

Red Notice

A Monthly Update on Global Investigations and Prosecutions



February 2017

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ANTICORRUPTION DEVELOPMENTS

Acting SEC Chief Limits Subpoena Authority to Enforcement Division Acting Director

On February 15, 2017, *The Wall Street Journal* reported that the acting Chair of the Securities and Exchange Commission (SEC), Michael Piwowar, revoked subpoena authority from about 20 senior enforcement officials and limited such authority to Stephanie Avakian, the acting Director of the SEC's Division of Enforcement. Since 2009, senior enforcement attorneys have had the authority to issue such subpoenas without review by the Director. The SEC did not announce the decision, but the *Journal* confirmed the change with "[t]wo people familiar with the matter."

The SEC's Division of Enforcement conducts investigations into possible violations of the federal securities laws, and litigates the SEC's civil enforcement proceedings in the federal courts and in administrative proceedings.

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

Congress Approves Resolution to Rescind SEC's Resource Extraction Payments Disclosure

Rule

On February 14, 2017, President Donald J. Trump signed into law a Joint Resolution under the Congressional Review Act (CRA) disapproving of the SEC's Final Rule, titled "Disclosure of Payments by Resource Extraction Issuers."

The SEC adopted the rule requiring disclosure of resource extraction payments on June 27, 2016, after it had been originally promulgated in 2012 and subsequently vacated by the U.S. District Court for the District of Columbia in 2013. The rule requires that certain producers of oil, natural gas and minerals publicly disclose information regarding payments to the U.S. federal government, as well as to foreign governments, to further the commercial development of such resources. The SEC was required to issue the rule under Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Under the CRA, 5 U.S.C. § 8, Congress has 60 days from the beginning of the 115th Congress to initiate a congressional review of any of the regulations promulgated by the Obama administration after May 2016. If the final rule is repealed under the CRA procedure, it is not only immediately nullified, but it restricts all future administrations from promulgating rules on the same subject matter. Since the law was enacted in 1996, it has been used only once to nullify a rule promulgated by the Clinton administration related to ergonomics when Senate Republicans initiated the resolution of disapproval, and it was signed by President George W. Bush.

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

DOJ Closes FCPA Investigation of Cobalt International Energy, Inc.

On February 9, 2017, Cobalt International Energy, Inc., the Houston-based independent exploration and production company active in the deepwater U.S. Gulf of Mexico and offshore Angola and Gabon, [announced](#) that it had received notice from the Department of Justice advising Cobalt that the DOJ had closed its Foreign Corrupt Practices Act (FCPA) investigation into Cobalt's operations in Angola. Investigations by the DOJ and the SEC began in 2011 related to alleged links between Angolan government officials and Nasaki Oil and Gas, S.A., an Angolan company that, until 2014, held a working interest on several exploration blocks offshore Angola. The investigations were disclosed by Cobalt in a Form 10-K [released](#) by the company on February 26, 2013. Thereafter, Cobalt [announced](#) that, on August 4, 2014, the SEC issued a Wells Notice to Cobalt stating that staff of the Enforcement Division had made a preliminary determination to recommend that the SEC institute an enforcement action against the company. However, on January 28, 2015, Cobalt [announced](#) that it had received a termination letter from the SEC advising that its FCPA investigation of the company's operations in Angola had been concluded and that the SEC did not intend to recommend any enforcement action by the SEC.

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

DOJ Publishes Example Questions for the Evaluation of Corporate Compliance Programs

On February 8, 2017, the DOJ published a document titled *Evaluation of Corporate Compliance Programs*. Within, the DOJ notes that "the existence and effectiveness of [a] corporation's pre-existing compliance program" and a corporation's remedial efforts "to implement an effective corporate compliance program or to improve an existing one" are factors to be considered by prosecutors in conducting an investigation of a corporate entity, determining whether to bring charges, and negotiating plea or other agreements. The DOJ further notes that the document "provides some important topics and sample questions that the Fraud Section has frequently found relevant in evaluating a corporate compliance program." In total, the document provides 11 topics and related questions accompanying each.

The DOJ's *Evaluation of Corporate Compliance Programs* is available [here](#), and related training and compliance initiatives are available [here](#).

Bio-Rad General Counsel Awarded \$10 Million in Civil Whistle-Blower Action

On February 6, 2017, a federal jury in San Francisco concluded that Bio-Rad Laboratories Inc. retaliated against former general counsel Sanford "Sandy" Wadler for reporting FCPA violations. The jury awarded Wadler \$2.9 million in back pay and stock compensation and \$5 million in punitive damages. Wadler was terminated, in part, based on a falsified negative review dated April 2013, but created, based on the document's metadata, by the company's CEO a month after Wadler's separation.

In November 2014, Bio-Rad paid \$55 million to settle FCPA enforcement actions alleging that subsidiaries made improper payments to foreign officials in Russia, Vietnam and Thailand. Wadler had also raised concerns about the company's operations in China, but a subsequent investigation cleared the company of wrongdoing there. The jury found that the CEO would not have terminated Wadler had he not reported allegations of misconduct involving the company's Chinese operations to the audit committee.

For more information, see *The Wall Street Journal's* coverage [here](#), *The Recorder's* coverage [here](#), *Law360's* coverage [here](#) and [here](#), and the FCPA Blog's coverage [here](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

11 Individuals and One Company Charged with Exporting Prohibited Articles to Syria

On February 24, 2017, the U.S. Department of Justice (DOJ) announced that 11 individuals and one company were charged with exporting prohibited articles to Syria, in violation of the International Emergency Economic Powers Act (IEEPA), the Export Administration Regulations (EAR), and Global Terrorism Sanctions Regulations. According to the DOJ press release, the individuals allegedly engaged in a conspiracy to ship and export aircraft parts and equipment to Syrian Arab Airlines, an entity designated by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) on its list of Specially Designated Nationals (SDN) for transporting weapons to Syria in conjunction with Hizballah and the Iranian Revolutionary Guard Corps. The transactions at issue were conducted through a Florida-based export company managed by three of the charged individuals. The export compliance officer of the company allegedly facilitated these exports by submitting false and misleading electronic export information to federal agencies.

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

OFAC Issues a Finding of Violation to Taiwanese Shipping Company for Violations of Iran-Related Sanctions

On February 3, 2017, OFAC issued a Finding of Violation against B Whale Corporation (BWC), a Taiwanese shipping company, for a violation of the Iranian Transactions and Sanctions Regulations (ITSR). According to the OFAC Web notice, the violation stems from BWC's vessel *M/V B Whale* receiving 2,086,486 barrels of condensate crude oil from the vessel *M/T Nainital*, a vessel owned by the National Iranian Tanker Company (NITC). At the time of the transaction, NITC was designated as an SDN by OFAC, though this designation has since been removed.

Notably, OFAC determined that BWC, a Taiwanese company, was a U.S. person subject to the ITSR because it had filed for bankruptcy in the U.S. Bankruptcy Court for the Southern District of Texas and was present for bankruptcy proceedings when the transactions occurred. OFAC also determined that the *M/V B Whale* was subject to U.S. sanctions because it was property under the jurisdiction of a U.S. bankruptcy court, and, therefore, the oil transferred between the vessels qualified as an importation from Iran to the United States.

In making its Finding of Violation, OFAC considered several aggravating and mitigating circumstances. With respect to aggravating circumstances, OFAC determined that BWC demonstrated reckless disregard for U.S. sanctions while subject to U.S. jurisdiction, it concealed the ship-to-ship transfer by switching off the vessels' identification systems during the time in question, BWC acted with knowledge, and the transaction provided a benefit to Iran. With regard to mitigating factors, OFAC considered that BWC does not have a sanctions history in the preceding five years and that all of BWC's assets have been liquidated in bankruptcy.

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

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Trump Administration Makes First Iran Sanctions Designations

On February 3, 2017, OFAC issued a press release announcing sanctions against 25 individuals and entities that the U.S. government has associated with the supply chains of technology and materials being used by Iran to support its ballistic missile program. OFAC also designated individuals and entities acting on behalf of, or providing support to, Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) and Lebanon's Hizballah. The sanctions generally prohibit U.S. persons from engaging in transactions with the newly designated parties. They also block the property, and interests in property, of sanctioned parties that come into the possession or control of any U.S. person.

The OFAC press release emphasizes that these actions are "fully consistent with the United States' commitments under the Joint Comprehensive Plan of Action (JCPOA)"—the nuclear deal reached with Iran and implemented last year. Further, these designations were made immediately after the Trump administration's statement putting Iran "on notice" for conducting missile tests—which Iranian officials claim do not violate either the nuclear deal or United Nations Security Council resolutions barring Iran from testing "ballistic missiles designed to be capable of delivering nuclear weapons."

For additional information, please see the OFAC [press release](#) and discussion in the Akin Gump International

OFAC Eases Certain Sanctions Involving Russia's FSB; BIS Licensing Still Required

On February 2, 2017, OFAC issued Cyber-Related General License (GL) 1, a general license that authorizes certain transactions with Russia's Federal Security Service (Federalnaya Sluzhba Bezopasnosti, or FSB). GL 1 authorizes U.S. persons to request, receive, use, pay for or deal in licenses, permits, certifications, or notifications issued or registered by the FSB for IT products in Russia, provided that two conditions are met: (1) the relevant IT goods or technology are subject to the U.S. Export Administration Regulations (EAR) and are licensed or otherwise authorized by the U.S. Department of Commerce's Bureau of Industry and Security (BIS); and (2) payment of fees to the FSB for such licenses and other authorization or notification does not exceed \$5,000 in any calendar year. GL 1 also authorizes transactions or activities that are necessary and ordinary incident to complying with law enforcement or administrative actions or investigations involving the FSB or rules and regulations administered by the FSB.

GL 1 is a technical fix to earlier sanctions restrictions imposed by OFAC on the FSB in December 2016 in response to Russia's alleged cyber-related interference in the 2016 U.S. elections. OFAC issued GL 1 in response to complaints from U.S. companies that were unable to import many consumer technology products into Russia without a permit from the FSB. Importantly, the authorization does not allow the exportation, reexportation or provision of goods, technology or services to the Crimea region of Ukraine; the FSB remains on BIS's Entity List, and additional licensing requirements and restrictions apply to any contemplated exports, reexports and transfers of products subject to the EAR to the FSB. BIS has also implemented a presumption-of-denial policy to any license applications for exports, reexports or transfers to the FSB.

In conjunction with the GL 1, on February 8, OFAC issued four FAQs that discuss the activity authorized under GL 1 and the sanctions and export restrictions that remain in place.

For additional information, please see the OFAC [press release](#), the OFAC [FAQs](#) and the discussion in the Akin Gump International Trade [Client Alert](#).

OFAC Updates List of Medical Devices Requiring Specific Authorization for Export to Iran

On February 2, 2017, OFAC amended the "List of Medical Devices Requiring Specific Authorization" for export or reexport to Iran under the ITSR. This list was created in December 2016 in combination with OFAC's expansion of the general license authorizing exports and reexports of medicine, medical devices and agricultural commodities to Iran. Under this general license, all EAR99 items meeting the ITSR definition of "medical devices" are authorized for export or reexport, provided that they are not expressly excluded on the "List of Medical Devices Requiring Specific Authorization." The recent update to the list removes the note at the bottom of the list, which broadly excluded certain medical devices designed or modified for medical purposes, and removed and added certain medical devices to the list.

For additional information, please see the OFAC [press release](#) and the updated "[List of Medical Devices Requiring Specific Authorization](#)."

OFAC Issues Regulations Adjusting for Inflation the Maximum Amount of Civil Monetary Penalties

On February 9, 2017, OFAC issued regulations implementing the Federal Civil Penalties Inflation Adjustment Act of 1990 (the "Act"). The Act requires that federal agencies adjust the Civil Monetary Penalties within their jurisdiction of the agency. Based on this requirement, OFAC has adjusted the maximum civil penalty per violation across its sanctions programs. The base penalty for most OFAC sanctions programs is now \$289,238 per violation.

For additional information, please see the [Final Rule](#) issued by the U.S. Treasury Department.

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WRITING AND SPEAKING ENGAGEMENTS

On March 23, 2017, [Jasper Helder](#) and [Chiara Klauj](#) will present a "Sanctions Update" at Amber Road's Global Trade Management seminar in London.

On March 23, 2017, [Rebekah Jones](#) will present on "ITAR Enforcement" at Export Compliance Training Institute's Seminar Series, which will address US Export Controls on Non-US Transactions and will be held in Singapore.

On March 29, 2017, [Chiara Klauj](#) will present a "Sanctions Update" at Amber Road's Global Trade Management seminar in Amsterdam.

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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