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4 KEY TAKEAWAYS

2022 Roundup: Key Takeaways from U.S. Sanctions Enforcement Actions

Throughout 2022, the U.S. government continued to expand its economic and trade sanctions programs, particularly given the conflict in Ukraine and its global ramifications. During the year, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) published 16 enforcement actions regarding apparent sanctions violations, including one formal Notification of Blocked Property. We previously addressed key takeaways from OFAC's enforcement actions through May of 2022—read Here.

The following are some notable sanctions takeaways from the entirety of 2022.

1

When you outsource sanctions compliance efforts, you must understand the scope and limitations of the services being provided and whether they actually mitigate the risk. OFAC issued a Finding of Violation to a U.S. financial institution for apparent sanctions violations related to the institution maintaining accounts for, and processing payments on behalf of, two individuals who had been added to OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) for 14 days post-designation. The vendor for the financial institution had agreed to provide periodic screening of its customers against the SDN List. The vendor conducted daily screenings of new customers and of existing customers with certain account changes, but only screened once a month the entire existing customer, which included those customers who did not experience any account changes. OFAC determined that the financial institution misunderstood the scope of the contract with the vendor, mistakenly believing that the daily screenings focused on the entire customer base. OFAC concluded that, depending on the timing of additions to the SDN List (which take effect immediately), the financial institution could be unaware for up to 30 days that it was maintaining an account for a blocked person. In a separate enforcement action involving a U.S. company that offered virtual currency exchange services, OFAC determined that although the company retained a third-party vendor for sanctions screening purposes, the vendor screened only for hits against OFAC's SDN List and other sanctions lists. The screening did not scrutinize customers or transactions for a nexus to sanctioned jurisdictions. This resulted in the company operating 1730 accounts that processed transactions totaling over $263 million in apparent violations of multiple sanctions programs.

2

Use relevant geolocation tools to identify and prevent users located in sanctioned jurisdictions from engaging in prohibited transactions. OFAC disclosed 3 enforcement actions that highlight the importance of utilizing geolocation tools as part of a risk-based sanctions compliance program in order to mitigate the risks of providing services to individuals in jurisdictions subject to sanctions. One enforcement action involved a U.S. virtual currency exchange firm where users of its platform could buy, sell, or hold cryptocurrencies, as well as exchange one cryptocurrency for another. The firm maintained a sanctions and anti-money laundering compliance program that screened customers at onboarding and daily thereafter, and also reviewed IP address information generated at the time of onboarding to prevent users in sanctioned jurisdictions from opening accounts. Despite these controls, account holders who established accounts outside of sanctioned jurisdictions appear to have accessed their accounts and transacted on the firm's platform from a sanctioned jurisdiction. This resulted in 826 apparent violations of OFAC's Iran sanctions program. OFAC determined that the firm failed to implement appropriate geolocation tools, including an automated IP address blocking system on transactional activity across its platform. After identifying the problem, the firm implemented automated blocking of IP addresses linked to sanctioned jurisdictions and also implemented blockchain analysis tools to assist with its sanctions monitoring.

3

Transactions by non-U.S. companies that might not otherwise violate OFAC regulations but that involve the U.S. financial system in any way will give OFAC a reason to assert jurisdiction. In addition to the matter involving Toll Holdings Limited discussed in our takeaways from last May, OFAC disclosed 4 additional enforcement actions targeting non-U.S. companies that involved sanctioned jurisdictions and commercial transactions that went through the U.S. financial system. One enforcement action involved the wholly-owned UAE subsidiary of a Danish multinational company. The apparent violations occurred when the subsidiary directed its customers in sanctioned jurisdictions to make payments to the UAE branch of a U.S. financial institution, and the subsidiary later made payments from the same account to entities in sanctioned jurisdictions. The customers used third-party agents in non-sanctioned jurisdictions to pay the subsidiary. This practice disguised the originator or beneficiary of the transactions. As a result, the payments were not caught by the bank's transactional screening filters. OFAC determined that the subsidiary had "caused the U.S. financial institution to facilitate prohibited financial transactions and export financial services to sanctioned jurisdictions." The Danish parent company agreed to pay over $4 million to settle its potential civil liability for 225 apparent violations of multiple OFAC sanctions programs.

4

Train key staff including senior management to identify and escalate potential sanctions issues to appropriate compliance personnel. It is particularly important to implement controls specific to the risks posed by the regions in which subsidiaries operate, and any risks stemming from specific business practices, such as accepting payments from third parties. In the same enforcement action mentioned above involving the UAE subsidiary, OFAC concluded that the subsidiary was aware that using a U.S. financial institution to send or receive payments related to sanctioned jurisdictions could be prohibited. In fact, the subsidiary had received communications from its parent company as well as from various financial institutions regarding how the subsidiary's banking activities gave rise to sanctions concerns, which, at times, led to other financial institutions rejecting the transactions. Despite the communications, the subsidiary continued to use its U.S. branch account to collect payments from customers in sanctioned jurisdictions. Although the subsidiary relied on compliance guidance from its parent, OFAC believed that the parent company did not do enough to monitor its subsidiary's activities, as well as educate senior management to identify potential sanctions issues. Personnel at the subsidiary, including its regional finance director, did not have substantive training in U.S. sanctions and did not consult with the compliance program manager at the parent company on the transactions giving rise to apparent violations. OFAC determined that this insufficient understanding of U.S. sanctions left the regional finance director with a lack of urgency to address the subsidiary's banking issues.

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