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MEMORANDUM

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To Our Clients and Friends

Re: OFAC Framework for Compliance Commitments

The Office of Foreign Assets Control (“OFAC”) has issued a Framework for Compliance Commitments to provide guidance on the essential components of a risk-based sanctions compliance program (“SCP”) and outline several root causes of apparent violations of OFAC sanctions. OFAC states that in determining whether to apply civil money penalties in response to violations, it will consider favorably whether organizations had effective SCPs at the time of the violations.

The framework identifies five essential components of a SCP:

- management commitment
- risk assessment
- internal controls
- testing and auditing
- training.

The guidance provides that senior management should review and approve the organization’s SCP, ensure that the compliance function has sufficient authority and autonomy to implement its policies and procedures to control the organization’s OFAC risk, and ensure the organization’s compliance team receives adequate resources. Senior management is also expected to promote a culture of compliance throughout the organization.

OFAC recommends that organizations take a risk-based approach to developing and updating their SCPs. The risk assessment should account for potential OFAC risks as well as include a methodology to identify, analyze, and address particular risks. Internal controls should include written policies and procedures outlining the SCP, effective communication of the SCP’s policies and procedures to relevant staff, and ensuring recordkeeping policies and procedures satisfy OFAC requirements.

The testing and auditing function should be independent and accountable to management, be suitable for the sophistication of the SCP, and implement compensating controls following negative testing or auditing results. The organization should provide training to all relevant staff on a regular basis.

OFAC also provides a list of root causes underlying deficiencies or weaknesses in SCPs that OFAC identified in enforcement actions. These root causes include lack of a formal SCP, misinterpreting OFAC regulations, engaging in transactions involving OFAC-sanctioned persons or countries, faulty sanctions screening software, improper customer due diligence, and de-centralized compliance functions.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Victor Razon at (202) 776-0700.