects Iran's metals sector.

More information

- [Akin Gump Client Alert](#)
 - [Executive Order](#)
 - [OFAC Web Notice](#)
 - [FAQs](#)
-

Client Alert: Trump Administration Authorizes Lawsuits Against Companies That Deal in Property Confiscated by the Cuban Government and Tightens Other Sanctions Against Cuba

On May 2, 2019, the United States government allowed implementation of Title III of the Helms-Burton Act, for the first time since the law was enacted in 1996, to permit U.S. nationals to sue persons that “traffic” in private property “confiscated” from them by the Cuban government at any time since 1959. The Trump administration has also announced that it intends to deny visas to foreign nationals that “traffic” in such property, among other more restrictive measures.

Under the Helms-Burton Act, the term “traffic” is defined very broadly and could provide a basis for U.S. nationals to sue any company that “knowingly and intentionally” engages in transactions, commercial activities or dealings related to expropriated property.

While the course of such lawsuits in U.S. federal courts remains to be seen, the broad language of the statute suggests that this action could result in a flood of U.S. lawsuits against foreign companies with active interests in Cuba alleged to involve expropriated property.

The implementation of Title III may also create international legal challenges for the United States. The EU and Canada condemned the move and threatened to enforce established blocking measures against U.S. sanctions on Cuba. The EU also threatened to reinstate a World Trade Organization (WTO) case against the United States regarding the compatibility of Title III with global trade rules. Companies with business interests in Cuba, particularly interests that may intersect with expropriated property, should carefully consider the risks posed by these changes in U.S. law and, among other precautions, carefully engage in due diligence necessary to evaluate their potential risk and develop an effective mitigation strategy.

More information

- [Akin Gump Client Alert](#)

GLOBAL INVESTIGATIONS RESOURCES

- [DOJ's Recent Enforcement Policy Changes Further Incentivize Effective Corporate Compliance Programs](#)
- [OFAC's New Framework for an Effective Sanctions Compliance Program Provides Important Risk Mitigation Advice](#)
- [Commerce Department Imposes Controls on Five Types of “Emerging Technologies” Agreed to by Multilateral Regime Allies](#)
- [DOJ Announces New FCA Policy](#)

WRITING AND SPEAKING ENGAGEMENTS

On June 10, 2019, [Howard Sklamberg](#) and [Stanley Woodward](#) will be speaking at PLI's One Hour Briefing Webinar, “The Opioid Epidemic: An Overview of the Current State of the Legal Landscape”.

On June 20, 2019, [Christian Davis](#) will speak at Akin Gump's Mid-Year Energy Briefing, hosted by Akin Gump in Houston, TX.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics, please contact Jaime Sheldon at +1 212.407.3026 or [email](#).

[More information](#) for lawyers in the global investigations and compliance practice.

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