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'Voluntary' International Whistleblowing

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FEATURE

ADOBE STOCK

‘Voluntary’ Whistleblowing and International Whistleblowers

BY KATE REEVES
Kohn, Kohn, & Colapinto

Under the Dodd-Frank Act, a whistleblower who exposes fraud can receive a monetary award and anti-retaliation protections through the U.S. Securities and Exchange Commission (SEC) Whistleblower Program — as long as they blow the whistle voluntarily.

A definition of “voluntary” may seem simple enough. However, some Dodd-Frank whistleblowers who, acting of their own free will and without legal obligation, report fraud are considered “involuntary” simply because they reported to the media, other government agencies, foreign law enforcement, or a U.S. embassy.

The SEC Whistleblower Program, which applies transnationally, has been transformative for international whistleblowers because it creates clear protections and financial incentives for reporting foreign corruption and securities fraud. However, the program’s counterproductive restrictions on “voluntary” whistleblowing hurts international whistleblowers especially, and therefore interferes with federal anti-corruption objectives.

The rulemaking process for the new **Anti-Money**

Laundering (AML) Whistleblower Program thus has immense implications for the program's effectiveness in fighting international corruption. The rulemaking offers the Department of Treasury an opportunity to ensure that no unnecessary restrictions are placed on the definition of voluntary whistleblowing, enabling the program to fully incentivize the cooperation of international whistleblowers.

Voluntary Whistleblowing Under Dodd-Frank

Under the SEC Whistleblower Program, eligible whistleblowers can receive a monetary reward equivalent to 10-30% of the sanctions charged as a result of their tip. The SEC has three seemingly-simple eligibility criteria for Dodd-Frank Whistleblowers: whistleblowers must (1) voluntarily provide the commission with (2) original information that (3) leads to the successful enforcement by the Commission.

However, the SEC's rules governing the Dodd-Frank whistleblower law unnecessarily complicate the definition of a voluntary whistleblower. According to § 240.21F-4, a Dodd-Frank whistleblower is no longer considered voluntary if the SEC contacts them before they file a report with the SEC. A whistleblower can also be disqualified if they partake in a Congressional investigation before filing with the SEC.

This definition undermines the purpose of whistleblower laws and ignores the realities of whistleblowing – especially as it pertains to international whistleblowers reporting through transnational U.S. whistleblower laws.

All whistleblowers share a common instinct: when they witness fraud and corruption, they cannot remain indifferent. That being said, the act of blowing the whistle looks different for each whistleblower. Some expose the truth through the media, some by reporting to internal compliance officers, and some by reporting to foreign law enforcement or U.S. embassies. Others will report to U.S. agencies they feel are well-suited to address the crime they witnessed.

These whistleblowers satisfy a colloquial understanding of "voluntary." However, if the institution to which the whistleblower reported informs the SEC about the whistleblower's tip before the whistleblower themself files with the SEC, the whistleblower may be considered involuntary under Dodd-Frank.

Data from the Foreign Corrupt Practices Act (FCPA) Unit prove that sources of enforcement actions consist largely of these excluded categories. Media reports constitute 20% of detection sources and civil society and foreign law enforcement another 20%. When the SEC conducts investigations into information they acquired through the media or foreign law enforcement/civil society, they will often contact the original whistleblower as part of the investigation. Yet, these whistleblowers are ineligible for awards because they were contacted by the SEC first.

Continues on next page

SEC Awards More Than $104 Million in Whistleblower Case

Fourth largest sum in program's history

THE SECURITIES AND EXCHANGE COMMISSION (SEC) has announced a combined award exceeding $104 million to seven whistleblowers, marking the fourth largest sum in the SEC's whistleblower program's history. This award is a result of the individuals' significant contributions that led to successful enforcement by the SEC, as well as related actions by another agency.

The seven whistleblowers, including two joint claimant pairs and three single claimants, furnished key information and support that either initiated or considerably aided an SEC investigation. The evidence provided consisted of documents supporting allegations of misconduct, participation in interviews, and the identification of potential witnesses.

Several of the whistleblowers are reported to be foreign nationals, reporting misconduct in "multiple territories." *Qui tam* firm **Kohn, Kohn & Colapinto** notes the SEC has received over 5,000 whistleblower tips from foreign countries.

Creola Kelly, Chief of the SEC's Office of the Whistleblower, highlighted that the awards demonstrate the essential role of specific, credible information in the SEC's enforcement processes.

The awards can range from 10 to 30 percent of the money collected when monetary sanctions surpass $1 million, conditional upon whistleblowers voluntarily providing original, timely, and credible information leading to a successful enforcement action.

For additional details on the whistleblower program and how to submit a tip, visit www.sec.gov/whistleblower.

CLICK OR SCAN FOR THE FULL STORY:

Under the SEC Whistleblower Program, eligible whistleblowers can receive a monetary reward equivalent to 10-30% of the sanctions charged as a result of their tip.
ADOBESTOCK

Continued from previous page

The FCPA Unit also reports that 40% of enforcement actions are detected through "whistleblowers" — which in this context refers to whistleblowers who reported through any U.S. government agency. When whistleblowers fail to report to simultaneously file a report to the SEC within 120 days of reporting to another U.S. agency, they become ineligible for awards.

This remains the case even when whistleblowers report to agencies like the Department of Justice or Department of State who are obligated to advance certain reports to the SEC, and it remains the case even when the SEC is aware that the whistleblower's information triggered enforcement.

These rules disproportionately impact international whistleblowers, who are less likely to understand the nuances of U.S. whistleblower law or even be aware that their financial protections might differ depending on where they report or when.

The SEC Whistleblower Program has been transformative in U.S. counter-corruption efforts specifically because it allows international whistleblowers to apply for the program and because it offers awards. However, the restrictions on who is considered "voluntary" make the program inaccessible and dysfunctional for many international whistleblowers, inhibiting the program from reaching its full potential for combatting international corruption.

AML Whistleblower Rules can Expand Definition of Voluntary

Lawmakers have sought to use the whistleblower reward framework of Dodd-Frank as a blueprint for the new Anti-Money Laundering (AML) Whistleblower Act, which establishes a whistleblower award program for individuals blowing the whistle on money laundering and sanctions violations.

The U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) has yet to finalize the rules for the AML Whistleblower Program, and it is important that FinCEN think intentionally about designing rules that work for international whistleblowers.

By contrast, when the SEC was designing rules for Dodd-Frank in the wake of the 2008 recession, the focus was domestic. During the review period, the SEC did not receive a single comment regarding the implications of the "voluntary" definition for international whistleblowers, largely because few people considered the powerful transnational scope of the program until it went into effect.

For AML rulemaking, FinCEN has the advan-

tage of hindsight.

The AML Whistleblower law was enacted specifically due to national security concerns about money-laundering abroad. In order for the program to be as effective as possible, it cannot replicate the same eligibility restrictions as the Dodd-Frank Whistleblower rules.

Importantly, neither the text of the Dodd-Frank law nor the text of the AML law themselves contain restrictions on the voluntary status of whistleblowers based on where they first report. Therefore, the eligibility restrictions in Dodd-Frank do not necessarily reflect the intent of Congress. FinCEN has no need to self-impose restrictions which will only limit the reach of the AML Whistleblower Program.

With over 10 years of data from Dodd-Frank, we have the resources to better understand where international whistleblowers report to and what kind of pressures they face. Whistleblowers are more likely to blow the whistle in the avenue that is most accessible to them, most known to them, most trusted by them, and which they believe is most effective.

The AML Whistleblower Program rule-making process presents a critical opportunity for U.S. anti-corruption efforts. If the AML Whistleblower Program is to embrace the mission of the U.S. Strategy on Countering Corruption, which emphasizes the importance of interagency cooperation, protection of journalists, cooperation with foreign law enforcement, and expansion of whistleblower programs, then the AML definition of voluntary whistleblower must include those who report to other agencies, to news and media sources, and to foreign law enforcement or U.S. embassies abroad.

These institutions already work together as part of an anti-corruption apparatus. By rewarding whistleblowers whose information triggers a sanction under the new AML law, no matter the institution they originally reported to, we can use this program to strengthen and mobilize the entire apparatus in the fight against money laundering.

Conclusion

Whistleblowing is a risk, and it can unfortunately come at a great financial cost. Whistleblower rewards work because they provide a safety net, one which serves as a preemptive reminder that the risk of reporting is worth taking, and one that fills a material need for whistleblowers after they have spent years in of their life in legal battles and potential unemployment as a result of blowing the whistle. The financial cost for whistleblowers in money laundering and securities fraud cases cannot be understated, given that many of them are risking executive pay grade salaries to report.

Since international whistleblowers tend to lack domestic anti-retaliation laws as strong as those in the United States, the safety net that rewards offer becomes an even more critical risk-assessment factor prior to whistleblowing and provides a more frequently needed alleviation of financial hardship in the wake of whistleblowing.

Therefore, if the purpose of the AML Whistleblower Program is to increase reports on money laundering, FinCEN should ensure that whistleblowers who successfully lead to enforcement action on money laundering crimes are rewarded, no matter the manner in which they provide the information. This will prove to international whistleblowers, without them needing to navigate the nuances of U.S. bureaucracy, that the risk of blowing the whistle is worth taking, and the United States will have their back as they do it.

Kate Reeves is a Public Interest Law Clerk at Kohn, Kohn, & Colapinto. She graduated cum laude from Georgetown University in May 2023, earning a Bachelor of Science in Foreign Service with honors in her major, Culture & Politics. While at Georgetown, Kate conducted extensive research on the efficacy of human rights laws in protecting against environmental injustices associated with green development

CLICK OR SCAN FOR THE FULL STORY:

The financial cost for whistleblowers in money laundering and securities fraud cases cannot be understated, given that many of them are risking executive pay grade salaries to report.

Lexmark Parent Sues to Lift Slavery Sanctions

CHINESE PRINTER MANUFACTURER Ninestar, parent of Lexmark International, has filed a lawsuit against the U.S. Department of Homeland Security (DHS) and other related parties of the U.S. government before the U.S. Court of International Trade.

DHS added Ninestar and certain of its subsidiaries to the Uyghur Forced Labor Prevention Act (UFLPA) Entity List, and the company "is suffering irreparable harm to its business and reputation based on the listing," according to a statement.

In conjunction with the lawsuit, Ninestar also filed a motion for a preliminary injunction with the U.S. Court of International Trade, requesting that the court issue a preliminary injunction as soon as possible to promptly suspend the implementation of the decision to place Ninestar on the UFLPA Entity List.

From Selectrics to the Internet of Things

Kentucky-based Lexmark is the old IBM Information Products Corporation, the printer, typewriter, and keyboard operations of International Business Machines, acquired by a group of foreign investors led by Ninestar in 2016.

In addition to laser printers, the firm says, "We are a pioneer in edge-based computing and remotely managing distributed devices, through advanced diagnostic algorithms and machine learning (ML) techniques turning data into insight and action," accorting to their website.

CFIUS Approval in 2016

The 2016 acquisition was vetted and approved by the Committee on Foreign Investment in the U.S. (CFIUS), with terms to ensure the deal "posed no risk to U.S. national security." These terms are detailed in a National Security Agreement between Lexmark and the U.S. Departments of Defense (DOD) and Homeland Security (DHS)

The National Security Agreement ensures that Lexmark "remains a U.S. company with an independent, government-approved board of directors consisting entirely of U.S. citizens. Each year, we are audited by an independent Security Monitor appointed by the U.S. government to ensure compliance with our National Security Agreement," according to the company.

DC Clout

The firm's "independent, government-approved board of directors consisting entirely of U.S. citizens" includes such political heavyweights as

- Former Chair of the President Clinton's Council of Economic Advisers **Laura D'Andrea Tyson**
- Former United States Trade Representative and later United States Secretary of Commerce **Mickey Kantor**, and
- Nobel laureate and former Secretary of Energy **Steven Chu**.

CLICK OR SCAN FOR THE FULL STORY:

Musk's SpaceX Cited for Using ITAR as Excuse to Discriminate

AFTER COMPLAINING since at least 2005 that "we really need to do something about ITAR. It is really hurting U.S. industry," and citing export controls for not hiring eligible non-citizens, South African immigrant Elon Musk's company SpaceX has been sued by the Justice Department for employment discrimination.

The U.S. Department of Justice has filed a lawsuit against Space Exploration Technologies Corp. (SpaceX) for discriminating against asylees and refugees in its hiring process. The lawsuit contends that from September 2018 to May 2022, SpaceX deliberately discouraged such individuals from applying for positions within the company, violating the Immigration and Nationality Act (INA).

Export Control Laws and Citizenship

According to the complaint, SpaceX made incorrect claims in job postings and public statements, asserting that federal "export control laws" permitted the hiring of only U.S. citizens and lawful permanent residents. In reality, these laws impose no such restrictions. Asylees and refugees, whose residency permissions do not expire, are equally eligible to work in the U.S. and are not required to obtain additional governmental approval to access export-controlled information and materials.

The discrimination occured across the board, according to the complaint. In an online forum in 2016, Brian Bjelde, SpaceX Vice President of Human Resources stated "To comply with U.S. government space technology export regulations including

ITAR applicants must generally be U.S. citizens or lawful permanent residents." Mr. Bjelde, a veteran SpaceX mission manager and avionics engineer has been HR Chief for the past nine years.

Federal Investigation Findings

Assistant Attorney General Kristen Clarke of the Justice Department's Civil Rights Division stated, "Our investigation found that SpaceX failed to fairly consider or hire asylees and refugees because of their citizenship status and imposed what amounted to a ban on their hire regardless of their qualification." The investigation further found that SpaceX recruiters and high-ranking officials took actions that actively discouraged asylees and refugees from seeking employment opportunities at the company.

Specific Allegations

The lawsuit delineates multiple phases in the hiring process where SpaceX allegedly discriminated:

• Discouraging asylees and refugees from applying through public announcements and online recruiting communications. SpaceX and other SpaceX recruiters regularly told job candidates that with a few exceptions, SpaceX is only able to hire U.S. citizens or lawful permanent residents due to ITAR.

• Failing to fairly consider applications submitted by asylees and refugees and hiring exclusively U.S. citizens and lawful permanent residents. From September 2018 to May 2022, out of more than 10,000 hires, SpaceX hired only one individual who was an asylee and identified as such in his application

• Refusing to hire qualified asylee and refugee applicants due to their citizenship status. SpaceX repeatedly rejected applicants who identified as asylees or refugees because it "believed that they were ineligible to be hired due to ITAR."

• Between September 2018 and September 2020, hiring exclusively U.S. citizens and lawful permanent residents. From September 2018 to May

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2022, out of more than 10,000 hires, SpaceX hired only one individual who was an asylee and identified as such in his application

The positions at issue encompass a wide range of vocations, including but not limited to welders, software engineers, rocket engineers, and business analysts.

CLICK OR SCAN FOR THE FULL STORY:

Legal Framework

The INA prohibits employers from discriminating against asylees and refugees unless explicitly required or permitted by law, regulation, executive order, or government contract. The lawsuit affirms that no such stipulations apply to SpaceX in this instance.

Remedies and Relief

The U.S. government seeks back pay for those deterred or denied employment at SpaceX due to the alleged discrimination. It also seeks civil penalties, the amount of which will be determined by the court, and mandates policy changes to ensure compliance with the INA moving forward.

3M Settles China 'Educational Travel' FCPA Case

THE SECURITIES AND EXCHANGE Commission has accepted an Offer of Settlement from Minnesota's 3M Company, closing its investigation into violations of the Foreign Corrupt Practices Act by 3M's subsidiary, 3M-China Ltd.

Key findings from the investigation, which covered activities between 2014 and 2017, include:

• 3M-China disbursed approximately $1 million to fund at least 24 overseas trips for Chinese Government Officials, which incorporated Tourism Activities.

• The expenses for these trips were incorrectly recorded in 3M's consolidated financial records as legitimate business expenditures, with no notation indicating the inclusion of Tourism Activities.

• As a result of these actions, 3M garnered improper benefits amounting to at least $3.5 million from augmented sales.

The SEC found that 3M-China employees and Chinese Government Officials participated in Tourism Activities outlined in confidential "Alternate Itineraries," which were conveyed through hand delivery or personal WeChat accounts. Internal compliance documents were either falsified or omitted to facilitate the scheme.

The SEC concluded that these activities led to inaccuracies in 3M-China's accounting records, and also highlighted a failure on 3M's part to maintain sufficient internal accounting controls for cross-border fund transfers.

3M has agreed to financial penalties including:

Disgorgement: 3M will pay a disgorgement amounting to $3,538,897, essentially requiring the company to relinquish the profits gained from its violations.

Prejudgment Interest: In addition to disgorgement, 3M is responsible for paying prejudgment interest of $1,042,721.

Civil Money Penalty: 3M has been assessed a civil money penalty of $2,000,000.

In determining the acceptance of the Offer, the SEC considered several factors:

Prompt Self-Reporting: 3M immediately self-reported the misconduct upon discovery.

Cooperation: The company cooperated fully with the SEC investigation, including making witnesses available for interviews, providing translated documents, sharing findings from its internal investigation, and offering periodic, comprehensive updates.

Remedial Measures: 3M took substantial corrective action, which included disciplinary action or termination for involved employees. The company also severed its relationship with the China-based travel agencies implicated in the scheme.

Enhancement of Controls: 3M fortified its internal controls and compliance programs, including strengthening mechanisms governing cross-border fund transfers.

CLICK OR SCAN FOR THE FULL STORY:

Colombian Bank Settles FCPA Case for $80 Million

A BAD PENNY always turns up. **Odebrecht S.A**, the perennial source of corruption settlements under the Foreign Corrupt Practices Act (FCPA) delivered again, snaring a banking subsidiary of **Grupo Aval**, the holding company of the second richest man in Colombia.

Corporación Financiera Colombiana S.A. (Corficolombiana), a Colombian financial services institution, has agreed to pay over $80 million to resolve bribery investigations by criminal, civil, and administrative authorities in the U.S. and Colombia stemming from the company's involvement in a scheme to pay millions of dollars in bribes to government officials in Colombia.

The U.S. Department of Justice's resolution is coordinated with authorities in Colombia, as well as the U.S. Securities and Exchange Commission (SEC).

According to court documents, Corficolombiana entered into a three-year deferred prosecution agreement with the Department in connection with charges the company conspired to violate the antibribery provision of the FCPA. Corficolombiana was majority-owned and controlled by Grupo Aval Acciones y Valores S.A., a Colombian holding company and issuer in the U.S.

Between 2012 and 2015, Corficolombiana conspired with Odebrecht S.A., a global construction conglomerate based in Brazil, to pay over $23 million in bribes to Colombian government officials in order to win a contract to construct and operate a highway toll road known as the Ocaña-Gamarra Extension.

To carry out the scheme, Corficolombiana caused other entities to enter into fictitious contracts with companies associated with intermediaries that passed along the bribe payments to the government officials. Corficolombiana earned approximately $28.63 million in profits from the corruptly obtained business.

Corficolombiana will pay a criminal penalty of $40.6 million. The Department will credit up to half of that penalty against money that the company and its subsidiary, Estudios y Proyectos del Sol S.A.S. (Episol), paid to Colombia's Superintendencia de Industria y Comercio (SIC), for violations of Colombian laws related to the same conduct, so long as the company and Episol drop their appeals of the SIC resolution. Corficolombiana will also pay over $40 million as part of a resolution of the SEC's investigation.

Corficolombiana agreed to continue cooperating with the Department in any ongoing or future criminal investigations relating to this conduct. Corficolombiana also agreed to continue enhancing its compliance program and to provide reports to the Department regarding remediation and the implementation of compliance measures.

The Department reached this resolution based on factors including the nature and seriousness of the offense.

Corficolombiana received credit for its cooperation with the Department's investigation, which included (i) timely providing the facts obtained through the company's internal investigation; (ii) making detailed presentations that distilled key facts; (iii) producing documents that the government may not have had access to in ways that did not implicate foreign data privacy laws; (iv) providing sworn testimony from Colombian criminal and administrative proceedings of relevant witnesses; (v) proactively identifying previously unknown information; and (vi) collecting and producing relevant documents and translations.

The company engaged in extensive remedial measures including (i) conducting a root cause analysis of the conduct and taking actions to enhance its governance and controls at joint venture entities, as well as improving its oversight of non-controlled joint ventures and investments; (ii) overhauling its compliance program; (iii) enhancing its third-party intermediary risk management process; (iv) implementing a process for reporting and investigating allegations of misconduct; (v) establishing a disciplinary process overseen by an ethics committee; (vi) conducting testing of its anticorruption compliance program; and (vii) engaging in periodic review and updating of its anticorruption compliance program.

In light of these considerations, the criminal penalty calculated under the U.S. Sentencing Guidelines reflects a 30% reduction off the bottom of the applicable guidelines fine range.

CLICK OR SCAN FOR THE FULL STORY:

OFAC Sanctions Construction Supply Firm for Iran Sales

Dubai Subsidiary violations self-disclosed

TREASURY'S OFFICE OF FOREIGN Assets Control (OFAC) announced a $660,594 settlement with Construction Specialties, Inc. (CS), a Lebanon, N.J., manufacturer and distributor of specialty architectural products.

CS has agreed to settle its potential civil liability for three apparent violations of sanctions on Iran that arose from its United Arab Emirates subsidiary's, Construction Specialties, Middle East L.L.C. ("CSME"), exportation of U.S. origin goods to Iran.

Between Dec. 4, 2016 and Aug. 3, 2017, CSME senior leadership oversaw the purchase and re-exportation of commercial building products, valued at approximately $1,100,991, from suppliers in the U.S. with the knowledge that these goods were destined for a customer in Iran. OFAC determined that these apparent violations were egregious and were voluntarily self-disclosed.

FACTUAL STATEMENT

CS Establishes Policies for Business with Iran. During a visit to Dubai by CS executives in June 2016, CSME's General Manger, a non-U.S. person based in Dubai, proposed a new business opportunity: that CSME supply materials to build a shopping mall in Tehran. CS executives informed the GM that CSME was not permitted to pursue business with Iran until CS and external counsel determined the proposal to be permissible under sanctions laws.

[At all times relevant to the Apparent Violations, General License H ("GL H") authorized foreign subsidiaries of U.S. persons to do business with Iran under certain conditions. GL H, however, did not authorize the exportation, re-exportation, sale, or supply of any goods, technology, or services from the U.S. to Iran.]

Seeking to operate in accordance with GL H, CS established a compliance policy and issued written instructions to CSME's General Manager that set forth how CSME could permissibly engage in business dealings with Iran. Based on guidance from external counsel, and consistent with GL H and OFAC's published guidance, CS' policy removed U.S. persons from dealings with Iran.

CS also changed CSME's reporting structure so that CSME's GM would no longer report to the U.S. Chief Executive Officer of CS regarding any matter relating to CSME's business dealings with Iran.

On Aug. 29, 2016, CS disseminated the new company policy to CSME's GM, stating "In a nutshell, CS [USA] may not engage in business with Iran, but CSME is allowed to do so. U.S. citizens and U.S. lawful permanent residents are not allowed to facilitate or support Iranian business in any way."

The correspondence went on to name "a non-U.S. citizen proxy to provide support to CSME on the project as needed... I want you all to be aware of this so that neither you nor your teams inadvertently get involved."

CSME Willfully Re-exports U .S.-origin Goods to Iran. Between Dec. 4, 2016, and Aug. 3, 2017, contrary to CS' policy, CSME's GM and another senior manager at CSME sourced materials for the shopping mall project from CS and another supplier in the U.S. The two senior managers co-mingled the U.S.-origin goods with goods produced in Dubai and repackaged them in the UAE before exporting them to Iran, and concealed their conduct by:

- Stripping Iran as the final destination on purchase orders for U.S.-origin goods,
- Falsely stating the goods were for inventory at CSME's warehouse,
- Relabeling U.S.-origin goods before export to Iran, falsely identifying the country of origin as the UAE, and
- Omitting U.S.-origin details from invoices and related documentation.

A U.S. person employed at CSME discovered the activity and confronted the senior managers, who dismissed the employee. The employee flew to the U.S. to report the actions to CS, which prompted an internal investigation. CS subsequently replaced CSME's GM and the senior manager involved in the scheme, ended all future business dealings with Iran, and disclosed the matter to OFAC.

PHOTO: CONSTRUCTION SPECIALTIES

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BRIEFS

DOJ

Polite Bowing Out with a Bang

➤ Departing **Assistant Attorney General for the Criminal Division Kenneth Polite** told Reuters the department's enforcement pipeline has several more "global resolutions," or large corporate settlements pending in coming months.

Mr. Polite, who will be joining Sidley Austin in October after two years on the job, oversaw corporate resolutions such as **Glencore**, **ABB, Danske**, **Honeywell**, and **Stericycle**. He attributed the backlog to COVID, and said to expect "much larger schemes and activities."

BIS

Orders Denying Export Privileges

➤ On Aug. 16, 2023 the Bureau of Industry and Security (BIS) published orders denying export privileges to the following four individuals:

On Jan. 12, 2022, in the U.S. District Court for the Southern District of Florida, **Emilie Voissem** was convicted of **conspiracy to violate IEEPA, exporting and attempting to export, and smuggling four (4) rEvo III rebreathers from the U.S. to Libya without the required license or written approval.** The Court sentenced her to five months in prison, three years of supervised release and a $300 special assessment.

On Nov. 12, 2021, in the U.S. District Court for the Northern District of Iowa, Bradley **Jon Matheny** was convicted of **smuggling from the U.S. to Arad, Israel, .117 caliber hunting pellets and smuggling from the U.S. to Sderot, Israel and Scottsville, South Africa, a Winchester 42-piece firearm brush cleaning kit.** The Court sentenced Matheny to 36 months of confinement, three years of supervised release, $1000 assessment, $10,000 criminal fine and $256,441.78 in restitution. Matheny was also found guilty of seven counts of postage meter stamp forgery and counterfeiting.

On August 4, 2020, in the U.S. District Court for the Middle District of Florida, **Vladimir Volgaev** was convicted of smuggling and attempting to **smuggle firearm parts from the U.S. to Ukraine without having obtained a license or other approval from the U.S. Department of State.** The Court sentenced Volgaev to 33 months of confinement, one year of supervised release, $200 assessment and $6,835 in restitution.

On Dec. 3, 2019, in the U.S. District Court for the Northern District of Illinois, **Ismail** was convicted of **conspiring to straw purchase several handguns on behalf of co-defendant Ola Sayed, who allegedly tried to smuggle the firearms into Egypt**. The Court sentenced Ismail to 18 months in prison, one year of supervised release, and an assessement of $200.

More Orders Denying Export Privileges

➤ Two people were denied export privileges for gunrunning to Mexico and Canada, and one for the export of an "eyepiece" to China.

Esteban Andres Alexander was convicted of conspiring to export firearms and firearms parts from the U.S. to Mexico without the required license and authorization from the U.S. Department of State or U.S. Department of Commerce. The Court sentenced Alexander to 46 months of imprisonment, three years of supervised release, $10,000 criminal fine and a $100 assessment

Naomi Natal Haynes was convicted of conspiring to fraudulently and knowingly send firearms from the U.S. to Canada without the required license. The Court sentenced her to 84 months in prison, three years of supervised release, a $200 assessment and $18,240.18 in restitution.

Tuqiang Xie was convicted of knowingly and willfully engaging in brokering activities involving the People's Republic of China in negotiating and arranging purchases, sales, transfers, export, and import of a defense article, namely an eyepiece assembly, National Stock Number 1240-01-063-1352, without obtaining a license or written approval from the U.S. Department of State. The Court sentenced Xie to one year and one day in prison, one year of supervised release, an assessement of $200 and a preliminary order of forfeiture in the amount of $200,027.

FSB

Operative TDO Renewed

➤ On Feb. 21, 2023, **Ilya Balakaev** was indicted on multiple counts in the United States District Court for the Eastern District of New York. The charges included, but were not limited to, conspiring to violate U.S. export control laws in connection with the unlicensed export of electronic spectrum analyzers, signal generators, and gas detection equipment, among other items, to Balakaev's company Radiotester, located in Moscow, Russia, for ultimate end use by officials of the FSB and the DPRK. As described in the indictment and initial TDO, Radiotester is owned or controlled by Balakaev. The company is described on its website as "helping to quickly resolve issues of supply and repair of foreign- made measuring equipment" and as having "experience of working with large federal, city-forming, manufacturing enterprises".

OEE has reason to believe that Balakaev and the other above-captioned parties continue to engage in unlawfully purchasing and shipping dual-use items from U.S. manufacturers to the FSB and DPRK. These items include advanced electronics and sophisticated testing equipment, some of which can be used in sensitive foreign counterintelligence and military operations.

Balakaev is presently a fugitive from U.S. law enforcement and resides in the Russian Federation. Because he has not yet been apprehended, OEE has reason to believe that his illicit procurement efforts will remain ongoing, given the length and nature of the conduct identified to date.

BIS Deemed Exports Advisory Opinion

THE BUREAU OF INDUSTRY & SECURITY published an advisory opinion on the release of licensed technology to employees of the foreign subsidiary while on temporary work assignment at the home office.

- **No additional deemed export license is required for these employees,**
- **While any new "technology" or "software" that is either "released" to those employees in the U.S. or created in the U.S. that is not authorized by the existing BIS license would require a new export license or other authorization from BIS.**

OPINION TEXT

An advisory opinion from the Bureau of Industry and Security (BIS) pursuant to § 748.3(c) of the Export Administration Regulations (EAR, 15 CFR Parts 730 – 774) on behalf of Company A, which is a wholly owned subsidiary of Company B, a corporation located in Country X which is listed in Country Group A:5 of the EAR (see supplement no. 1 to part 740 of the EAR).

"Your letter requests confirmation that, for Country X nationals who are on temporary work assignment at Company A in the United States and who are permanent and regular employees of Company B as described in §§ 734.20(d)(2) and 750.7(a)(3) of the EAR, the following apply:

I) A BIS license to export technology and software to Company B in Country X also authorizes the release of the licensed technology and software to employees of Company B **while they are on temporary rotational assignment to Company A in the United States; and**

II) A BIS license to export technology and software to Company B in Country X also **authorizes exports to Company B of same technology and software that is created by those Company B employees while on temporary rotational assignments to Company A in the United States.**

Regulatory Analysis

Section 734.20(d)(2) of the EAR defines a permanent and regular employee as an individual who:

(i) Is permanently (i.e., for not less than a year) employed by an entity, or

(ii) Is a contract employee who:

(A) Is in a long-term contractual relationship with the company where the individual works at the entity's facilities or at locations assigned by the entity (such as a remote site or on travel);

(B) Works under the entity's direction and control such that the company must determine the individual's work schedule and duties;

(C) Works full time and exclusively for the entity; and

(D) Executes a nondisclosure certification for the company that he or she will not disclose confidential information received as part of his or her work for the entity.

Section 750.7(a)(3) of the EAR states that:

A BIS license authorizing the release of "technology" to an entity also authorizes the release of the same "technology" to the entity's foreign persons who are permanent and regular employees (and who are not proscribed persons) of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the "technology" to foreign persons of specific countries or country groups. See §734.20 of the EAR for additional information regarding the release of "technology" authorized by a BIS license.

Therefore, with regard to question I) above, BIS confirms that a license authorizing exports, reexports, or transfers (in-country) of "technology" and "software" from Company A to Company B also authorizes the export, reexport, or transfer (in-country) of that licensed "technology" and "software" from Company A to Country X nationals on temporary rotational assignment in the United States who meet the criteria of § 734.20(d)(2) of the EAR and are permanent and regular employees of

Company B. No additional deemed export license is required for these employees.

The "technology" or "software" that has been licensed for export to Company B is authorized by that license for "release" to Company B 'permanent and regular' employees, including those located in the United States, provided the "technology" or "software" is within the scope of the existing license. **Any new "technology" or "software" that is either "released" to Company B employees in the United States or created in the United States that is not authorized by the existing BIS license would require a new export license or other authorization from BIS.**

With regard to question II) above, BIS confirms that a license authorizing exports, reexports, or transfers (in-country) of "technology" and "software" from Company A to Company B in Country X also authorizes "technology" and "software" that is created by the Company B Country X nationals on temporary rotational assignment with Company A in the United States, provided that the "technology" or "software" created in the United States is within the scope of the existing license. Again, any new "technology" or "software" created by the Company B employees on temporary rotational assignment in the United States that is not authorized by the existing BIS license would require a new export license or other authorization from BIS.

The above responses address questions I) and II) in your letter concerning "technology" and "software" that are created and/or developed in the United States. BIS also notes that Country X-origin "software" and "technology" that was originally imported into the United States for use by Company A employees in the United States would be eligible for reexport back to Country X under License Exception Temporary exports, reexports and transfers (in-country) (TMP)

(§ 740.9(b)(3) of the EAR), provided it was not altered, enhanced, or otherwise changed while in the United States. Therefore, the original, unaltered, and unenhanced Country X-origin "software" and "technology" provided to Company A may also be provided to the Company B employees on temporary rotational assignment in the United States pursuant to License Exception TMP.

CLICK OR SCAN FOR LINKS TO THE ORIGINAL DOCUMENT:

COMMERCE CONTROL LIST

Nuclear Suppliers Group Update

➤ Bureau of Industry and Security (BIS) published this final rule to amend the Export Administration Regulations (EAR) to reflect changes reached by the Nuclear Suppliers Group (NSG) in its June 2019 plenary meeting in Nur-Sultan (now Astana), Kazakhstan and its plenary meeting of June 2022 in Warsaw, Poland.

This **rule revises five existing Export Control Classification Numbers (ECCNs) under the Commerce Control List (CCL)**. These changes protect U.S. nuclear nonproliferation interests, while aligning the EAR with the control text agreed to by participating governments (PGs)

BACKGROUND

BIS is amending the CCL, supp. no. 1 to part 774 of the EAR, 15 CFR parts 730-774, consistent with U.S. commitments as a participating country in the NSG.

The NSG is a multilateral export control forum that consists of 48 PGs. The NSG maintains two lists of items that are subject to multilateral controls (collectively, the NSG Guidelines):

• A list of items especially designed or prepared for nuclear uses, also known as the trigger list; and

• A list of dual-use items that could be used for nuclear proliferation activities.

The list of dual-use items is maintained in the Annex to Part 2 of the "Guidelines for the Transfer of Nuclear Related Dual Use Equipment, Materials, Software and Related Technology."

NSG participating countries share a commitment to prevent nuclear proliferation and the development of nuclear-related weapons of mass destruction. In furtherance of that commitment, they have undertaken to impose export controls on the items listed in the Annexes to the NSG Guidelines. The NSG Guidelines and the Annexes thereto are designed to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or related proliferation activities.

These changes were published in International Atomic Energy Agency (IAEA) Information Circular INFCIRC/254/Rev.11/Part 2 in October 2019 and the IAEA Information Circular INFCIRC/254/Rev.12/Part 2 in July 2022, which contains the updated text of Part 2 of the NSG Guidelines and its related Annex. BIS is publishing these amendments to the EAR to fulfill U.S. commitments to the regime.

Supplement no. 1 to part 774 is amended by:

• Category 1 is amended by removing ECCN 1B229 and revising ECCN 1B231;

• Category 2 is amended by revising ECCNs 2B209 and 2B228; and

• Category 3 is amended by revising ECCN 3A233.

CLICK OR SCAN FOR LINKS TO THE FULL RULE:

BIS, NRC Tighten Nuclear Exports to China

BUREAU OF INDUSTRY AND SECURITY (BIS) is amending the Export Administration Regulations (EAR) by adding additional nuclear nonproliferation controls on China and Macau, effective August 11, 2023.

This change specifically applies to items controlled for Nuclear Nonproliferation (NP) column 2 reasons for control. These controls enhance U.S. government efforts to monitor the export of these items and to ensure they are only being used in peaceful activities such as commercial nuclear power generation, medical developments, production of or use in medicine, and non-military industries.

Existing Nuclear Nonproliferation Export Controls

The multilateral Nuclear Suppliers Group (NSG) comprises nuclear supplier countries that seek to contribute to the nonproliferation of nuclear weapons through the implementation of two sets of guidelines for nuclear exports and nuclear-related exports.

• The first set of NSG guidelines applies to exports of nuclear material, equipment, and technology generally subject to the export licensing jurisdiction of the Nuclear Regulatory Commission (NRC) and the Department of Energy.

• The second set of NSG guidelines applies to exports of nuclear-related dual-use items, which are subject to the Export Administration Regulations (EAR) (15 CFR parts 730–774), administered by the Department of Commerce, Bureau of Industry and Security (BIS). Such items are listed on the Commerce Control List (CCL) (supplement no. 1 to part 774) and controlled for nuclear **nonproliferation column 1 (NP1) reasons** (see §742.3(a)(1)). Items controlled for NP1 reasons require a license to all destinations except NSG member countries listed in Country Group A:4

• In addition to implementing the multilateral NP1 controls, BIS controls certain additional items unilaterally for nuclear nonproliferation reasons. Such items are listed on the CCL and controlled for nuclear **nonproliferation column 2 (NP2) reasons**.

• These items require a license when destined to Country Group D:2 (supplement no. 1 to part 738) countries, and with this rule, to the People's Republic of China (China) or Macau. (Note: Under the EAR; licensing requirements for China apply to Hong Kong).

• Items controlled for NP2 reasons are listed in Export Control Classification Numbers (ECCNs) 1A290, 1C298, 2A290, 2A291, 2D290, 2E001, 2E002, and 2E290. Items controlled under these ECCNs include, for example, depleted uranium, graphite and deuterium for non-nuclear end use, and generators and other equipment for nuclear plants.

• Prior to this rule, neither China nor Macau were subject to NP2 reasons for control.

In addition to list-based license requirements for nuclear-related dual-use items, BIS implements end use and end user controls to restrict the export, reexport, and transfer (in-country) of items to or within China and Macau for nuclear nonproliferation and certain maritime nuclear propulsion reasons.

Move tied to October 7th Rule

On October 7, 2022, BIS implemented restrictions on the export of certain advanced computing items to China and imposed additional restrictions on certain entities on the Entity List. Four of those entities were determined to be involved with supercomputers in China that are believed to be used in nuclear explosive activities. See 87 FR 62186, at 62187.

ADOBESTOCK

The October 7 rule specifically noted a U.S. intelligence community assessment that China "will continue the most rapid expansion and platform diversification of its nuclear arsenal in its history, intending to at least double the size of its nuclear stockpile during the next decade and to field a nuclear triad and is building a larger and increasingly capable nuclear missile force that is more survivable, more diverse, and on higher alert than in the past, including nuclear missile systems designed to manage regional escalation and ensure an intercontinental second-strike capability."

Expansion of Nuclear Nonproliferation Export Controls on the People's Republic of China and Macau

BIS has determined it is necessary to enhance nuclear nonproliferation export controls, imposing a license requirement to China and Macau on items that could contribute to nuclear activities of concern.

For purposes of the EAR, this rule does not change the status of Macau; it will continue to be treated as a separate destination from China.

Part 738

This final rule applies NP2 reasons for control to China and Macau in the Commerce Country Chart (supplement no. 1 to part 738). This imposes a license requirement for NP2 controlled items destined for China or Macau.

Part 742

As a conforming change, this final rule adds China and Macau to §742.3(a)(2) to impose the license requirements on the NP2 controlled items. License applications for items controlled for NP2 reasons to China and Macau will be reviewed in accordance with the license review policies set forth in §742.3(b)(3) and (4) of the EAR. BIS is also using this rule to revise the language of paragraph (a)(2) to ensure its clarity

NRC Action

Another U.S. government agency is putting forward a nuclear export-related action as well. The NRC is publishing a separate notice of issuance of an order affecting general licenses for exports of special nuclear material, source material, and deuterium for nuclear end use to China issued under 10 CFR 110.21, 110.22, and 110.24, respectively.

CLICK OR SCAN FOR LINK TO NOTICES:

BIS

International Atomic Energy Agency Safeguards Protocol

BUREAU OF INDUSTRY AND SECURITY, Department of Commerce published a request for comment on the Additional Protocol to the United States—*International Atomic Energy Agency Safeguards*

The Additional Protocol requires the U.S. to submit declaration forms to the International Atomic Energy Agency (IAEA) on a number of commercial nuclear and nuclear-related items, materials, and activities that may be used for peaceful nuclear purposes, but also would be necessary elements for a nuclear weapons program.

These forms provides the IAEA with information about additional aspects of the U.S. commercial nuclear fuel cycle, including: mining and milling of nuclear materials; buildings on sites of facilities selected by the IAEA from the U.S. Eligible Facilities List; nuclear-related equipment manufacturing, assembly, or construction; import and export of nuclear and nuclear-related items and materials; and research and development.

The Protocol also expands IAEA access to locations where these activities occur in order to verify the form data.

Comments regarding this proposed information collection must be received on or before October 10, 2023.

CLICK OR SCAN FOR LINK TO PROPOSAL:

BRIEF

DDTC

Filing Requirement / Clarifications Rule Category XXI

➤ The Census Bureau issues this final rule amending its regulations to reflect new export reporting requirements related to the State Department, Directorate of Defense Trade Controls (DDTC) Category XXI Determination Number.

Specifically, the Census Bureau is adding a conditional data element, DDTC Category XXI Determination Number, when "21" is selected in the DDTC USML Category Code field in the Automated Export System (AES) to represent United States Munitions List (USML) Category XXI.

In addition, this rule makes remedial changes to the Foreign Trade Regulations (FTR) to update International Traffic in Arms Regulations (ITAR) references in existing data elements: DDTC Significant Military Equipment Indicator and DDTC Eligible Party Certification Indicator. This rule also makes other remedial changes to the FTR.

This final rule is effective November 8, 2023.

CLICK OR SCAN FOR LINK TO FULL STORY AND DOCUMENTS:

POLICY BRIEF

Biden EO on China Investments, Treasury ANPRM

On August 9 President Biden issued an Executive Order (E.O.) focused on national security **threats stemming from U.S. investments in the People's Republic of China** (PRC), specifically those related to technologies critical for military and intelligence capabilities.

The Department of the Treasury will oversee a new national security program's implementation and concurrently issued an **Advance Notice of Proposed Rulemaking (ANPRM)** to outline the intended scope and solicit public input. **Treasury's Investment Security** office is responsible for the implementation as well as Chair of the Committee on Foreign Investment in the United States ("CFIUS").

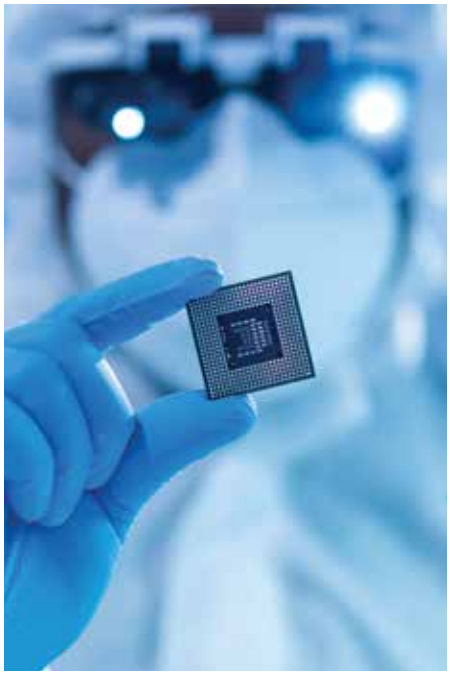
The E.O. aims to **protect U.S. national security while maintaining open investment**. It sets forth a new program, focusing on prohibiting certain U.S. transactions and requiring notifications to Treasury regarding others, specifically related to the following technology areas:

- **Semiconductors and microelectronics**
- **Quantum information technologies**
- **Certain artificial intelligence systems**

The program aims to prevent the PRC from utilizing U.S. investments to further its military modernization capabilities.

Treasury is considering creating an exception for certain types of passive and other investments that may pose a lower likelihood of conveying intangible benefits or in an effort to minimize unintended consequences.

For example, Treasury is considering excepting from the program's coverage certain U.S. investments into publicly-traded securities, index funds, mutual funds, exchange-traded funds, certain investments made as a limited partner, committed but uncalled capital investments, and intracompany transfers of funds from a U.S. parent company to its subsidiary.



ADOBESTOCK

The scope and nature of each of these potential exceptions is under consideration as detailed in the ANPRM.

Advance Notice of Proposed Rulemaking (ANPRM):

Alongside the E.O., Treasury issued an ANPRM to provide clarity about the program and seek public feedback on its implementation. The ANPRM outlines preliminary considerations for the program, such as:

- Requirements on U.S. persons
- Specific categories of covered transactions
- Involving covered foreign persons
- Deliberate approach to excepted transactions
- Details on sub-sets of technologies and products within the three identified categories

The ANPRM is an initial step and will be followed by draft regulations later in the process.

Beijing Reaction

Beijing blasted President Biden's decision to curb U.S. investments in Chinese advanced technology companies, calling it blatant economic coercion.

"Restricting U.S. companies' investments in China with national security as a front is a clear act of overstretching the concept of security and politicizing business engagement," according to a statement from China's Ministry of Foreign Affairs.

"The move's real aim is to deprive China of its right to develop and selfishly pursue US supremacy at the expense of others," it continued.

"This is blatant economic coercion and tech bullying, an act that seriously violates the principles of market economy and fair competition, undermines the international economic and trading order, destabilizes global industrial and supply chains and hurts the interests of both China and the US and the global business community. This is de-globalization and a move to phase China out."

"President Biden committed to not

seeking to "decouple" from China or halt China's economic development," according to the statement.

"We urge the US to follow through on that commitment, stop politicizing, instrumentalizing and weaponizing tech and trade issues, immediately cancel the wrong decisions, remove the restrictions on investments in China and create an enabling environment for China-U.S. business cooperation. China will follow the developments closely and resolutely safeguard our rights and interests.

Lawmakers Want More

Key Congressional lawmakers called the executive order a step in the right direction, but vowed to pass legislation that further restricts US investment in China. Both the House and Senate included restrictions on U.S. outbound investment in China in their versions of the National Defense Authorization Act.

The executive order provides an important new tool, **Democratic Reps. Rosa Delauro** (Conn) and **Bill Pascrell** (NJ) said in a joint statement. "We urge the Administration to go further and will fight in Congress for broader statutory authority to become law," they said.

CLICK OR SCAN FOR LINK TO STORY AND MATERIALS:

BIS Clears Verification Backlog, Credits Policy Change

COMMERCE'S BUREAU OF INDUSTRY and Security (BIS) announced that 33 parties will be removed from the Unverified List, 27 of which are based in the People's Republic of China (PRC) with others located in Indonesia, Pakistan, Singapore, Turkey, and the United Arab Emirates.

"The ability to verify the legitimacy and reliability of foreign parties receiving U.S. exports through the timely completion of end-use checks is a core principle of our export control system," said **Assistant Secretary for Export Enforcement Matthew S. Axelrod.** "Our removal of 33 parties demonstrates the concrete benefit companies receive when they or a host government cooperates with BIS to complete a successful end-use check."

BIS is taking this action because it was able to establish the *bona fides* — i.e., legitimacy and reliability relating to the end use or end user of items subject to the Export Administration Regulations (EAR) — of these parties through the successful completion of end-use checks.

On October 7, 2022, BIS announced a two-step policy that moves parties onto the Unverified List, and then from the Unverified List to the Entity List, when a host government's sustained non-cooperation prevents the timely scheduling of end-use checks. Under the policy, parties can be added to the Unverified List 60 days after end-use checks are requested but host government inaction prevents their completion. In addition, after an additional 60 days of continued inaction by the foreign government, BIS will initiate the interagency regulatory process to move those parties from the Unverified List to the Entity List.

Beyond the policy, parties can also be added to the Unverified List for other reasons, including our inability to contact or locate the party and failure by the party to appropriately demonstrate the disposition of items subject to the Export Administration Regulations. If these circumstances are later remedied, the party may be removed from the Unverified List.

Prior to BIS issuing the policy issuing, requested end-use checks in the PRC had been met with lengthy scheduling delays. The October issuance of the policy subsequently led directly to the scheduling of end-use checks in the PRC. On December 16, 2022, 26 parties located in the PRC were removed from the Unverified List after subsequent scheduling and successful completion of end-use checks. On February 7, 2022, BIS added 31 parties located in the PRC to the Unverified List and moved nine parties located in Russia from the Unverified List to the Entity List. This announcement results in an additional 27 PRC parties being removed from the Unverified List following successful checks.

In addition, BIS is removing two Russian entities from the UVL because they were added to the Entity List on June 6, 2022.

The Unverified List (supplement no. 6 to part 744) is one of several lists, including the Entity List (supplement no. 4 to part 744) and the Military End User List (supplement no. 7 to part 744), administered and maintained by BIS. These lists inform U.S. exporters and the general public of end-users that are of concern for various reasons, and that are subject to specific requirements or prohibitions in the EAR.

CLICK OR SCAN FOR LINK TO MEMO AND RULE:

Treasury Outreach on Beneficial Ownership Rules

Call center and small entity guide coming

UNDER SECRETARY OF THE TREASURY for Terrorism and Financial Intelligence Brian E. Nelson recently spoke to concerns about the implementation of the Corporate Transparency Act (CTA) which requires certain U.S. and foreign companies to report to FinCEN information about their beneficial owners:

"FinCEN is working around the clock to stand up this program in a way that allows you to understand your obligations, provides you the resources to meet them, and ensures the smallest possible burden on you.

"**We are particularly mindful of the costs to American companies, especially small businesses**, that will result from the beneficial ownership information reporting requirements and have made, and will continue to make, every effort to minimize burdens...

"We will be standing up a contact center to assist small business owners in filing beneficial ownership reports, respond to questions from the public, and reduce regulatory burden.

"**In fact, FinCEN has already published an initial set of guidance materials** in the form of infographics, videos, and Frequently Asked Questions on its website and **[FinCEN] will soon be publishing a Small Entity Compliance Guide**. This guide will describe in simple, easy-to-read language each provision of the Beneficial Ownership Information Reporting Rule, which implements the reporting requirements of the CTA and goes into effect Jan. 1, 2024. It will also provide answers to key questions, with checklists and other tools to assist businesses in complying with their reporting obligations.

"**We recognize, also, that protecting the security and confidentiality of this beneficial ownership information is a critical concern for businesses**, especially in this era of increased cyber-related fraud and crime. Reporting companies can be confident that their sensitive information is protected in a secure, confidential database built to meet the highest security standards, and that only authorized users can access the information for authorized purposes — to protect national security and to fight crime."

BRIEFS

National Intel Strategy: No Mention of Commerce Role

➤ Despite its emphasis on control of emerging technologies and climate resilience, the Administration's National Intelligence Strategy makes no mention of the role of the Commerce Department in its formulation or execution.

Director of National Intelligence Avril D. Haines recently released the 2023 National Intelligence Strategy (NIS), which provides strategic direction for the Intelligence Community (IC) over the next four years, calling for redoubled efforts in economic statecraft, industrial actions and climate analysis.

"The NIS is a foundational document for the IC and reflects the input of leaders from each of the 18 intelligence elements, as it directs the operations, investments, and priorities of the collective," said Ms. Haines. **No Commerce Department elements are included in the definition of "Intelligence Community**," according to the report.

Haines

"Leadership in technology and innovation has long underpinned our economic prosperity and military strength, and will be critical to outcompeting our rivals, advancing our interests, and safeguarding democracy. **The United States must be able to identify the applications and implications of emerging technologies, understand supply chains, and use economic statecraft tools** — in coordination with our allies and partners — to ensure strategic competitors are not able to undermine our competitiveness and national security.

The six goals outlined in the NIS reflect key elements of the current strategic environment:

- The centrality of strategic competition between the U.S. and the People's Republic of China (PRC) and the Russian Federation;
- The growing importance of emerging technologies, supply chains, and economic statecraft to national security;
- The increasing influence of sub-national and non-state actors; and
- The challenges stemming from the convergence of shared global challenges, such as climate change and health security.

OFAC

Ex-Head of Central Bank of Lebanon Sanctioned

THE U.S. DEPARTMENT of the Treasury's Office of Foreign Assets Control (OFAC) has designated **Riad Salameh**, the former governor of Lebanon's central bank, and four of his close associates for corrupt and unlawful activities for personal enrichment, investing in European real estate.

As governor of the Banque du Liban (BdL), Salameh used his office to engage in a variety of unlawful self-enrichment schemes. In one scheme, Salameh — with the assistance of his brother, **Raja Salameh** — used a shell company owned by Raja in the British Virgin Islands, Forry Associates, to divert approximately $330 million from transactions involving the BdL.

As part of this scheme, Salameh approved a contract that allowed his brother's company to take a commission on purchases of financial instruments by Lebanese retail banks from the BdL, even though Raja's company provided no apparent benefit for these transactions and the contract avoided naming Forry Associates or its owner.

Salameh and Raja then moved these funds to bank accounts in their own names or the names of other shell companies. Salameh's primary assistant at the BdL, **Marianne Hoayek**, joined Salameh and Raja in this venture by transferring hundreds of millions of dollars — far more than her official BdL salary accounted for — from her own bank account to those of Salameh and Raja.

ADOBE STOCK

The designations are coordinated with the U.K. and Canada and complement ongoing investigations in Lebanon and Europe. The sanctions are authorized under Executive Order (E.O.) 13441, targeting those who undermine Lebanon's democratic processes or the rule of law. **The sanctions do not extend to the Banque du Liban (BdL) or its U.S. correspondent bank relationships.**

CLICK OR SCAN FOR LINK TO FULL STORY:

State and Treasury Sanction Russians

➤ The Treasury Department targeted a major Russian business association for sanctions, along with prominent members of Russia's financial elite.

The Russian Association of Employers the Russian Union of Industrialists and Entrepreneurs is a Russia-based organization involved in the technology sector of the Russian Federation economy.

RSPP has a variety of coordinating councils, including ones that promote import substitution, technology independence and technology development. It has also been involved in activities related to Russia's responses to sanctions imposed on Putin's regime since Russia's invasion of Ukraine, according to Treasury. The RSPP was designated for operating or having operated in the technology sector of the Russian Federation economy.

➤ In August, the State Department announced sanctions on a number of Russian and Russian-related individuals and entities:

- 75 individuals and 44 entities
- 22 vessels identified as blocked property.
- Deputy Minister of Justice and two others.
- 24 individuals and companies linked to tobacco magnate Igor Kaseyev.

CLICK OR SCAN FOR LINK TO NOTICES:

OFAC

State Further Sanction Russians in Navalny Poisoning

TREASURY'S OFFICE OF FOREIGN Assets Control (OFAC) is taking further action related to the Government of Russia's poisoning of Russian opposition politician Aleksey Navalny on Aug.20, 2020. The State Department is also announcing related sanctions.

OFAC has sanctioned four Russian nationals, all of whom were involved in the poisoning of Navalny. They were designated pursuant to *the Sergei Magnitsky Rule of Law Accountability Act of 2012* for having acted as agents of or on behalf of a person in a matter relating to extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation.

The majority of individuals implicated in Navalny's poisoning have been reported to have worked within or collaborated with the FSB Criminalistics Institute, a laboratory originally founded under the Soviet-era Committee for State Security (the KGB). The FSB Criminalistics Institute was designated on Aug. 20, 2021 pursuant to Executive Order 13382 for acting for or on behalf of, directly or indirectly, the FSB.

AUGUST 2020 POISONING OF ALEKSEY NAVALNY

Navalny came to prominence as a leading Russian anti-corruption campaigner more than a decade ago. Exposés published by Navalny and his organization, the Anti-Corruption Foundation, have revealed the ill-gained wealth of Russia's elite politicians and their families, including, among others, President Vladimir Putin (Putin), former Prime Minister Dmitry Medvedev, and Kremlin spokesperson Dmitriy Peskov. As a vocal anti-corruption politician, Navalny has continued his fight against Russia's kleptocracy.

On Aug. 20, 2020, approximately 30 minutes into a flight back to Moscow after campaigning in Tomsk and Novosibirsk, Navalny fell gravely ill, prompting an emergency landing in Omsk where Navalny was treated by local hospital staff.

The U.S. government assesses that Russian Federal Security Service (FSB) officers used the nerve agent Novichok to poison Navalny. Novichok nerve agents were created by the Soviet Union, and Russia is the only known country to have used these chemical weapons. Russia previously used a Novichok nerve agent in the March 2018 attempted assassination of former Russian military intelligence officer Sergei Skripal in Salisbury, U.K.

The Russian operation against Navalny reportedly involved multiple individuals who were on the ground in both Tomsk and Omsk, as well as operatives coordinating the situation from afar. These individuals collaborated to surveil Navalny ahead of the attack, break into his hotel room and apply the chemical weapon to his personal belongings, and they attempted to erase any evidence of their operation following the attack.

Russian authorities imprisoned Navalny upon his return to Russia in January 2021, and on Aug. 4, 2023, a Russian court sentenced Navalny to an additional 19 years in prison on unfounded charges of so-called "extremism."

Headquarters of the FSB and affiliated prison on in Moscow

ADOBESTOCK

CLICK OR SCAN FOR LINK TO MORE INFORMATION:

OFAC

Belarus G/Ls Steel & Aviation

THE DEPARTMENT OF THE TREASURY'S Office of Foreign Assets Control (OFAC) is issuing:

• Belarus General License 8 "Authorizing the Wind Down of Transactions Involving Joint Stock Company Byelorussian Steel Works Management Company of Holding Byelorussian Metallurgical Company," and

• Belarus General License 9 "Authorizing Transactions Related to Civil Aviation Safety or the Wind Down of Transactions Involving Open Joint Stock Company Belavia Belarusian Airlines."

Additionally, the SDN list has recently been updated, including:

• BEL-KAP-STEEL LLC, Miami, FL
• BELAVIA BELARUSIAN AIRLINES
• MINSK CIVIL AVIATION PLANT 407
• and a Jet Aircraft

This comes on the heels of the third anniversary of the fraudulent 2020 Belarusian presidential election, and constitute **significant measures against entities and individuals supporting Belarusian President Lukashenka's regime.**

"Today, we are hitting where it hurts. We are taking action against the enterprises and officials that form the financial backbone of Lukashenka's authoritarian regime," said **Under Secretary of the Treasury, Brian Nelson**.

The most notable among these is the Open Joint Stock Company Belavia Belarusian Airlines, the nation's main airline. Its access to EU airspace and airports was revoked by the EU in the wake of the controversial redirection of a Ryanair flight in May 2021, intended to detain a political dissident. The U.S. action follows the EU's designation of BELAVIA in December 2021.

Additionally, in a bid to clamp down on Lukashenka's monetary channels, Treasury is targeting U.S.-designated Belarusian businessman **Aliaksey Ivanavich Aleksin**, known to be one of Lukashenka's "wallets." His family members, who recently inherited his business empire, are also now under U.S. sanctions. Their businesses dominate Belarus's tobacco and transportation industries.

The State Department is also imposing visa restrictions on 101 regime officials for their role in undermining Belarus's democratic processes and suppressing free expression on social media.

Another significant measure targets the Department of Financial Investigations of The State Control Committee of the Republic of Belarus, which has been complicit in cracking down on independent media outlets and violating human rights.

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BRIEFS

South Sudan Business Advisory Issued

➤ This August, the Departments of Commerce, State and Labor issued a Business Advisory on South Sudan. The advisory highlights the reputational and financial risks to American businesses and individuals conducting business with companies that have significant ties to South Sudan's extended transitional government or that are controlled by family members of government officials.

The transitional government has failed to implement economic reforms and financial management commitments made in the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), which were due to be completed by February 2023. The lack of progress on these reforms, the absence of significant progress over the original transition period, and the government's continued failure to adhere to its own laws in the transparent management of its oil revenue could adversely impact U.S. businesses, individuals, and their operations in South Sudan and the region.

Businesses and individuals operating in South Sudan and the region should undertake robust due diligence related to corruption and human rights issues and should be aware of the potential reputational, financial and legal risks.

They should also take care in all dealings (including transactions transiting the U.S.) that involve property or interests in property of persons listed on the Department of the Treasury, Office of Foreign Assets Controls' (OFAC) List of Specifically Designated Nationals and Blocked Persons. U.S. financial institutions should consult the 2017 Department of the Treasury's Financial Crimes Enforcement Network Advisory on South Sudan.