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A Week Shy Of One Year [See Below] Since Previous Analysis, The OFAC Again Swings Mightily Its *Sword of Damocles*.

When The Biden-Harris Administration (2021-) Questions Why United States-Based Financial Institutions Generally Recoil At Engagement With Specifically-Authorized Republic Of Cuba-Related Transactions, Including Those Specifically Authorized By Law Rather Than Executive Branch Policy And Regulatory Initiatives, This Is A Primary Catalyst:

“The statutory maximum civil monetary penalty applicable in this matter is \$4,399,759,685... Apparent Violations were voluntarily self-disclosed and were non-egregious.... The settlement amount of \$206,213 reflects OFAC’s consideration of the General Factors under the Enforcement Guidelines.”

Yes, A Potential Fine Of Approximately US\$4.4 Billion For Voluntarily-Disclosed Transactions Totaling US\$549,134.89 During A Five-Year Period.

What Incentive Does Any United States-Based Financial Institution Have To Support Re-Engagement Transactions For Privately-Owned Companies In The Republic Of Cuba, Individual Entrepreneurs, When An OFAC Penalty Could Bankrupt The Financial Institution?

United States Department of the Treasury

Washington DC

6 November 2023

Enforcement Release

OFAC Settles with daVinci Payments for \$206,213 Related to Apparent Violations of Multiple Sanctions Programs

“Swift Prepaid Solutions, Inc. d/b/a daVinci Payments (daVinci), a financial services and payments firm based in Buffalo Grove, Illinois, has agreed to remit \$206,213 to settle its potential civil liability for 12,391 apparent violations of OFAC sanctions on Crimea, Iran, Syria, and Cuba. Between November 15, 2017 and July 27, 2022, daVinci, which manages prepaid reward card programs, enabled reward cards to be redeemed from persons apparently resident in sanctioned jurisdictions. The settlement amount reflects OFAC’s determination that daVinci’s conduct was non-egregious and was voluntarily self-disclosed.

Description of the Apparent Violations

DaVinci provides digital or physical payment reward card programs for corporate, non-profit, and government clients through an online platform. These programs allow daVinci’s clients to issue payment cards to select recipients, typically as part of a loyalty, award, or promotional incentive for employees, customers, and other beneficiaries.

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DaVinci's clients funded the card programs themselves through an issuing bank, with daVinci providing the digital or physical prepaid cards to authorized users. Upon receiving a list of card recipients from its clients, including names and email addresses, daVinci would send an email containing a token to each authorized user, inviting each to redeem the token for a prepaid card. To redeem the token, users would go to daVinci's website and provide their names, addresses, and email addresses. Users could not enter an address in a sanctioned jurisdiction and were screened against sanctions lists. Once screened and verified, funds would be released by the issuing bank to the users' prepaid cards and the cards would be issued by daVinci to the users, who could then use the cards with merchants who accepted cards via third party credit card networks.

Between March 2020 and February 2022, in the course of a compliance review and subsequent investigation, daVinci discovered that on 12,378 occasions it had redeemed prepaid cards for users with Internet Protocol (IP) addresses associated with Iran, Syria, Cuba, and Crimea. After daVinci began preventing access to its platform from IP addresses associated with these sanctioned jurisdictions, the company further discovered it had redeemed prepaid cards for 13 card recipients who had used email addresses with suffixes (sometimes called top-level domains) associated with sanctioned jurisdictions (e.g., Syria is .sy, Iran is .ir) during the redemption process and who were apparently resident therein.

Over the course of the relevant time period, this absence of comprehensive geolocation controls led daVinci to process 12,391 redemptions totaling \$549,134.89 for cardholders apparently located in sanctioned jurisdictions, resulting in apparent violations of the Cuban Assets Control Regulations, 31 C.F.R. § 515.201; the Iranian Transactions and Sanctions Regulations, 31 C.F.R. 2§ 560.204; the Ukraine-/Russia-Related Sanctions Regulations, 31 C.F.R. § 589.287; and the Syrian Sanctions Regulations, 31 C.F.R. § 542.207 (the "Apparent Violations").

Penalty Calculations and General Factors Analysis

The statutory maximum civil monetary penalty applicable in this matter is **\$4,399,759,685**. OFAC determined that the Apparent Violations were voluntarily self-disclosed and were non-egregious. Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), 31 C.F.R. part 501, app. A, the base civil monetary penalty applicable in this matter equals the sum of one-half of the transaction value for each Apparent Violation, which is \$274,950. The settlement amount of \$206,213 reflects OFAC's consideration of the General Factors under the Enforcement Guidelines.

OFAC determined the following to be aggravating factors:

(1) DaVinci failed to exercise due caution or care when it redeemed prepaid digital reward cards or users who appeared to be in sanctioned jurisdictions. DaVinci knew or had reason to know of redeemers' IP addresses and email address suffixes but did not incorporate this information into its compliance program or controls. OFAC determined the following to be mitigating factors: (1) OFAC has not issued a Finding of Violation or Penalty Notice to daVinci in the five years preceding the earliest date of the transactions giving rise to the Apparent Violations. (2) DaVinci undertook a number of significant remedial measures, including by proactively conducting an internally initiated review, implementing IP blocking of access to its platform from sanctioned jurisdictions, conducting real-time screening and blocking of email address suffixes, and instituting independent third-party testing at regular intervals. (3) DaVinci cooperated with OFAC's investigation.

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Compliance Considerations

This enforcement action underscores the importance of obtaining and using all available information to verify a customer's identity or residency, including by using location-related data, such as IP address and top-level domains, for sanctions compliance purposes. As appropriate, firms providing services through online platforms should integrate such information into a risk-based sanctions compliance program to prevent the provision of services to persons in sanctioned jurisdictions. This case further demonstrates the potential shortcomings of controls that rely on customer-provided information, rather than a holistic information-gathering system that can mitigate evasion or misrepresentation. The action further highlights the value of conducting proactive, self-initiated reviews to identify compliance gaps, disclose any potential violations to OFAC, and taking steps to remediate deficiencies, including by instituting periodic independent testing to ensure adequate controls.

OFAC Enforcement and Compliance Resources

On May 2, 2019, OFAC published A Framework for OFAC Compliance Commitments

(Framework) in order to provide persons subject to U.S. jurisdiction, as well as foreign entities that conduct business in or with the United States or U.S. persons, or that use goods or services exported from the United States, with OFAC's perspective on the essential components of a sanctions compliance program. The Framework also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements. The Framework includes an appendix that offers a brief analysis of some of the root causes of apparent violations of U.S. economic and trade sanctions programs OFAC has identified during its investigative process.

Information concerning the civil penalties process can be found in the OFAC regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Enforcement Guidelines. These references, as well as recent civil penalties and enforcement information, can be found on OFAC's website at <https://ofac.treasury.gov/civil-penalties-and-enforcement-information>. For more information regarding OFAC regulations, please go to: <https://ofac.treasury.gov/>."

Link To Related Analysis

[Facing Extinction Like Javan Rhino? Non-U.S. Banks Engaging With U.S. And Non-U.S. Entities For Authorized Transactions Involving Cuba Due To Risk Of OFAC Penalties. Since 2015, Only Two U.S. Banks, October 17, 2022](#)

A CFO, "We Have A US\$10,000.00 Transaction From The U.S. To Cuba And A US\$10,000.00 From Cuba To U.S. If We Make A Mistake, A Potential US\$14.7 Million OFAC Penalty. Should We Do It? What, Am I Nuts?"

Number Of Financial Institutions In The United States Processing Cuba-Related Transactions Remains Less Than Inspiring- And Harmful For Those Engaging In Authorized Transactions. Since 2015, Two Financial Institutions Have Included Cuba

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An increasing number of financial institutions located in third countries are refusing to process transactions which include a sender located in the Republic of Cuba or a recipient located in the Republic of Cuba.

This posture has metastasized despite the presentation by the sender or recipient of authorizations and opinions from the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, Bureau of Industry and Security (BIS) of the United States Department of Commerce, and Office of the Legal Adviser (OLA) at the United States Department of State. Why?

- The fear of the cost for an unintentional violation of OFAC transaction compliance regulations
- The inclusion by the OFAC in violation settlement agreements with financial institutions and companies of both the value of the agreed upon financial settlement and the statutory maximum civil monetary penalty.

*Why is the value of the agreed upon financial settlement and the statutory maximum civil monetary penalty problematic? Because the statutory maximum monetary penalties in four most recent Republic of Cuba-connected OFAC violations were **35, 89, 266, and 1,473** times the actual imposed monetary penalty.*

It is those multipliers which serves as a financial *Sword of Damocles*, a disincentive for an increasing number of financial institutions from willingness to engage with Republic of Cuba-related transactions regardless of assurances from the United States government. *For example:*

- The OFAC fined a United States-based company US\$116,048.60 for a violation according to the OFAC “*self-disclosed... and constituting a non-egregious case.*” According to the OFAC, the “*statutory maximum civil monetary penalty applicable in this matter is US\$4,062,841.00.*”
- The OFAC fined a Switzerland-based company US\$720,258.00 for a violation “*self-disclosed... and constituting a non-egregious case.*” According to the OFAC, the “*statutory maximum civil monetary penalty applicable in this matter is US\$64,062,841.00.*”
- The OFAC fined a Monaco-based financial institution subsidiary of a France-based financial institution US\$401,039.00 for a violation “*self-disclosed... and constituting a non-egregious case.*” According to the OFAC, the “*statutory maximum civil monetary penalty applicable in this matter is US\$106,853,346.00.*”
- The OFAC fined a United States-based company “*that provides an online virtual currency exchange and hosted wallet services*” US\$24,280,829.20 for 116,421 apparent violations. “*The statutory maximum civil monetary penalty applicable in this matter is US\$35,773,364,108.57. OFAC determined that the Apparent Violations were not voluntarily self-disclosed and were non-egregious. Accordingly, under OFAC’s Economic Sanctions Enforcement Guidelines (“Enforcement Guidelines”), the base civil monetary penalty amount applicable in this matter equals the applicable schedule amount, which is US\$485,616,584.00. The settlement amount of US\$24,280,829.20 reflects OFAC’s consideration of the General Factors under the Enforcement Guidelines.*”

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What's The Solution For Non-United States-Based Financial Institutions?

For non-United States-based financial institutions, the **Biden-Harris Administration** (2021-) would need to direct the OFAC reinstate what had been authorized prior to 2019 when the **Trump-Pence Administration** (2017-2021) reversed a 2015 decision of the **Obama-Biden Administration** (2009-2017).

“**U-turn**” transactions were authorized by the OFAC for financial institutions to process United States Dollar transactions relating to the Republic of Cuba provided they originated and terminated outside the United States and neither the originator nor the beneficiary were persons subject to United States jurisdiction. Thus, along with the absence of direct correspondent banking, there are two layers of impediments to sending, delivering, and settlement of fund transfers.

What's The Solution For United States-Based Financial Institutions?

For non-United States-based financial institutions, the OFAC would also need to reinstate U-turn transactions along with authorizing Republic of Cuba government-operated financial institutions to have **Correspondent Accounts** with United States-based financial institutions.

By United States law and by regulation, the implementation of Direct Correspondent Banking requires transparency by the participating United States-based financial institution and transparency by the non-United States-based financial institution. Activity must comply with regulations of the Financial Crimes Enforcement Network (**FinCEN**) of the United States Department of the Treasury and provisions of the 2001 USA Patriot Act. If the government of the Republic of Cuba accepts Direct Correspondent Banking, a result will be an increased transparency, accountability, and efficiency for financial institution operations within in the Republic of Cuba.

In 2016, the OFAC authorized United States-based financial institutions to have correspondent accounts with Republic of Cuba government-operated financial institutions. However, the OFAC did not authorize Republic of Cuba government-operated financial institutions to have correspondent accounts with United States-based financial institutions.

Officials of the Obama-Biden Administration refused to provide an explanation as to the basis for their decision and to this day officials of the Biden-Harris Administration maintain that same silence.

The result of their decision required all transactions authorized by United States laws (1992 Cuban Democracy Act (**CDA**) and 2000 Trade Sanctions Reform and Export Enhancement Act (**TSREEA**), regulations, and policies to travel to and from third countries. The consequences have included inefficiency, increased cost, less transparency, and a financial windfall for financial institutions in third countries who receive a fee for every transaction.

The TSREEA re-authorized the exports of agricultural commodities and food products on a cash-in-advance only basis. TSREEA exports value since the first transaction in December 2001, exceed US\$6.8 billion. The CDA re-authorized exports of healthcare products (medical equipment, medical instruments, medical supplies, pharmaceuticals) with payment terms and financing authorized. CDA exports value since 2003 exceeds US\$30.5 million.

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For perspective, since 1992, the value of these third-country transactions exceeds **US\$7 billion-not including the value of annual electronically-delivered remittances-** which have been estimated to range up to US\$1 billion on an annual basis.

U.S. Banks Doing What

In 2015, Pompano Beach, Florida-based **Stonegate Bank** (2017 assets approximately US\$2.9 billion) acquired accounts for the Embassy of the Republic of Cuba in Washington, DC, and the Permanent Mission of the Republic of Cuba to the United Nations in New York after Buffalo, New York-based **M&T Bank Corporation** (2021 assets approximately US\$150 billion) notified the embassy and mission that it would no longer provide services due to challenges with regulatory compliance for many accounts with embassies and missions.

Stonegate Bank was also approved for a correspondent account at Banco Internacional de Comercia SA (**BICSA**), a member of Republic of Cuba government-operated Grupo Nueva Banca SA, created by Corporate Charter No. 49 in 1993 and commenced operation in 1994.

According to the Republic of Cuba, “Its [BICSA] main activity is ‘enterprises’ bank’ carried through its central services and five branches based in the country’s capital, Santiago de Cuba and Villa Clara. It records all transactions in real time providing its customers with card and remote banking services while it is working on developing other methods of electronic banking. Its institutional clients, national or foreign, receive a complete accounting and documentary service, while national entities also enjoy of significant volumes of credit facilities. Practically all sectors of the economy benefit from all this, such as that of agriculture, the food industry, the basic and light industries, transportation, aviation, fishing, construction, domestic and foreign trade, the iron and steel industry, sugar, informatics, communications and others with not only economic importance but also social, such as health, water supply, education, culture and sports. Credit policy followed by the Bank is dictated in a collegiate way by its Credit Committee on the basis of a strict analysis and control in loan making. The Bank counts on correspondents in the five continents, the majority are first class banks, mainly Europeans and Americans. Equity capital of shareholders (Grupo Nueva Banca with the biggest share and Bancholding), near the USD95 millions with a balance ranging from 550 to 600 millions, make sure the Bank has a strong solvency ratio.”

Without explanation the Obama-Biden Administration did not authorize BICSA under a license from the OFAC to have a correspondent account at Stonegate Bank, so Stonegate Bank routed transactions for approximately eighty (80) customers on a regular basis through Panama City, Panama-based **Multibank** (2019 assets approximately US\$5 billion) which had dealings with the Republic of Cuba.

However, on 16 June 2020, Bogota, Colombia-based **Grupo Aval** (2021 assets approximately US\$110 billion) reported that “*On May 25th, Banco de Bogotá, through its subsidiary Leasing Bogotá S.A. Panamá, acquired 96.6% of the ordinary shares of Multi Financial Group [Multibank]. As part of the acquisition process, MFG’s operation in Cuba was closed and as part of the transaction. Grupo Aval complies with OFAC regulations and doesn't have transactional relationships with Cuba.*”

In 2017, Conway, Arkansas-based Home BancShares (2021 assets approximately US\$18 billion) through its subsidiary *Centennial Bank* purchased Stonegate Bank. Stonegate Bank operations were absorbed into *Centennial Bank*.

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In June 2022, Chicago, Illinois-based Chicago, Illinois-based **First American Bank** (2021 assets approximately US\$6 billion) acquired from *Centennial Bank* an operating account (and Republic of Cuba-focused branch personnel) for the Embassy of the Republic of Cuba in Washington, DC. If First American Bank seeks a correspondent account with BICSA and if BICSA is authorized by the OFAC to establish a correspondent account with First American Bank, there would be an opportunity for two-way fund transfers for authorized transactions (agricultural commodities, food products, healthcare products (medical equipment, medical instruments, medical supplies, pharmaceuticals, informational materials, travel (visa processing, overflight fees, landing fees, accommodation payments- Airbnb, etc.), remittances, entrepreneurial activities (direct investment to and direct financing for privately-owned companies located in the Republic of Cuba, etc.).