

New OFAC Sanctions Compliance Framework and Guidance

Reducing Risk of Incurring U.S. Sanctions Liability, Minimizing Potential Exposure if Violations Occur

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Miller & Chevalier

The New “Framework for OFAC Compliance Commitments”: What You Need to Know

Timothy P. O’Toole & Brian J. Fleming

August 8, 2019

THE FRAMEWORK

Summary

- Five essential elements:
 - Management Commitment
 - Risk Assessment
 - Internal Controls
 - Testing and Auditing
 - Training Action
- OFAC Enforcement will examine each element as part of remedial plan in case where violation has occurred
- Appendix outlines frequent root causes of violations

Why Does It Matter?

- These are the “teacher’s notes” OFAC will use to grade programs in the event of violations
- The root causes are a helpful guide to risk identification and management
- Familiarity with this framework can help guide discussions with regulators

Pillar One: Management Commitment

- Review and approval of Sanctions Compliance Plan (SCP)
- Empowers compliance
- Provides adequate resources to compliance
- Culture of compliance
- Takes potential violations seriously through investigation and effective, prompt remediation

Pillar Two: Risk Assessment

- Conducted in a manner and frequency that is tailored to risk-profile of business
- Updated to address new information, including violations or systemic deficiencies
- Based on systemic methodology that evolves based on new information

Pillar Three: Internal Controls

- Written policies and procedures outlining SCP: Capture day to day operations, easy to follow, and designed to prevent misconduct
- Tailored to risk profile, incorporate adequate technology and periodically tested
- Enforced through internal and external audits
- Sufficient to ensure compliance with sanctions laws
- Weaknesses are immediately remedied when identified
- Communicated to relevant personnel and external parties
- Dedicated personnel responsible for incorporating into business

Pillar Four: Testing and Auditing

- Testing and Auditing function accountable to senior management, independent and has sufficient authority, skills, and resources
- Geared to risk profile in terms of level and sophistication
- Negative testing results are identified and remediated

Pillar Five: Training

- Scope appropriate to business
- Frequency appropriate to business
- Remedial training provided in the event of a negative testing or audit result
- Resources sufficient

APPENDIX OF ROOT CAUSES

List of Root Causes

- Lack of a formal SCP
- Misinterpreting OFAC regulations
- Failing to recognize U.S. touchpoints:
 - Facilitation (foreign subs and affiliates)
 - U.S. origin goods
 - U.S. financial system
- Software inadequacy
- Lack of sufficient due diligences on customers/clients
- Failure to follow or enforce SCP
- Unusual payment of commercial practices
- Rogue actors

POST-FRAMEWORK COMPLIANCE PROGRAMS

To Do List

- Affirmative review of current program
- Modifications
- If enforcement action already underway or contemplated

CONDUCTING U.S. SANCTIONS INVESTIGATIONS IN LIGHT OF THE FRAMEWORK

To Do List

- What to look for
- How to assess
- Checklist of possible root causes

INTERACTING WITH OFAC IN LIGHT OF THE FRAMEWORK

To Do List

- Homework
- Anticipation of issues
- Narrative framing
- Root cause explanation

Questions?



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