



MIDDLETON & SHRULL  
INTERNATIONAL TRADE LAW

# WHY OFAC SANCTIONS MATTER TO FINANCIAL SERVICES COMPLIANCE PROFESSIONALS

If there is one thing you can be sure of in the world of financial services, it is that as sure as the sun will come up tomorrow, the regulators will be on your doorstep regulating.

At Patrina, we know knowledge is power. That's why we want to give you plenty of it. We're teaming up with industry leaders to give you their boots-on-the-ground perspectives on regulatory compliance and living under the watchful gaze of an entire alphabet of regulators.

Happy reading! And if you ever have questions about what you read or about how to better manage your non-trading compliance exposure or compliant data archiving, give me a call. At Patrina, our mission is to give you the tools to take charge of your business and take charge of compliance. Fines are expensive. Compliance doesn't have to be.

Enjoy this whitepaper authored by Matthew Bock and Christine Abely of international trade law firm Middleton & Shrull, and let's talk.

*Mark*

Mark Opila | Chief Executive Officer



Patrina Corporation  
45 Broadway, Suite 1440  
New York, NY 10006  
212.233.1155  
mopila@patrina.com  
www.patrina.com

# Why OFAC sanctions matter to financial services compliance professionals

It is likely one of the lesser known of the regulatory alphabet of agencies overseeing the financial services sector, but the Office of Foreign Assets Controls (OFAC) should absolutely be on the radar of all industry compliance professionals. An agency of the U.S. Department of the Treasury, OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

OFAC economic sanctions are powerful foreign policy tools that require the active participation and support of every financial institution. Because of their importance and urgency, violations of such sanctions can carry enormously consequential penalties.

But before we wade into the deep end of the sanctions pond, let's start at the beginning.

## HOW LONG HAS OFAC EXISTED?

The Treasury Department has a long history of dealing with sanctions. Before the War of 1812, the then Secretary of the Treasury administered sanctions imposed against Great Britain in response to its harassment of American sailors. During the Civil War, Congress approved a law prohibiting transactions with the Confederacy which provided a licensing regime under rules and regulations administered by the Treasury Department.

OFAC is the successor to the Office of Foreign Funds Control (the "FFC"), which was established at the advent of World War II following the German invasion of Norway in 1940. The FFC was intended to prevent the Nazis from using occupied countries' foreign exchange and securities holdings and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries. OFAC itself was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency and blocked all Chinese and North Korean assets subject to U.S. jurisdiction.

## WHAT ARE SOME OF THE SANCTIONS PROGRAMS OFAC ADMINISTERS?

OFAC administers sanctions programs covering the following areas: North Korea, Cuba, Iran (4 separate sets of regulations), Sudan, Syria, Zimbabwe, Darfur, Democratic Republic of the Congo, Belarus, Lebanon, Somalia, Yemen, Central African Republic, Burundi, South Sudan, Libya, Iraq, the Western Balkans, Ukraine, Venezuela, Hizballah, narcotics trafficking, weapons of mass destruction trade and proliferation, cyber-related activities, the Magnitsky Act, transnational criminal organizations, rough diamonds, terrorism, global terrorism, terrorism list governments, foreign terrorist organizations, and foreign narcotics.

Some of these regulations are broad in scope. Others are more limited to specifically-named individuals or entities.

## ARE ALL FINANCIAL TRANSACTIONS SUBJECT TO OFAC REGULATIONS?

Yes. There is no minimum or maximum amount or dollar limit for a transaction to be subject to OFAC regulations. What OFAC is watching for are "prohibited transactions," namely, trade or financial transactions and other dealings in which U.S. individuals and businesses may not engage unless they are "exempt" by statute or authorized by OFAC. What may complicate the analysis is that a particular transaction may be subject to one or multiple OFAC sanctions programs, depending on the nature of the transaction at issue.

## ARE SOME ACTIVITIES LICENSED?

Yes. OFAC may issue one of two kinds of licenses authorizing transactions that would otherwise be prohibited. General licenses are provisions within the OFAC regulations that authorize certain types of transactions with respect to that sanctions program without the need for a license application. Specific licenses are permits issued by OFAC for a specific individual or entity to engage in an activity that would otherwise be prohibited by the relevant sanctions regulations. Specific licenses are always issued on stationery from the U.S. Department of the Treasury.

## WHO MUST COMPLY WITH OFAC REGULATIONS?

Generally, any person subject to the jurisdiction of the United States. This includes American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and in some cases, entities owned or controlled by any of the aforementioned, most notably foreign-organized subsidiaries of U.S. corporations. Sometimes, foreign persons in control of U.S. goods are also required to comply with OFAC regulations.

## HOW CAN OFAC REGULATIONS AFFECT A FINANCIAL SERVICES FIRM?

Generally, OFAC regulations require banks to:

1. **block accounts** and other property of specified countries, entities, and individuals; and
2. **prohibit or reject unlicensed trade and financial transactions** with specified countries, entities, and individuals. Namely, the assets and accounts of an OFAC-specified country, entity, or individual must be blocked when such property is located in the United States, is held by U.S. individuals or entities, or comes into the possession or control of U.S. individuals or entities. Assets and property include anything of direct, indirect, present, future, or contingent value (including all types of bank transactions).

Banks must block transactions that:

1. are by or on behalf of a blocked individual or entity;
2. are to or go through a blocked entity; or
3. are in connection with a transaction in which a blocked individual or entity has an interest.

Even if there are no blocked parties involved in a transaction, some transactions must be rejected or not processed because certain provisions in a relevant sanctions program would prohibit the transaction.

There are also specific procedures in place for the credit reporting industry, including what information should be included if credit bureaus choose to place OFAC information on credit reports.

## WHAT ARE REPORTING REQUIREMENTS FOR BLOCKED OR REJECTED TRANSACTIONS?

Banks must report all blockings to OFAC within ten (10) business days of the occurrence and annually by September concerning those assets blocked as of June 30.

The annual blockings should be reported on Form TDF 90-22.50. Once assets or funds are blocked, they should be placed in a separate blocked account. Prohibited transactions that are rejected must also be reported to OFAC within ten (10) days of the occurrence.

Banks must keep a full and accurate record of each rejected transaction for at least five (5) years after the date of the transaction. For blocked property (including blocked transactions), records must be maintained for the period the property is blocked and for five (5) years after the date the property is unblocked.

## HOW CAN I CHECK IF AN INDIVIDUAL OR ENTITY HAS BEEN BLOCKED?

The best place to search is the Consolidated Screening List maintained by the U.S. government. The Consolidated List combines the screening lists of the U.S. Departments of Commerce, State and the Treasury to ensure that a party is properly screened. Always be sure to search the most current version of the Consolidated List. There are also software solutions available which can aid in appropriate screening measures.

## WHEN IS AN ENTITY “OWNED OR CONTROLLED” BY A BLOCKED ENTITY OR INDIVIDUAL?

Any entity owned in the aggregate, directly or indirectly, fifty percent (50%) or more by one or more blocked persons is itself considered to be a blocked person. The property and interests in property of such an entity are blocked regardless of whether the entity itself has been designated a Specially Designated National or listed on an annex to an executive order. Therefore, a U.S. person generally may not engage in any transactions with such an entity, unless authorized by OFAC.

## HOW CAN A FINANCIAL SERVICES FIRM ASSESS ITS OFAC COMPLIANCE RISK PROFILE?

OFAC has published risk matrices for financial institutions and for the securities sector that can help evaluate an organization's risk of encountering an OFAC issue. Some factors that can be evaluated to help assess the OFAC compliance risks a financial services firm faces are as follows:

- Size and stability of customer base, in localized, domestic, or international environment;
- Number of high-risk customers;
- Presence of overseas branches and correspondent accounts with foreign banks;
- Variety of e-banking products and services offered;
- Number of funds transfers made for customers and non-customers, including international funds transfers;
- Number of other types of international transactions; and
- History of OFAC enforcement activity with respect to firm/institution and whether firm/institution has addressed any issues identified.

### Additional Factors include:

- Whether management has fully assessed key aspects of OFAC compliance risk and how this understanding of risk and commitment to OFAC compliance is communicated throughout the organization;
- Whether the board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate and consistent with the bank's OFAC risk profile;
- Whether staffing levels are adequate to properly execute the OFAC compliance program;
- Whether authority and accountability for OFAC compliance are clearly defined and enforced, including the designation of a qualified OFAC officer;
- Whether training is appropriate and effective based on a bank's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance;
- Whether the institution employs strong quality control methods;
- Whether compliance considerations are incorporated into all products and areas of the organization;
- Whether effective policies for screening transactions and new accounts for Specially Designated Nationals and Blocked Persons (SDNs) and sanctioned countries are in place, and whether these policies take into account the level of risk of the type of transaction being screened;
- Whether compliance systems and controls effectively identify and appropriately report potential OFAC violations, whether compliance systems are commensurate with risk, and whether records are retained that document such reporting;
- Whether if, on a periodic basis, determined by the bank's level of risk, all existing accounts are checked to ensure that problem accounts are properly blocked or restricted, depending on the requirements of the relevant sanctions program;
- Whether compliance systems and controls quickly adapt to changes in the OFAC SDN list and country programs, regardless of how frequently or infrequently those changes occur;
- Whether independent testing of a compliance program's effectiveness is in place (an independent audit function should test OFAC compliance with regard to systems, training, and use);
- Whether problems and potential problems are quickly identified, and whether management promptly implements meaningful corrective action; and
- Whether overall, appropriate compliance controls and systems have been implemented to identify compliance problems and assess performance.

## WHAT DOES OFAC COMPLIANCE MEAN FOR SECURITIES INDUSTRY FIRMS?

Paying attention to the entities with whom one does business. As custodians and securities intermediaries, securities firms must accurately identify the beneficial owner of assets within an account or transaction. How can a firm avoid the risk of directly or indirectly providing services to—or dealing in property in which there is an ownership or other interest of—parties subject to sanctions?

OFAC encourages firms operating in the securities industry, including securities intermediaries and custodians, to implement measures that mitigate that risk. It encourages such measures to be tailored to and commensurate with the sanctions risk posed by a firm's business activities.

Among the best practices OFAC recommends are:

- Making customers aware of the firm's U.S. sanctions compliance obligations and having customers agree in writing not to use their account(s) with the firm in a manner that could cause a violation of OFAC sanctions;
- Conducting due diligence, including through the use of questionnaires and certifications, to identify customers who do business in or with countries or persons subject to U.S. sanctions;
- Imposing restrictions and heightened due diligence requirements on the use of certain products or services by customers who are judged to present a high risk of non-compliance from an OFAC sanctions perspective;
- Making efforts to understand the nature and purpose of non-proprietary accounts, including requiring information regarding third parties whose assets may be held in the accounts; and
- Monitoring accounts to detect unusual or suspicious activity, e.g., unexplained significant changes in the value, volume, and types of assets within an account.

## WHAT ARE SOME STEPS THAT BANKS CAN TAKE TO ENSURE OFAC COMPLIANCE?

Banks are encouraged to develop a written OFAC compliance program commensurate with their OFAC risk profile. The program should identify higher-risk areas, provide for appropriate internal controls for screening and reporting, establish independent testing for compliance, designate an individual(s) as responsible for OFAC compliance, and create training programs for appropriate personnel in all relevant areas of the bank.

An internal controls program should address the criteria for identifying and reviewing suspect transactions, updating OFAC lists, screening Automated Clearing House (ACH) transactions, reporting, and maintaining license information.

The U.S. Treasury Department recommends that every bank designate a qualified individual(s) to be responsible for the day-to-day compliance of the OFAC compliance program, including the reporting of blocked or rejected transactions to OFAC and the oversight of blocked funds. The individual should have an appropriate level of knowledge about OFAC regulations commensurate with the bank's OFAC risk profile.

## WHAT ABOUT VIRTUAL/DIGITAL CURRENCY? WHERE DOES OFAC STAND ON THESE DIGITAL REPRESENTATIONS OF VALUE?

OFAC says that whether a currency is digital or conventional, the obligations of financial services institutions are the same: U.S. persons (and persons otherwise subject to OFAC jurisdiction) must ensure that they block the property and interests in property of persons named on the OFAC SDN List or any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons, and that they do not engage in trade or other transactions with such persons.

---

## ABOUT THE AUTHORS

**Matthew A. Bock** (mbock@mstradelaw.com) is a Partner at Middleton & Shrull, LLC. He is a licensed customs broker and admitted to practice law in Massachusetts, New York, and the U.S. Court of International Trade.

**Christine Abely** (cabely@mstradelaw.com) is a Counsel at Middleton & Shrull, LLC. She is a licensed customs broker and admitted to practice law in Massachusetts and Connecticut.

**Middleton & Shrull, LLC** ([www.mstradelaw.com](http://www.mstradelaw.com)) is a law firm exclusively focused on the practice of customs and international trade law and import, export controls, economic sanctions, anti-bribery/anti-corruption, and anti-money laundering regulatory compliance. The firm focuses on educating and advising companies of all sizes on reducing regulatory risks, duties and indirect costs; auditing, refining or building regulatory compliance programs; helping companies manage and mitigate penalties, seizures and detentions; and interceding with the U.S. federal agencies that regulate international trade and business transactions.