

### 3 KEY TAKEAWAYS

## OFAC's 2019 Sanctions Enforcement

2019 was a busy year for the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"): in May, OFAC provided a compliance roadmap in its "Framework for OFAC Compliance Commitments" guidance document (see our 6 Key Takeaways from the OFAC Framework); revised its "Reporting and Record-Keeping Requirements" (31 C.F.R. Part 501) to establish new reporting and license application requirements for parties engaging with OFAC; and in June, announced a change in how it calculates fines related to sanctions violations. In addition, OFAC had a robust sanctions enforcement year.

The following are 3 takeaways from OFAC's 2019 enforcement actions:

# 1

Cross-border M&A - Enforcement actions in this area generally involve a U.S.-based holding company acquiring a non-U.S. subsidiary. For example, in an enforcement action, announced last February, OFAC held a U.S. parent company liable for its subsidiaries' Iranian sanctions violations. This action further highlights the importance of U.S. acquirers conducting sanctions-related due diligence both prior to mergers and acquisitions, and to take appropriate steps to train, monitor, audit, and verify newly acquired subsidiaries and affiliates for sanctions compliance. Foreign acquisitions can pose unique risks that U.S. parent companies need to address fully at all stages of its relationship with the subsidiary.

Global supply chain – A January 2019 enforcement action against U.S. company, e.l.f. Cosmetics, Inc. (e.l.f.), highlights the importance of verifying the country of origin of goods and services when engaging in cross-border business. This is particularly true in an industry in which North Korea is known to export goods. e.l.f.'s compliance program focused on quality control rather than sanctions compliance, and failed to reveal that 80% of the false eyelash kits contained North Korean materials. Companies that source globally should examine their sourcing practices and consider several steps to protect their supply chains from OFAC enforcement risks: (1) review OFAC's 2018 advisory "Risks for Business with Supply Chain Links to North Korea" for insight into the kinds of indicators OFAC and other enforcement agencies consider heightened risk factors; (2) implement supply chain audits to verify the country of origin of goods and services; (3) require suppliers to sign compliance certificates stating that they will comply with all U.S. export controls and trade sanctions; and (4) hold mandatory, regular and refresher trainings on U.S. sanctions regulations for employees and key or high risk suppliers.

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Screening tools – Enforcement actions and OFAC's May 2019 guidance highlight the importance of insuring that sanctions screening tools are properly configured and updated to incorporate additions or revisions to OFAC's List of Specially Designated Nations and Blocked Persons ("SDN List") and the Sectoral Sanctions Identification List ("SSI List"), and that the use of the screening tools account for alternative spellings of prohibited countries or parties. In one enforcement action, the entity's sanctions screening tool failed to match the upper case name of the legal entity, which included a country-specific business suffix, in its system with the lower case name as written on the SDN List. In another enforcement action, the U.S. company's sanctions screening tool did not identify an entity listed on the SDN List because the tool only screened for the entity's acronym rather than its formal legal entity name. Sanctions screening should insure that all data elements (such as names, addresses and alternative spellings) are checked for potential matches, and it should screen customers, intermediaries, or other parties involved in the transaction, including those mentioned in commercial and financial documents in order to identify sanctioned destinations, parties, or dealings. Companies should also consider implementing an annual review of its screening tool's logic and configuration, and require employees to review potential SDN List matches flagged by the sanctions screening tool.

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