2010 Mid-Atlantic Anti-Money Laundering Conference

Ethics and Risk for OFAC: Two Aspects of One Compliance Reality

Thursday, July 29, 2010
Ethics and Risk: A Possible Methodology in Addressing OFAC Issues

First, for a firm to manage its risks well, everyone who represents that firm must practice good ethics.

Second, for a firm to act ethically, everyone who represents that firm must manage risk well.

Conversely, from a negative perspective:

First, a firm that permits or encourages unethical actions by anyone who represents it is not practicing good risk management.

Second, a firm that permits or encourages anyone who represents it to manage its risks poorly is acting unethically.
A Possible Acronym in Addressing OFAC ISSUES

• Transparency
• Ethics
• Responsibility
• Risk
• OFAC
• Response?
Five Possible Risk Appraisal Steps:

1. Check your ego, power, and quick judgments at the door.
2. Seek Constant Vigilance.
3. Verify sources, purposes, and corroborate information – Transparency.
4. Take enough of the right risks - both common sense and appropriate behaviorally.
5. Sustain operational discipline.
Enforcement Update

IEEPA Enhancement Act - October 16, 2007

IEEPA Penalty Increase to Greater of:
- $250,000 or
- 2x Transaction Amount

Retroactive Application

Economic Sanctions
Enforcement Guidelines

November 9, 2009

Economic Sanctions Enforcement Procedures for Banking Institutions
January 12, 2006
Economic Sanctions Enforcement Guidelines

Types of OFAC Response

No Action
Cautionary Letter
Finding of Violation
Civil Penalty
Criminal Referral

Economic Sanctions Enforcement Guidelines

General Factors

A. Willful or Reckless Violation of Law
B. Awareness of Conduct at Issue
C. Harm to Sanctions Program Objectives
D. Individual Characteristics
E. Compliance Program
F. Remedial Response
G. Cooperation with OFAC
H. Timing of Apparent Violation in Relation to Imposition of Sanctions
I. Other Enforcement Action
J. Future Compliance/Deterrence Effect
K. Other Relevant Factors on a Case-by-Case Basis

Credit Suisse - USD 536M Settlement

Combined Base Penalty - USD 1.7 billion

“Credit Suisse used cover payments to avoid referencing parties subject to U.S. sanctions and omitted, removed, or provided incorrect information in payment messages to conceal the identities of U.S. sanctions targets in electronic funds transfers executed through the United States and in securities transactions executed in the United States.”
Reading Between the Headlines...

**More coordination**
OFAC, DOJ, BIS, Domestic/Foreign Regulators

**Issues of concern**
U.S. Dollar clearing activities and securities transactions

FX and lending activities tied to settlements of third-country trade with U.S. sanctioned countries

Transparency in transactions (ex. e-banking, Prepaid Cards, New Product Technologies, etc.)

Recordkeeping lapses
Resources

OFAC Homepage
www.treas.gov/ofac

Civil Penalties and Enforcement Information

Subscribe to OFAC Alerts
http://www.treas.gov/offices/enforcement/ofac/abarrs/e_notice.shtml

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