

Red Notice

A Monthly Update on Global Investigations and Prosecutions



November 2016

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ANTICORRUPTION DEVELOPMENTS

JPMorgan Resolves Enforcement Action Regarding China Subsidiary's Hiring Practices

On November 17, 2016, JPMorgan Chase & Co. (JPMC) entered into a nonprosecution agreement with the Department of Justice (DOJ), and the Securities and Exchange Commission (SEC) and the Federal Reserve Board of Governors (FRB) issued administrative cease-and-desist orders, in connection with allegations that JPMC's wholly owned Hong Kong-based subsidiary, JPMorgan Securities (Asia Pacific) Limited (JPMorgan APAC), violated the antibribery and books and records provisions of the Foreign Corrupt Practices Act (FCPA).

According to the enforcement actions, between 2006 and 2013, JPMorgan APAC bankers improperly hired or provided internships for the purpose of influencing senior officials at clients, including Chinese state-owned enterprises, to award business to the company. The enforcement actions further allege that such hiring occurred despite JPMC's institution of a compliance review process to screen candidates for employment referred to the

company by clients, potential clients and/or government officials. However, the enforcement actions further allege that JPMorgan APAC bankers and support personnel routinely provided inaccurate, misleading and untruthful answers in compliance questionnaires required by JPMC's compliance review process to facilitate the purported improper hirings.

JPMC agreed to pay more than \$260 million to resolve the enforcement actions (including a \$72 million criminal penalty; \$105,507,668 in disgorged profits and \$25,083,737 in prejudgment interest to the SEC; and \$61,932,500 in sanctions to the FRB). The DOJ's Press Release and Non-Prosecution Agreement are available [here](#), the SEC's Press Release and Order are available [here](#), and the FRB's Press Release and Order are available [here](#).

For more information, see *The New York Times*' coverage [here](#) and *The Wall Street Journal*'s coverage [here](#).

Rio Tinto Self-Discloses \$10.5 Million Payment to International Authorities

On November 8, 2016, Rio Tinto filed a Form 6-K (available [here](#)) announcing that it had notified authorities in the United Kingdom and in the United States that it is investigating a \$10.5 million payment made in 2011 to a consultant on its Simandou mining project in Guinea. The Guinean government partially revoked Rio Tinto's rights to the Simandou project in 2008 due to slow performance, but those rights were re-awarded to the company in 2011. The company is also in the process of notifying pertinent Australian authorities.

Rio Tinto learned of the payment from an email discovered in August 2016 and launched an investigation. The payment – made as part of a contractual agreement for “advisory services” – benefited a consultant with close ties to senior government officials in the Guinean government and was approved by Rio Tinto's then CEO Tom Albanese. As a result of the investigation to date, both the company's Energy and Minerals Chief Executive, Alan Davies, and the Legal and Regulatory Affairs Executive, Debra Valentine, have been terminated. Rio Tinto sold its 46.6 percent interest in the Simandou project in October 2016 and has stated that it intends to cooperate fully with all authorities' inquiries into this matter.

For more information, see *The Wall Street Journal*'s coverage [here](#) and the FCPA Blog's coverage [here](#).

Teva Pharma Reserves \$520 Million to Resolve FCPA Investigation

On November 15, 2016, Teva Pharmaceutical Industries Ltd. filed a Form 6-K (available [here](#)) indicating that it has reserved \$520 million to resolve an FCPA investigation by the DOJ and SEC in connection with allegations that the company engaged in conduct that violated the FCPA in Russia, Mexico and Ukraine between 2007 and 2013. In 2014, the company had previously filed a Form 6-K (available [here](#)) stating that affiliates under investigation “provided to local authorities inaccurate or altered information relating to marketing or promotional practices” and that such practices “could rise to the level of FCPA violations and/or violations of local law.”

For more information, see the FCPA Blog's coverage [here](#) and *The Wall Street Journal*'s 2015 coverage [here](#).

Agricultural Bank of China Fined by New York Department of Financial Services for Violation of State Anti-Money Laundering Laws

On November 4, 2016, the New York Department of Financial Services (DFS) entered into a Consent Order (available [here](#)) with the New York branch of the Agricultural Bank of China (the “Bank”) in connection with allegations that the Bank violated New York anti-money laundering laws.

The consent order comes on the heels of the DFS investigation into the Bank's increase of dollar-clearing transactions after being instructed by the DFS in 2013 not to increase such transactions until its compliance apparatus was greatly enhanced. Dollar-clearing transactions involve the conversion of payments on behalf of clients into U.S. dollars from a foreign currency. In addition to significantly increasing the number of dollar clearing transactions it undertook in 2014 and 2015, the Bank restricted its chief compliance officer from fulfilling his duty to investigate and report suspicious activity related to the dollar-clearing transactions involving parties from China, Russia, Yemen, Iran and Afghanistan. The Afghan client, DFS stated, is known to have ties to a narcotics traffickers-affiliated network, and the Iranian transactions appeared to benefit a sanctioned party. The chief compliance officer and much of the compliance staff eventually resigned in protest of the Bank's restrictions.

The DFS concluded that the Bank's efforts to evade regulatory oversight centered on sending coded messages through the Society of Worldwide Interbank Financial Telecommunication (SWIFT) system, a system that permits the Bank's compliance staff to vet transactions to ensure their compliance with anti-money laundering requirements, office of foreign assets control regulations, and the requirements of DFS and other regulators. The Bank agreed to pay a \$215 million penalty and to retain an independent monitor.

For more information, see *The Financial Times*' coverage [here](#) and *The Wall Street Journal*'s coverage [here](#).

SEC Issues “Risk Alert” Warning Investment Advisors and Brokers to Comply with Whistleblower Regulations

On October 24, 2016, the SEC's Office of Compliance Inspections and Examinations (the “Office”) issued a “Risk

Alert” advising that, in examining compliance with Rule 21F-17, which prohibits any company or person from impeding an individual’s ability to communicate directly with the SEC about potential securities law violations, the Office will review a variety of documents, including “compliance manuals, codes of ethics, employment agreements, and severance agreements” to identify provisions that may result in Rule 21F-17 violations.

Specifically, provisions that violate Rule 21F-17 include those that (1) limit the types of information an employee may convey to the SEC; (2) require departing employees to waive their right to monetary recovery related to any government investigation, including those resulting from whistleblowing tips; (3) require employees to represent that they have not assisted in any investigation involving the employer; and (4) require employees to notify, or obtain consent from, the employer prior to disclosing confidential information to the SEC.

The SEC’s Risk Alert is pertinent, given recent enforcement actions against companies relating to their treatment of whistleblowers. The SEC’s Risk Alert can be found [here](#).

World Bank Adds 16 Entities and Individuals to its Debarment List

In November, the World Bank added 16 entities and individuals to its debarment list, including five added by cross-debarment by other Multilateral Development Banks under the 2010 Agreement of Mutual Recognition of Debarments (available [here](#)). Of the remaining debarments, the World Bank released details about only four:

- Honeyomar Ventures Ltd., alleged to have submitted false audited financial statements in its bid for two World Bank-financed infrastructure projects in Nigeria (debarred for 18 months)
- Zarcus Construction Nig. Ltd., alleged to have submitted false audited financial statements in its bids for contracts under the Erosion and Watershed Management Project and Second Rural Access and Mobility Project in Nigeria (debarred for two years)
- Geoambiente Sensoramiento Remoto Ltd., for allegedly forging the signature of one of its proposed team members in a CV submitted in its proposal (and failing to notify the government of the team member’s noninvolvement in the project) while bidding for, and negotiating, a contract under the World Bank-financed State of Rio Grande do Sul – Project Rs Biodiversity in Brazil (debarred for 13 months)
- SFC Umwelttechnik GmbH, for allegedly engaging in fraudulent practices under the Vietnam Project Preparation Technical Assistance Facility Project and the Da Nang Priority Infrastructure Investment Project in Vietnam (debarred for 15 months).

World Bank Press Releases concerning the debarments are available [here](#) (Honeyomar), [here](#) (Zarcus and Geoambiente) and [here](#) (Umwelttechnik). The list of all World Bank debarred entities and individuals is available [here](#).

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Oilfield Servicing Company Settles Alleged Violations of Cuban, Iranian and Sudanese Sanctions

On November 14, 2016, the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) announced that National Oilwell Varco, Inc. (NOV), a Delaware corporation, and two of its subsidiaries, agreed to pay \$5,976,028 to OFAC to settle potential violations of U.S. sanctions targeting Cuba, Iran and Sudan. According to the OFAC web notice, the alleged violations stem from multiple transactions conducted by NOV and its subsidiaries between 2002 and 2009 that resulted in the sale and/or export of goods or services to the above-referenced countries. The OFAC settlement is concurrent with a settlement agreement between NOV and the U.S. Department of Commerce, Bureau of Industry and Security (BIS) and a Non-Prosecution Agreement (NPA) with the U.S. Attorney’s Office for the Southern District of Texas. OFAC considers payment of the settlement amount satisfied by NOV’s payment of \$25 million pursuant to the NPA.

In determining the penalty, OFAC evaluated several aggravating and mitigating factors consistent with its Economic Sanctions Enforcement Guidelines. With respect to aggravating factors, OFAC determined that NOV’s conduct was reckless; senior managers knew, or had reason to know, of potential sanctions violations; the conduct caused harm to U.S. sanctions program objectives; and NOV is a large, sophisticated multinational corporation that lacked an effective compliance program. With respect to mitigating factors, OFAC considered that NOV had not received a prior Penalty Notice or Finding of Violation in the previous five years, NOV cooperated with OFAC’s investigation, and NOV made efforts to remediate its compliance program and introduce compliance enhancements.

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

Iranian National Pleads Guilty to Conspiring to Export Controlled Goods from the US to Iran

On October 27, 2016, the Department of Justice (DOJ) announced that Mansour Moghtaderi Zadeh, an Iranian

national, pled guilty to taking part in a conspiracy to ship controlled goods to Iran without a license. According to the DOJ press release, beginning in 2005, Zadeh was involved in multiple conspiracies to export products to Iran. After BIS detained one of these shipments in 2007, the agency issued a Temporary Denial Order (TDO) against Zadeh (under an alias) that prohibited him from engaging in U.S. export activities involving U.S. commodities. Zadeh subsequently circumvented the TDO and continued to engage in exports to Iran of various commodities, including resin, sealant, paint, pneumatic grease, film adhesive, and polyurethane coating and thinner. Zadeh faces up to 57 months in prison and a potential fine of up to \$200,000.

For additional information, see the DOJ [press release](#).

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC Adds Six Russian Lawmakers to SDN List Under the Crimea-Related Sanctions Program

On November 14, 2016, OFAC added six Russian lawmakers representing Crimea and Sevastopol in the Russian Parliament to its Specially Designated Nationals and Blocked Persons List (“SDN List”) pursuant to Crimea-related sanctions under Executive Order 13660. According to the OFAC press release, the sanctions support U.S. efforts to bring a diplomatic resolution to the conflict in Ukraine and align U.S. sanctions with similar action taken by the European Union.

For additional information, see the OFAC [press release](#).

BIS Amends Arms Embargo Controls for Four Countries and Recognizes India’s Accession to the MTCR

On November 4, 2016, BIS issued a final rule amending the Export Administration Regulations (EAR) to remove provisions pertaining to arms embargo-related controls on Cote d’Ivoire, Liberia, Sri Lanka and Vietnam. The amendments harmonize the EAR with the International Traffic in Arms Regulations (ITAR), U.N. Security Council resolutions, acts of Congress and determinations by the Secretary of State. The amendments also recognize India as a member of the Missile Technology Control Regime (MTCR).

For additional information, see the BIS notice and the final rule in the [Federal Register](#).

DOJ Establishes Voluntary Self-Disclosure Program for Criminal Violations of U.S. Economic Sanctions and Export Controls

Last month, the DOJ established a formal, voluntary self-disclosure program for criminal violations of U.S. economic sanctions and export controls and issued guidance on cooperation and remediation for companies facing potential criminal violations of U.S. export controls and sanctions laws. This program directs companies to disclose potentially willful violations to DOJ in order to receive cooperation credit from the agency. This DOJ disclosure is in addition to those made to other relevant regulatory agencies such as the Directorate of Defense Trade Control, BIS or OFAC. Benefits of disclosure include eligibility for a significantly reduced penalty, fine and forfeiture; possibility of an NPA; a reduced period of supervised compliance; and the ability to avoid an independent monitor.

For an in-depth analysis of the new Guidance, please see the Akin Gump [International Trade Alert](#) from November 16, 2016.

World Bank’s Integrity Vice President Releases Annual Report for Fiscal Year 2016

Last month, the Integrity Vice President (INT) of the World Bank Group (the “Bank”) released its annual report for fiscal year 2016 (the “Report”). In the Report, the INT provides insight into the Bank’s efforts to combat fraud, corruption and other sanctionable practices in Bank-funded projects through its enforcement activities in the preceding fiscal year. These enforcement activities include investigations into allegations of sanctionable activities committed by firms, individuals, agents and Bank staff, including the imposition of sanctions. The Report is a helpful document that provides parties participating in contracts involving Bank financing with insight into the Bank investigation and sanctions process, as well as investigation and enforcement priorities for the coming year.

For an in-depth analysis of the Report, please see the Akin Gump [International Trade Alert](#) from November 17, 2016.

Akin Gump Postelection Report 2016

The results of the U.S. presidential election were historic and will have significant economic, political, legal and social implications. President-elect Trump has stated that he will pursue vast changes in diverse regulatory sectors, including international trade, health care, energy and the environment. Please see the [Akin Gump 2016 Postelection Report](#) for a review of potential changes that may be expected under the incoming Trump

administration.

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WRITING AND SPEAKING ENGAGEMENTS

On Monday, December 5, Akin Gump will host the CLE for In-House Counsel "Best Practices When Faced with an SEC Investigation" presented by [Peter Altman](#) at Akin Gump's Houston Office. If you are interested in attending the program, please contact Flor Gonzalez at fgonzalez@akingump.com.

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.

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The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Johann Strauss](#) and Sina Kimiagar, Law Clerk.

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Red Notice is a monthly publication of Akin Gump Strauss Hauer & Feld LLP.

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