

Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



OCTOBER 2015

Introduction

Welcome to the October 2015 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, a Japanese multinational conglomerate settles U.S. Securities and Exchange Commission (SEC) charges in connection with alleged violations of the Foreign Corrupt Practices Act (FCPA), a European water supplier and its executives face charges and an investigation related to corruption allegations in Romania, Scotland announces an inaugural U.K. Bribery Act settlement involving corporate oversight of a third party, a Texas company resolves an FCPA SEC investigation through a cease-and-desist order, an Italian oil and gas company and five individuals face trial for alleged improper activities in Algeria, and a complex bribery scheme unfolds within the United Nations.

In export control and sanctions enforcement news, a European bank settles apparent sanctions violations with five different agencies, three more individuals are convicted in a scheme to illegally export controlled items to Russia, a Filipino national pleads guilty to Arms Export Control Act (AECA) charges, the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury issues a Finding of Violation to a mid-western bank due to Iran-related violations, and a former U.S. resident receives an eight-year sentence and pays fine for AECA violations.

Finally, in developments in export control and sanctions law, OFAC announces sanctions on individuals affiliated with ISIS, legislators propose a bill establishing a minimum sentence for sanctions violators, and the comment period for certain USML categories opens until December 8, 2015.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Hitachi Resolves SEC FCPA-Related Charges with Nearly \$20 Million Settlement

Japanese conglomerate Hitachi, Ltd. agreed to pay \$19 million to settle charges brought by the U.S. Securities and Exchange Commission (SEC) related to alleged violations of the FCPA. The SEC charged Hitachi with inaccurately recording improper payments made to a front company for South Africa's ruling political party, the African National Congress (ANC), in connection with contracts to build two multibillion-dollar power plants.

TRANSLATIONS

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WRITING AND SPEAKING ENGAGEMENTS

On November 12, partners [Natasha Kohne](#), [Michelle Reed](#), and [David Turetsky](#) will present "Tackling Cybersecurity in the Boardroom" at the Akin Gump New York office. For information, contact NewYorkEvents@akingump.com.

On November 19, partner [Ed Rubinoff](#) will serve as moderator on a panel titled, "Government Roundtable: Changes to Sanctions Regulations in Russia and Iran you Must be Aware of to Avoid Violations and Fines," at [C5's 4th Advanced Forum](#) on Economic Sanctions & Financial Crime for the Financial and Insurance Industries in London.

On December 2, partner [Chuck Connolly](#) will co-chair the Corporate Counsel Symposium hosted by the New York City Bar. Partner [Parvin Moyné](#) will present on "Compliance Challenges: What Keeps In-House Counsel Up at Night" at this program.

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

The SEC alleged that Hitachi sold a 25 percent stake in a South African subsidiary to Chancellor House Holdings (Pty) Ltd., which served as a front for the ANC. This arrangement allowed the front company and the ANC to share profits in the power plant construction contracts secured by Hitachi. The SEC's complaint accused Hitachi of paying \$1 million in "success fees," improperly booked as consulting fees, to Chancellor. The fees allegedly compensated Chancellor for exerting influence during the bidding process pursuant to a separate undisclosed agreement.

Hitachi was ultimately awarded the contracts by South African state-run electricity utility Eskom Holdings SOC Ltd. Hitachi allegedly paid the ANC front company approximately \$5 million in dividends based on profits from the contracts. "Hitachi's lax internal control environment enabled its subsidiary to pay millions of dollars to a politically-connected front company for the ANC to win contracts with the South African government," said Andrew J. Ceresney, director of the SEC's Enforcement Division. Hitachi settled without admitting or denying the SEC's allegations. In announcing the settlement, which is subject to court approval, the SEC noted that it received significant assistance in its investigation from the African Development Bank's Integrity and Anti-Corruption Department through a new cooperative relationship that the SEC hopes to continue.

To learn more read the SEC's [press release](#) and coverage in the [FCPA Blog](#) and [Shanghai Daily](#).

Criminal Proceedings Begin Against French Water Supplier in Romania

Following an investigation by the Romanian anticorruption agency, National Anticorruption Directorate, also known as DNA, Romanian prosecutors have charged French executive Bruno Roche in connection with corruption allegations surrounding the operation of Apa Nova Bucuresti (Apa Nova), the Romanian branch of Veolia Group.

The French-owned Veolia Group provides water, waste management and energy services to 17 European countries, including the sewage and water system in Bucharest. Roche is a former Apa Nova CEO, having served from 2008 to 2013. In charging documents, DNA prosecutors said that Roche and others created fictitious contracts and set up secret bank accounts to transfer millions of euros in bribes to Bucharest officials and businessmen, who, in return, approved significant price increases in the company's favor. DNA further alleged that Apa Nova hired former intelligence service workers to spy on company employees to prevent them from releasing incriminating information.

After Roche was formally charged with bribery and influence peddling, he was placed under judicial supervision for 60 days. Prosecutors continue to investigate Roche's successor, Laurent Lalague, who was Apa Nova's CEO from 2013 until June 2015. A former advisor to the Bucharest mayor and a former party treasurer are among several Romanians also arrested in connection with the investigation.

See [Politico](#) and [Romania-Insider](#) for more information.

Scotland's Prosecutor Reaches First-Ever Civil Settlement with Company for Failure to Prevent Third-Party Bribery

In September, Scotland's Civil Recovery Unit of the Crown Office and Procurator Fiscal Service (COPFS) announced an agreed civil settlement with Brand-Rex Limited, a Scottish cabling company that accepted responsibility for failing to prevent unlawful conduct by one

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of its independent installers in violation of the U.K. Bribery Act of 2010. The settlement, totaling £212,800, was the first for failure to prevent bribery by a third party. Following an investigation conducted by external counsel and forensic accountants, Brand-Rex's counsel self-reported the bribery scheme to COPFS.

Notably, in its announcement, COPFS conceded that the Brand-Rex incentive scheme known as "Brand Breaks"—which provided varying degrees of rewards, such as travel and vacations to installers and distributors meeting or exceeding sales targets—was not itself unlawful. Rather, the unlawful conduct at issue in the settlement resulted from an independent installer of Brand-Rex products offering the travel tickets he received under Brand Breaks to an employee of one of his customers. The individual who ultimately received the tickets was in a position to influence decisions concerning cabling purchases, and employees of the company and related individuals used these tickets for vacations abroad in 2012 and 2013.

In announcing the settlement, Linda Hamilton, Head of the COPFS Civil Recovery Unit, noted that in cases where companies accept responsibility for their failure to prevent bribery and take steps to prevent reoccurrence, the UK Bribery Act permits prosecutors to settle those cases with a civil settlement, rather than criminal prosecution. The amount of the settlement was based on the third-party company's gross profit related to the misuse of the Brand Breaks program.

For more information, read the COPFS's [post](#) and [Herald Scotland](#).

Oil Exploration Company Concludes FCPA Ordeal with SEC Settlement

Texas-based Hyperdynamics Corporation announced in late September that it settled an investigation into FCPA books and records and internal controls violations conducted by the SEC. Although the U.S. Department of Justice (DOJ) previously announced in late May that it had closed its investigation without bringing charges, [as Red Notice previously reported](#), the SEC pursued the enforcement through September's internal administrative order. According to its [press release](#), Hyperdynamics agreed to pay a \$75,000 penalty and consented to the entry of a cease-and-desist [order](#) without admitting or denying the SEC's findings. The order references alleged defects in the company's internal accounting and payment recording processes from July 2007 to October 2008, including failure to "record certain payments made by its subsidiary based in the Republic of Guinea" and shortcomings relating to accurately tracking and ensuring the propriety of the subsidiary's expenditures. The settlement also takes into account Hyperdynamics' remedial efforts and cooperation, including replacing its senior management team and board of directors. Additionally, the company implemented a compliance training program, increased its accounting staff and established a more stringent system for controlling the money flow to Guinea.

To learn more, see the [FCPA Blog](#) and [WSJ coverage](#).

Saipem Executives to Stand Trial for Corruption Charges

Saipem S.p.A., three former senior Saipem executives and two alleged intermediaries from Algeria will stand trial in an Italian court in connection with alleged improper activity surrounding contract awards in Algeria. Prosecutors said the Milan-based oil and gas services group paid about \$221.55 million in bribes to win contracts worth about \$9 billion with the Algerian government-owned company Sonatrach.

The Milan judge ruled on October 2, 2015 that the defendants will stand trial for tax fraud and international corruption. Under Italian law, companies are held responsible for the actions of their managers and may be subject to fines if a manager is found guilty. With trial set for December 2015, Saipem stated that it is “confident that it will be able to demonstrate that there are no grounds for the company to be held liable under Italian Legislative Decree 231/2001 at the first instance of trial.”

Saipem's parent company, Eni, and several former executives have been cleared of wrongdoing. Tullio Orsi, the former head of subsidiary Saipem Contracting Algeria S.p.A., had previously pleaded guilty and was sentenced to two years and 10 months in jail and fined \$1.3 million.

To learn more, see Saipem's [press release](#) and coverage from the [FCPA Blog](#) and [Reuters](#).

Former UN Officials Charged in Alleged Multimillion-Dollar Bribery Scheme Engineered by Macau Billionaire

At least two former U.N. officials have been charged for their alleged role in a complex bribery scheme centering around Macau billionaire and real-estate developer Ng Lap Seng. Ng and his assistant Jeff Yin were arrested in September for lying about the intended use of more than \$4.5 million in cash they have brought into the United States since 2013. John Ashe, the former ambassador to the U.N. for the Caribbean nation of Antigua and Barbuda and the 68th president of the U.N. General Assembly, along with Francis Lorenzo, the deputy permanent representative to the U.N. from the Dominican Republic, were both charged on October 5, 2015, in the U.S. District Court for the Southern District of New York. The charges include alleged conspiracy to commit bribery, conspiracy to commit money laundering and tax fraud. Charging documents alleged that Ng and his business associates funneled millions in cash to Ashe in exchange for his influence in the U.N. and at home in Antigua. Ng sought U.N. sponsorship of a multibillion-dollar conference center he planned to build in Macau. Ashe is alleged to have written a letter to the U.N. secretary general promoting the conference center in exchange for kickbacks. According to the unsealed complaint, Ashe then used this money to buy expensive watches, build a basketball court at his home and take first-class vacations.

Lorenzo is alleged to have acted as a proxy for Ng to move regular installments of cash to Ashe. Similar allegations have been brought against prominent Chinese businesswoman Shiwei Yan, also known as Sheri Yan. Yan is alleged to have sent Ashe monthly payments of \$20,000 through her NGO, the Global Sustainability Foundation, in exchange for Ashe's promise to advocate on behalf of her business interests in the Caribbean.

Ng posted \$50 million bail and has been placed on house arrest in a Manhattan apartment.

To learn more, see [Business Insider](#), the [Daily Beast](#) and [WSJ](#) articles [here](#), [here](#) and [here](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

French Bank to Pay \$787 Million in Criminal and Civil Penalties in Multi-Agency Settlement, Including a \$329 Million Fine for 4,297 Apparent Violations of OFAC Sanctions

Crédit Agricole Corporate and Investment Bank (CA-CIB), a

corporate and investment bank owned by Crédit Agricole S.A. and headquartered in Paris, agreed to pay \$787.3 million in criminal and civil penalties as part of a multiagency settlement for violations of the International Emergency Economic Powers Act, the Trading with the Enemy Act and U.S. sanctions regulations. The agencies involved in the settlement include only U.S. regulators—the DOJ, OFAC, the Board of Governors of the Federal Reserve System, the New York County District Attorney’s Office and the New York State Department of Financial Services.

CA-CIB has agreed to pay \$329,593,585 in connection with 4,297 apparent violations of OFAC sanctions regulations, which will be satisfied by the payments to federal and local agencies. The alleged violations stem from transactions processed by CA-CIB and certain of its predecessor banks and subsidiaries to or through U.S. financial institutions that involved persons or entities subject to OFAC sanctions pertaining to Sudan, Cuba, Burma and Iran. OFAC determined that managers at these CA-CIB entities were aware of U.S. economic sanctions programs and understood restrictions on blocking or rejecting transactions. Nonetheless, these individuals used practices that omitted references to sanctioned parties and prevented U.S. financial institutions from appropriately reviewing and analyzing the transactions for compliance with OFAC regulations.

In determining the settlement amount, OFAC considered that CA-CIB managers were aware that conduct might constitute a violation of U.S. law, CA-CIB is a large and sophisticated institution with a global presence and CA-CIB did not have controls in place to prevent apparent violations from occurring. OFAC also determined that CA-CIB did not voluntarily self-disclose the apparent violations and that the bank’s conduct was egregious, which allows for a higher base penalty. Nonetheless, the settlement was lower than the base penalty of \$1,464,860,377 due to CA-CIB’s compliance with OFAC regulations in the five years preceding the allegations and due to remedial action taken by the bank in response to the apparent violations. OFAC also considered that CA-CIB cooperated extensively with the investigation and that the majority of the apparent violations occurred between 2003 and 2005, prior to publication of the benchmark ABN-Amro settlement.

For additional information, see the OFAC [enforcement notice](#) and the DOJ [press release](#).

Three Convicted in Conspiracy to Illegally Export Microelectronics to Russia

On Monday October 26, 2015, the DOJ announced that Alexander Posobilov, Shavkat Abdullaev and Anastasia Diatlova were convicted, after a month long trial, on charges that they engaged in a conspiracy to export, and illegally exported, controlled advanced microelectronics to Russia. All three defendants worked for Houston-based Arc Electronics Inc. (Arc) and were originally charged in 2012 alongside eight other co-conspirators. Five members of the conspiracy, including Arc founder Alexander Fishenko, previously pleaded guilty to similar charges. It was determined at trial that the defendants obtained advanced microelectronics from manufacturers and suppliers located in the United States and exported them to Russian government agencies without obtaining the necessary export license. The microelectronics they exported (e.g., analog-to-digital converters, static random access memory chips, microcontrollers, microprocessors) can be used in radar, surveillance systems and weapons guidance systems—all areas where exports are strictly controlled under the International Emergency Economic Powers Act and AECA. To evade export controls, the defendants provided false end-user information, claimed that Arc was a manufacturer when it actually operated exclusively as an exporter,

and falsely classified exported goods on records submitted to the Department of Commerce. All three defendants face up to 20 years in prison for each violation of U.S. export laws.

For additional information see the [DOJ](#) press release and the September 2015 issue of [Red Notice](#). Also see coverage in [Reuters](#) and [CNBC](#).

Filipino National Admits Conspiring to Export Firearms Parts from the United States

Earlier this month, Kirby Santos, a Filipino national residing in New Jersey, pleaded guilty to AECA charges and U.S. antismuggling violations. Specifically, Santos admitted that between 2008 and 2013, he engaged in a conspiracy over the course of five years to ship firearm parts from the U.S. to the Philippines resulting in the unlawful exportation of more than \$200,000 worth of defense articles without the required export licenses. To avoid detection, Santos and his co-conspirators labeled the packages containing the firearm parts as "other items," used aliases when sending the packages and paid suppliers by credit card and other forms of payment. Santos is currently scheduled for a sentencing hearing on January 20, 2016 and faces up to five years in prison and a \$250,000 fine.

For more information, see the DOJ [press release](#) and coverage in the [Daily Journal](#).

OFAC Issues a Finding of Violation to Chicago-based Bank in Connection with Fund Transfers in Violation of Iran-related Sanctions

BMO Harris Bank HA (BMO) received a Finding of Violation from OFAC for transferring funds to a client in violation of the Iranian Transactions and Sanctions Regulations. Specifically, OFAC determined that between February and March 2011, a predecessor, Marshall and Ilsley Bank (M&I Bank), processed six funds transfers totaling \$67,357 on behalf of a customer for the purpose of paying an outstanding balance owed to an Iranian entity located in Iran for the purchase of Persian rugs. M&I Bank stated that the company had been added to the bank's "False Hit List" in 2009 (when the importation of Iranian-origin carpets was authorized under a general license) due to the word "Persian" in the company's name. However, after OFAC removed the general license in 2011, M&I Bank did not remove the company from the False Hit List or implement additional measures that could have prevented the funds transfers in 2011.

OFAC issues a Finding of Violation when it wants to document a violation but determines the violation does not warrant a monetary penalty. The subject of a Finding of Violation may respond to OFAC's determination of violation before the determination becomes final.

In issuing the Finding of Violation to BMO, OFAC considered that M&I Bank may have been unaware of the risks associated with a false hit list that is not periodically reviewed. To this end, OFAC has now issued guidance to companies on the importance of maintaining false hit lists. OFAC also considered that staff-level personnel had actual knowledge of the conduct, had reason to know that the transactions were in violation of the ITS and had failed to include procedures for updating internal sanctions lists and sanctions programs administered by OFAC. Mitigating factors included that fact that no managers or supervisors were aware of the conduct, no finding had been previously issued against M&I Bank and personnel at M&I Bank (and later BMO Harris) substantially cooperated with OFAC during the course of investigation.

For additional information, see [WSJ coverage](#) as well as the OFAC

[enforcement notice](#) and the newly-issued [guidance](#) on false hits.

Former Connecticut Resident Sentenced to Prison for Attempting to Send U.S. Military Technology to Iran

On October 23, 2015, Mozaffar Khazaei, a former resident of Connecticut, was sentenced to 97 months in prison and ordered to pay a fine of \$50,000 for violating the AECA. Specifically, a U.S. District Judge in Connecticut determined that between 2009 and 2013 Khazaei attempted to send to Iranian universities material relating to U.S. military jet engines. Such material is controlled under the International Traffic in Arms Regulations and was obtained by Khazaei through previous employment with multiple U.S. defense contractors. Khazaei was arrested in New York with the material prior to boarding a flight to Iran on January 9, 2014. He sought to export approximately 1,500 documents containing trade secrets and 600 documents containing highly sensitive defense technology involving the JSF Program, F-22 Raptor, V-22 Osprey, C130J Hercules and the Global Hawk engine programs. Khazaei pleaded guilty to the unlawful export of defense materials without an export license in violation of AECA.

For additional information, see the DOJ [press release](#), the March 2015 issue of the [Red Notice](#) and [Bloomberg](#).

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC Issues Sanctions Against Individuals Tied to ISIS

In late September, OFAC announced the addition of 25 individuals and 5 entities to the agency's Specially Designated Nationals (SDN) list on counterterrorism grounds. The additions include persons and entities that the U.S. government identified through intelligence as having links to the Islamic State of Iraq and Syria (ISIS), both logistically and financially. OFAC stated that the sanctions—which restrict designated entities from using financial institutions with a U.S. nexus—are designed to make it harder for ISIS to use the wealth it has amassed through oil sales, taxation and extortion to finance its operations in Iraq and Syria. The sanctions also reveal the broad scope of ISIS supporters throughout the Middle East and North Africa as many of the individuals targeted reside or operate in Afghanistan, Pakistan, Libya, Yemen and Tunisia.

For more information, see OFAC's [SDN list](#) update and coverage in [Fox News](#).

US Bill Proposes Mandatory Minimums for Sanctions Violators

Earlier this month, a sentencing reform bill was introduced in the Senate containing a provision that would establish five-year minimum prison terms for individuals found guilty of providing "controlled goods or services" to terrorists or weapons proliferators or to anyone on the U.S. sanctions list. Under the proposed bill, controlled goods or services are defined as applying to any "article, item, technical data, service or technology" listed or included on the United States Munitions List (USML) or the Commerce Control List, both of which control the export and re-export of a broad range of U.S.-origin goods. A parallel sentencing bill proposed in the House of Representatives does not contain the provision on minimum penalties for sanctions violators.

For more information, see coverage in the [WSJ](#).

Request for Comments Regarding USML Categories VI, VII, XIII and XX

On October 9, 2015, the U.S. Department of State announced that it was requesting comments from the public to inform its current review of the controls implemented in recent revisions to USML Categories VI (Vessels of War and Special Naval Equipment), VII (Tanks and Military Vehicles), XIII (Auxiliary Military Equipment) and XX (Miscellaneous Articles) pursuant to the President's Export Control Reform initiative. The state department is reviewing these categories as part of its ongoing efforts to revise the USML to create a "positive list" that describes controlled items using objective criteria instead of broad, subjective or intent-based criteria. The purpose of this initiative is to ensure that the USML is not overly broad in its description of controlled items, resulting in the control of a broad range of items with limited impact on U.S. military and intelligence. The state department periodically reviews USML categories to ensure that they do not inadvertently control items in normal commercial use, account for technological developments and properly implement the national security and foreign policy objectives of the "positive list" reform efforts. The comment period for these USML categories will remain open until December 8, 2015.

For more information see the Notice of Inquiry published in the [Federal Register](#).

CONTACT INFORMATION

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The "Anticorruption Developments" section of *Red Notice* is edited by [Jonathan Vukicevich](#). The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlappizzi](#).

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