

Resolutions Highlight Aggressive Sanctions Enforcement, Need For Senior-Level Commitment to Compliance

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On July 16, 2020, Essentra FZE Co. Ltd., a manufacturer of components for cigarettes located in the United Arab Emirates, agreed to a settlement with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) for alleged violations of the North Korea Sanctions Regulations, 31 C.F.R. part 510. Under the terms of the settlement, Essentra agreed to pay a \$665,112 penalty and institute rigorous compliance reforms. Separately, Essentra entered into a deferred prosecution agreement (DPA) with the U.S. Department of Justice (DOJ) for conspiring to violate the International Emergency Economic Powers Act and defrauding the United States in connection with evading sanctions on North Korea. According to the DOJ, the agreement marks the first ever DOJ corporate enforcement action for sanctions violations involving North Korea.

Specifically, the DOJ's investigation found that Essentra exported cigarette filters to North Korea through a network of front companies in China and other countries using deceptive practices. The scheme, which lasted about a year, began in October 2017 when two former employees of Essentra were warned that, because of sanctions against North Korea, a front company would have to be used to receive payments from a customer in that country. They were instructed to falsely declare China as the destination of the products and not to mention North Korea in the contract documents. Essentra received three wire transfers for payments totaling approximately \$333,272 in furtherance of the transaction, for which the DOJ sought double penalties. Notably, two of the payments were not made in U.S. dollars and never transited the U.S. banking system, but were made into Essentra's bank accounts at the foreign branch of a U.S. bank, which is considered a "U.S. person" triggering U.S. jurisdiction relating to the transactions.

The terms of Essentra's settlement agreement with OFAC follows the guidance offered in OFAC's 2019 Framework for Compliance Commitments. As part of the agreement, Essentra's senior management committed to supporting its sanctions compliance program, ensuring that its compliance function receives adequate resources and is delegated sufficient authority and autonomy to deploy its policies and procedures in an effective manner, and promoting a culture of compliance. In addition, as part of senior management's commitments, Essentra improved and restructured its compliance program that was in place when the apparent violations were identified, including: (1) the approval of new and enhanced policies and procedures for OFAC compliance; (2) the appointment of new senior management who received specific training on sanctions compliance; (3) the appointment of a new global compliance director and replacement OFAC compliance officer; (4) access to third-party due diligence platforms and internal enterprise resource planning software and systems; (5) the creation of a confidential whistleblowing hotline; (6) the imposition of quarterly sanctions compliance reporting obligations to monitor and control sanctions risks; and (7) the inclusion of management from the full spectrum of business functions on Essentra's Group Compliance Committee.

The Essentra settlement agreement, like the 2019 Framework for Compliance Commitments, provides a roadmap for companies as to the elements of an effective sanctions compliance program. The settlement also highlights the expected role of senior management in reviewing and approving a company's sanctions compliance program, as well as providing its compliance function with the adequate resources to properly ensure that a compliance program is effective in addressing risks. The dual-agency resolution of this matter sends a clear message to the global business community that the United States will pursue sanctions violations, regardless of where they originate, where they involve U.S. financial institutions. Companies should take this opportunity to review and assess their current compliance program in light of the roadmap provided in the settlement agreement.

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