

THE OFAC 50% RULE:

WHEN GOVERNMENT LISTS ARE NOT ENOUGH

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When compliance managers think about the good old days, they do not have to look back too far. In fact, prior to 2008, the world was a much simpler place: the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) published a list of sanctioned companies and individuals, and as long as their company was not doing business with any person on that list, they seemed to be in good shape. This was definitely not an easy task. However, after 2008, it became more complicated when OFAC guidance stated that an ownership interest of 50% or more by a sanctioned subject was blocked or otherwise limited.

Flash forward to August 2014 and compliance gets even more challenging. Revised guidance requires that businesses stay away from or limit their engagement with entities where subjects on the OFAC list have a 50% or greater ownership interest individually or in the aggregate. The catch: OFAC was not going to aggregate those interests or proactively publish them on any list. This new requirement necessitates a significant amount of research to map these holdings, which is something that most compliance departments and list providers do not have the resources to do. It also requires experience to conduct due diligence in multiple languages given the global nature of such holdings.

DON'T BE ORIGINAL AND FOLLOW THE BANKS

Financial institutions faced a similar challenge in January 2001, when regulators asked them to identify and monitor politically exposed persons or PEPs and only provided a definition as opposed to an official list. Resources were, of course, limited at the time for banks as well, and Dow Jones Risk and Compliance responded to requests by clients to leverage its internal expertise in developing complete, accurate and up-to-date content, and built a proprietary list of PEPs.

In 2014, Dow Jones responded again to the evolving regulatory landscape and began mapping and aggregating ownership interests of 10% or greater by individuals and entities sanctioned by the U.S. regulator OFAC, the UK and the EU. These interests were related to the conflict in Ukraine and spanned across 78 different countries today. The goal, of course, is to help companies conserve compliance resources while, at the same time, increasing their regulatory coverage in light of recent developments. This data set is complementary to government lists and could be used by companies to screen their third-party relationships.

REAL CONSEQUENCES

In July 2015, OFAC added 18 majority-owned subsidiaries of Russia's Vnesheconombank (VEB) to its Sectoral Sanctions Identifications (SSI) List. While subjects on the SSI List are not blocked by OFAC, they are subject to specific limitations.

Bank BelVEB OJSC, a named majority subsidiary of VEB, was added to the Dow Jones Risk and

Compliance database on August 25, 2014, almost a year before OFAC's announcement. On that date, Dow Jones noted that the bank is 97.51% owned by OFAC SSI List entity, Vnesheconombank. There are countless other similar examples given the concerted effort by Dow Jones to map these types of holdings.

In addition to identifying ownership interests by persons on Ukraine-related sanctions lists, Dow Jones also provides structured lists of entities that are the subject of potentially negative legal, regulatory and reputational issues in the media.

On October 22, 2015, OFAC identified Seguros Continental S.A., a Honduran firm, as "more than 50%-owned by Inversiones Continental SA de CV, which Treasury named earlier [that] month as a component of a conglomerate of Honduran businesses controlled by the powerful Rosenthal family, who the U.S. charged with laundering money for drug cartels," according to The Wall Street Journal. While Inversiones Continental and members of the Rosenthal family both appear on the OFAC SDN list, Seguros Continental does not as of the date of this article.

Seguros Continental was added to the Dow Jones Risk and Compliance database under the category of Adverse Media Entity on the same day as the OFAC announcement. Traditional screening approaches against government sanctions lists would not be able to detect a company's relationship with this entity and this could have significant consequences.

The Wall Street Journal article noted that as a result of OFAC's statement, "the Honduran

government has 'initiated proceedings' to seize shares of Seguros Continental, and 'in the meantime,' Honduras has taken steps to ensure transactions involving Seguros don't benefit anyone on U.S. sanctions lists."

PROACTIVE WHILE BALANCING INTERNAL RESOURCES

Screening processes have leveraged technology and lists for years and complying with the 50% rule does not have to be an overwhelming task for a compliance department. The key, of course, is having the right lists and a provider with the ability to adapt its solutions to the ever-changing world of sanctions compliance.

BIOGRAPHY

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Michael has held multiple consulting roles focused on risk management and enhanced due diligence over his career. He worked as a consultant with the Business Intelligence Group, the Anti-Money Laundering Group at Goldman Sachs & Co in New York City, and served as CCO and Internal Counsel at Abacus Wealth Partners. Michael holds a Juris Doctor from the University of San Diego School of Law and is a member of the State Bar of California.

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