

Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



JULY 2014

Introduction

Welcome to the July 2014 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, two Noble Corporation executives settle with the U.S. Securities and Exchange Commission (SEC) ahead of trial; U.K. anticorruption watchdog drives enforcement actions in the Middle East and Asia; a pharmaceutical company tackles a probe surrounding potential Foreign Corrupt Practices (FCPA) violations; and Macau's graft agency reviews a business arrangement involving an international hospitality conglomerate.

In export control and sanctions enforcement news, a major French bank reaches a \$9 billion global settlement with the U.S. government to resolve allegations that it violated several sanctions programs; five other companies ranging from a prominent U.S. bank to an energy drink manufacturer settle with the Office of Foreign Assets Control (OFAC) for more than \$17 million in connection with alleged sanctions violations; a Russian National pleads guilty to charges of violating the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR); and a Texas woman pleads guilty to ITAR violations.

In developments in export control and sanctions law, the Obama administration expands Ukraine-related sanctions to certain sectors of the Russian economy; the departments of State and Commerce issue final rules related to the export jurisdiction of certain military electronics; and OFAC issues final rules outlining South Sudan and Central African Republic-related sanctions regulations.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Noble Execs Settle Nigerian Bribery Case With SEC

Mark A. Jackson, Noble Corp. CEO, and James J. Ruehlen, Director of Noble's Nigerian subsidiary, Noble Drilling (Nigeria), Ltd., settled SEC charges accusing the pair of bribing Nigerian officials. The settlement comes on the heels of U.S. District Judge Keith P. Ellison's denial of the executives' motion for summary judgment in which Jackson and Ruehlen argued that they were acting in good faith and believed the payments to Nigerian officials were allowable costs to obtain permits. Judge Ellison also ruled that the payments did not fit the narrow exception for facilitating payments under the FCPA.

Final judgments signed by Judge Ellison on July 3, 2014 contained injunctions against Jackson and Ruehlen but did not require any financial penalties or admission of wrongdoing.

After having several similar claims dismissed for statute of limitations reasons, the SEC sued Jackson and Ruehlen in 2012 for conduct from May 2006 forward. During that time, Jackson and Ruehlen allegedly paid Nigerian officials to obtain numerous extensions for temporary permits beyond the three extensions allowed by law in order to circumvent sizeable custom duties. Under local law, oil companies operating with temporary permits may obtain up to three permit extensions for six-month periods to import. After that, the rigs either must be exported and reimported under a new temporary permit, or the company must permanently import the rigs and pay hefty duties. Since 2006, Jackson and Ruehlen allegedly paid "hundreds of thousands of dollars in bribes to Nigerian customs officials to obtain 11 illicit permits and 29 extensions," according to

TRANSLATIONS

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WRITING AND SPEAKING ENGAGEMENTS

On July 30, the International Trade practice hosted a reception for clients and colleagues attending the Bureau of Industry and Security (BIS) Update 2014 Conference on Export Controls and Policy in Washington, DC.

If you would like to invite Akin Gump Strauss Hauer & Feld LLP lawyers to speak at your company or to your group about anticorruption law, compliance, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

the SEC. The agency further alleged that Ruehlen prepared the false paperwork related to the company's import and export of oil platforms and paid the officials while Jackson sought to hide the payments from the audit committee.

In 2012, Noble executive Thomas O'Rourke agreed to pay \$35,000 without admitting or denying allegations that he aided and abetted Jackson and Ruehlen in their alleged scheme to bribe Nigerian officials.

See additional coverage at [Reuters](#) and the [Houston Business Journal](#).

UK's Serious Fraud Office (SFO) Ramps up Anticorruption Efforts with Increased Investigations and Prosecutions

The SFO is keeping busy this summer, securing a jury conviction of two individuals and conducting two separate probes investigating alleged bribery in Asia and the Middle East.

On June 18, 2014, a jury at Southwark Crown Court convicted two former Innospec Limited executives for conspiracy to commit corruption. The convictions of Dennis Kerrison, a former CEO of Associated Octel Corporation (later renamed Innospec Ltd.), and Miltiades Papachristos, a former Regional Sales Director for the Asia Pacific region, mark the conclusion of the SFO's six-year investigation into Innospec. The global specialty chemicals company pled guilty to making payments to officials in Indonesia in exchange for securing contracts from the government to supply an Innospec chemical, Tetraethyl Lead, whose use was prohibited in the United Kingdom in 2000. Mr. Kerrison and Dr. Papachristos will face sentencing on August 1, 2014, along with two other former Innospec executives who pled guilty in 2012. The SFO collaborated with U.S. agencies and authorities in Indonesia, Switzerland and Singapore during this investigation. Read the SFO's [press release](#) and more coverage at the [FCPA Blog](#).

In mid-July, the SFO arrested and questioned several people in connection with a long-running investigation into GPT Special Project Management, an Airbus Group NV subsidiary. While the SFO did not confirm if these arrests were linked to the ongoing probe regarding alleged corrupt business practices in Saudi Arabia, news reports indicate that two current and two former employees were recently interviewed and released on bail. SFO has been examining Airbus' Saudi business operations for more than two years in response to whistleblower claims that the European aircraft and defense company's GPT division secured contracts via bribes and gifts given to Saudi generals. See more details at [Bloomberg](#) and [Reuters UK](#).

Finally, on July 14, 2014, SFO confirmed that it is investigating British survey and construction services firm, Sweett Group, in relation to allegations of bribery in the United Arab Emirates (UAE) and elsewhere in the Middle East. This probe relates to claims that a former Dubai-based employee of a Sweett subsidiary asked a firm of architects to make a payment to an official inside the UAE president's personal foundation in exchange for a \$100 million contract to build a hospital in Morocco sponsored by the president's foundation. Sweett Group originally notified the SFO in April 2014 about the alleged impropriety of this employee and has expressed its commitment to cooperate fully with the SFO as the investigation proceeds. The FCPA prohibits companies from offering charitable donations as a quid pro quo in order to wrongfully obtain business opportunities. For more information, see the Sweett's Group [press release](#) and additional coverage at the [Telegraph](#) and the [London Evening Standard](#).

Spanish Drug Company Discloses Internal FCPA Investigation in Europe and the Middle East

In a recent [6-K filing](#) with the SEC, Grifols, S.A. revealed that they have retained an external expert to investigate their sales practices in Central and Eastern European countries, specifically Belarus and Russia. Trading practices in Brazil, China, Georgia, Iran and Turkey are also being investigated, in addition to other countries "considered necessary," according to the filing. The investigation was initiated prior to the acquisition of Talecris, which also faced scrutiny for FCPA violations in Europe in 2012. The pharma company produces more than 90 percent of its sales outside of the United States. For more information, see coverage at [Compliance Week](#).

Macau's Anticorruption Agency Probes Wynn Resorts Land Deal

Macau's Commission Against Corruption (CACC) has formed a task

force to review the land deal that forged the path for Wynn Resorts' ("Wynn") \$4 billion casino-resort in the globe's largest gambling hub and only legal gambling site in China. Executed in 2012, this deal provided Wynn with the necessary land in Macau's desirable Cotai area to construct Wynn Palace, currently underway to open in 2016. This transaction encompassed a \$50 million payment by Wynn to Macau-registered Tien Chiao Entertainment and Investment Co. Ltd. in exchange for rights to the construction site.

CACC initiated the investigation after a request by the U.S.-based International Union of Operating Engineers, a trade association calling for increased transparency in Wynn's business dealings in Macau, to provide more details on how an unknown company obtained rights to the land before it was granted to Wynn. They also called into question why a payment was made to an entity with possible connections to politically influential figures. The company's CEO, Steve Wynn, maintains that the deal complies with U.S. antibribery laws. Another company executive said that the company has not been contacted by authorities as of mid-July.

The SEC previously investigated Wynn in connection with allegations that a company affiliate made an improper payment to the University of Macau Development Foundation. The investigation closed in July 2013 with the SEC declining to proceed with an enforcement action.

For additional coverage, see [Bloomberg](#) and [Reuters](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

BNP Paribas S.A. Reaches Global Settlement of U.S. Sanctions Violations Totaling Nearly \$9 Billion

French bank BNP Paribas S.A. agreed in late June 2014 to a \$963,619,900 settlement with OFAC in connection with allegations that it processed transactions to or through U.S. financial institutions that involved individuals, entities and countries subject to U.S. sanctions programs. These transactions led to more than 3,800 apparent violations of the Sudanese Sanctions Regulations (SSR), the Iranian Transactions and Sanctions Regulations (ITSR), the Cuban Assets Control Regulations (CACR) and the Burmese Sanctions Regulations (BSR). The large settlement amount apparently reflects OFAC's estimation that (1) BNP's alleged violations constituted an egregious case; (2) BNP did not submit a voluntary self-disclosure; (3) the alleged violations, representing a large volume of transactions over many years, appeared to have resulted from a systematic practice of employing methods to conceal the sanctioned parties' involvement or interest in the transactions; and (4) despite BNP's sophistication and size, it did not have adequate compliance policies in place. With a base penalty amount of \$19,272,380,006, however, the settlement amount also reflects OFAC's consideration of the fact that BNP cooperated in the investigation, agreed to a statute of limitations tolling agreement with multiple extensions and adopted remedial measures.

The OFAC settlement, the largest to date involving violations of U.S. sanctions, is part of a global settlement among BNP, OFAC and several U.S. state and federal government agencies, including the U.S. Department of Justice (DOJ), the New York County District Attorney's Office, the Federal Reserve Board of Governors and the Department of Financial Services of the State of New York. As part of the agreement with DOJ, BNP agreed to plead guilty to the charge of conspiring to violate the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) and to pay \$8.9 billion, representing the proceeds derived from the transactions at issue. The agreement is historic, since it marks a departure from DOJ's pattern of entering into deferred prosecution agreements with companies involved in sanctions violations. DOJ remarked that the hefty penalty was warranted, based on BNP's prolonged misconduct and failure to cooperate with the U.S. government investigation. OFAC's fine will be settled by the DOJ payments.

Read the OFAC [settlement agreement](#), summary of the OFAC action, DOJ [press release](#) and other relevant [documents](#). Additional news coverage is available at [The Washington Post](#) and [Bloomberg](#) coverage.

Bank of America, N.A. Enters into Settlement with OFAC Regarding Alleged Violations of Multiple Sanctions Programs

Bank of America, N.A. (BoA) agreed in late July to a settlement with OFAC of \$16,562,700 regarding allegations that it violated multiple sanctions programs over approximately four years. OFAC alleged that BoA failed to properly block the accounts of, and processed

more than 400 transactions on behalf of, individuals on OFAC's Specially Designated Nationals (SDN) List and Specially Designated Narcotics Traffickers (SDNT) List, in violation of the Foreign Narcotics Kingpin Sanctions Regulations (FNKSR) and the Narcotics Trafficking Sanctions Regulations (NTSR). In addition, according to allegations, BoA did not file timely blocked property reports for SDNT accounts at the bank, in violation of the Reporting, Procedures and Penalties Regulations (RPPR).

Of note, the transactions at issue were valued at less than \$200,000. The much larger settlement amount apparently reflects several factors. First, although BoA identified the majority of apparent violations, OFAC concluded that BoA's disclosure was not voluntary, because OFAC was already aware of substantially similar apparent violations. Moreover, OFAC found that several of the violations were egregious, based on BoA's failure to adequately address a known weakness in its SDN screening tool. In addition, OFAC noted BoA's prior settlement for related activity, as well as its size and sophistication. With a reduction from the base penalty of more than \$83 million, however, the settlement amount also reflected OFAC's finding that some of the alleged violations may have been eligible for OFAC licenses, that BoA has since undertaken significant remedial action, and that BoA has hired additional compliance personnel and provided additional training to existing personnel.

Read OFAC's [summary](#) and [Reuters coverage](#).

Electronics Company Reaches \$4 Million Settlement with OFAC for ITSR Allegations

Epsilon Electronics Inc. of California reached a \$4,073,000 settlement with OFAC in late July in connection with alleged violations of the ITSR. OFAC alleged that Epsilon issued 39 invoices over a four-year period for sales of car audio and video equipment to a company that re-exports most of its goods to Iran and therefore knew or had reason to know that the products were to be transhipped to Iran. In its settlement announcement, OFAC noted that Epsilon issued five of these invoices after OFAC sent a cautionary letter explaining ITSR prohibitions. OFAC determined that these five transactions constituted an egregious case. The settlement amount, which is greater than the value of the goods exported, apparently reflects OFAC's consideration that Epsilon acted in reckless disregard of U.S. sanctions, had no compliance program during the timeframe of the alleged violations, attempted to conceal the Iran-related sales, and offered false information in subpoena responses and other communications with OFAC. However, OFAC seems to have tempered its demand, based on the fact that Epsilon is a small company and agreed to a statute of limitations tolling agreement with OFAC.

Read OFAC's [summary](#) and additional coverage at [The Wall Street Journal](#).

IT Provider Settles Potential Civil Liability with OFAC for Trade Practices in Sudan and Iran

Network Hardware Resale LLC (NHR), a California-based provider of networking equipment and services solutions, agreed to a \$64,758 settlement with OFAC for alleged violations of the SSR and ITSR, occurring between April 2008 and January 2011. During this time period, NHR allegedly exported 16 shipments of networking equipment and related accessories from the United States to Sudan, as well as two shipments with similar contents bound for Iran. OFAC determined that NHR's actions resulted from a pattern of conduct and represented reckless disregard for U.S. sanctions requirements. With a reduction from the base penalty of \$143,906, however, the settlement amount also reflected OFAC's finding that NHR had no prior history of sanctions violations, voluntarily self-disclosed this matter, cooperated with OFAC during the investigation and promptly implemented corrective measures.

Read OFAC's [summary](#) and learn more at the [FCPA Blog](#).

Red Bull North America, Inc. Settles with OFAC on Cuba Violation Claims

Energy drink giant Red Bull North America, Inc. (RBNA) agreed in late June to a \$89,775 settlement with OFAC for seven alleged breaches of the CACR. In early June 2008, seven RBNA representatives spent 10 days in Cuba filming a documentary. RBNA management approved the travel associated with the filmmaking but failed to secure prior authorization from OFAC for the travel-related expenses.

OFAC established that RBNA was aware of existing U.S. sanctions,

attempted to conceal the transaction and is a U.S. subsidiary of a multinational company well versed with the terms of international trade practices. Nevertheless, the settlement amount, which is less than the base penalty amount of \$105,000, also reflects OFAC's determination that RBNA took remedial measures by initiating an OFAC compliance program.

Read the enforcement [summary](#) and additional coverage at [Reuters](#).

Consumer Products Manufacturer Tofasco of America, Inc. Settles Alleged Iran-WMD Violations with OFAC

California-based Tofasco of America, Inc. agreed in mid-July to a settlement with OFAC of \$21,375 in connection with an alleged breach of the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR). In April 2009, Tofasco approached a bank to administer a letter of credit transaction compensating for a chair shipment involving the Islamic Republic of Iran Shipping Lines (IRISL), an entity whose property and interests are blocked pursuant to the WMDPSR. When denied, Tofasco engaged another banking institution to process this letter of credit transaction with a substitute bill of lading intentionally omitting the reference to the IRISL.

OFAC established that Tofasco demonstrated a reckless disregard for Iran sanctions, manipulated documents to elude sanctions and did not voluntarily self-disclose. However, the penalty was reduced from the base amount of \$25,000 in apparent recognition that Tofasco is a small company lacking the sophistication of an organization equipped with international trade experience, and it has no prior sanctions violations history.

Read OFAC's summary [here](#).

Russian National Pleads Guilty to Conspiracy Charges Violating the AECA and the ITAR

Following a lengthy investigation by the U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations, Dmitry Ustinov pled guilty in the U.S. District Court for the District of Delaware to conspiring to export high-tech military technology, including night-vision devices and thermal imaging scopes subject to the ITAR to Russia.

According to a statement released by the U.S. Attorney's Office for the District of Delaware, Ustinov partnered with a Virginia-based supplier from July 2010 to April 2013 to purchase and export this equipment without obtaining the required licenses from the U.S. Department of State. Ustinov orchestrated payments for various types of high-tech, night-vision and targeting devices via international wire transfers to the supplier's bank account.

Upon sentencing on October 2, 2014, Ustinov faces a maximum penalty of five years in prison, three years of supervised release and a \$250,000 fine.

Read [ICE](#) and [DOJ](#) press releases for more information and news coverage at [Delaware Online](#).

Texas Woman Pleads Guilty to ITAR Violations and Is Sentenced to Prison

The U.S. Attorney for the District of Connecticut announced on June 19, 2014, that Janiece M. Hough of Kempner, Texas, had admitted to one count of smuggling goods from the United States, in violation of the ITAR. Hough sold two Advanced Combat Optical Gunsights (ACOGs), items on the U.S. Munitions List, to an individual in Connecticut with the understanding that the equipment's intended destination was Germany. Hough was not licensed by the U.S. Department of State.

District Judge Stefan R. Underfill sentenced Hough to serve six months in federal prison, to be followed by three years' supervised release, the first eight months of which is to be served as home confinement. Hough was also mandated to perform 100 hours of community service and forfeit a penalty of \$198,054.

Based in Fort Hood, Texas, Hough was employed by a government contractor and operated a side e business offering surplus military clothing and equipment on eBay. She procured this merchandise from U.S. Army personnel, including a purchase from Michael Barth, who was sentenced to 24 months' imprisonment in April 2013.

Read the Department of Commerce's Bureau of Industry and Security (BIS) [press release](#) and [statement](#) issued by the U.S. Attorney for the District of Connecticut. Local [coverage](#) available at [Our Town Texas](#).

U.S. Government Increases Pressure on Russia with Creation and Expansion of Sectoral Sanctions Identifications List, Export Restrictions and Designation of Additional SDNs

On July 16, 2014, the Obama administration, acting under Executive Order 13662, imposed "sectoral" sanctions prohibiting U.S. persons from engaging in certain financial transactions with key Russian companies in the banking and energy industries. OFAC immediately issued its Sectoral Sanctions Identifications (SSI) List, identifying individuals and entities operating in targeted sectors of Russia's economy. The sanctions are primarily designed to limit designees' access to new financing. The SSI List is separate from OFAC's more restrictive SDN List, and presence on the SSI List does not necessarily entail SDN listing. Consequently, only certain specified transactions with those on the SSI List are prohibited, while the property and interests in property of those on the SSI List are not automatically blocked.

Beyond issuing the new sectoral sanctions, OFAC also designated additional individuals and entities as SDNs, and BIS added these new SDNs (11 Ukrainian and Russian entities) to its Entity List. The BIS action means that exports, re-exports or foreign transfers to designated entities of items subject to the Export Administration Regulations (EAR) will require a license, with a presumption of denial.

On July 29, 2014, a series of new sanctions measures were implemented against Russia, including a prohibition on exports of certain goods and technology to Russia's energy sector, suspension of credit that encourages exports to Russia and financing for economic development projects in Russia, and designation of an additional defense company on the SDN List and three Russian banks to the SSI List.

The U.S. actions were developed in coordination with European Union (EU) sanctions also issued on the same day. These trade penalties will similarly place restrictions on new equity and debt transactions with major-state owned banks, but may also hit banks not yet targeted by the United States. The EU has also placed restrictions on energy-related exports intended for oil exploration and production, similar to the restrictions that the U.S. has discussed. Furthermore, like the United States, the EU has suspended financing for development projects in Russia.

Read the July 16th [OFAC](#) and [BIS](#) announcements, the July 29th [OFAC](#) and [BIS](#) announcements, and additional [information](#) on the individuals and companies on the SSI List. Also, see Akin Gump articles for more information about the [July 16th](#) and [July 29th](#) sanctions.

Find additional news reports at [Bloomberg](#) and [The New York Times](#).

Export Control Reform: Administration Publishes Changes to Regulations Controlling Exports of Military Electronics

Companion final rules issued by the departments of State and Commerce in late June, pursuant to President Obama's Export Control Reform initiative, transfer less sensitive items from Category XI (pertaining to military and advanced electronics) of State's U.S. Munitions List (USML) to Commerce's Commerce Control List (CCL). The updated regulations move to the CCL military electronics, software and technology for certain applications ("certain wing folding systems, certain superconducting and cryogenic equipment, and related items..."). The final rules will be effective December 30, 2014.

Read press releases from the [State Department](#) and [BIS](#), and see the [Federal Register](#) for additional information.

OFAC Issues Final Rules Outlining the South Sudan and Central African Republic (CAR) Sanctions Regulations

OFAC issued final rules in early July implementing President Obama's April 2014 and May 2014 Executive Orders blocking the property and interests in property of individuals and entities who threaten the peace, stability and security of, or who target civilians through acts of violence in, South Sudan and CAR, respectively. The OFAC South Sudan- and CAR-related regulations will be supplemented in the future with more detail, possibly including

additional interpretive guidance and general license information.

Read the OFAC summaries from [July 2](#) and [July 7](#), [South Sudan](#) and [CAR](#) Executive Orders and Federal Register publications from [July 1](#) and [July 7](#).

CONTACT INFORMATION

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The "Anticorruption Developments" section of Red Notice is edited by [Courtney Cardin](#). The "Export Control and Sanctions Developments and Enforcements" sections are edited by [Annie Schlappizzi](#).

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