
The U.S. Sanctions/AML Landscape in a New Era of Government

Presented by

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Presenters



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Jeanine is counsel in Davis Polk's Financial Institutions Group and the economic sanctions and national security practice. She practices in the firm's Washington, D.C. office, where she concentrates in U.S. trade and investment laws applicable to cross-border transactions, focusing on U.S. economic sanctions, anti-money laundering laws, anti-boycott laws, the Foreign Corrupt Practices Act and transaction reviews by U.S. national security agencies, including the Committee on Foreign Investment in the United States. Her clients include major U.S. and foreign financial institutions, and pharmaceutical, technology, telecommunications, energy, and natural resources companies.

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Denis J. McNerney

Denis is a partner in our Litigation Department and practices in our New York office. His practice focuses on grand jury, regulatory, cross-border, and internal investigations as well as complex criminal and civil litigation. He returned to Davis Polk in 2014 after serving as Chief of the Fraud Section (2010-2013) and then Deputy Assistant Attorney General of the Criminal Division of the U.S. Department of Justice (2013-2014). In those positions, Mr. McNerney was responsible for supervising approximately 100 prosecutors in DOJ's Fraud Section, which has responsibility for all FCPA investigations conducted by DOJ as well as a wide range of other white collar investigations and prosecutions. He previously served as a Deputy Chief of the Criminal Division in the Southern District of New York.



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John is a partner in Davis Polk's Financial Institutions Group and the economic sanctions and national security practice. He practices in the firm's Washington, D.C. office, where he advises U.S. and international clients on trade, security, and regulatory issues. He frequently represents clients before the U.S. Departments of State, Treasury, Commerce, Defense, and Homeland Security and the Office of the U.S. Trade Representative. With over 25 years of experience in export controls and economic sanctions, he counsels across industry sectors concerning all types of international compliance and enforcement issues, especially matters involving U.S. national security.

Presenters



Will Schisa

Will is counsel in Davis Polk's Financial Institutions Group and economic sanctions and national security practice, based in the Washington, D.C. office. He has extensive experience with the economic sanctions laws and regulations administered by the Treasury Department's Office of Foreign Assets Control (OFAC), having served for nearly 10 years as an attorney in the Office of the Chief Counsel, Foreign Assets Control, the legal office that supports OFAC.

Agenda

- What we are seeing and expect from the Trump Administration, including:
 - Appointments and Nominations to Key Government Positions
 - Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs
 - Update on Anti-Money Laundering (“AML”) Initiatives
- Key Enforcement Trends and Developments

What we are seeing and expect from the Trump Administration

Appointments and Nominations to Key Government Positions

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs

Update on AML Initiatives

Appointments and Nominations to Key Government Positions

Treasury Department

- Office of Foreign Assets Control (“OFAC”), *Director*
 - Leads OFAC’s efforts in administering and enforcing economic and trade sanctions against countries, governments, groups, and individuals
 - Sanctions generally prohibit U.S. persons from directly or indirectly engaging in or facilitating business with target countries, individuals, or entities
 - There are currently more than 20 sanctions programs, although some overlap
 - *John E. Smith*
- Office of Terrorism and Financial Intelligence (“OTFI”), *Under Secretary*
 - Heads the Treasury’s efforts to cut off financial support for terrorists, proliferators of weapons of mass destruction, and narcotics traffickers
 - Oversees implementation of aspects of the Bank Secrecy Act (“BSA”) as well as economic sanctions programs and security functions
 - *Sigal Mandelker*

Appointments and Nominations to Key Government Positions

- OFAC Compliance & Enforcement, *Associate Director*
 - Develops and implements compliance and enforcement strategies
 - Supervises investigations and actions with respect to financial institutions (by OFAC's Compliance Division) and non-financial institutions (Enforcement Division)
 - *Michael Mosier*
- Financial Crimes Enforcement Network ("FinCEN"), *Director*
 - Supervises FinCEN's efforts to combat domestic and international money laundering, terrorist financing, and other financial crimes
 - Manages FinCEN's enforcement of BSA and coordinates with counterpart organizations abroad
 - *Vacant; Jamal El-Hindi is currently Acting Director*
- Office of the Comptroller of the Currency ("OCC"), *Comptroller*
 - OCC is primary federal banking supervisor of national banks, federal savings associations, and federally licensed branches and agencies of international banks
 - *Nominee: Joseph Otting; Keith Noreika is currently Acting Comptroller*

Appointments and Nominations to Key Government Positions (cont.)

Board of Governors of the Federal Reserve System

- Federal Reserve is primary banking supervisor of bank holding companies, state member banks, and foreign banking organizations with banking operations in the U.S.
- Three vacancies for Governors
 - *Nominee: Randal Quarles as Vice-Chair in charge of Supervision*
- Janet Yellen's term as Chairman expires February 2018; Stanley Fischer's term as Vice Chairman expires June 2018
- Board announced appointment of new General Counsel, effective later this summer
 - *Mark Van Der Weide*
- Assistant General Counsel & Assistant Director (oversees enforcement actions brought by Board)
 - *Patrick Bryan*

Federal Deposit Insurance Corporation ("FDIC")

- FDIC is primary federal banking supervisor of state non-member banks and state savings associations
- Chairman
 - *Nominee: James Clinger; Martin Gruenberg's term expires November 2017*

Appointments and Nominations to Key Government Positions (cont.)

Department of Justice (“DOJ”)

- Deputy Attorney General
 - Broad range of responsibilities relating to the operations of the DOJ
 - *Rod Rosenstein*
- Head of the Criminal Division
 - *Nominee: Brian Benczkowski*
- Awaiting nominations on other positions, including:
 - U.S. Attorneys for a number of U.S. Attorney’s Offices
 - Head of the National Security Division (“NSD”), *Dana Boente is currently the Acting Assistant Attorney General of the National Security Division*

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs

Sanctions may be imposed against geographical areas and all persons within those areas, or against designated governments, organizations, individuals, and entities wherever they may be located

- Territorial (Country) Sanctions:
 - Iran
 - Syria
 - Crimea region
 - North Korea
 - Sudan
 - Cuba
- List-Based Sanctions: Individuals or entities whose property is blocked are generally placed on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"):
 - Individuals and entities involved in narcotics trafficking, terrorism and terrorist financing, transnational crime, proliferation of weapons of mass destruction, malicious cyber-enabled activities
 - Designated individuals and entities in, or related to, certain former regimes or engaged in specific acts in certain countries or regions

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs



Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Cuba

Recent changes to Cuba sanctions policy

- Key policy changes announced on June 16, 2017, will include:
 - Channeling economic activities away from the Cuban military monopoly, Grupo de Administración Empresarial (GAESA), while continuing to allow American individuals and entities to develop economic ties to the private, small business sector in Cuba
 - Limiting travel for non-academic educational purposes to group travel; the individual people-to-people travel permitted by the Obama administration will be prohibited
- The policy changes will become effective when OFAC amends the Cuban Assets Control Regulations (“CACR”) and the Commerce Department makes any necessary amendments to the Export Administration Regulations
 - The Administration has directed the relevant agencies to initiate a process within 30 days to amend the regulations

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Iran

The Joint Comprehensive Plan of Action (“JCPOA”)

- July 14, 2015, the P5+1, the EU, and Iran entered into JCPOA to restrict Iran’s nuclear development program in exchange for relief from U.S., EU, and UN Security Council sanctions
 - Following January 16, 2016 International Atomic Energy Agency certification that Iran had fulfilled certain commitments, UN and EU lifted sanctions against Iran; U.S. issued temporary waivers of nuclear-related secondary sanctions
- Because JCPOA was adopted under executive authority, congressional review has been limited, and entire structure can be reversed by subsequent administration

Options available to Trump Administration

- **1) Withdraw** from the JCPOA or undertake measures approximating withdrawal (e.g., reimpose nuclear-related sanctions, decline to renew waivers, re-designate Specially Designated Nationals)
- **2) Attempt to renegotiate** the JCPOA (e.g., augment stringency or duration of Iran’s commitments)
- **3) Augment enforcement** of the JCPOA (e.g., respond more aggressively to reports of Iranian non-compliance by withholding sanctions relief or referring Iran to Joint Commission charged with dispute resolution)

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Iran (cont.)

Recent/upcoming decision points on the JCPOA

- **Certifications of compliance:** Pursuant to Iran Nuclear Agreement Review Act of 2015, President must periodically certify to Congress whether Iran has remained compliant with JCPOA
 - Trump Administration's first certification on April 18, 2017
- **Waiver renewals:** Waivers of secondary sanctions require periodic renewal (N.B., these waivers may not be publicized)
 - May 17, 2017: U.S. extended JCPOA by renewing sanctions waiver
 - Waiver renewals are conducted via statutory provisions that allow the President to waive sanctions in the interest of national security
 - Administration simultaneously imposed narrow penalties on Iranian and Chinese entities for supporting Iran's ballistic missile program
 - Additional waivers must be renewed in July 2017

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Iran (cont.)

- Many U.S. sanctions targeting Iran, Government of Iran (“GOI”), and designated Iranian individuals and entities, remain in effect
- U.S. persons continue to be broadly prohibited from engaging in transactions involving Iran, including USD transactions for or with Iranian financial institutions
 - All property and interests in property of Iranian financial institutions in U.S. or in possession of U.S. person are “blocked,” and may not be transferred, paid, exported, withdrawn, or otherwise dealt in
- U.S. person employees, even outside U.S., may not participate in transactions or decision-making involving Iran-related business
- Some secondary sanctions are available to apply without violating JCPOA, including possible sanctions for significant transactions with Iranian persons or entities on SDN List, including:
 - Islamic Revolutionary Guard Corps (“IRGC”)
 - Persons or entities designated in connection with Iran’s proliferation of WMDs or support for international terrorism
 - Examples of IRGC-affiliated entities:
 - Khatam al-Anbya Construction Headquarters
 - Oriental Oil Kish
 - Sahel Consultant Engineering

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Iran (cont.)

So what's next?

■ **Compliance uncertainty**

- Some suggestion that European and American banks may be holding back from transactions within Iran for fear of running afoul of changing political tides

■ **Potentially stronger U.S. stance on non-nuclear secondary sanctions**

- Even without pulling out of JCPOA, U.S. is able to strengthen its stance against Iran
- Congress has proposed multiple bills for enhancing or supplementing existing sanctions, and Trump Administration is able to enforce existing sanctions more vigorously
 - S.722 – Countering Iran's Destabilizing Activities Act of 2017
 - H.R.1698 – Iran Ballistic Missiles and International Sanctions Enforcement Act

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Syria

Syria is target of territorial (country) sanctions

- One of most comprehensive sanctions programs currently administered by OFAC
- Broadly prohibits U.S. persons from most transactions or dealings, directly or indirectly, in Syria and blocks all property in which Government of Syria (broadly defined) has an interest

Rapidly unfolding landscape in Syria in 2017

- Early April – Assad launches a lethal sarin gas attack and Trump responds by firing 59 Tomahawk cruise missiles at a Syrian airfield
- April 24 – OFAC sanctions 271 employees at Syria's Scientific Studies and Research Center (allegedly responsible for developing chemical weapons for Syrian government)
- June 18-20 – U.S. shoots down Syrian aircraft; two days later, U.S. shoots down drone that attacked U.S. soldiers

Possibility of increased sanctions?

- Given the breadth of current sanctions, possibilities may include:
 - Applying current sanctions program to non-U.S. subsidiaries of U.S. companies
 - Introducing secondary sanctions

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Russia

Background on Russian sanctions

- March to December 2014: Executive Orders (“E.O.s”) 13660, 13661, and 13662 imposed sanctions on certain persons in response to actions taken by Russia involving Ukraine and Crimea
- May 2014: OFAC issued Ukraine-Related Sanctions Regulations, 31 CFR Part 589 to implement Russia/Ukraine E.O.s
- December 2014:
 - Ukraine Freedom Support Act of 2014 enacted
 - Authorizes additional economic sanctions against entities in Russian defense sector
 - Authorizes, but does not mandate, certain measures targeting Russian energy sector, including sanctions on non-Russian persons knowingly investing in certain crude oil projects
 - President Obama issued E.O. 13685 imposing territorial sanctions on Crimea region
- April 1, 2015: E.O. 13694 authorized sanctions against certain persons engaging in significant malicious cyber-enabled activities (amended December 2016)
- January 2017: Bipartisan group of Senators proposed “Counteracting Russian Hostilities Act of 2017,” which would codify Obama-era sanctions on Russia into law
- June 2017: Russia sanctions provisions were added to Iranian sanctions legislation
 - The bill passed in the Senate and is stalled in the House

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: North Korea

North Korea is a target of territorial sanctions

- Additionally, North Korea Sanctions and Policy Enhancement Act of 2016 (“NKSPEA”) provides for both mandatory and discretionary secondary sanctions against foreign individuals or entities determined to be engaged in certain activities with regard to North Korea
- As of February 2016, secondary sanctions on North Korea that would emulate those on Iran were authorized, but have not yet been deployed

Potential for additional secondary sanctions against foreign entities doing business with North Korea?

- Significance of North Korea’s trade relationship with China suggests secondary sanctions targeting Chinese companies would be critical to success of sanctions
- China reportedly accounts for 70% of North Korea’s trade
- North Korea reportedly uses a combination of front companies, shell companies, and third-country agents to gain access to American technology and markets, especially through Chinese banks
- As of June 2017, Chinese leaders agreed to strengthen implementation of sanctions imposed on North Korea

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: North Korea (cont.)

What might secondary sanctions on North Korea look like?

- Current framework comes from the NKSPEA of 2016:
 - Requires President to sanction individuals and entities determined to contribute to North Korea's weapons program, arms trade, human rights abuses, or other problematic activities
 - Offers President discretionary authority to sanction entities supporting persons sanctioned by UN Security Council

Proposed Korean Interdiction and Modernization of Sanctions Act ("Kims Act")

- Kims Act, H.R. 1644, passed the House on May 4, 2017, with nearly unanimous support
- Differences with the NKSPEA include:
 - New additions to mandatory sanctions (purchase of certain North Korean minerals, maintaining correspondent accounts with North Korean financial institutions, providing support to sanctioned North Korean vessels)
 - Discretionary sanctions on key North Korean exports
 - New sanctions targeting those involved in the export or use of North Korean forced labor
 - Stronger measures targeting ports that inadequately enforce UN Security Council sanctions against North Korea

Notable Developments in, and Possible Expansion of, U.S. Sanctions Programs: Sudan

January 13, 2017 – Obama Administration announced suspension of sanctions against Sudan

- Trade embargo, asset freezing, and financial sanctions had been in place for nearly 20 years to address Sudan's support for international terrorism, activities to destabilize the region, and human rights violations
- Subsequent conflict in 2003 in Darfur triggered additional round of U.S. sanctions

January's pronouncement was two-pronged

- OFAC announced General License authorizing all transactions previously prohibited by Sudanese Sanctions Regulations ("SSR") and by E.O.s 13067 and 13412, effective January 17, 2017
- E.O. 13761 provided for 6-month review period to determine whether Sudan continued to engage in bilateral cooperation, ending of internal hostilities, regional cooperation, and improvements in humanitarian access

On July 11, 2017, President Trump issued a new Executive Order extending the Sudan sanctions review period for an additional three months

- The U.S. will revoke the sanctions at the end of this period if the Government of Sudan is assessed to have sustained its positive actions

Update on AML Initiatives

Update on AML Initiatives

OVERVIEW OF U.S. AML LAWS AND REGULATIONS

Purpose of U.S. AML laws and regulations is to prevent use of financial system to launder money that comes from criminal activity

A variety of regulatory and law enforcement agencies, including the OCC, FDIC, the Federal Reserve, and FinCEN are principally responsible for AML enforcement

Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 & 1957)

- Criminal AML statute applies to:
 - Criminals who launder their ill-gotten gains
 - Any persons or entities that knowingly participate in those transactions
 - Not specific to financial institutions
- Creates federal criminal liability for conduct related to laundering the proceeds of “specified unlawful activity” (over 170 separate crimes)

Bank Secrecy Act of 1970 (“BSA”)

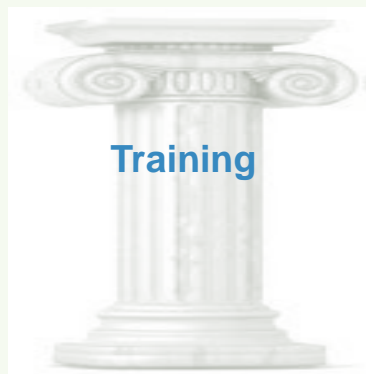
- Requires financial institutions to create and maintain records of customer transactions, and to report certain financial transactions to the government
- Provisions in Title III of USA PATRIOT Act of 2001 have amended BSA
- Recent amendments to BSA regulations focus on beneficial ownership information and customer due diligence

Update on AML Initiatives

FOCUS ON BENEFICIAL OWNERSHIP INFORMATION AND CUSTOMER DUE DILIGENCE

BSA's "Pillars" of an Effective AML Compliance program

- Requires that covered financial institutions establish risk-based AML program that includes, at a minimum, "four pillars"
- In May 2016, FinCEN issued a Final Rule under BSA that adds a "fifth pillar" focused on customer due diligence ("CDD") requirements, which will become applicable on May 11, 2018
- Requires financial institutions to identify and verify beneficial ownership of most legal entity customers when new account is opened



Consistent with Financial Action Task Force ("FATF") Dec. 2016 Mutual Evaluation Report

- Described lack of access to timely and accurate beneficial ownership information as "fundamental gap" in U.S. AML framework and recommended U.S. require that information at federal level
- Recommended U.S. assess vulnerability of non-financial businesses and professions, and consider applying AML obligations to lawyers, accountants, and trust and company service providers

Update on AML Initiatives

FOCUS ON BENEFICIAL OWNERSHIP INFORMATION AND CUSTOMER DUE DILIGENCE (CONT.)

- New CDD Rule will require risk-based procedures for conducting ongoing CDD that include, but are not limited to:
 - Understanding customer relationships to develop customer risk profile
 - Constantly monitoring and updating customer information
- The CDD Rule's definition of "beneficial owner" is two-pronged, focusing on ownership and control of customers that are legal entities:
 - Under ownership prong, beneficial owner is any individual who, directly or indirectly, owns 25% or more of equity interests of legal entity customer; and
 - Control prong requires identification of one individual with significant responsibility to control, manage, or direct legal entity, including executive officer, senior manager, or any other individual who regularly performs similar functions
- Under CDD Rule, financial institutions must identify and verify the identify of each individual who satisfies ownership test and one individual who satisfies control test
 - If one individual is both a 25% or more owner and meets definition for control, that individual could be identified as beneficial owner under both prongs

Update on AML Initiatives

CYBERSECURITY AND AML

Importance of cybersecurity to AML

- Cyber attacks can generate illicit proceeds (e.g., from ransomware attacks, sale of proprietary information or credit card numbers)
- Cyber attacks may directly impact funds (e.g., through fraud, identity/credential theft, and misappropriation of funds)
- Cyber attacks may seek unauthorized access to electronic systems, services, resources, or information to conduct unauthorized transactions

FinCEN “Advisory to Financial Institutions on Cyber-Events and Cyber-Enabled Crime,” plus FAQs, released October 26, 2016

- Emphasized importance of BSA reporting to combatting cyber-enabled crime by providing investigatory leads, helping to identify criminals, and disrupting criminal networks
- Reiterated the mandatory SAR reporting of cyber-events
 - “If a financial institution knows, suspects, or has reason to suspect that a cyber-event was intended, in whole or in part, to facilitate or affect a transaction or a series of transactions, it should be considered part of an attempt to conduct a suspicious transaction or series of transactions”
- Called for cyber-related information in SARs (timestamps, device identifiers, etc.), collaboration between AML and cybersecurity units, and information sharing among financial institutions

Update on AML Initiatives

CYBERSECURITY AND AML (CONT.)

NY Department of Financial Services' ("NYDFS") cybersecurity requirements for financial services companies (23 NYCRR 500) became effective March 1, 2017, with transitional period ending August 28, 2017

- Requires companies to assess their specific risk profiles and design appropriate programs that:
 - Identify and assess internal and external cybersecurity risks that may threaten the security or integrity of nonpublic information
 - Use defensive infrastructure and implementation of policies and procedures to protect the companies' information systems, and nonpublic information stored on them, from unauthorized access or other malicious acts
 - Detect cybersecurity events
 - Respond to identified or detected cybersecurity events to mitigate negative effects
 - Recover from cybersecurity events and restore normal operations and services
 - Fulfill applicable regulatory reporting obligations
- Senior management must file annual certification confirming compliance

Update on AML Initiatives

DE-RISKING

De-risking

- Occurs when financial institutions opt not to transact with certain business or countries deemed too risky from AML perspective
- Can drive such transactions to less well-regulated financial systems and away from oversight

Joint Fact Sheet on Foreign Correspondent Banking

- On August 30, 2016, the Treasury, Federal Reserve Board, FDIC, National Credit Union Administration, and OCC sought to dispel concerns potentially contributing to the de-risking trend by noting:
 - 1) No expectation for banks to conduct due diligence on individual customers of foreign financial institutions
 - 2) AML enforcement is not “zero tolerance”; about 95% of deficiencies are resolved through cautionary letters or other guidance
- Only Treasury and the banking regulators signed on; DOJ, state and local law enforcement, state banking or securities regulators did not join or endorse positions in Joint Fact Sheet

Update on AML Initiatives

NYDFS RULE REGARDING AML TRANSACTION MONITORING

New NYDFS risk-based anti-terrorism and anti-money laundering regulation became effective January 1, 2017 (Part 504)

- Part 504 requires regulated institutions to:
 - Monitor and filter transactions for potential BSA/AML violations and prevent transactions with sanctioned entities
 - Submit annual board resolution or senior officer compliance finding confirming steps taken to ensure compliance
- Notably, final rule:
 - Eliminates previous requirement that regulated institutions not change monitoring and filtering programs that would reduce quantity of SARs
 - States that areas needing improvement should be fixed and documented for NYDFS
 - Lacks materiality standard for civil liability
 - Does not establish separate basis for criminal liability, but notes that provisions, including the annual certification, may be enforced pursuant to “any applicable laws,” including existing criminal laws

Update on AML Initiatives

INDUSTRY CALLS FOR REFORM

The Clearing House (“TCH”): “A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement” (White Paper)

- Published in February 2017, and calls for, among other things:
 - FinCEN to reclaim from the federal banking agencies sole supervisory responsibility for large, multinational financial institutions
 - Passage of beneficial ownership legislation
 - De-prioritization of the investigation and reporting of inconsequential information
 - Enactment by FinCEN of safe harbor rule to allow financial institutions to innovate
 - Facilitating flow of raw data from financial institutions to law enforcement
 - Clarifying and expanding the scope of information sharing under Section 314(b)
 - Enhancing legal certainty surrounding Suspicious Activity Reports’ (“SARs”) use and disclosure

Other industry groups have echoed these concerns

- American Bankers Association has urged Congress to lighten burdens of AML compliance and reporting requirements, and eliminate potential penalties for banking legal businesses
- Independent Community Bankers of America wants to raise BSA currency transaction report threshold from \$10,000 to \$30,000, and to enact tax credits to offset the cost of BSA compliance

Key Enforcement Trends and Developments

Key Enforcement Trends and Developments

SANCTIONS/EXPORT CONTROLS ENFORCEMENT

Settlements in 2014 and 2015

- 2014: OFAC imposed or collected \$1.2 billion from settlements and penalties in 23 cases
 - Included largest OFAC settlement ever, for \$963 million (BNP Paribas SA – global settlement totaled \$8.9 billion)
- 2015: OFAC imposed or collected nearly \$600 million from settlements and penalties in 15 cases
 - Included settlements for \$258 million (Commerzbank AG – global settlement totaled \$1.45 billion) and \$329 million (Credit Agricole – global settlement totaled \$787 million)

2016 and 2017 to date

- OFAC resolved 9 cases in 2016 (the fewest since 2006) with settlements and penalties totaling \$21 million
- As of today, aggregate penalties and settlements in 2017 total \$102 million from 7 cases
- On March 7, 2017, OFAC imposed \$100 million penalty as part of a larger \$1.19 billion joint settlement with Zhongxing Telecommunications Equipment Corporation (“ZTE”) for apparent violations of Iranian Transactions and Sanctions Regulations
- Actions have also continued against individual defendants in *U.S. v. Zarrab* and *U.S. v. Zong*

February 9, 2017, OFAC issued regulations implementing the Federal Civil Penalties Act of 1990, which adjusts the maximum civil monetary penalties upward for inflation

Key Enforcement Trends and Developments

SANCTIONS/EXPORT CONTROLS ENFORCEMENT (CONT.)

Actions against individuals

- *United States v. Zarrab et al.*, No. 1:15-cr-99867 (SDNY)
 - December 15, 2015, four individuals, including Turkish businessman Reza Zarrab, indicted on charges including (i) conspiracy to defraud the United States, (ii) conspiracy to violate U.S. sanctions against Iran, (iii) conspiracy to commit bank fraud, and (iv) conspiracy to commit money laundering
 - On October 17, 2016, the U.S. District Court for the Southern District of New York denied Zarrab's motion to dismiss
- *United States v. Zong*, No. 3:16-cr-00142, (D. Alaska)
 - On December 14, 2016, 47-count indictment against Kenneth Zong for alleged scheme to move approx. \$1 billion in restricted Iranian funds out of South Korea to Iranian recipients

Actions against non-financial institutions

- *ZTE*
 - March 2017 – U.S. Department of Commerce (“BIS”), OFAC, U.S. Attorney's Office for the Northern District of Texas, and DOJ collectively imposed a \$1.19 billion fine on Chinese telecommunications giant ZTE
 - Cover-up by ZTE management, which included misleading its outside counsel and forensic auditor so that they would unwittingly provide false information to the government

Key Enforcement Trends and Developments

AML ENFORCEMENT

Continued focus on AML enforcement actions

- The Federal Reserve
 - May 2017 – Imposed penalty of \$41 million on Deutsche Bank for various AML/BSA failures and required retention of independent firm to conduct internal review
- NY Department of Financial Services
 - January 2017 – Fined Deutsche Bank \$425 million relating a “mirror trading scheme” involving Russian customers
 - December 2016 – Fined Intesa Sanpaolo \$235 million, and extended term of its independent consultant by two years; allegations include deficiencies in the transaction monitoring system
 - November 2016 – Fined Agriculture Bank of China \$215 million for increasing dollar-clearing activities despite warnings from NYDFS not to make such increases without significantly upgrading internal compliance
 - August 2016 – Fined Mega International Bank of Taiwan \$180 million, plus imposed two-year independent monitor and required AML reforms, relating to the Bank’s AML compliance management and controls

Key Enforcement Trends and Developments

AML ENFORCEMENT (CONT.)

FinCEN Beneficial Ownership Rule (“CDD Rule”) is already being incorporated in enforcement actions, even though it applies from May 11, 2018

- OCC recently instructed Carver Federal Savings Bank, New York, to take CDD Rule into account when formulating new AML policies

Compliance officers facing personal liability

- *U.S. v. Haider* – Agreeing with FinCEN, a Minnesota federal district court found that BSA allows for prosecution of individuals for willful violation of AML requirements
- The OCC, SEC, and FINRA have all imposed AML compliance-related fines against senior compliance officers

May 18, 2016, FINRA imposed \$17 million fine (largest ever) against Raymond James, alleging AML compliance issues

Key Enforcement Trends and Developments

AML ENFORCEMENT (CONT.)

Independent monitors and consultants

- A number of AML enforcement actions have required the retention of independent monitors
- Banking agencies' AML enforcement actions have traditionally required retention of third-party consultants to assist on remediation and conduct transaction reviews

Significant focus on filing of timely and adequate SARs

- The SEC recently brought its first ever enforcement action based solely on a broker-dealer's failure to file SARs (Albert Fried & Company)
- Both FinCEN and the OCC have recently fined financial institutions for delayed or inadequate SARs, including:
 - Feb. 2016 – FinCEN imposed \$4 million fine against Gibraltar Private Bank & Trust for 120 SARs (involving \$558 million in transactions) not being timely filed
 - April 2016 – OCC imposed \$1 million penalty against Stearns Bank for not filing timely SARs
 - Feb. 2017 – FinCEN announced \$7 million civil penalty assessment against Merchants Bank of California for not establishing an adequate AML compliance program

Key Enforcement Trends and Developments

REGULATORY REFORM?

Representative Hensarling's Financial CHOICE Act 2.0

- New law would impose limits on federal financial regulatory agencies' enforcement authority, including requiring agencies to designate one agency as Lead Banking Investigator for multi-agency investigations
- With regard to SEC, would establish a "Wells Committee 2.0" to reassess its enforcement program, would prohibit "rulemaking by enforcement," and would prohibit awarding whistleblower awards to co-conspirators
- On June 8, 2017, the bill passed in the House and subsequently went to the Senate for consideration

Questions



For the Interested Reader

- Davis Polk's Resource for Financial Regulatory Reform:
 - <http://www.finregreform.com/>