

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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ANTICORRUPTION DEVELOPMENTS

SEC Chairman Nominee Jay Clayton Receives Confirmation Hearing

On March 23, 2017, SEC Chairman Nominee Jay Clayton testified before the Senate Banking Committee at his confirmation hearing. Clayton, a partner in a prominent law firm with a history of representing Wall Street clients, was asked what advice he would give companies seeking to enter markets known for corruption. In response,

Clayton testified that he would “tell the client to think long and hard about whether you want to have the potential exposure [and] there are some jurisdictions where in the vast majority of the cases it may...make sense just not to participate.” When asked about individual accountability, Clayton testified that “individual accountability drives behavior more than corporate accountability.” The Senate Banking Committee is scheduled to vote on Clayton’s nomination on April 4, 2017.

For more information, see *The Wall Street Journal’s* coverage [here](#) and *The New York Times’* coverage [here](#).

DOJ’s FCPA Pilot Program to Undergo Evaluation

On March 10, 2017, at the American Bar Association’s National Institute on White Collar Crime, Acting Assistant Attorney General for the Criminal Division of the Department of Justice (DOJ) Kenneth Blanco stated that the DOJ’s Pilot Program would continue past its planned one-year expiration on April 5, 2017. Blanco stated that the DOJ would evaluate the utility and efficacy of the Program, including “whether to extend it, and what revisions, if any, [DOJ] should make to it.”

The DOJ’s (FCPA) Pilot Program launched in [April 2016](#) and was intended to motivate companies to voluntarily self-disclose misconduct in return for credit of up to a 50 percent reduction off any U.S. Sentencing Guidelines fine range. The Program has yielded first-of-their-kind resolutions. The DOJ issued five declination letters under the new guidelines, including two that required disgorgement of all profits attributable to their violations of the FCPA. These disgorgement declinations were issued in [September 2016](#) to two privately held Texas companies that voluntarily disclosed \$500,000 in bribes to officials in Venezuela and China and agreed to disgorge about \$2.7 million in related profits. The first declination letter under the new guidelines came in [June 2016](#).

The DOJ’s Press Release announcing the Program is available [here](#), and its memorandum establishing the Program is available [here](#). For more information, see FCPA Blog’s coverage [here](#).

9th Circuit Deepens Split Defining Scope of Antiretaliation Protections Afforded to Internal Whistleblowers

On March 8, 2017, the U.S. Court of Appeals for the 9th Circuit held that the Dodd-Frank Act’s whistleblower provisions extend antiretaliation protections to an employee who internally reports concerns about potential violations of the law to a supervisor, even if the employee never discloses the information to the Securities and Exchange Commission (SEC). Plaintiff Paul Somers was the Vice President for Portfolio Management at defendant Digital Realty until he made several reports to senior management alleging potential violations of the securities laws and was subsequently fired. In 2015, the Northern District of California denied Digital Realty’s motion to dismiss in which the company claimed that Somers was not protected under Dodd-Frank’s whistleblower regime because he reported his concerns only within the company. By affirming this ruling, the 9th Circuit deepens a circuit split in which the 2nd and 9th Circuits have ruled that internal flag-raisers must be offered full whistleblower protections, while the 5th Circuit has taken the narrower position that the definition of the term “whistleblower” in the Dodd-Frank Act refers to only an employee who reports suspected violations to the SEC.

On March 20, 2017, the U.S. Supreme Court declined to address the circuit split when it denied former Morgan Stanley employee John S. Verble’s petition for certiorari regarding similar issues. Verble sought to appeal the 6th circuit’s ruling that his allegations that Morgan Stanley fired him for working with the Federal Bureau of Investigation (FBI) regarding Morgan Stanley’s alleged violations of the securities laws were too vague to merit whistleblower protections. Aligning closely with the 5th Circuit’s logic, the Eastern District of Tennessee had previously ruled that because Verble reported to the FBI (and not the SEC), he did not qualify as a whistleblower under Dodd-Frank.

The opinion of the U.S. Court of Appeals for the 9th Circuit can be found [here](#). The SEC’s amicus curiae brief is available [here](#). For more information, see *Law360’s* coverage [here](#).

Petrobras Resolves Four Additional Investor Lawsuits

On March 7, 2017, Petrobras, the Brazilian state-owned oil company, announced its settlement of four individual investor lawsuits filed in federal court in New York. The suits arose following the disclosure that Petrobras is being investigated for orchestrating a bribery and kickback scheme, which involved covering up a large graft scheme. In total, 27 lawsuits, both individual and class actions, have been filed against Petrobras by investors alleging loss of shareholder value.

The most recent settlements are with (1) the New York City Employees Retirement System; (2) Transamerica Income Shares, Inc.; (3) Internationale Kapitalanlagegesellschaft; and (4) Lord Abbett Investment Trust - Lord Abbett Short Duration Income Fund. The terms of the settlements are confidential, and Petrobras has now resolved 19 of the 27 actions. Petrobras anticipates spending \$372 million on settlements in 2016 and has already set aside an additional \$364 million as of September 2016 for further litigation and settlement expenses.

In an interview with *Reuters*, Akin Gump partner Charles Connolly opined that “Petrobras settlements show [the] company [is] eager to resolve corruption cases.” The full article is available [here](#).

Petrobras’s Press Release is available [here](#). For more information, see the FCPA Blog’s coverage [here](#).

The \$64,000 – Make That \$64 Million – Question: How Will President Trump Influence International Bribery Enforcement?

On March 7, 2017, the *Metropolitan Corporate Counsel* published an interview with Akin Gump partner Paul Butler regarding changes in FCPA enforcement that we can expect to see under the Trump administration. Butler speculated that, “if this administration feels that U.S. businesses are being disadvantaged by increased enforcement, what we might see is a shift in enforcement from U.S. businesses to foreign businesses that the government believes are competing unfairly.”

The entire interview is available [here](#).

Businessman Jailed for His Role in Mexican Airplane Maintenance Contract Scheme

On March 2, 2017, the Southern District of Texas sentenced Victor Hugo Valdez Pinon to one year and one day of imprisonment, two years of supervised release, restitution of \$90,000 and forfeiture of \$250,000 for his role in conspiring to violate the FCPA and to commit wire fraud. In October 2016, Valdez Pinon and four others pleaded guilty to the scheme, which involved the payment of more than \$2 million in bribes in exchange for Mexican aviation maintenance, repair and overhaul contracts for the Brownsville, Texas-based company Hunt Pan Am Aviation.

The DOJ's Information, Plea Agreement and Press Release are available [here](#). For more information, see the FCPA Blog's coverage [here](#) and [here](#).

SEC Issues Declination Letter for Crawford & Company

On February 27, 2017, Atlanta-based claims management firm Crawford & Company disclosed in its [Form 10-K](#) that the SEC had issued a declination letter advising that it concluded its investigation of potential FCPA violations and was not bringing an enforcement action. Crawford discovered the possible FCPA violations during a routine internal audit in 2015 and self-reported the same to both the DOJ and the SEC. No details regarding the nature of the possible violations have been made public, and no declination by the DOJ has been reported.

For more information, see *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

FinCEN Enforcement Action Highlights AML Compliance Program Failures and Conflicts of Interest for High-Risk MSB Customers

On February 27, 2017, FinCEN announced a \$7 million civil monetary penalty against Merchants Bank of California for willful violations of the Bank Secrecy Act (BSA). Additionally, the Office of the Comptroller of the Currency (OCC), Merchants' federal functional regulator, identified deficiencies in Merchants' processes that resulted in violations of the 2010 and 2014 consent orders that Merchants entered into with the OCC, as well as continued violations of 12 C.F.R. § 21.21 (i.e., the requirement that a bank's AML compliance program must be reasonably designed to assure and monitor compliance with the BSA's recordkeeping and reporting requirements). The OCC is assessing an additional, separate \$1 million penalty for the violations.

See [here](#) and [here](#) for the FinCEN press release and assessment of civil monetary penalty, and [here](#) and [here](#) for the OCC press release and consent order for the assessment of a civil monetary penalty.

For more information, see Akin Gump's client alert [here](#), *The Wall Street Journal's* coverage [here](#) and FCPA Blog's coverage [here](#).

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EXPORT CONTROL, SANCTIONS AND CUSTOMS ENFORCEMENT

DOJ, OFAC and BIS Announce \$1.19 Billion Settlement with Chinese Telecom Supplier for Apparent Violations of Iran Sanctions

On March 7, 2017, the U.S. Department of Justice (DOJ), the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and the U.S. Department of Commerce's (DOC) Bureau of Industry and Security (BIS) announced that Zhongxing Telecommunications Equipment Corporation (ZTE), based in Shenzhen, China, agreed to pay the U.S. government a total of \$892,360,064 to settle liability for apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR). The settlement amount consists of \$430,488,798 in fines and forfeitures to the DOJ, a \$100,871,266 settlement with OFAC and a \$361 million settlement with BIS. In addition to the payments, ZTE will be subject to ongoing compliance requirements in the settlement agreements. BIS has agreed to suspend an additional \$300 million, which ZTE will pay if it violates its settlement agreement with BIS. According to the U.S. government, the apparent violations stem from ZTE's multiyear and systemic practice of utilizing third-party companies to covertly supply Iran with a substantial volume of U.S.-origin goods.

The DOJ fine represents the largest criminal fine to date in connection with an International Emergency Economic Powers Act (IEEPA) prosecution, and the settlement with OFAC marks that agency's largest settlement with a nonfinancial entity. The DOJ identified various aggravating factors, including ZTE's failure to self-report and internal documents that demonstrated the scope of the violations and actual knowledge of illegality and potential consequences.

For additional information, please see the DOJ [press release](#); the OFAC [press release](#), [notice](#) and [settlement agreement](#); and the BIS [press release](#) and [settlement agreement](#). For additional information on the enforcement action taking place against ZTE, please see [here](#) and [here](#) for Akin Gump coverage.

OFAC Settles Apparent Violation of Iran Sanctions with California Medical Instrument Company

On February 28, 2017, OFAC announced that United Medical Instruments, Inc. (UMI), a California company, agreed to pay \$515,400 to settle potential civil liability for 56 alleged violations of the ITSR. According to OFAC, between 2007 and 2009, UMI sold medical imaging equipment with knowledge, or reason to know, that the goods were intended specifically for supply or reexport to buyers in Iran. UMI also facilitated the sale of such equipment from a UAE company to Iran. The total value of the goods in these transactions was \$2,493,597.

In determining the settlement amount, OFAC weighed several aggravating and mitigating factors. With regard to aggravating factors, OFAC considered that UMI willfully exported the goods to Iran with actual knowledge and prior notice that such shipments were likely a violation of U.S. law and required an OFAC license. In particular, OFAC determined that UMI demonstrated actual knowledge, since the company had submitted a prior license application to OFAC. OFAC also considered UMI's failure to effectively manage and enforce its own compliance program. With regard to mitigating factors, OFAC recognized that the alleged violations were attributable to a single UMI employee, rather than a systemic pattern of companywide conduct; UMI took remedial action in response to the alleged violations; UMI did not have an enforcement history with OFAC in the preceding five years; UMI cooperated with OFAC's investigation by providing timely responses and entering into multiple statute of limitations tolling agreements; and UMI is a small business. OFAC also considered that mitigation was warranted due to UMI's financial condition and financial difficulty.

For additional information, please see the OFAC [notice](#) and [settlement agreement](#).

Ukrainian National Arrested in Connection with Conspiracy to Export Rifle Scopes and Thermal Imaging Equipment from the United States to Ukraine

On March 7, 2017, the U.S. Attorney's Office for the Eastern District of New York announced that federal agents arrested Volodymyr Nedoviz, a lawful permanent resident of the United States and citizen of Ukraine, for engaging in a conspiracy to illegally export controlled military technology from the United States to endusers in Ukraine. The items included advanced night vision rifle scopes and thermal imaging equipment. Such items are controlled by the Department of State's Directorate of Defense Trade Controls (DDTC) and/or BIS for national security reasons and cannot be exported to Ukraine without a license. The DOJ alleges that Nedoviz and his co-conspirators pretended to be U.S. citizens to induce U.S.-based manufacturers and suppliers to sell them the export-controlled devices. To hide the true destination of the shipments, Nedoviz and his co-conspirators falsely described the nature and value of the goods and shipped the items under false names to conceal their identities. If convicted, Nedoviz faces up to 20 years in prison and a \$1 million fine.

For additional information, please see the DOJ [press release](#).

Arc Electronics Manager Sentenced to 135-Month Prison Term for Illegal Exports of Microelectronics to Russia

On February 28, 2017, the U.S. Attorney's Office for the Eastern District of New York announced that Alexander Posobilov was sentenced to 135 months in prison for conspiring to export, and illegally exporting, controlled microelectronics to Russia, as well as for conspiring to launder money. Posobilov worked for Houston-based Arc Electronics Inc. ("Arc") and, along with his co-conspirators, obtained advanced microelectronics from manufacturers and suppliers located in the United States and exported them to Russian government agencies without obtaining the necessary export license. This sentencing follows the 10-year prison sentence entered against Arc founder Alexander Fishenko, as reported in the July 2016 issue of *Red Notice*. According to the DOJ, the microelectronics exported (e.g., analog-to-digital converters, static random access memory chips, microcontrollers, microprocessors) can be used in radar, surveillance systems and weapons guidance systems—all areas where exports are strictly controlled under the IEEPA. The value of the goods totaled approximately \$50 million. To evade export controls, the defendants provided false end-user information, claimed that Arc was a manufacturer when it actually operated exclusively as an exporter, and falsely classified exported goods on records submitted to the DOC. Posobilov was sentenced to a 135-month imprisonment.

For additional information, please see the DOJ [press release](#) and discussion in the [July 2016](#) and [September 2015](#) issues of *Red Notice*.

Lebanese National Arrested and Extradited to U.S. for Ties to Hizballah and Conspiring to

Evade U.S. Sanctions Laws

On March 24, 2017, the DOJ announced the unsealing of an 11-count indictment against Kassim Tajideen of Lebanon. Tajideen was arrested and extradited to the United States earlier this month from Belgium on charges of evading U.S. sanctions imposed on him in 2009 because of his financial support of Hizballah. According to the press release, Tajideen presided over a multibillion-dollar commodity distribution business empire in the Middle East and Africa. He allegedly restructured those businesses in order to willfully deceive U.S. business partners and conceal his identity from law enforcement. He is charged with violations of the IEEPA and the Global Terrorism Sanctions Regulations, unlawful transactions with terrorists and conspiracy to launder monetary instruments. Tajideen has pleaded not guilty.

The arrest and subsequent extradition of Tajideen in coordination with U.S. agencies and local law enforcement partners was part of the Drug Enforcement Administration's Project Cassandra. The initiative specifically targets Hizballah's Business Affairs Component, which is responsible for logistics, procurement and financing for the international terrorist organization.

For additional information, please see the DOJ [press release](#).

Florida Tobacco Importer Sentenced in Connection with Evading Federal Excise Taxes

On February 27, 2017, the U.S. Attorney's Office for the Southern District of Florida sentenced Gitano Pierre Bryant Jr. for fraudulently evading the federal tobacco excise tax due on imported cigars. Bryant, the owner of Havana '59 Cigar Company, consistently underpaid the excise tax due on cigars that he imported and altered documents to conceal the actual price paid. He ultimately evaded over \$13 million in excise taxes between January 2012 and June 2016. Bryant was sentenced to a 48-month prison term and ordered to pay \$9 million in restitution to U.S. Customs and Border Protection, the agency tasked with collecting federal excise taxes on imported tobacco products.

For additional information, please see the DOJ [press release](#).

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

U.S. Department of State Sanctions 30 Individuals and Entities in 10 Countries, Including 9 in China, in Relation to Iran's Missile Program

On March 21, 2017, the U.S. Department of State imposed sanctions on 30 foreign entities and individuals in 10 countries pursuant to the Iran, North Korea, and Syria Nonproliferation Act (INKSNA). Additionally, 11 individuals and entities were singled out in the announcement for transfers of sensitive items to Iran's ballistic missile program, nine of which were Chinese individuals or entities. All 30 of the new designations, including the 11 Iran designations, came as a result of a periodic review of sanctionable activity under INKSNA. The sanctions come less than two months after Iran's recent medium-range ballistic missile test.

For additional information, please see the State [press release](#).

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WRITING AND SPEAKING ENGAGEMENTS

On April 3, [Kevin Wolf](#) will be the keynote speaker at the Export Compliance Training Institute's US Export Controls on Non-US Transactions seminar in Alexandria, VA.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

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