

Red Notice

A Monthly Update on Global Investigations and Prosecutions



November 2017

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ANTICORRUPTION DEVELOPMENTS

SBM Offshore N.V. Agrees to Pay \$238 Million to Resolve DOJ FCPA Enforcement Action

On November 29, 2017, SBM Offshore N.V. (SBM), a Netherlands-based company specializing in the

manufacture and design of offshore drilling equipment, and its wholly owned subsidiary, SBM Offshore USA Inc. (SBM USA), agreed to pay \$238 million to resolve the Department of Justice (DOJ)'s investigation of alleged violations of the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). SBM entered into a non-prosecution agreement with the DOJ while SBM USA pleaded guilty to one count of conspiring to violate the FCPA.

Specifically, the DOJ alleges, from at least 1996 through 2012, SBM paid more than \$180 million in commissions to sales intermediaries and others knowing that a portion of the commissions would be used to bribe foreign officials in Brazil, Angola, Equatorial Guinea, Kazakhstan and Iraq. In addition, the DOJ alleges that SBM marketing and sales staff had discretion to provide items of value, such as jewelry or electronics, to officials with the state-owned oil companies; that officials were regularly provided "thank you" money after successfully awarding projects; that foreign officials were provided travel and "spending money" stipends for sporting events; and that tuition and living expenses were provided to the relatives of foreign officials. The DOJ further alleges the purpose of the payments was to obtain or retain business with state-owned oil companies in the five named countries and that the companies accounted for at least \$2.8 billion in revenues for SBM.

Relatedly, earlier this month, on November 10, 2017, the former chief executive officer and the sales and marketing director of SBM pleaded guilty to conspiracy to violate the FCPA, both of whom await sentencing.

SBM has already resolved enforcement actions in Brazil and the Netherlands, paying a total of \$582 million in resolutions to date.

Read the DOJ's press release and deferred prosecution agreement pertaining to SBM and SBM USA [here](#) and press release pertaining to SBM's executives [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and [here](#) and the *FCPA Blog's* coverage [here](#) and [here](#).

DOJ Announces New FCPA Corporate Enforcement Policy

On November 29, 2017, in a speech before the 34th International Conference on the Foreign Corrupt Practices Act, Deputy Attorney General Rod Rosenstein announced a new FCPA Corporate Enforcement Policy intended to continue the increase in voluntary disclosures that followed the [DOJ's Pilot Program initiated in April 2016](#). The new Policy – which likely became effective immediately given its simultaneous inclusion in the U.S. Attorneys' Manual – incorporates key features of the Pilot Program. Specifically, the new Policy creates a presumption that those companies that voluntarily disclose a FCPA violation, fully cooperate with the DOJ in an ensuing investigation, and timely and appropriately remediate, will receive a declination from the DOJ absent "aggravating circumstances" such as involvement by the executive management of the company in the misconduct, the pervasiveness of the misconduct within the company, the finding of significant profit resulting from the misconduct, and/or criminal recidivism.

Even if aggravating circumstances exist, the new policy provides that companies that voluntarily disclose, fully cooperate, and timely and appropriately remediate, may still receive up to a 50 percent reduction off the low end of the requisite U.S. Sentencing Guidelines fine range. Moreover, the new Policy notes that DOJ will generally not require the appointment of an independent compliance monitor, if the company has, at the time of resolution, implemented an effective compliance program.

Also, the new Policy provides that even absent a voluntary disclosure, companies that fully cooperate and timely and appropriately remediate, may still receive up to a 25 percent reduction off the low end of the requisite U.S. Sentencing Guidelines fine range.

The policy further outlines the aspects considered by the DOJ in its evaluation of compliance programs (as part of the definitions of "timely and appropriate remediation") to better enable companies to understand the Department's expectations.

Notably, as we have seen in the published declinations since implementation of the Pilot Program, the new Policy provides that qualification for the above benefits will be conditioned upon the disgorgement, forfeiture, and/or restitution of profits resulting from the misconduct at issue. And relatedly, the new Policy specifies that all qualifying declinations under the Policy will continue to be publicized.

Read Mr. Rosenstein's remarks [here](#), and the updated Manual can be found [here](#) (at section 9-47.120). For more information, see *The Wall Street Journal's* coverage [here](#), *Bloomberg's* coverage [here](#), and the *FCPA Blog's* coverage [here](#).

Two Charged in Alleged Bribery Scheme Involving Chinese Energy Company

On November 20, 2017, the DOJ unsealed the indictments of two individuals charging them for their role in alleged schemes to make improper payments to government officials in Chad and Uganda. Chi Ping Patrick Ho is reported to have been the deputy-director of CEFC Hong Kong Non-Governmental Fund Committee, which is funded by CEFC China Co. (CEFC) (neither entity is named in the underlying complaint). Cheikh Gadio is a former Senegalese minister turned consultant, alleged to have facilitated Ho's offer of a \$2 million improper payment to the President of Chad in an attempt to secure oil rights for CEFC. Separately, Ho is alleged to have

made a \$500,000 improper payment, with the promise of more, to the Ugandan foreign minister to secure oil rights for CEFC.

As others have reported, the charges are noteworthy in that they demonstrate the DOJ's ability and willingness to reach foreign companies doing business abroad while engaging in corruption.

Read the DOJ's press release and complaint [here](#). For more information, see *The New York Times'* coverage [here](#) and [here](#), *The Wall Street Journal's* coverage [here](#), *Reuters'* coverage [here](#), *Law360's* coverage [here](#), and the *FCPA Blog's* coverage [here](#).

UK SFO Charges Unaoil Executives With Conspiracy to Make Corrupt Payments in Iraq

On November 16, 2017, as part of an ongoing investigation of Monaco-based Unaoil SAM (Unaoil), the UK Serious Fraud Office (SFO) entered charges against two Unaoil executives in Iraq. The SFO alleges that both Unaoil's Iraq Partner and Iraq Territory Manager conspired to make improper payments to Iraqi officials to secure oil and gas contracts for Unaoil's client, SBM Offshore N.V., whose involvement in the alleged scheme is noted above.

In addition to the SFO probe, the Securities and Exchange Commission (SEC) and DOJ continue to investigate a number of companies who had relationships with Unaoil. Only one declination has been issued so far ([on behalf of Core Laboratories](#)).

Read the SFO's updated case page for Unaoil [here](#). *Red Notice* previously covered the Unaoil investigation in [October](#) and [May](#) of this year. For more information, see *The Wall Street Journal's* coverage [here](#).

Canadian Software Company FreeBalance Inc. Debarred by the World Bank for Six Months

On November 9, 2017, FreeBalance Inc. (FreeBalance), a Canadian provider of financial management-related software, entered into a Negotiated Resolution Agreement (NRA) resolving the Bank's investigation of FreeBalance's participation in the Integrated Financial Management System Project for Liberia. Specifically, the Bank alleges, FreeBalance failed to properly disclose the identity and payment terms for a local Liberian agent. Pursuant to the NRA, FreeBalance will be debarred for six months, a reduced period of debarment in light of the company's voluntary corrective and remedial actions.

Read the World Bank's press release [here](#). For more information, see *FCPA Blog's* coverage [here](#).

SEC Enforcement Division Reflections on the FCPA

On November 15, 2017, SEC Enforcement Division Co-Directors Stephanie Avakian and Stephen Peikin announced the release of the Division's Annual Report. It notes that in FY 2017, the SEC brought 13 FCPA enforcement actions, a decrease from 2016, when the SEC brought 21 FCPA enforcement actions. The Annual Report also emphasizes principles that have been consistently touted by the agency including fighting cybercrime, protecting the "main street investor" and re-assessing allocation of resources to most effectively protect investors.

Relatedly, on November 9, 2017, Mr. Peikin gave public remarks to commemorate the 40th anniversary of the FCPA. Notably, Peikin called the recent Supreme Court holding in [Kokesh v. SEC](#) "a very significant decision that has already had an impact across many parts of our enforcement program," that will hold "particular significance for . . . FCPA matters." Peikin acknowledged that the SEC will need to move more quickly to investigate cases in order to respond to *Kokesh's* holding that a five-year statute of limitations applies to disgorgement sought by the SEC. In his remarks, Peikin also emphasized the SEC's commitment to cooperate with foreign enforcement agencies to fight corruption as well as the need to hold culpable individuals liable for their actions through enforcement.

Read the SEC's press release and Annual Report [here](#) and the full text of Peikin's remarks [here](#).

Argentina's Congress Passes Anti-Bribery Law

On November 8, 2017 Argentina's National Congress passed a new corporate anti-corruption law, providing for civil fines of up to five times an allegedly improper payment and barring companies from bidding on public contracts for up to ten years. Previously, companies doing business in Argentina were not themselves subject to enforcement actions for engaging in corruption (only individuals were potentially prosecutable).

Passage of the law brings Argentina a step closer toward compliance with [The Anti-Bribery Convention of The Organization for Economic Cooperation and Development](#).

For more information, see *Reuters'* coverage [here](#).

Kenneth Blanco Named FinCEN Head

On November 8, 2017, U.S. Department of Treasury named Kenneth Blanco as the new director of the Financial

Crimes Enforcement Network (FinCEN). Blanco is the former Acting Assistant Attorney General of the Criminal Division at the DOJ with more than twenty years of experience in various roles within the Department. He has supervised work related to illicit financing, money laundering, sanctions enforcement and global financial institutions, among others.

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

Charles Cain Named Chief of SEC FCPA Unit

On November 2, 2017, the SEC announced that Charles Cain had been named Chief of the Commission's specialized FCPA unit. Cain, whom had been serving as Acting Chief since April of this year, previously served as Deputy Director. Cain is widely considered to be an expert on the FCPA, and supervised many of the unit's recent marquee enforcement actions.

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

U.S. Leaves the Extractive Industries Transparency Initiative

On November 2, 2017, [following repeal of the SEC's resource extraction payments disclosure rule in February](#), the U.S. officially withdrew as an implementing country from the Extractive Industries Transparency Initiative (EITI). The U.S. had been a member of the EITI since 2014, disclosing revenues it received from oil, gas, and mining (including mineral extraction) companies, and requiring U.S. companies in those industries to disclose the payments they made to the U.S. and other governments (including taxes or other fees).

Read the Department of the Interior's withdrawal letter [here](#). For more information, see *The Hill's* coverage [here](#) and *Reuters'* coverage [here](#).

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Credit Card Issuer Agrees to \$204,277 Settlement in Connection with Alleged Sanctions Violations Relating to Cuba

On November 17, 2017, the Department of the Treasury's Office of Foreign Assets Control (OFAC) announced that the U.S. parent company of BCC Corporate SA ("BCCC"), a Belgium-based credit card issuer and corporate service company, has agreed to pay \$204,277 to settle potential civil liability for apparent violations of the Cuban Assets Control Regulations (CACR). According to the OFAC web notice, the apparent violations concern credit card purchases made in Cuba by BCCC corporate customers. Despite the existence of internal policies and procedures to review transactions for compliance with U.S. sanctions law, from 2009 to 2014 BCCC failed to prevent 1,818 transactions totaling \$583,649 for more than 100 distinct corporate customers of BCCC whose cards were used in Cuba or that otherwise involved Cuba.

OFAC considered aggravating and mitigating factors when evaluating settlement for this case. Aggravating factors included that (i) personnel had reason to know of the conduct that led to the apparent violations; (ii) neither BCCC nor its parent companies appeared to appreciate the risk that BCCC-issued credit cards could be used in Cuba; (iii) the violations harmed U.S. sanctions program objectives at the time they occurred; (iv) the U.S. parent is a large and commercially sophisticated financial institution; and (v) BCCC and its U.S. parent provided verifiably inaccurate or incomplete information and made material omissions during the OFAC investigation. Mitigating factors included that (i) BCCC had no prior violation history in the five years preceding the date of the first apparent violation; (ii) the U.S. parent took swift and appropriate remedial action upon discovering the apparent violations; (iii) BCCC and its U.S. parent voluntarily self-disclosed the alleged violations to OFAC and (iv) BCCC signed a statute of limitations tolling agreement, as well as subsequent extensions.

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

Pilot Air Freight, LLC to Pay \$175,000 to Settle Alleged Export Violation

On November 21, 2017, Pilot Air Freight, LLC ("Pilot") agreed to settle one violation of § 764.2(b) of the Export Administration Regulations (EAR) for \$175,000. The Department of Commerce's Bureau of Industry and Security (BIS) alleged that the company aided and/or abetted an attempted unlicensed export to a listed entity, IKAN Engineering Services ("IKAN"). According to BIS, Pilot arranged for the transportation and export of an ultrasonic mill cutting machine (ECCN 2B991) to IKAN—an intermediary or front company known to have worked with Pakistan's Advanced Engineering Research Organization to procure U.S.-origin items for the Pakistani Government's unmanned aerial vehicle programs. Although Pilot had proprietary software that it used to screen customers against the BIS Entity List and other lists of prohibited parties, the software was not connected to the company's customer-facing shipment portal that was used to schedule and ship the controlled item at issue. In the settlement, Pilot agreed to pay \$100,000 to the Department of Commerce, with an additional \$75,000

suspended subject to a probationary period extending through March 31, 2020. Pilot also agreed to complete two external audits of its export controls compliance program.

For further information, please see the BIS's [Order and Settlement Agreement](#).

OFAC Issues a Finding of Violation to Dominica Maritime Registry, Inc. for Executing a Binding MOU with a Blocked Entity

On November 28, 2017, OFAC announced that it had issued a Finding of Violation to Dominica Maritime Registry, Inc. ("DMRI") for a violation of the Iranian Transactions and Sanctions Regulations (ITSR). According to the OFAC web notice, the apparent violation concerned a contingent contract, in the form of a binding memorandum of understanding, with the National Iranian Tanker Company ("NITC"). This entity was identified on the List of Specially Designated Nationals and Blocked Persons ("SDN List") at the time of execution of the contract.

OFAC considered aggravating and mitigating factors when evaluating settlement for this case. Aggravating factors included that (i) DMRI failed to exercise a minimal degree of caution or care by executing a contingent contract with an entity it knew was listed on the SDN list at the time of the violation; (ii) DMRI executives had actual knowledge, and actively participated in, the conduct that led to the violation, and were aware of NITC's status when DMRI executed the contingent contract; and (iii) the violations harmed the policy objectives of the ITSR. Mitigating factors included that (i) DMRI had no prior violation history in the five years preceding the date of the violation (ii); DMRI is a small company; and (iii) DMRI took remedial actions such as engaging counsel, updating its OFAC compliance procedures, and undertaking a process to establish an OFAC compliance training program for its employees.

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

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EXPORT CONTROL, SANCTIONS AND CUSTOMS DEVELOPMENTS

OFAC Publishes Ukraine-/Russia-related CAATSA Guidance

On October 31, 2017, as a result of the Countering America's Adversaries Through Sanctions Act (CAATSA) passed by Congress earlier this year, OFAC modified Directive 4 of Executive Order 13662. The modifications prohibit U.S. persons or persons within the United States from providing, exporting, or re-exporting goods, services (except for financial services), or technology in support of exploration or production for new deepwater, Arctic offshore, or shale projects located anywhere in the world (versus prior restrictions only on such projects within Russia) that involve persons identified in Directive 4, subject to certain conditions. These are restricted projects are ones that: (1) have the potential to produce oil in the Russian Federation or its maritime areas/territories and involve a person subject to Directive 4, their property, or interests in property, or (2) are initiated on or after January 29, 2018, that have the potential to produce oil in any location and in which any person subject to Directive 4, their property, or their interests in property has (a) a 33 percent or greater ownership interest or (b) ownership of a majority of the voting interests. The amended Directive also prohibits transactions that evade, cause, or attempt to violate any of its prohibitions and any conspiracy formed to violate its prohibitions. In updated FAQs, OFAC defines various key terms used in Directive 4 and provides a series of examples illustrating the application of the 33-percent interest rule and its interaction with OFAC's 50-percent rule.

In addition, OFAC issued new FAQs related to CAATSA §§ 223(a), 226, 228, and 233. First, OFAC clarifies that although § 223(a) of CAATSA authorizes sanctions against "state-owned entities operating in the railway or metals and mining sector of the economy of the Russian Federation," such sanctions are "not require[d]." Second, OFAC clarifies certain aspects of CAATSA § 233, including the agency's intended interpretation of the terms "investment," "facilitates," "unjustly benefits," and "close associates or family members." Third, OFAC clarifies several aspects of CAATSA § 226, including the types of activities that will trigger sanctions against foreign financial institutions ("FFIs"), how OFAC will notify FFIs that become subject to prohibitions, and OFAC's intended interpretations of the terms "significant transaction," "significant financial transaction," and "facilitated." Finally, OFAC clarifies certain aspects of CAATSA § 228, primarily OFAC's intended interpretation of the terms "foreign person," "knowingly," "materially violate," "facilitation . . . for or on behalf of," "significant transaction," and "deceptive or structured transaction."

For further information, please see OFAC's [press release](#) on its Publication of Ukraine-/Russia-related CAATSA Guidance, [amended Directive 4](#), and updated FAQs [here](#) and [here](#).

OFAC Issues Ukraine-/Russia-related General License 1B and Updates Related FAQs

On November 28, 2017, OFAC issued Ukraine-/Russia-related General License 1B and updated related FAQs to address decreases in the maturity date thresholds for new debt offerings prohibited by Directives 1 and 2 under Executive Order 13662. Under the relevant CAATSA provisions, new debt (i.e., debt issued on or after November

28, 2017) issued to persons operating in Russia's financial sector (Directive 1) may not have a maturity longer than 14 days, while new debt issued to persons operating in Russia's energy sector (Directive 2) may not have a maturity longer than 60 days. To account for these decreases, OFAC has issued General License 1B, which authorizes all "transactions by U.S. persons" involving "derivative products whose value is linked to an underlying asset that constitutes prohibited debt issued by a person subject to Directive 1, 2, or 3" or "prohibited equity issued by a person subject to Directive 1." By contrast, the license "does not authorize the holding, purchasing, or selling of underlying assets otherwise prohibited by Directives 1, 2, or 3."

For more information, please see OFAC's [press release](#), [General License 1B](#), and the updated FAQs [here](#) and [here](#).

Cuba Sanctions: Treasury, State, and Commerce Regulations Implement Trump Administration Cuba Policy

On November 9, 2017, the U.S. Department of State, OFAC and BIS took coordinated actions to tighten U.S. sanctions against Cuba, pursuant to President Trump's "National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba" (the "Presidential Memorandum"), which was issued on June 16, 2017.

OFAC amended the Cuban Assets Control Regulations (CACR) to prohibit persons subject to U.S. jurisdiction from engaging in direct financial transactions with entities and sub-entities identified on the Cuba Restricted List, a new list maintained by the U.S. Department of State. OFAC also imposed new limitations on educational and people-to-people travel, in addition to expanding the scope of individuals deemed to be "prohibited officials of the Government of Cuba." The newly published Cuba Restricted List includes over 100 entities and sub-entities, including Zona Especial de Desarrollo Mariel (ZEDM) (Mariel Special Development Zone), five major Cuban holding companies—Grupo de Administración Empresarial S.A. (GAESA), Grupo de Turismo Gaviota, Compañía Turística Habaguanex S.A., Unión de Industria Militar (UIM), and Corporación CIMEX—and many Cuban hotels, marinas, tourist agencies, stores and defense and security sector companies. BIS implemented a general policy of denial for license applications to export items subject to the EAR for use by entities and sub-entities on the Cuba Restricted List. Additionally, BIS expanded the scope of License Exception Support for the Cuban People (SCP) to encourage exports to Cuba for use by the Cuban private sector in private sector economic activities.

Notwithstanding these new restrictions, many previously authorized activities will continue under the revised regulations, including preexisting commercial engagements with entities and sub-entities designated on the Cuba Restricted List, as well as other generally authorized categories of travel. The new changes reflect a moderate tightening of sanctions against Cuba that will require persons subject to U.S. jurisdiction engaged in or contemplating otherwise authorized transactions or travel involving Cuba to engage in additional diligence to ensure compliance with the new targeted restrictions.

For further information, please see the Federal Register notice for the initial [Cuba Restricted List](#), the [Interagency Cuba Factsheet](#), the OFAC [web notice](#) on updated FAQs, and the new BIS [Cuba Guidance](#).

OFAC Publishes New Venezuela-related FAQs and Designations

On November 9, 2017, OFAC issued two FAQs addressing economic sanctions related to Venezuela and made Venezuela-related designations adding nine individuals to the SDN list. Under the Venezuela-related economic sanctions, issued this past August, U.S. persons are prohibited from engaging in certain transactions involving the Venezuelan government and entities that it owns or controls, including Petróleo de Venezuela S.A. (PdVSA).

In the recently issued FAQs, OFAC clarifies that for purposes of the Venezuela sanctions program, the term "PdVSA" includes all PdVSA subsidiaries, and OFAC reiterated that General License 2 authorizes certain activities involving specified PdVSA subsidiaries. The new FAQs also clarified that, while U.S. persons are prohibited from engaging in transactions or dealings involving SDNs, they may engage in transactions and participate in negotiations related to bonds specified in the Annex to General License 3, provided that no SDNs are involved. Activity that involves the creation or subsequent dealing in new debt of PdVSA or the Government of Venezuela with a maturity of greater than 90 days or 30 days (respectively) would require a license, and OFAC notes it will consider such license applications on a case-by-case basis, based on the facts and circumstances of the particular application.

For further information on the new FAQs, please see OFAC's [announcement](#); for further information and detailed analysis of the new Venezuela-related economic sanctions, see Akin Gump's [Client Alert](#). To view the new Venezuela-related designations, please see OFAC's [web notice](#).

OFAC Removes Côte d'Ivoire Sanctions Regulations

On November 13, 2017, OFAC published a final rule announcing the removal of the Côte d'Ivoire Sanctions Regulations from the Code of Federal Regulations (C.F.R.). This action follows President Obama's Executive Order 13739 on September 14, 2016, terminating the national emergency declaration with respect to Côte d'Ivoire and revoking Executive Order 13396 which formed the basis for the sanctions program.

For further information, please see OFAC's [final rule](#) removing 31 C.F.R. Part 543.

Iran: Following President Trump's "Decertification," New U.S. Sanctions on Iranian Entities and All Eyes on the U.S. Congress

On October 13, 2017, President Trump announced a new policy toward Iran that includes not recertifying the 2015 Joint Comprehensive Plan of Action (JCPOA or the Iran Nuclear Deal), seeking amendments to domestic U.S. legislation providing congressional oversight over the JCPOA, i.e., the Iran Nuclear Agreement Review Act of 2015 (INARA), and imposing new sanctions on the Iranian Revolutionary Guard Corps (IRGC) and related parties. The President's determination to not recertify alignment of the JCPOA with U.S. interests permits either house of Congress to "fast-track" legislation to re-impose nuclear-related sanctions against Iran that were suspended in conjunction with U.S. ratification of the JCPOA. In addition, OFAC has designated the IRGC under terrorism-related sanctions and blacklisted four other entities under weapons proliferation-related sanctions. Ultimately, this action against the IRGC is more symbolic than substantive, given that core OFAC sanctions already generally prohibited U.S. persons from engaging in activities involving the IRGC. However, it reflects the more confrontational approach to Iran articulated by President Trump, and indicates a greater U.S. willingness to enforce and increase U.S. sanctions against the country.

For further information and detailed analysis, please see Akin Gump's [Client Alert](#).

Proposed Bill Seeks to Expand Scope of CFIUS Reviews of Foreign Investments

On November 8, 2017, Sens. John Cornyn (R-TX), Dianne Feinstein (D-CA), and Richard Burr (R-NC) introduced legislation, titled the "Foreign Investment Risk Review Modernization Act," (FIRRMA), in the U.S. Senate that would dramatically expand the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS). Rep. Robert Pittenger (R-NC) introduced a companion bill by the same name in the U.S. House of Representatives that also has bipartisan sponsorship. In addition to expanding CFIUS jurisdiction, the proposed bills would impose mandatory reporting requirements for certain types of transactions and introduce filing fees to the notification process. While the legislation has received bipartisan sponsorship, it remains to be seen whether the supporters of FIRRMA can garner the necessary votes for it to become law.

For further information and detailed analysis, please see Akin Gump's [Client Alert](#).

Shipping Groups Sue CBP Challenging Jones Act Letter Rulings

On November 9, 2017, the Offshore Marine Service Association and the Shipbuilders Council of America filed a suit against U.S. Customs and Border Protection (CBP) in the U.S. District Court for the District of Columbia alleging unlawful application of the Jones Act. This law limits the transportation of merchandise between two U.S. points to ships that are built and flagged in the U.S. and owned and crewed by U.S. citizens or permanent residents. The lawsuit states that CBP has issued numerous ruling letters that impermissibly allow foreign-flagged vessels to transport certain merchandise between U.S. points, including points on the Outer Continental Shelf. Further, these allegations target certain exceptions made by CBP in its interpretations of "merchandise"—specifically, exceptions favorable to foreign vessels that ship certain oil and gas supplies and equipment between U.S. points.

This action follows CBP's withdrawal of its 2009 and 2017 proposals to revoke the rulings at issue, and the groups claim that CBP's refusal to revoke the unlawful rulings harms their members by diverting work that would ordinarily be handled by U.S. vessels and mariners. The groups also allege that CBP repeatedly violated the Administrative Procedures Act, including by not revoking or modifying the rulings subject to the 2009 and 2017 proposals.

For more information, and to access the complaint, the case is docketed in the District Court for the District of Columbia, No. 1:17-cv-02412-TSC.

EU Imposes Restrictive Measures on Venezuela

On November 14, 2017, the Council of the European Union (the "EU Council") imposed a number of restrictive measures against Venezuela in view of the continuing deterioration of democracy, the rule of law and human rights in the country. These restrictions include an arms embargo, as well as a prohibition on the export of equipment that can be used for internal repression, and items intended primarily for use in monitoring or interception of internet or telephone communications. There are associated restrictions on the provision of related financing, financial assistance, technical assistance, and brokering services, and the EU Council has also introduced a separate prohibition on the provision of telecommunication or internet monitoring or interception services of any kind to, or for the direct or indirect benefit of, Venezuela's government, public bodies, corporations and agencies, or any person or entity acting on their behalf or at their direction. Separately, the EU Council has also introduced the legal framework necessary to impose travel bans and asset freezes on certain individuals within the Maduro government.

For further information and detailed analysis, please see Akin Gump's [Client Alert](#).

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On December 6, [Lars Hielm](#) will address the topic "Examining the Impact of Leaving the E.U. on Rules of Origin" and [Jasper Helder](#) will speak about "The UK as a "Third Country": How Industry Is Preparing for Potentially New Customs Valuation" at C5's 10th Advanced Conference on Customs Compliance in London, U.K.

On December 7, [Steve Kho](#) will speak on the panel, "Adapting and implementing international trade strategies in a time of uncertainty" at the IBA's Investing in Asia conference in New York, NY.

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, Sanctions and Customs Developments and Enforcement" sections are edited by [Suzanne Kane](#).

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