

2010 Mid-Atlantic Anti-Money Laundering Conference

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



OFAC

Office of Foreign Assets Control
Office of Foreign Assets Control

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

~~September 8, 2008~~

**Economic Sanctions
Enforcement Procedures
for Banking Institutions**

January 12, 2006



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Economic Sanctions Enforcement Guidelines

Types of OFAC Response



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



Recent Cases - *Application*

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

<http://www.treas.gov/offices/enforcement/ofac/civpen/index.shtml>

Subscribe to OFAC Alerts

http://www.treas.gov/offices/enforcement/ofac/abarrs/e_notice.shtml

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