

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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中文 >

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IN THIS ISSUE

Anticorruption Developments

- [LATAM Airlines Agrees to Pay \\$22 Million to Settle FCPA Cases](#)
- [Orthofix Emerges from FCPA-Related DPA, Accrues Nearly \\$5 Million in Anticipation of Additional FCPA-Related Costs](#)
- [FinCEN Issues New Customer Due Diligence Rules Requiring Certification of Beneficial Owners](#)

Export Control and Sanctions Enforcement

- [OFAC Issues a Finding of Violation to AXA Equitable Life Insurance Company and Humana, Inc. under the Foreign Narcotics Kingpin Sanctions](#)
- [OFAC Issues a Finding of Violation to Compass Bank under the Foreign Narcotics Kingpin Sanctions](#)

Export Control and Sanctions Developments

- [Iran General License J Authorizes Expanded Activity by Non-U.S. Persons in Civil Aviation Sector](#)
- [DDTC and BIS Further Implement Export Control Reform Changes](#)
- [DDTC Posts Revision 4.4 of the Guidelines for Preparing Agreements](#)
- [OFAC Updates Cuba FAQs regarding Collection and Recordkeeping Requirements for Carrier and Travel Services Providers](#)

Global Investigations Resources

- Client Alert: [Cleared for Takeoff: OFAC's General License J Allows Boeing, Airbus and Other Aircraft to Land in Iran](#)
- [AG Trade Law Blog](#)
- [Writing and Speaking Engagements](#)

ANTICORRUPTION DEVELOPMENTS

LATAM Airlines Agrees to Pay \$22 Million to Settle FCPA Cases

Last month, LATAM Airlines ("LATAM"), based in Santiago, Chile, agreed to pay \$22 million to settle parallel civil and criminal proceedings involving alleged violations of the Foreign Corrupt Practices Act (FCPA). The allegations related to improper payments that the company made in an attempt to resolve a conflict with its unionized employees in Argentina. In connection with the settlement, LATAM admitted that executives of LAN Airlines S.A. ("LAN"), the company's predecessor in interest, had agreed to pay an Argentinian consultant to negotiate a settlement with the intent that some money would be funneled to third parties with influence over the unions. In total, LAN's management authorized \$1.15 million in payments to the consultant, which were recorded as payments for a study of existing air routes in Argentina. LAN will pay \$9.4 million in disgorgement and prejudgment interest to settle the Securities and Exchange Commission (SEC) case and a \$12.75 million criminal penalty to the Department of Justice (DOJ), and it will maintain a compliance monitor for 27 months.

To learn more, read the SEC [press release](#) and the DOJ [press release](#).

Orthofix Emerges from FCPA-Related DPA, Accrues Nearly \$5 Million in Anticipation of Additional FCPA-Related Costs

Until last month, Orthofix International N.V., a Texas-based global medical device company, had been subject to a Deferred Prosecution Agreement (DPA) since 2012. The DPA initially related to self-reported FCPA violations involving Orthofix's Mexican subsidiary, Promeca S.A. de C.V. In August 2013, while subject to the DPA concerning the Promeca investigation, Orthofix learned of, and self-reported, additional potential violations related to improper payments by its Brazilian subsidiary, Orthofix do Brasil Ltda. The additional disclosures led the DOJ to extend the DPA in 2015 because it found that the company had not sufficiently improved its compliance program as required by the DPA's terms. The DOJ allowed the agreement to expire on July 17, 2016, and sought dismissal of the Promeca-related case on July 28, 2016.

Orthofix announced in its Form 10-Q filed on August 1, 2016, that the company is currently engaged in negotiations with the SEC to resolve the allegations involving the Brazilian subsidiary and has accrued a charge of \$4.6 million in anticipation of a negotiated resolution of that matter.

To learn more, click [here](#).

FinCEN Issues New Customer Due Diligence Rules Requiring Certification of Beneficial Owners

On July 11, 2016, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued new rules requiring enhanced customer due diligence. The rules require covered financial institutions to develop and implement written policies designed to both identify and verify beneficial owners of "legal-entity customers" that open new accounts with the institution and to include such procedures in the institutions' anti-money laundering compliance program. Legal-entity customers include corporations, limited liability companies, general partnerships and other similar entities.

Before the new rules were issued, financial institutions were not required to collect any information about the beneficial owners of legal-entity accounts. Institutions will now be required to obtain documentation and an accompanying certification of at least one individual significantly tied to the account. Legal-entity customers will be required to present information about their beneficial owners, which are defined to include individuals who directly or indirectly hold a significant equity interest in the legal entity (25 percent or more) as well as individuals who maintain significant control over the management or direction of the legal entity, such as senior officers and executives. Legal-entity customers must disclose at least one individual who exercises significant control. The compliance deadline is May 11, 2018.

For more information, click [here](#).

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

OFAC Issues a Finding of Violation to AXA Equitable Life Insurance Company and Humana, Inc. under the Foreign Narcotics Kingpin Sanctions

On August 2, 2016, the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury announced that it had issued a Finding of Violation to AXA Equitable Life Insurance Company ("AXA") and Humana, Inc. for violations of the Foreign Narcotics Kingpin Sanctions Regulations (FNKSR). According to OFAC, the violations concerned health insurance policies that were maintained by AXA and serviced by Humana, Inc. through a subsidiary, Kanawha Corporation (Kanawha), on behalf of three individuals designated as Specially Designated Nationals (SDNs) pursuant to the FNKSR.

OFAC determined that, between December 2009 and May 2011, neither AXA nor Kanawha identified the three policyholders as SDNs, resulting in sanctions violations. Specifically, during this time frame, the companies processed and/or received premium payments from these SDNs and engaged in activity, such as servicing the policies, maintaining policy records and answering inquiries related to their policies. Notably, OFAC issued this Finding of Violation even though personnel at the companies were unaware that the policyholders were sanctioned parties. In this regard, OFAC stated that both companies are large and sophisticated companies that failed to maintain adequate controls and measures to ensure that it could identify, block and report insurance policies, premiums or claims benefiting a sanctioned party.

For additional information, see the OFAC web [notice](#).

OFAC Issues a Finding of Violation to Compass Bank under the Foreign Narcotics Kingpin Sanctions

Late last month, OFAC announced that it had issued a Finding of Violation to BBVA Compass Bank ("Compass") under the FNKSR. According to OFAC, the violations stem from the failure of Compass to block the bank accounts of two individuals who were designated pursuant to the FNKSR for engaging in money laundering activity. Compass stated that the reason it did not close the accounts was due to a misconfiguration in its

sanctions screening software that prevented it from reviewing dormant or inactive accounts against changes to OFAC's SDN List—an issue that dated back to February 2010. The bank staff also did not take action to block the account of one individual after identifying news reports regarding the customer's OFAC designation.

In issuing its Finding of Violation, OFAC determined that the penalty was appropriate, given that Compass is a large and commercially sophisticated financial institution and had reason to know that it maintained accounts for, and on behalf of, SDNs. Compass had also previously received an OFAC cautionary letter in relation to substantially similar conduct involving issues with the bank's screening software. However, OFAC also took into consideration, as mitigating factors, that no managers or supervisors appear to have been aware of the conduct and that Compass does not appear to have processed any transactions for, or on behalf of, the individuals.

For additional information, see the OFAC web [notice](#).

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Iran General License J Authorizes Expanded Activity by Non-U.S. Persons in Civil Aviation Sector

Late last month, OFAC issued a new General License J (GL-J), which authorizes the re-exportation of certain civil aircraft on temporary sojourn to Iran, as well as related transactions involving the re-exportation of spare parts, components and technology to Iran by non-U.S. persons. GL-J provides authorization for commercial passenger and cargo airline operators to fly into and out of Iran, subject to various limitations.

For additional information, see the OFAC [press release](#) and in-depth discussion in the [AG Trade Law Blog](#).

DDTC and BIS Further Implement Export Control Reform Changes

Late last month, as part of the Obama administration's Export Control Reform (ECR) effort, the Directorate of Defense Trade Controls (DDTC) issued a final rule revising United States Munitions List (USML) Categories XIV (Toxicological Agents and Associated Equipment) and XVIII (Directed Energy Weapons). This rule will result in items transitioning from the USML to the Commerce Control List of the Export Administration Regulation (EAR). In conjunction with the DDTC rule, the Bureau of Industry and Security (BIS) issued a final rule determining how such transitioned items will be controlled under the EAR. Both rules are effective on December 31, 2016.

In addition, on August 16, 2016, DDTC and BIS released final rules amending the International Traffic in Arms Regulations (ITAR) and EAR to make various revisions, including harmonizing the destination control statement requirements in the two regulations. These rules are effective November 15, 2016.

For additional information, see the Federal Register notices for the ECR changes [here](#), [here](#), [here](#) and [here](#).

DDTC Posts Revision 4.4 of the Guidelines for Preparing Agreements

On August 11, 2016, DDTC issued Revision 4.4. to the Guidelines for Preparing Agreements which accounts for recent amendments to the ITAR. The revisions go into effect on September 1, 2016. All agreements and amendment applications submitted after that date must incorporate the revised language.

For more information, see the Guidelines for Preparing Agreements ([Revision 4.4](#)).

OFAC Updates Cuba FAQs regarding Collection and Recordkeeping Requirements for Carrier and Travel Services Providers

Late last month, OFAC announced updates to its FAQs related to Cuba sanctions. In this update, OFAC added a new FAQ #38, clarifying that carrier and travel service providers do not need to collect and retain on file a physical or electronic copy of a specific license for customers traveling to Cuba under a specific license issued by OFAC. Instead, carrier or travel service providers need to collect only the specific license number to comply with the regulations. As a result of the addition of FAQ #38, OFAC amended FAQ #39, which deals with record retention requirements for airlines, vessel operators, and travel service providers. Specifically, the amended FAQ now specifies that, when providing services to U.S. persons traveling to Cuba under a specific license, such entities must retain either a copy of a license or a license number for a period of five years.

For more information, see the Cuba [FAQs](#), updated July 25, 2016.

[Back to top.](#)

WRITING AND SPEAKING ENGAGEMENTS

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 Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

[Back to top.](#)

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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 [Johann Strauss](#).

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