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## Recent OFAC Enforcement Actions Highlight Potential Risks Facing Financial Institutions

On August 16, 2010, Barclays Bank plc ("Barclays") entered into deferred prosecution agreements with the Department of Justice ("DOJ") and the New York County District Attorney's office to settle criminal charges brought by federal and state prosecutors, who allege that Barclays facilitated illegal currency transactions with banks in countries sanctioned by the United States, including Iran, Cuba, and Sudan. Under the agreements, Barclays agreed to forfeit \$298 million--\$149 million to the United States and \$149 million to the New York County District Attorney's office. In addition, Barclays agreed to conduct a thorough review of its compliance programs and complete a comprehensive sanctions policy training program for all bank employees involved in processing U.S. dollar transactions. This case is the latest in a series of high profile investigations and enforcement actions brought by federal and state authorities, and it highlights the potential risk facing financial institutions and other organizations that do business in the United States and engage in international business and financial transactions.

### United States Sanctions Law

The United States Treasury Department's Office of Foreign Assets Control ("OFAC") administers and enforces United States economic sanctions policy. OFAC has authority, pursuant to sanctions legislation enacted by Congress, to license, regulate and prohibit transactions that involve nations sanctioned by the United States, and individuals on the list of Specially Designated Nationals and Blocked Persons ("SDN List"), which includes persons involved in terrorism, the proliferation of weapons of mass destruction, narcotics trafficking and other areas of national security or foreign policy concern. Under federal legislation, such as the International Emergency Economic Powers Act and the Trading With the Enemy Act, it is a federal crime to willfully violate the sanctions regulations adopted by OFAC.

As the Barclays case demonstrates, economic sanctions laws impose significant risks on financial institutions that process U.S. dollar transactions. Non-financial companies, such as those in the manufacturing and energy industries, must also comply with relevant OFAC regulations.

In less than two years there have been four major settlements between financial institutions and federal and state authorities over alleged violations of sanctions laws, each yielding a significant financial penalty. This pattern demonstrates not only increased enforcement, but also the potential costs of non-compliance with OFAC regulations.

## Recent Actions

In January 2009, a major financial institution agreed to forfeit \$350 million to the United States and the New York County District Attorney's office, and conduct annual reviews to ensure compliance with OFAC regulations for two years, after being accused of violating sanctions laws. According to authorities, the bank removed material information from payment messages on wire transfers, such as customer names, bank names and addresses. This process, known as "stripping" information, enabled U.S. dollar transactions involving OFAC-sanctioned countries and individuals on the SDN List to proceed without detection. According to the government, these transactions would have been held for further review, blocked or rejected by banks in the United States if the payment messages had not been altered.

In December 2009, another large financial institution agreed to forfeit \$536 million to the United States and the New York County District Attorney's office as part of the largest penalty ever assessed for OFAC violations. Authorities similarly alleged a pattern of removing material information on payment messages for currency transactions originating in sanctioned countries, including Iran, Sudan and Cuba. The government also alleged that the bank had processed securities trades on behalf of other banks in sanctioned countries in further violation of OFAC regulations. Under the settlement, the bank agreed to implement a more stringent OFAC compliance program.

In May 2010, a prominent financial institution agreed to forfeit \$500 million to the United States and enhance its OFAC compliance program, after purported violations of OFAC regulations and money-laundering provisions. Authorities alleged that the bank removed or altered references to sanctioned countries on payment messages for currency transactions. According to the government, these alterations permitted U.S. dollar transactions to be processed through banks in the United States instead of being held for further review, blocked or rejected.

Finally, in August of this year, Barclays entered into the deferred prosecution agreements described above after being accused of removing material information on payment messages for currency transactions from sanctioned countries, including Iran, Cuba and Sudan.

## Implications

These cases reinforce the importance of compliance with economic sanctions laws. Financial institutions and other organizations that conduct international transactions should take the opportunity to examine their own OFAC compliance programs to ensure they adequately and effectively manage the risks posed by processing currency transactions for international clients. The recent settlements illustrate the potentially severe consequences of non-compliance with OFAC regulations, and as federal and state authorities increase their investigative and enforcement efforts, the risks of non-compliance will likely continue to grow.

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