

Red Notice

A Monthly Update on Global Investigations and Prosecutions



August 2017

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MTS Receives DOJ and SEC Declination Letters Concluding FCPA Investigations

On August 7, 2017, MTS Systems (MTS), a Minnesota-based maker of test systems and industrial position sensors, announced that both the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) had issued declination letters ending the U.S. government's investigation of potential violations of the Foreign Corrupt Practices Act (FCPA).

In 2012, MTS first disclosed that it was conducting an internal investigation into certain gift, travel, entertainment and other expenses incurred in the Asia-Pacific region. In 2013, the company provided the results of its investigation to the DOJ and SEC, voluntarily disclosing the investigation to them.

MTS's Form 10-Q is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the *FCPA Blog's* coverage [here](#).

Halliburton Company Agrees to Pay More than \$29 Million to Resolve SEC FCPA Enforcement Action

On July 27, 2017, Halliburton Company, a global oilfield services company headquartered in Houston, Texas, submitted an Offer of Settlement to the SEC, resulting in an administrative Cease-and-Desist Order resolving the government's investigation of alleged violations of the FCPA.

Specifically, the SEC's enforcement action alleges that, from April 2010 through April 2011, Halliburton paid \$3,705,000 to a local Angolan company owned by a former Halliburton official who was the neighbor of an official at Angola's state-owned oil company, Sonangol, with authority to veto or reduce subcontracts awarded to Halliburton by large international oil companies. Halliburton, the SEC alleges, entered into contracts with the local company for the purpose of satisfying local content requirements, but did so in violation of its own internal accounting controls and did not record the true nature of the transactions in its books and records.

Halliburton agreed to disgorge ill-gotten gains of \$14 million along with prejudgment interest of \$1.2 million, and pay a civil penalty of \$14 million. Halliburton also agreed to retain an independent consultant to review and evaluate Halliburton's anticorruption policies and procedures, including policies and procedures related to retaining local content.

The SEC also reached an agreement with former Halliburton vice president Jeannot Lorenz, a citizen of France and a permanent resident of the United States, in which Lorenz agreed to pay a \$75,000 civil penalty to the SEC because, the SEC alleges, Lorenz approved the payments to the local company knowing that doing so would circumvent Halliburton's internal accounting controls and that the true nature of the transaction would not be properly recorded.

The SEC's Press Release and Cease-and-Desist Order are available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#), *Law360's* coverage [here](#), and the *FCPA Blog's* coverage [here](#).

South Africa's Net1 Receives DOJ Declination Letter Ending FCPA Investigation

On July 27, 2017, Net 1 UEPS Technologies, Inc. ("Net1"), a South-African-based payment-processing service provider, announced that it had received a declination letter from the DOJ, ending the U.S. government's investigation into potential violations of the FCPA. Net1 received a declination letter from the SEC in 2015.

Net1 first disclosed the investigations in a December 2012 SEC filing. In that document, Net1 stated that the investigation was initiated after South Africa's Social Security Agency awarded a contract to Net1 and one of the losing bidders forwarded unsubstantiated South African press articles to the DOJ.

Net1's Form 8-K is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the *FCPA Blog's* coverage [here](#).

U.S. Court of Appeals Holds Testimony Compelled by Foreign Authorities Inadmissible in U.S. Criminal Actions

On July 19, 2017, the United States Court of Appeals for the 2nd Circuit (which includes Connecticut, New York and Vermont) issued its opinion in *United States v. Allen*, No. 16-898-cr, holding that pursuant to the 5th Amendment testimony given by an individual involuntarily under the legal compulsion of a foreign power may not be used against that individual in a criminal case in an American court.

The case arose as part of the investigation by the United Kingdom's Financial Conduct Authority (FCA) into the alleged manipulation of the London Interbank Offered Rate. As U.K. citizens, the eventual defendants, Anthony Allen and Anthony Conti, were compelled to provide testimony to the FCA or face potential imprisonment. The FCA eventually dropped its investigation, but the Fraud Section of the DOJ pursued it. A cooperating witness - who had previously pleaded guilty and had the opportunity to review and take notes on the statements by Allen and Conti - testified against both men. Relying on *Kastigar v. United States*, 406 U.S. 441 (1972), the court held that the DOJ was required to prove, at a minimum, that the witness's review of the compelled testimony did not shape, alter or affect the evidence used by the government and that, here, no such burden of proof had been met.

Accordingly, the 2nd Circuit reversed the convictions of Allen and Conti and dismissed their indictments.

The 2nd Circuit's opinion is available [here](#). For more information, see *The New York Times*' coverage [here](#), *The Wall Street Journal*'s coverage [here](#), and *Law360*'s coverage [here](#).

Anticorruption Spotlight: SEC Issues Two Whistle-Blower Determinations

In late July, the SEC issued two whistle-blower determinations, bringing the total number of whistle-blower awards to 46 since it first began the practice in 2012. Awards totaling approximately \$158 million have been paid for whistle-blower information.

Specifically, on July 25, 2017, the SEC awarded almost \$2.5 million to an anonymous whistle-blower who provided information that led to a successful enforcement action. According to the SEC's Order, the whistle-blower is an employee of an unnamed domestic government agency that holds some law enforcement responsibilities – a group that is typically exempted from receiving whistle-blower compensation. In this case, the SEC determined that the employee worked in a separate “sub-agency” of the company that was sufficiently removed from law-enforcement authority to entitle the whistle-blower to an award. The SEC's Press Release and Order are available [here](#).

In addition, on July 27, 2017, the SEC awarded more than \$1.7 million to a “company insider” who provided a tip to the SEC informing the agency of a “serious, multi-year fraud that would have otherwise been difficult to detect.” According to the SEC's Order, the whistle-blower was awarded compensation even though the whistle-blower was deemed to bear some “limited culpability” for the underlying fraud. The SEC's Press Release and Order are available [here](#).

Whistle-blower awards—provided for under the Dodd-Frank Act—can range from 10 percent to 30 percent of the money collected when monetary sanctions from a successful enforcement exceed \$1 million. Notices of Covered Actions—enforcement actions with sanctions greater than \$1 million—are posted on the SEC's website, and claims must be submitted within 90 days of such postings.

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Oilfield Services Company Agrees to Pay \$415,350 to Settle Alleged Civil Liability for Iran-Related Sanctions Violations

On August 24, 2017, the Department of Treasury's Office of Foreign Assets Control (OFAC) announced that COSL Singapore Ltd, an oilfield services company, agreed to pay \$415,350 to settle civil liability for apparent Iranian Transactions and Sanctions Regulation (ITSR) violations involving oil rig supplies. According to the OFAC web notice, between October 2011 and February 2013, COSL subsidiaries exported, or attempted to export, 55 orders of oil rig supplies from the United States to Singapore and the United Arab Emirates, and then subsequently reexported or attempted to reexport the supplies to four separate oil rigs located in Iranian territorial waters.

OFAC considered aggravating and mitigating factors when evaluating settlement for this case, which OFAC determined could have resulted in a maximum statutory civil monetary penalty of \$13.75 million. Aggravating factors included that COSL (i) failed to exercise minimal caution; (ii) is a sophisticated company with 14 offshore rigs worldwide and (iii) did not have an OFAC compliance program in place at the time of the transactions. Mitigating factors included that COSL (i) had no prior violation history in the five years prior to the first apparent violation; (ii) took remedial action and instituted a compliance program and (iii) cooperated with OFAC throughout the investigation, including by entering into a tolling agreement.

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

Freight Forwarder Agrees to \$518,062 Settlement in Connection with Alleged Sanctions Violations Relating to Iran

On August 18, 2017, OFAC announced that Blue Sky Blue Sea Inc., doing business as American Export Lines and International Shipping Company (AEL), agreed to pay \$518,063 to settle civil liability involving apparent violations of ITSR. According to the OFAC web notice, the apparent violations concern the transshipment of used and junked cars and parts from the United States via Iran to Afghanistan on 140 occasions from April 2010 to June 2012.

OFAC considered aggravating and mitigating factors when evaluating settlement for this case, which OFAC determined could have resulted in a maximum statutory civil monetary penalty of \$35 million. Aggravating factors included that (i) AEL exhibited reckless disregard for U.S. sanctions law; (ii) senior management knew, and approved, of the transshipments; (iii) there was a high volume of transactions and (iv) AEL is a sophisticated freight forwarder with experience in U.S. export and sanctions laws, particularly the ITSR. Mitigating factors

included that (i) the goods were transshipped through Iran and did not appear to have an end use there, (ii) AEL had no prior violation history in the five years preceding the date of the first apparent violation; (iii) AEL is a small business, and the apparent violations constituted less than 1 percent of total shipments during the time period in question; (iv) AEL had a compliance program in place and took remedial action before the inception of the OFAC investigation and (v) AEL cooperated with OFAC and agreed to toll the statute of limitations for 804 days.

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

Settlement Agreement Between OFAC and IPSA International Services, Inc. for Alleged Violations Related to Third-Party Due Diligence

On August 10, 2017, OFAC announced that IPSA International Services, Inc. agreed to pay a \$259,200 civil settlement in connection with 72 apparent violations of the ITSR. IPSA is a U.S. company that provides global investigative due diligence services, and this enforcement action highlights the heightened sanctions compliance and enforcement risk that companies face when engaging third-party consultants to perform due diligence on counterparties.

For additional information and analysis, please see the [Akin Gump Client Alert](#).

Texas Man Pleads Guilty to Conspiring to Illegally Export Radiation Hardened Integrated Circuits to Russia and China

On August 3, 2017, the Department of Justice announced that Peter Zuccarelli pleaded guilty to violating the International Emergency Economic Powers Act in connection with a scheme to illegally export radiation hardened integrated circuits (RHICs) for use in the space programs of China and Russia without obtaining a license from the Bureau of Industry and Security (BIS) of the Department of Commerce.

According to the press release, between June 2015 and March 2016, Zuccarelli received orders for, and \$1.5 million to purchase, RHICs for use in the space programs of China and Russia. Zuccarelli used the money to order the controlled goods and provided false certifications to domestic suppliers, stating that his own U.S. company was the end user. After receiving the RHICs, he repackaged them and declared them as “touch screen parts” before shipping them outside of the United States.

Zuccarelli created false paperwork and made false statements in order to conceal the conspiracy from the U.S. government.

Zuccarelli faces up to five years’ imprisonment and a maximum fine of \$250,000. The matter is being investigated by Homeland Security Investigations, the Federal Bureau of Investigation, BIS and the Defense Criminal Investigative Service.

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

OFAC Pushes New Limits on Jurisdiction of U.S. Sanctions by Penalizing Non-U.S. Companies \$12 Million for “Causing” Violations by Making U.S. Dollars Payments

On July 27, 2017, OFAC announced a civil settlement with CSE TransTel Pte. Ltd. and CSE Global Limited in the amount of \$12,027,066 for potential civil liability for apparent violations of the U.S. economic sanctions against Iran. Past enforcement actions based upon similar facts have targeted the non-U.S. financial institution involved in the transaction, rather than the non-U.S. company. This case represents the first time that OFAC has penalized a nonfinancial institution outside the United States where the sole nexus was settling a transaction with a sanctioned country in U.S. dollars, which OFAC has stated thereby resulted in the non-U.S. entity causing a violation of U.S. sanctions by a financial institution.

For additional information and analysis, please see the [Akin Gump Client Alert](#) and coverage in the [July 2017 Red Notice](#).

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

President Trump and OFAC Announce Targeted Economic Sanctions on Venezuela

On August 25, 2017, President Trump issued an Executive Order (EO) imposing economic sanctions related to Venezuela. The new measures prohibit U.S. persons from engaging in certain debt- equity- and securities-related transactions involving the government of Venezuela and entities owned or controlled by the government of Venezuela. Simultaneously with the issuance of the EO, OFAC published four General Licenses and a series of Frequently Asked Questions pertaining to the new Venezuelan sanctions.

For additional information and analysis, please see the [Akin Gump Client Alert](#).

OFAC Targets Chinese, Russian, Singaporean and Hong Kong-Based Entities by Announcing North Korea-Related Sanctions Designations

On August 22, 2017, OFAC expanded its List of Specially Designated Nationals (“SDN List”) by designating 10 entities and six individuals from various countries in response to North Korea’s ongoing ballistic missile and weapons of mass destruction development programs, violations of United Nations Security Council Resolutions, and U.S. sanctions evasion. The designations include Chinese, Russian, Singaporean and Hong Kong-based entities from various sectors, including the mining, commodity trading, financial services, construction and development, and energy industries.

The North Korea-related designations are intended to target companies and individuals in third-countries that deal in the North Korean energy trade, facilitate North Korean exportation of workers, enable sanctioned North Korean entities to access the U.S. and international financial systems, and otherwise assist SDNs supporting the North Korean nuclear and ballistic missile programs.

For additional information, please see the [OFAC press release](#) and [web notice](#) listing the designations.

New Law Imposes Expansive New Sanctions on Russia, Iran and North Korea While Limiting the President’s Ability to Ease Russia Sanctions

On August 2, 2017, President Trump signed into law the Countering America’s Adversaries Through Sanctions Act of 2017 (the “Act”), which expands economic sanctions against Russia, Iran and North Korea. The Act provides for significant changes to current U.S. sanctions imposed on Russia, Iran and North Korea, including secondary sanctions targeting non-U.S. companies that engage in proscribed business with the three countries.

For additional information and analysis, please see the [Akin Gump Client Alert](#).

United States Imposes Sanctions on Venezuelan President Maduro and 13 Current and Former Government Officials

On July 31, 2017, OFAC announced the addition of Venezuelan President Nicolas Maduro to the SDN List. The action followed the addition of 13 current and former government officials to the SDN List on July 26, 2017. Pursuant to these sanctions, U.S. persons cannot engage in transactions with President Maduro or the other listed parties, and all assets of President Maduro and the other listed parties subject to U.S. jurisdiction are frozen.

For additional information and analysis, please see the [Akin Gump Client Alert](#) and coverage in the [July 2017 Red Notice](#).

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WRITING AND SPEAKING ENGAGEMENTS

September 12: [Jonathan Poling](#) will speak on the topic “It’s Bound to Happen (and Probably Already Has): Handling Violations” and [Kevin Wolf](#) will speak on “Recent & Upcoming Developments in U.S. Export Controls” at the Export Compliance Training Institute’s Interactive Export Controls Workshop in Alexandria, VA.

September 19: [Kevin Wolf](#) will speak on the panel titled “Seven Deadly Sanctions/Export Controls Sins Unveiled in OFAC and BIS Cases – And Their Lessons” at SanctionsAlert.com’s Sanctions Risk Management Symposium in New York, NY.

September 19: Akin Gump will host an International Trade and Compliance Conference at the Sheraton Amsterdam Airport Hotel and Conference Center in Amsterdam, Netherlands. If you are interested in attending the program, please contact Sue Menon at sue.menon@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 "Export Control, Sanctions and Customs Developments and Enforcement" sections are edited by [Suzanne Kane](#) and [Johann Strauss](#).

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