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INTERNATIONAL LAW FIRM

OFAC  
ALERT

## **The Tri-Seal Compliance Note on Voluntary Self-Disclosure of Sanctions Violations**

Throughout 2023, the Department of Justice’s National Security Division (“NSD”), the Department of Commerce’s Bureau of Industry and Security (“BIS”), and the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) have implemented aggressive measures to fight Sanctions evasion schemes. For instance, NSD appointed a Chief Counsel for Corporate Enforcement and added twenty-five new prosecutors to address sanctions evasion, export control violations, and similar economic crimes. BIS’s Office of Export Enforcement implemented a new “dual-track system” to prioritize resolutions and investigations in matters involving export control evasion. OFAC has designated over 300 individuals and companies, with touchpoints in more than 20 jurisdictions, in an effort to deter circumvention of Sanctions.

Most recently, NSD, BIS, and OFAC published a Tri-Seal Compliance Note (the “Compliance Note”) on the Voluntary Self-Disclosure of Potential Violations (“VSD”) of Sanctions, export controls, and national security laws. In this Compliance Note, NSD encourages companies to promptly disclose potential criminal violations of U.S. sanctions and export control laws. More specifically, companies may avoid criminal liability by voluntarily self-disclosing potential violations, sharing all relevant non-privileged facts, providing NSD timely access to material documents and information, and by effectively remediating any compliance deficiencies and implementing a robust compliance and ethics program. This enforcement policy extends to other corporate crimes related to national security, including laws against terrorist financing, and potential violations of the regulations administered by the Committee on Foreign Investment in the U.S.

Similarly, in the Compliance Note, BIS strongly encourages companies to voluntarily disclose potential violations of the Export Administration Regulations and confirms that timely and full cooperation with BIS will result in lower civil penalties pursuant to BIS’s settlement guidelines, if the disclosing entity faces enforcement actions. Conversely, deliberate non-disclosure of significant potential violations, reluctance to conduct an internal investigation, or delays in addressing compliance gaps will be treated by BIS as aggravating factors when assessing the appropriate penalties.

OFAC also encourages voluntary disclosures of apparent sanctions violations. As highlighted in the Compliance Note, OFAC considers VSDs as a mitigating factor in determining enforcement actions for a particular case. Additionally, in a case where a civil monetary penalty is warranted, a qualifying VSD can lead to a 50 percent reduction in the proposed penalty amount. When reviewing a VSD, OFAC considers various aspects surrounding the apparent violation, including the existence, nature, and effectiveness of the company’s compliance program at the time of the violation, as well as the corrective actions implemented in response to the apparent violation.

Voluntary disclosures to OFAC, however, will not qualify as VSDs in cases wherein (i) a third party notifies OFAC of the apparent violation because the transaction was blocked or rejected by that third party; (ii) the disclosure includes false or misleading information; (iii) the disclosure is not self-initiated (e.g. the disclosure results from a recommendation or order of a federal or state agency or official, a disclosure made without the authorization of the entity’s senior management, or in response to an administrative subpoena or other

inquiry from OFAC); or (iv) the disclosure is materially incomplete. Whether a disclosure of an apparent violation to another agency qualifies as a VSD to OFAC is assessed on a case-by-case basis.

Additionally, the Compliance Note highlights the substantial monetary rewards that whistleblowers may receive from the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") for providing information regarding Sanctions and export control violations. Indeed, the Compliance Note confirms that, consistent with the whistleblower framework introduced by the Anti-Money Laundering Act of 2020 and the Anti-Money Laundering Whistleblower Improvement Act, both enacted by Congress in early 2023, successful enforcement actions related to certain U.S. export control violations could be eligible for financial awards under the Whistleblower Provisions.

### **DRT Commentary**

The Compliance Note represents a joint effort by the three U.S. Federal agencies to better inform the private sector about their enforcement expectations and provide guidance to businesses on complying with Sanctions and export control laws.

Given OFAC's increased focus on VSDs as a mitigating factor when assessing the appropriate enforcement action in response to a potential Sanctions violation, and the U.S. Government's increased interest in the investigation and prosecution of Sanctions-related crimes, it is important that international companies and financial institutions, their shareholders, directors, officials, and employees understand the Compliance Note, and immediately implement and/or update their compliance programs accordingly.

DRT has extensive experience in counseling individuals and international organizations in their efforts to secure compliance with OFAC Sanctions. This work includes preparation of VSDs, transaction screenings, OFAC compliance assessments, design, and implementation of Sanctions Compliance Programs, and/or requests for OFAC's interpretive guidance or specific licenses.

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\*\* This newsletter is not intended to serve as legal advice. No legal opinions are intended, nor should any be inferred. You are welcome to contact us to discuss legal solutions tailored to your needs and the specific circumstances of your situation.

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