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Growing number of sanctions presses the importance of a sanctions compliance program

By Sascha Matuszak

The United States has the most active and extensive sanctions program in the world. Not only does the U.S. target multiple countries, but individuals — no matter where they live — are also targeted through regulations, such as the Global Magnitsky Human Rights Accountability Act. The U.S. also divides its sanctions program into primary and secondary sanctions, the latter being an often ambiguously defined extraterritorial prohibition against U.S. companies and institutions (e.g., financial and logistics firms) doing business with a non-U.S. company that engages in activities with sanctioned entities.

The result is a serious risk for both compliance officers dealing in international transactions and supply chain managers overseeing global value chains. Keeping track of Specially Designated Nationals (SDNs) and sanctioned entities is very difficult, especially given the fact that both SDNs and sanctioned nation-states work very hard to mask their business transactions via shell companies and complicated accounting and payment procedures.

Recent changes and guidance

The U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) has been very active in the last year, issuing new requirements, guidance and restrictions. RSCC recently covered one of the most recent releases, "A Framework for OFAC Compliance Commitments," which delves into the critical components of a sanctions compliance program and provides guidelines for how such a program should look.

A month later, on June 21, OFAC announced changes to its Reporting, Procedures and Penalties Regulations (31 C.F.R. § 501). According to an update released by the Bass, Berry & Sims' International Trade Practice Group, one of the more significant changes was an "enhanced reporting requirement for a 'rejected transaction,' i.e., a transaction rejected because to proceed with the transaction would violate OFAC sanctions." The new definition of transaction has been expanded to cover "transactions related to wire transfers, trade finance, securities, checks, foreign exchange, and goods or services," a significant change from the previous definition, "rejected funds transfers."

"There is a spectrum of possible conduct involving an SDN that may or may not constitute a transaction," wrote Thad McBride, partner at Bass, Berry & Sims. "For example, if a U.S. manufacturer were to receive an email inquiry from an SDN and, after identifying the inquiring party as an SDN, declined to respond to the inquiry, would that constitute a reportable rejected transaction? Does it matter if the U.S. manufacturer initiated contact with the SDN? Keep an eye out for clarification from OFAC."

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