

U.S. Sanctions and Anti-Money Laundering Developments

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Presenters



John Banes

John is a partner in Davis Polk's Financial Institutions Group. He advises financial institutions on all types of corporate finance and regulatory matters, as well as U.S. and non-U.S. companies on internal investigations and regulatory enforcement matters, providing compliance, governance (including the Foreign Corrupt Practices Act ("FCPA")), and transactional advice. John is also a partner in the firm's white collar and criminal defense practice and the internal investigation practice, and advises clients on investigations and compliance matters and related corporate governance, financial reporting, and disclosure issues.



Margarita Clarens

Margarita is an associate in Davis Polk's Litigation Department, based in New York. Her practice focuses on internal investigations and criminal and regulatory enforcement matters, in areas such as sanctions, anti-money laundering, fraud, and the FCPA. She also advises clients on related governance and compliance matters.

Presenters (cont.)



Jeanine P. McGuinness

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 FCPA, 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.



Paul J. Nathanson

Paul is a partner in Davis Polk's Litigation Department, based in Washington, D.C. His practice focuses on internal investigations and criminal and regulatory enforcement matters, in areas such as the FCPA, fraud, sanctions, and anti-money laundering. Paul is an experienced trial lawyer and previously served as Deputy Chief of the Financial Crimes and Public Corruption Unit of the U.S. Attorney's Office for the Eastern District of Virginia. He also previously served at the U.S. Treasury Department and is a former law clerk to Chief Justice John G. Roberts Jr.

Presenters (cont.)



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.



B. Chen Zhu

Chen is counsel in Davis Polk's Litigation Department, currently practicing as a Registered Foreign Lawyer in Hong Kong. He relocated from the firm's New York office to Hong Kong in 2013. He represents multinational corporations, financial institutions, and individuals in cross-border regulatory enforcement and internal investigations relating to the FCPA, U.S. economic sanctions, anti-money laundering, market manipulation, and securities fraud, and advises clients on related governance and compliance matters.

Agenda

1 Update on U.S. Sanctions Programs

- Venezuela
 - Iran
 - Cuba
 - Russia
 - North Korea
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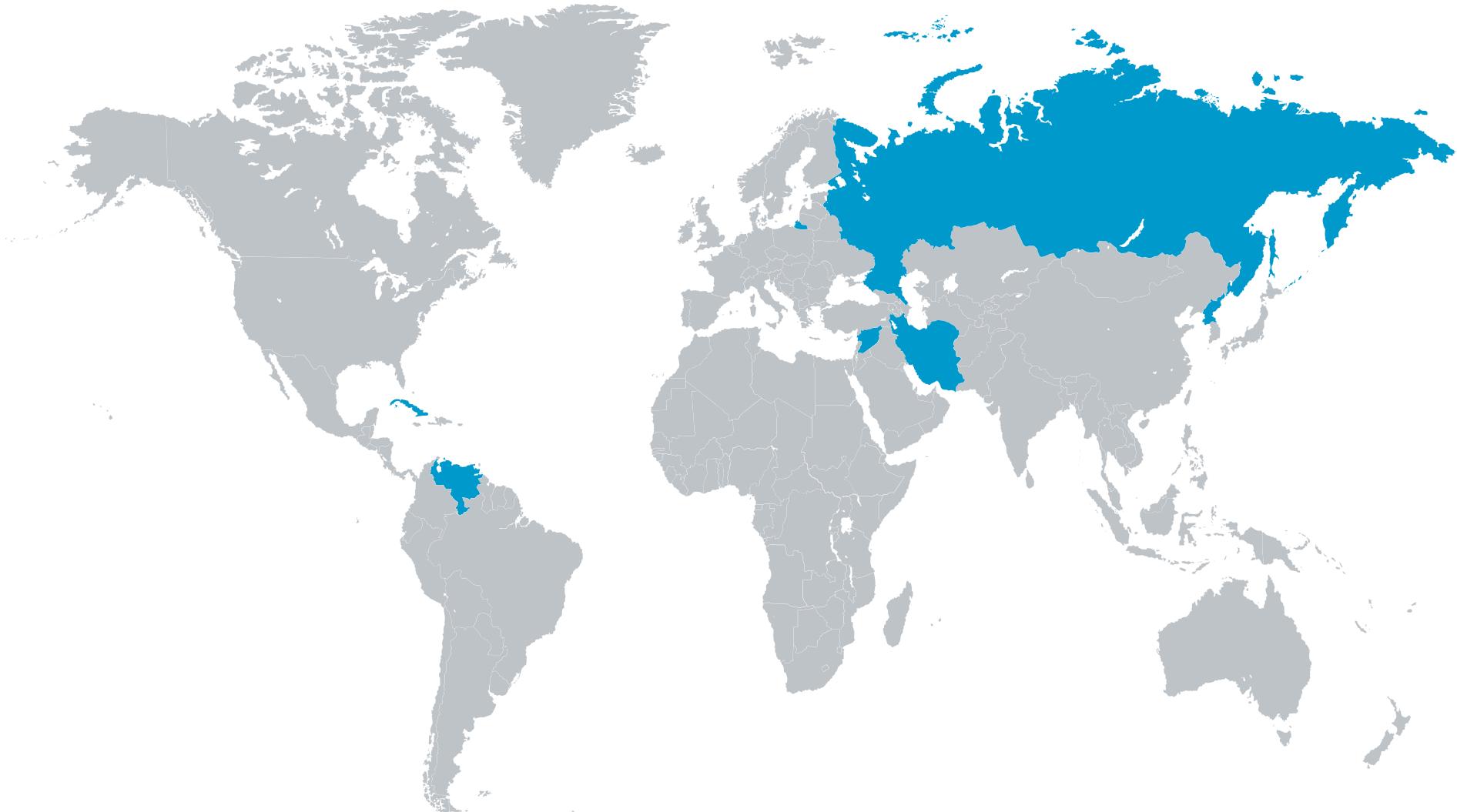
2 Update on Anti-Money Laundering (“AML”) Initiatives

3 Recent Enforcement Trends and Developments

Update on U.S. Sanctions Programs



Update on U.S. Sanctions Programs



Venezuela



New OFAC sanctions target Maduro regime in Venezuela

- January 28, 2019: Blocking sanctions imposed on Petróleos de Venezuela, S.A. (“PdVSA”) and subsidiaries pursuant to Executive Order 13850
- February 1, 2019: Additional restrictions on dealings in pre-sanctions Government of Venezuela bonds
- March 22, 2019: Blocking sanctions imposed on Banco de Desarrollo Económico y Social de Venezuela (“BANDES”) and four subsidiaries in Venezuela, Bolivia, and Uruguay
- April 17, 2019: Designation of the Central Bank of Venezuela

Additional OFAC sanctions target external sources of support for Maduro regime

- March 11, 2019: Designation of Russian Evrofinance Mosnarbank (“Evrofinance”)
- April 2019: Designation of shipping companies, and identification of associated vessels as blocked property, in connection with transporting oil from Venezuela to Cuba



JCPOA withdrawal

- United States has withdrawn from the Iran nuclear deal—the Joint Comprehensive Plan of Action (“JCPOA”)
- November 5, 2018: All U.S. sanctions (both primary and secondary) waived or lifted under JCPOA are reimposed and in full effect

Waivers

- “Significant reduction” exceptions granted by State Department expired on May 2, 2019, and were not renewed

Metals sanctions

- May 8, 2019: New secondary sanctions imposed, targeting Iran’s metals sector, specifically, iron, steel, aluminum, and copper, pursuant Executive Order 13871

Iran (cont.)



E.U. measures

- August 2018: E.U. Blocking Statute updated to cover U.S. extraterritorial sanctions relating to Iran
 - Forbids E.U. persons from complying with relevant sanctions unless authorized by European Union to do so
- January 2019: Britain, France, and Germany launch Instrument in Support of Trade Exchanges (“INSTEX”)
 - Provides payments mechanism outside of banking system intended to be resilient against threats of U.S. sanctions



Helms-Burton Act

- Title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (“Libertad Act” or “Helms-Burton Act”) permitted by State Department to take effect
 - Authorizes U.S. nationals that own claims to certain confiscated property to sue for damages any person who “traffics” in such property
 - Effective March 19, 2019, for suits against certain Cuban entities and May 2, 2019, for suits against other persons

Sanctions developments

- April 17, 2019: Administration announces intent to impose additional restrictions, including:
 - Revocation of general license regarding “U-turn” transactions involving Cuba
 - Reimposition of remittance limits
 - Imposition of further restrictions on non-family travel to Cuba
- June 5, 2019: OFAC and Commerce Department publish amended regulations taking initial steps to implement these restrictions



Russia sanctions policy remains uncertain

- January 27, 2019: Sanctions lifted on En+, Rusal, and EuroSibEnergo (“ESE”)
- August 8, 2018: Sanctions against Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 announced by State Department
 - August 27, 2018: First round of sanctions takes effect
 - November 6, 2018: Potential second round of sanctions triggered (but not yet imposed)

First secondary sanctions under CAATSA

- September 20, 2018: Executive Order 13849 authorizes relevant federal departments and agencies to take necessary actions to implement menu-based sanctions under Countering America's Adversaries Through Sanctions Act (“CAATSA”)
 - State Department imposes sanctions on the same day on Chinese military entity Equipment Development Department and its head for purchasing air defense systems and fighter jets from Russian company Rosoboronexport

Possible new legislation

- 2019: DETER Act and DASKA Act introduced in Senate; would authorize imposition of significant new sanctions

North Korea



Continued pressure on North Korea, despite the United States largely pausing its “maximum pressure” campaign due to ongoing diplomatic engagement

- Imposition of targeted sanctions designations focused on North Korean shipping, money laundering, sanctions evasion, and arms procurement; include designations of Russian and Chinese entities
- May 9, 2019: Civil forfeiture complaint filed by DOJ against “Wise Honest,” a carrier ship registered in North Korea, after ship is detained by Indonesian authorities

Update on AML Initiatives



New Legislation in Congress

Proposed legislation

- Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019 (“COUNTER Act”)
 - Focuses on improving AML/countering the financing of terrorism (“CFT”) oversight and modernizing the AML system
- Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings Act (“ILLICIT CASH Act”)
 - Focuses on modernizing Financial Crimes Enforcement Network (“FinCEN”), improving AML/CFT oversight, and adapting current and emerging technologies to combat money laundering and terrorist financing
- Financial Reporting Threshold Modernization Act
 - Would increase dollar thresholds for suspicious activity reports and currency transaction reports
- Corporate Transparency Act of 2019
 - Would require beneficial owners of corporations or limited liability companies to be disclosed to FinCEN at time of formation and annually thereafter

Cannabis Banking

Proposed legislation

- Secure and Fair Enforcement Banking Act of 2019 (“SAFE Banking Act”)
 - Would permit depository institutions to provide financial services to cannabis-related businesses and service providers that comply with state laws regulating legal cannabis-related activity
- Strengthening the Tenth Amendment Through Entrusting States Act (“STATES Act”)
 - Would amend the Controlled Substances Act (“CSA”) to render inapplicable CSA prohibitions on certain cannabis-related conduct
 - Would permit financial institutions to provide financial services to certain cannabis-related businesses

2018 Farm Bill removes hemp from definition of marijuana in CSA

- Provides primary regulatory authority over hemp production to states with plans approved by U.S. Department of Agriculture
- Bars states and Indian tribes from prohibiting certain interstate transportation of hemp
- Does not affect the authority of Secretary of Health and Human Services or Commissioner of the Food and Drug Administration (“FDA”) under applicable FDA laws

Guidance on Virtual Currency

FinCEN

- May 9, 2019: Interpretive guidance regarding application of regulations to certain business models involving money transmission denominated in convertible virtual currencies (“CVCs”)
- May 9, 2019: Advisory warning of threats posed by virtual currency misuse

OFAC

- November 28, 2018: Designation of two Iranian persons as Specially Designated Nationals (“SDNs”) for helping exchange bitcoin ransom payments into Iranian rial
 - OFAC publicly attributed digital currency addresses associated with designated individuals
- November 28, 2018: FAQs issued regarding blocking digital currency

Recent Enforcement Trends and Guidance



Enforcement Overview

Sanctions actions in 2019 to date

- In 2019 to date, OFAC announced resolution of 19 cases, with penalties imposed totaling nearly \$1.3 billion
- DOJ and other U.S. federal and state agencies continue to bring actions against financial institutions, large corporations, and individuals

AML actions in 2019 to date

- Several large international investigations have been reported that implicate corporations in multiple countries
- DOJ actions brought against corporations and individuals

Enforcement actions and U.S. authorities' guidance highlight importance of due diligence and effective compliance programs

Significant Takeaways from Recent Enforcement Actions

- 1** Importance of effective compliance programs
 - 2** Continued focus on foreign entities that use the U.S. financial system
 - 3** Continued focus on individual accountability
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Importance of Effective Compliance Programs

U.S. criminal and civil authorities provide guidance on effective compliance programs

- April 2019: DOJ issues new guidance that provides factors for prosecutors to consider when evaluating the strength of corporate compliance programs in determining corporate penalties
 - Factors focus heavily on ensuring effectiveness, highlighting whether the compliance program:
 - is “well designed,”
 - is “implemented effectively” and “in good faith,” and
 - works in practice

Importance of Effective Compliance Programs (cont.)

- May 2019: OFAC issues framework for evaluating sanctions compliance programs under its Enforcement Guidelines
 - Framework incorporates five “essential components of compliance”:
 - Senior management commitment
 - Risk assessment
 - Internal controls
 - Testing and auditing
 - Training
 - Framework highlights “root causes” of compliance program deficiencies, including:
 - De-centralized and inconsistent compliance programs
 - Improper due diligence

Importance of Effective Compliance Programs (cont.)

OFAC enforcement actions announced in 2018 and 2019 involve financial institutions and corporations across variety of industries

Key takeaways from announced resolutions include:

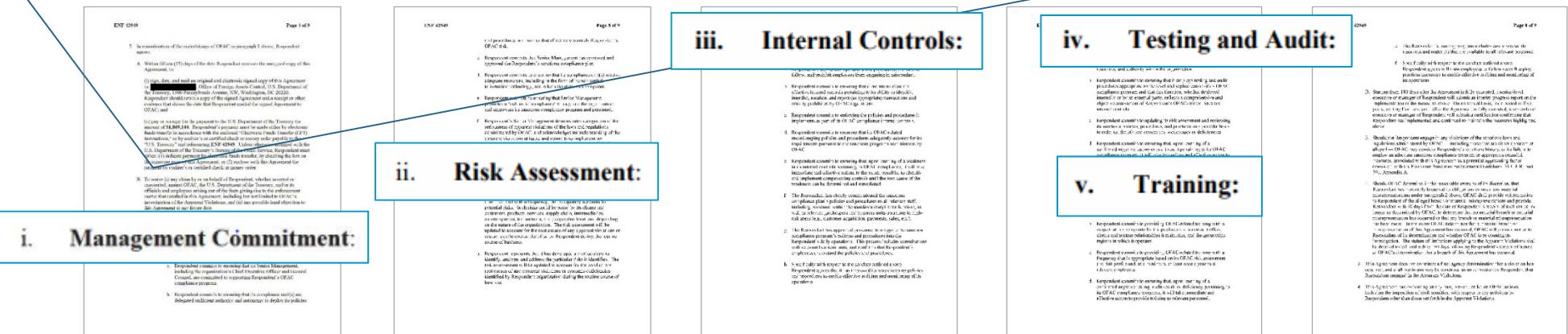
- Importance of M&A due diligence and ensuring that newly acquired foreign affiliates comply with applicable U.S. sanctions (Kollmorgen, AppliChem, Stanley Black & Decker, Expedia)
- Need to ensure compliance with OFAC's 50 percent rule (Cobham Holdings, Zoltek Companies)
- Importance of identifying and promptly remediating screening system weaknesses (JPMorgan Chase, Western Union)
- Importance of supply chain due diligence to ensure goods are not sourced directly or indirectly from sanctioned countries (ZAG IP, e.l.f. Cosmetics)
- Absence of formal compliance program or lack of "culture of compliance" as root cause of violations (Haverly Systems, MID-SHIP Group)

Importance of Effective Compliance Programs (cont.)

As part of their settlements with corporations, U.S. criminal and civil authorities are imposing provisions intended to support future compliance

- DOJ continues to impose monitorships, and new guidance on monitorships provides more clarity on when monitorships are appropriate
 - OFAC has included “compliance commitments” section in recent settlements, including Stanley Black & Decker

C. Respondent has terminated the conduct described above and has established, and agrees to maintain, sanctions compliance measures that are designed to minimize the risk of recurrence of similar conduct in the future. Specifically, OFAC and Respondent understand that the following compliance commitments have been made:



Importance of Effective Compliance Programs (cont.)

U.S. regulators encourage innovative approaches in AML compliance programs

- October and December 2018: Federal Reserve (“Fed”), FinCEN, Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (“OCC”), and National Credit Union Administration issue joint statements
 - Encourage banks and credit unions to collaborate and share resources to protect against AML risk
 - Encourage banks to “consider, evaluate, and, where appropriate, responsibly implement innovative approaches” to meet AML compliance obligations

Continued Focus on Foreign Entities that Use the U.S. Financial System

Société Générale

- November 2018: U.S. federal and state authorities announce resolution, including a Deferred Prosecution Agreement (“DPA”), for \$1.34 billion
- DPA describes violations of U.S. sanctions against Cuba through “stripping” and “repair” conduct
 - Also discusses, though does not charge, Iranian sanctions violations occurring outside of statute of limitations
- No explicit inter-agency crediting of penalty amounts
- Simultaneous AML action by NY Department of Financial Services (“DFS”), in addition to its sanctions order

UniCredit

- April 2019: U.S. federal and state authorities announce resolution with UniCredit and two subsidiaries, with one subsidiary entering into a guilty plea
- Charging documents state that subsidiaries engaged in “stripping” and “repair” conduct
- Parent corporation agreed to ensure that subsidiaries fulfilled obligations to DOJ
- Resolution totaled \$1.3 billion

Continued Focus on Foreign Entities that Use the U.S. Financial System (cont.)

Standard Chartered

- April 2019: U.S. federal and state authorities announced DPA extensions with Standard Chartered; the settlement amount to all U.S. and foreign agencies combined total just over \$1 billion
- Two employees facilitated Iranian customer's infiltration of the bank
- DOJ credited portions of penalties paid to Fed, DFS, and UK's Financial Conduct Authority ("FCA")

Huawei

- According to the indictment, Huawei allegedly executed transactions, related to its business in Iran, that cleared through U.S. financial institutions
- Indictment brought wire and bank fraud charges (and conspiracies thereof) and a charge of conspiracy to defraud the United States
- Huawei added to Commerce Department's BIS Entity list, with Temporary General License authorizing some transactions through August 19, 2019

Continued Focus on Foreign Entities that Use the U.S. Financial System (cont.)

1MDB

- Underlying conduct relates to money allegedly misappropriated from a Malaysian state-owned development fund, 1MDB, by former Malaysian prime minister and co-conspirators
- Two bank employees, including one who has pled guilty, allegedly assisted in laundering funds
 - Guilty plea also stated that employees paid kickbacks and bribes to government officials
- Investigation has led to forfeiture actions against over \$1 billion in assets

Investigations reportedly involve suspicious transactions arising from operations in the Baltic states by three Nordic banks—Danske Bank, Swedbank, and Nordea Bank

- Earlier this year, in wake of investigations, Danish prosecutors charged former CEO of Danske Bank; and Swedbank's CEO fired and Chairman resigned
- U.S. federal and state authorities reportedly investigating activity by Nordic banks

Continued Focus on Individual Accountability

DOJ and OFAC highlight individual accountability

- For DOJ, corporations seeking cooperation credit must identify every person who was substantially involved in or responsible for criminal conduct
 - November 29, 2018: Former Deputy AG Rosenstein reaffirmed DOJ's position that "absent extraordinary circumstances, a corporate resolution should not protect individuals from criminal liability"
- As part of its compliance framework document, OFAC highlighted the importance of individual accountability

OFAC has identified scenarios involving U.S.-owned or controlled entities operating outside of the United States, in which supervisory, managerial or executive employees of the entities conducted or facilitated dealings or transactions with OFAC-sanctioned persons, regions, or countries, notwithstanding the fact that the U.S. entity had a fulsome sanctions compliance program in place. In some of these cases, the employees of the foreign entities also made efforts to obfuscate and conceal their activities from others within the corporate organization, including compliance personnel, as well as from regulators or law enforcement. **In such circumstances, OFAC will consider using its enforcement authorities not only against the violating entities, but against the individuals as well.**

— A Framework for OFAC Compliance Commitments, page 12 (emphasis added)

Continued Focus on Individual Accountability (cont.)

Recent cases highlight a continued focus on individual accountability

- OFAC sanctioned Turkish affiliate manager in connection with alleged responsibility for fraudulently representing to U.S. parent company that affiliate was complying with U.S. sanctions laws (Kollmorgen)
- Unsealed criminal indictment of bank customer for alleged sanctions and AML violations and guilty plea of bank employee who assisted customer (Standard Chartered)
- Criminal charges against two bank employees, one of whom has pled guilty, and customer in connection with alleged money laundering scheme (1MDB)
- Unsealed criminal indictment against company's executive and other employees alleging bank fraud for role in apparent scheme to evade U.S. sanctions laws (Huawei)
- First action brought by FinCEN against peer-to-peer virtual currency exchanger for violating BSA (Eric Powers)

Questions



Appendix: Further Reading



Appendix: Further Reading

- July 2018 Webcast: U.S. Sanctions and AML Regulation and Enforcement
 - <https://www.davispolk.com/events/webcast-us-sanctions-and-aml-regulation-and-enforcement>
- Davis Polk's Resource for Financial Regulatory Reform
 - <http://www.finregreform.com/>
- Related Client Memoranda and Publications
 - DOJ Provides Additional Guidance and Clarity Regarding Its Evaluation of Corporate Compliance Programs (May 7, 2019), https://www.davispolk.com/files/2019-05-07_doj_provides_additional_guidance_and_clarity_regarding_its_evaluation_of_corporate_compliance_programs.pdf
 - Proposed U.S. Federal Cannabis Legislation: Updated Briefing on the SAFE Banking Act and STATES Act (Apr. 16, 2019), <https://www.davispolk.com/files/2019-04-16-banking-and-cannabis-updated-briefing-on-the-safe-banking-act-and-states-act.pdf>
 - U.S. Government Fully Re-Imposes Iran Sanctions, Announces “Unprecedented” Sanctions Effort as it Moves on from the JCPOA (Nov. 6, 2018), https://www.davispolk.com/files/2018-11-06_us_government_fully_re-imposes_iran_sanctions.pdf
 - Second Circuit Holds the FCPA Does Not Extend to Non-U.S. Persons Under Conspiracy and Accomplice Liability Theories Absent U.S. Nexus (Aug. 31, 2018), <https://www.davispolk.com/files/2018-08-31-second-circuit-holds-the-fcpa-does-not-extend-to-non-u.s.-persons-absent-u.s.-nexus.pdf>