

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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ANTICORRUPTION DEVELOPMENTS

Former CEO of Harris Corporation's Chinese Subsidiary Pays \$46,000 to Settle Alleged FCPA Violations; No Charges for Company

On September 13, 2016, the Securities and Exchange Commission (SEC) issued a cease-and-desist order (the "Order") against Jun Ping Zhang ("Ping"), former chairman and CEO of Hunan CareFx Information Technology, LLC ("CareFx"). CareFx is a Chinese subsidiary of Harris Corporation, a U.S. developer of communications and information technologies. According to the Order, Ping directly or indirectly authorized the payment of between \$200,000 and \$1 million in improper gifts to government officials at Chinese state-owned hospitals in order to obtain or retain business worth approximately \$9.6 million. CareFx employees then falsely recorded the improper payments as "entertainment," "office expenses" or "transportation." The Order required Ping to pay a civil penalty of \$46,000 for violating the antibribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act (FCPA).

In 2013, Harris Corporation disclosed the potential violations to the DOJ and SEC shortly after acquiring CareFx and discovering the irregularities. The DOJ declined to charge Harris in November 2015. In its announcement of Ping's settlement, the SEC said that it too had decided to bring no action against Harris after "taking into

consideration the company's efforts at self-policing that led to the discovery of Ping's misconduct shortly after the acquisition, prompt self-reporting, thorough remediation, and exemplary cooperation with the SEC's investigation."

For additional information, see coverage in [FCPA Professor](#) and the SEC [press release](#) and [notice](#).

Cisco Receives SEC and DOJ Declinations Following FCPA Investigation

On September 8, 2016, in its Form 10-K, Cisco Systems Inc. announced that both the DOJ and SEC have declined to pursue FCPA enforcement actions against the company following more than two years of investigation into Cisco's operations in Russia and neighboring CIS countries. In December 2013, Cisco disclosed that the company was investigating its business activities and discounting practices in the region after Cisco and U.S. authorities received reports of misconduct. In its announcement, Cisco noted that it had fully cooperated with the DOJ and SEC and that Cisco had shared the results of its own investigation with the government.

For additional information, see coverage in [The FCPA Blog](#).

Nu Skin U.S. Settles FCPA Enforcement Action Related to Charitable Donation in China

On September 20, 2016, Nu Skin Enterprises, Inc. ("Nu Skin U.S."), a Delaware corporation headquartered in Provo, Utah, reached an administrative settlement with the Securities and Exchange Commission ("SEC") in connection with allegations that the company's Chinese subsidiary ("Nu Skin China") violated the internal controls and books-and-records provisions of the FCPA .

According to the SEC's order, in 2013 Nu Skin China was under investigation by the local Administration of Industry and Commerce ("AIC") for improperly making direct sales in violation of Chinese law. A Nu Skin China employee contacted a high-ranking member of the Chinese Communist Party regarding the investigation, and ultimately arranged for Nu Skin China to make an approximately \$154,000 donation to a charity with which the Party official was associated. Nu Skin China informed Nu Skin U.S. of the donation in advance, but did not disclose the association between the charity and the Party official. Nu Skin U.S. advised Nu Skin China to seek advice from a U.S. law firm based in China before making the donation to ensure that the donation complied with the FCPA. The firm apparently advised Nu Skin China to include certain language in the donation agreement regarding the illegality of influencing government officials, which the agreement ultimately did not include.

Two days after the donation ceremony, the AIC concluded its investigation of Nu Skin China without charging or fining the company. This case is a rare example of an enforcement action based solely on a charitable contribution intended to violate the FCPA. Nu Skin U.S. agreed to pay about \$765,000 to settle the matter (\$431,088 in disgorgement, \$34,600 in prejudgment interest, and \$300,000 in a civil penalty).

For additional information, see coverage in [The FCPA Blog](#) and the [notice](#) from the SEC.

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Illinois Seed Company Agrees to Pay OFAC \$4.3 Million to Settle Alleged Iran Sanctions Violations

On September 13, 2016, the U.S. Treasury's Office of Foreign Assets Control (OFAC) announced that PanAmerican Seed Company ("PanAm"), a company based in West Chicago, Illinois, agreed to pay \$4.3 million to settle alleged violations of the Iranian Transactions and Sanctions Regulations (ITSR). According to OFAC's enforcement notice, between May 2009 and March 2012, PanAm indirectly exported flower seeds to Iran in 48 sales transactions through two companies based in Europe and the Middle East. PanAm personnel involved in the violations were aware of sanctions restrictions on Iran and conducted the sales in a manner designed to conceal the involvement of the Iranian distributors.

In assessing the penalty, OFAC considered this to be an egregious case because PanAm employees acted willfully, ignored compliance responsibilities and continued sales after OFAC commenced its investigation. OFAC further considered that PanAm did not initially cooperate in the investigation, by providing misleading or incomplete information, and is a division of a commercially sophisticated international company, Ball Horticultural. Nonetheless, the final settlement is a reduction from the maximum statutory civil penalty of \$12 million due, in part, to consideration of mitigating factors. For example, OFAC considered that PanAm had not violated OFAC sanctions five years prior to the first transaction and that the exports at issue were likely eligible for an OFAC license. OFAC also considered that PanAm took remedial measures in response to the investigation, such as halting exports and implementing a sanctions compliance program.

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

Oregon Orthodontic Device Company Agrees to Pay OFAC \$43,000 to Settle Alleged Iran Sanctions Violations

On September 7, 2016, OFAC announced that World Class Technology Corporation (WCT), a company headquartered in Portland, Oregon, agreed to pay \$43,000 to settle alleged violations of the ITSR in connection with the sale of orthodontic devices to Iran. Specifically, OFAC alleged that, between April 2008 and July 2010, WCT exported seven shipments of orthodontic devices totaling \$59,886 from the United States to Germany, United Arab Emirates and Lebanon with knowledge that such devices were intended for re-export to Iran.

In determining the settlement amount, OFAC found that WCT's management had knowledge that products were being exported to Iran and that the company lacked a sanctions compliance program. Nonetheless, the final settlement is a reduction from the maximum statutory civil penalty of \$1.75 million due to consideration of several mitigating factors. Specifically, OFAC considered that the violations did not result in great economic or other benefit to Iran and would have qualified for an OFAC license. OFAC also took into account that WCT did not have a sanctions violation in the five years preceding the first transactions, lacked commercial sophistication at the time of the sales and has since developed an economic sanctions compliance program.

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

Chinese Company and Four Chinese Nationals Charged with Evading North Korea Sanctions

On September 26, 2016, the Department of Justice (DOJ) announced that it had charged four Chinese nationals and a trading company, Dandong Hongxiang Industrial Development Co. Ltd. (DHID), for engaging in a conspiracy to evade sanctions on North Korea. According to the DOJ press release, between August 2009 and September 2015, DHID and the Chinese nationals involved used front companies established in offshore jurisdictions to conduct U.S.-dollar financial transactions when completing sales to North Korea. The DOJ alleges that the transactions were financed or guaranteed by Korea Kwangson Banking Corporation, an OFAC specially designated national (SDN) with ties to a prominent North Korean arms dealer and exporter of goods related to ballistic missiles and conventional weapons. The charges include conspiracy to violate the International Emergency Economic Powers Act, defraud the United States and launder monetary instruments. On account of the charges, OFAC also imposed sanctions on DHID and the four individuals for their ties to the government of North Korea's weapons of mass destruction proliferation activity.

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

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC and BIS Russia Sanctions

On September 1, 2016, OFAC expanded its SDN List and Sectoral Sanctions Identifications (SSI) List for the Russia sanctions program. This action marks OFAC's first major expansion in the Russia sanctions since December 22, 2015. The U.S. Department of Commerce's Bureau of Industry and Security (BIS) made corresponding additions to its Entity List on September 7, 2016. OFAC described its actions as part of its "ongoing efforts to counter attempts to circumvent sanctions on Russia, to assist the private sector with sanctions compliance, and to foster a diplomatic resolution to the conflict in Ukraine." In a similar vein, BIS is taking action "to ensure the efficacy of existing sanctions on the Russian Federation (Russia) for violating international law and fueling the conflict in eastern Ukraine."

The additions to the SDN list include seven entities involved in the Kerch Bridge project connecting the Crimean peninsula with Russia; 11 entities in the defense and maritime sectors within Crimea; 17 individuals identified as Ukrainian separatists; and the Salvation Committee of Ukraine, an entity affiliated with the former Ukrainian prime minister. The additions to the SSI list include 96 subsidiaries of Bank of Moscow, Gazprombank or Gazprom—all of which were previously subject to sectoral sanctions due to being 50 percent or more owned by the sanctioned parent entities. BIS has also updated the Entity List to include 81 new entities that BIS believes to be involved in, or pose a significant risk of being or becoming involved in, activities that "violat[e] international law and fuel[] the conflict in eastern Ukraine."

For additional discussion on the changes to the Russia sanctions program and implications on U.S. and foreign businesses, please see the Akin Gump International Trade [Alert](#) from September 8, 2016.

Boeing and Airbus Receive OFAC Licenses to Sell Commercial Aircraft to Iran

On September 21, 2016, Boeing and Airbus announced that they each had received licenses from OFAC to export and sell commercial passenger airliners to Iran Air. The license granted to Boeing reportedly allows the company to complete negotiations with Iran Air in accordance with a memorandum of agreement for the sale of 80 airliners consisting of 737s, 777s and 787s. The license granted to Airbus is said to allow "short-term" deliveries of 17 A320s and A330s to Iran Air. According to news reports, the deals are intended to update Iran's commercial aircraft fleets and are subject to strict conditions to prevent resale or transfer to designated entities or for noncommercial uses.

For additional information, see coverage in [Law360](#), [Wall Street Journal](#) and [Aviation International News](#).

President Issues Executive Order Terminating Côte d'Ivoire-Related Sanctions Program

On September 14, 2016, President Obama issued an Executive Order lifting the economic sanctions program related to Côte d'Ivoire. The sanctions program was initiated by former President Bush via Executive Order 13396 on February 7, 2006, in response to widespread human rights abuses, political violence and unrest, and attacks on U.N. peacekeeping forces. In lifting the sanctions, the President and the U.S. State Department issued statements acknowledging the progress made by Côte d'Ivoire to restore peace and democracy through transparent elections, reconciliation and strengthening of the country's democratic institutions.

For additional information, see the OFAC [press release](#) and [statement](#) by the U.S. State Department.

President Announces Intent to Terminate Burma-Related Sanctions Program

On September 14, 2016, President Obama announced his intent to terminate the Burma sanctions program. The program, which has been in place for nearly 20 years, was initiated to counter widespread human rights abuses. According to the State Department, the President plans to lift the sanctions due to the historic changes that have occurred in Burma in recent years in furtherance of democracy, peace and reconciliation.

In conjunction with the announcement, on September 14, 2016, OFAC published FAQ #480 on the Burma sanctions program. The FAQ clarifies that President Obama's announcement to terminate the sanctions program will become effective on issuance of a new Executive Order and termination of existing Executive Orders. When this occurs, the Burmese Sanctions Regulations will no longer be in effect, and OFAC will formally remove such regulations from the Code of Federal Regulations.

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

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WRITING AND SPEAKING ENGAGEMENTS

On October 20, 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 New York Office. If you're interested in attending the program, please contact NewYorkEvents@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 "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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