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Comparing corporate enforcement trends levied since 2018

By Frank Orlowski

Most compliance professionals are very familiar with the Foreign Corrupt Practices Act (FCPA) and how it is administered by the U.S. Securities and Exchange Commission (SEC).^[1] However, there is a complementary, lesser-known, and no-less-important group imposing similar sanctions: the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

Its primary mission is to administer and enforce economic and trade sanctions based on U.S. foreign policy and national security goals.

What does OFAC do?

OFAC plays a crucial role in implementing and enforcing various U.S. sanctions programs targeting countries, individuals, organizations, and entities that threaten national security, engage in terrorism, proliferate weapons of mass destruction, or violate human rights. Many companies fined by OFAC did not willingly do business with sanctioned entities; they lacked appropriate due diligence. A checklist or standard operating procedure for a buy-side transaction or joint venture in any corporation should specifically address existing or potential OFAC violations. These violations may be very low in overall dollar impact. However, the impact on a company's reputation can be insurmountable. Even if a vendor or customer of a company being acquired violates OFAC regulations, the damage to a company's reputation can be significant even if it appears as an arm's-length, third-party transaction. However, sanctions are typically imposed to pressure targeted entities to promote change in their internal compliance and control behavior.

OFAC also maintains and publishes a list of specially designated nationals (SDNs), blocked persons, and various sanction programs. U.S. individuals, businesses, and organizations are prohibited from engaging in to comply with OFAC regulations.

OFAC employs various tools to enforce sanctions, including issuing penalties and fines for violations, seizing assets, and prohibiting transactions with sanctioned entities. It works closely with other U.S. government agencies and international partners to ensure the effectiveness of sanctions and prevent circumvention.

OFAC aims to protect U.S. national security interests, advance foreign policy goals, and promote international stability by administering and enforcing economic and trade sanctions.

Like SEC, OFAC publishes a running log of its sanction enforcement activity against corporations. The U.S. Department of Justice (DOJ) and SEC do the same with the FCPA. That gives the United States a less-than-perfect way to compare sanctions and FCPA enforcement.

But OFAC does the heavy lifting. It has jurisdiction to administer 35 sanctions programs, including country- and policy-based programs. So, OFAC's enforcement count is complete enough to provide a meaningful comparison with FCPA enforcement.

For both sanctions and FCPA enforcement, parallel DOJ criminal prosecutions against corporate defendants simultaneously with civil actions by OFAC or SEC, respectively, count as one action, not two. That eliminates double counting for those keeping score at home.

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