

ENFORCEMENT INFORMATION FOR JANUARY 13, 2017

Information concerning the civil penalties process is discussed in OFAC regulations governing the various sanctions programs and in 31 C.F.R. part 501. On November 9, 2009, OFAC published as Appendix A to part 501 Economic Sanctions Enforcement Guidelines. See 74 Fed. Reg. 57,593 (Nov. 9, 2009). The Economic Sanctions Enforcement Guidelines, as well as recent final civil penalties and enforcement information, can be found on OFAC's Web site at <http://www.treasury.gov/ofac/enforcement>.

ENTITIES – 31 C.F.R. 501.805(d)(1)(i)

Toronto-Dominion Bank Settles Potential Civil Liability, and Separately Receives a Finding of Violation, for Apparent Violations of the Iranian Transactions and Sanctions Regulations and the Cuban Assets Control Regulations: Toronto-Dominion Bank (“TD Bank”), a financial institution headquartered in Toronto, Canada, has agreed to remit \$516,105 to settle its potential civil liability for 167 apparent violations of § 515.201 of the Cuban Assets Control Regulations, 31 C.F.R. part 515 (CACR), and § 560.204 of the Iranian Transactions Sanctions Regulations, 31 C.F.R. part 560 (ITSR) (collectively, the “Apparent Violations”). Separately, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) has issued a Finding of Violation to TD Bank, the parent company of wholly owned subsidiaries Internaxx Bank SA (“Internaxx”) and TD Waterhouse Investment Services (Europe) Limited (“TDWIS”), for 3,491 violations of the CACR and ITSR (collectively, the “Violations”).

Settlement

OFAC has determined TD Bank voluntarily self-disclosed the Apparent Violations, and that the Apparent Violations constitute a non-egregious case. The total base penalty amount for the Apparent Violations was \$955,750.

Beginning as early as 2003 or 2004, TD Bank’s Global Trade Finance business, based in Montreal, Canada engaged in a series of trade finance transactions that appear to have implicated the sanctions regulations administered by OFAC. These transactions generally involved import-export letters of credit for TD Bank’s Canadian customers that the bank failed to screen for any potential nexus to an OFAC-sanctioned country or entity prior to processing related transactions through the U.S. financial system. For a number of years, up to and including 2011, TD Bank maintained several accounts for, and processed transactions to or through the United States on behalf of, a Canadian company owned by a Cuban company. TD Bank had reason to know about the customer’s connections to Cuba through the company’s ownership and business, as well as actual knowledge on the part of several TD Bank employees and business lines as early as 2005 and 2006. Pursuant to this fact pattern, between August 14, 2007 and April 22, 2011, TD Bank processed 29 transactions totaling \$1,156,181.37 to or through the United States in apparent violation of the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

TD Bank also maintained several accounts in Canada for a company that the bank described as “a freight, cargo and shipping business, based in Canada, that is, among other things, a transporter of oil and gas related equipment . . . [that ships its products] to destinations in the Middle East.” According to a document available to TD Bank, the customer was listed as a sales

agent for an entity on OFAC's List of Specially Designated Nationals and Blocked Persons and located in Iran. Between December 1, 2008 and March 28, 2012, TD Bank processed 39 transactions totaling \$515,071.20 to or through the United States on behalf of this customer in apparent violation of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. Part 560.

Separately, TD Bank maintained accounts on behalf of 62 customers who were Cuban nationals residing in Canada.¹ Between August 7, 2007 and January 24, 2011, TD Bank processed 99 transactions totaling \$459,341.62 to or through the United States on behalf of these customers in apparent violation of the CACR.

The conduct that led to the Apparent Violations involved multiple business units throughout the TD Bank network outside of the United States – including at times supervisory or management personnel – that had reason to know or actual knowledge of information regarding these customers' connections to OFAC-sanctioned jurisdictions or parties. In general, the Apparent Violations appear to have occurred due to shortcomings in the bank's OFAC compliance policies, procedures, and program.

The settlement amount reflects OFAC's consideration of the following facts and circumstances, pursuant to the General Factors Affecting Administrative Action under OFAC's Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. OFAC found the following to be aggravating factors in this case: several employees within TD Bank (including those in its compliance unit and supervisory and management personnel) were aware that the bank processed USD transactions on behalf of a Cuban entity and were aware of a gap in the bank's procedures permitting such transactions to clear through the U.S. financial system in apparent violation of the CACR; various TD Bank personnel had reason to know of the conduct that led to the Apparent Violations due to documentation or information in the bank's possession regarding various clients' ties to, or locations in, countries subject to OFAC sanctions; TD Bank is a large and sophisticated financial institution with a global presence; and TD Bank's compliance program does not appear to have had controls in place sufficient to identify and prevent the bank from processing transactions to, through, or within the United States that were for or on behalf of customers owned by entities located in, or that conducted business with, OFAC-sanctioned countries.

¹ On March 16, 2016, OFAC revised 31 C.F.R. §515.505, which now states: "(a) *General license unblocking certain persons.* The following persons are licensed as unblocked nationals, as that term is defined in §515.307 of this part: (1) Any individual national of Cuba who: (i) Has taken up residence in the United States; and (ii) Is a United States citizen; is a lawful permanent resident alien of the United States; has applied to become a lawful permanent resident alien of the United States and has an adjustment of status application pending; or is lawfully present and intending to lawfully remain in the United States on a permanent basis; and (iii) Is not a prohibited official of the Government of Cuba, as defined in §515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in §515.338 of this part. (2) Any individual national of Cuba who has taken up permanent residence outside of Cuba, provided that the required documentation specified in paragraph (c) of this section is obtained and the individual is not a prohibited official of the Government of Cuba, as defined in §515.337, or a prohibited member of the Cuban Communist Party, as defined in §515.338.... (b) *General license unblocking blocked accounts.* Banking institutions, as defined in §515.314, including U.S. registered brokers or dealers in securities and U.S. registered money transmitters, are authorized to unblock any blocked account, as defined in §515.319, that had been previously blocked solely because of the interest therein of one or more persons licensed in paragraph (a) of this section as unblocked nationals..."

The following were considered mitigating factors: no TD Bank managers or supervisors appear to have had actual knowledge regarding the conduct that led to the apparent violations involving Pars Marine or the eight Cuba-connected retail banking customers; while the transactions involving the Cuba-connected customers constituted apparent violations of the CACR, the customers were eligible for specific licenses from OFAC to become unblocked Cuban nationals and were eventually covered by a general license published in January 2011; TD Bank has not received a penalty notice or Finding of Violation from OFAC in the five years preceding the earliest dates of the transactions giving rise to the apparent violations; TD Bank undertook a robust remedial response, including by changing its policies and procedures as well as its compliance structure in response to the apparent violations; and TD Bank provided substantial cooperation to OFAC throughout its investigation by voluntarily self-disclosing the apparent violations, providing detailed and well-organized information in response to OFAC's requests, and signing a tolling agreement and multiple extensions to the agreement thereafter.

Finding of Violation

Internaxx is an international online brokerage and banking operation based in Luxembourg that maintains relationships with individual customers and acts as an "order entry system" for securities-related transactions. Internaxx automatically forwards transactions ordered by its customers to TDWIS, a broker-dealer that maintains a trading platform used to execute the securities transactions. In order to settle the transactions described below, TDWIS executed trades in its name (i.e., not including identifying information related to underlying parties) through a U.S. broker-dealer.

In 2010, in the course of TD Bank's annual Anti-Money Laundering (AML) Risk Assessment, TD Bank identified Internaxx as a high-risk business and selected it for increased review and scrutiny by the bank's AML compliance team. The review concluded that Internaxx provided securities-related products and services for numerous customers resident in countries subject to comprehensive OFAC sanctions programs and that TD Bank may have processed transactions through the U.S. financial system on their behalf. In particular, between 2003 and 2008 Internaxx opened accounts for four customers who were either resident in Iran or Cuba at the time of account opening or who later moved to Iran or Cuba. Internaxx maintained the accounts, and Internaxx and TDWIS processed U.S. securities transactions, for or on behalf of these customers for a period of several years.

In total, between August 7, 2007 and November 18, 2013, Internaxx and TDWIS processed 3,491 securities-related transactions totaling approximately \$92,868,862 to, through, or within the United States that were for or on behalf of persons ordinarily resident and located in Iran or Cuba.

The determination to issue a Finding of Violation to TD Bank for the Violations reflects OFAC's consideration of the following facts and circumstances, pursuant to the General Factors under OFAC's Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. A Finding of Violation is appropriate given that Internaxx had information in its possession showing that its customers were located in countries subject to comprehensive OFAC sanctions, which it shared with TDWIS prior to processing transactions to, through, or in the United States; Internaxx processed a large volume of transactions that constituted violations of the ITSR or CACR for a

period of several years; and Internaxx does not appear to have had an OFAC compliance program in place or controls and measures to identify customers located in OFAC-sanctioned countries until October 2011. OFAC also considered that the Violations do not constitute or result from a pattern of misconduct within Internaxx, but rather insufficient compliance policies and procedures; the harm caused by the violations of the CACR was largely cabined to one individual who was in Cuba as a diplomat for a third country; Internaxx is a small institution with relatively little business outside Luxembourg, which provides personal investment products; the financial institution has not received a penalty notice or Finding of Violation from OFAC in the five years preceding the earliest date of the transactions giving rise to the Violations; and Internaxx – through TD Bank’s initiatives – took remedial action in response to the Violations and improved its OFAC compliance program and procedures.

This enforcement action highlights the importance of institutions taking appropriate measures to ensure compliance with all applicable sanctions when they have subsidiaries in high-risk industries – such as securities firms – that may not be aware of the parent’s U.S. sanctions compliance obligations. Separately, this action also highlights the risk associated with online payment platforms when the financial institution is unable to restrict access for individuals and entities located in comprehensively sanctioned countries.

For more information regarding OFAC regulations, please visit: <http://www.treasury.gov/ofac>.