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EVOLUTION OF U.S. SANCTIONS
AND THEIR IMPACT ON BANK
COMPLIANCE PROGRAMS

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P R O C E E D I N G S

MR. KINI: Good morning. Well first of all, thank you all for joining us. We are here to talk about the evolution of U.S. sanctions and their impact on bank compliance programs. My name is Satish Kini and I have the privilege of moderating this panel which is, I know they say that on every panel but this really is a pretty illustrious group of folks that we have here. And we're lucky enough to have folks who have kind of a government expertise and background and also folks with former government but now in industry and to give their perspective.

So, let me just introduce who is up here with me and I'm not going to go through their whole bio because that will eat up too much of the time. But to my immediate right is Donna Murphy. She among other things oversees BSA AML issues as deputy comptroller for compliance risk policy at the OCC. Donna has been doing lots of different things. She has a long career, earlier in her career at the Department of Justice, graduate of Yale Law School and American University.

To Donna's right is Bradley Smith. Brad is

the Deputy Director of the U.S. Treasury Department's Office of Foreign Assets control. He previously was chief counsel and has served in other roles in the administration and on national security issues. He graduated from the University of Chicago Law School and a BA from Michigan State.

And then moving down the line, we have Brian Grant. Brian is managing director, global head of sanctions compliance at MUFG. And he has worked in the Treasury Department's National Security Policy Office. He served multiple roles in OFAC earlier in his career and he has a BA and MA from Georgetown University.

And last but certainly not least, Sahand Boorboor who is a global sanctions executive at Bank of America. Prior to working at B of A, Sahand was at JPMC and in private practice where his practice is focused on economic sanctions, anti-corruption and related issues. He has a JD from Cornell Law School, an LLM from Humboldt University in Berlin and a BA from the University of Rochester.

So, thank you all first of all for joining me on this panel. And we are going to talk about kind of

U.S. sanctions, bank compliance, how it all fits and doesn't fit together. And maybe I'm going to start with Brad. And, you know, some of you in the audience are going to be very familiar with OFAC, recognize many here in the audience will be. To others, maybe a little bit less familiarity. Maybe if you could give us a little bit of insight into OFAC how it's structured what its role is just on a very high level just to kick us off.

MR. SMITH: Sure, sure. Well first of all, thank you all for having me. I always enjoy these events because quite frankly, I think I learn more from you all then you probably get from me which may be a source of frustration for you but it's a real benefit on my end. I want to tell you, I'm here to speak as candidly as I can. I'm talking off the record and so if you have questions that come up and want to put me on the spot, I'll try to answer or deflect as best I can.

But generally speaking, the Office of Foreign Assets Control is an office within the Treasury Department. We are proud of reminding folks that we have been around 75 years now. We came into existence in World War II primarily to protect assets that were

being seized by the Nazi's and also to cease assets that belonged to Japan.

And I like to say, that tells you two sides of the sanctions story. It's a great news story that we protected assets being seized by the Nazi's. We were then able to use them to help with Holocaust survivors and others. Some historians, however, argue we triggered the attack on Pearl Harbor. So, sanctions seem to cut both ways and it's always something we like to think about when we talk about our authorities.

Our office is primarily responsible for implementing and administering U.S. economic sanctions across the world. Over time, how our sanctions are structured have evolved. Historically, sanctions were really designed in way that you might see with Cuba what we might describe as a full embargo that prohibits U.S. persons and U.S. companies from having any business or any dealing with a country or regime.

Over time, our sanctions programs have changed as have our national security threats. And really starting in the mid-nineties, tied to Iran in some part, we started to focus on activity based conduct. And with

that we've started to take what we describe as more targeted actions, sanctions that go after individual actors and sort of prohibit and block and charge individuals with potential violations if they have a dealing with specific individuals.

And we also adjusted and have monitored and over time had some flexibility in the scope of our prohibitions. Most recently about five years ago when we stood up our Russia related program, that was something that was relatively novel in our history. And so, I think if you were to take a high level, sanctions have been around for about 75 years. They've been evolving as our national security threats have evolved. And I expect going forward, they will continue to evolve.

Now at a nitty gritty level, we're structured around essentially four divisions within OFAC. One division is responsible for developing and participating in interagency process. And when I say interagency for those who don't mean it, that means talk discussions with the State Department, with the National Security Council, the Department of Commerce, the Department of

Justice and others on developing and deciding what authorities we should put in place. How we should sort of go out with new sanctions prohibitions.

Another one of our divisions is responsible for giving guidance to regulated industry. We call that on our end compliance. And that is probably the office many of you may have an opportunity to deal with. They handle a lot of our relationships with financial institutions. We also have divisions that are structured to sort of give relief on sanctions, what we call licenses in our terminology. And that essentially gives authority to parties who would otherwise be prohibited from undertaking a transaction. We handle about 10 to 12,000, 15,000 depending on a year of those.

We also have divisions and offices that are dedicated to enforcing sanctions. And what that involves primarily is initiating actions and reviews against U.S. persons who either based on information we have received or through their disclosure to us we believe have committed a violation. And the numbers vary year to year but we process about 800 to 1000 enforcement cases in any given year. Of those, about 20

to 40 end up actually being a public penalty. The vast majority are sort of closed with what we call cautionary or no action letters. Meaning there wasn't a violation or it was too insubstantial to sort of trigger a more aggressive response.

And then we have quite frankly another division that just actually is sort of dedicated to the work of keeping the agency running. Handling a lot of government related HR issues. Sort of the infrastructure of keeping our IT system up to date and it is always probably a little antiquated. And that's kind of how OFAC is structured.

All told, we're roughly depending on the head count and fluctuation, about 300 people. That's in modern times a relatively high number our peak was actually in World War II when we were about 450. We dropped right after the Cold War to less than a hundred and we've been on the upswing since then.

But that's at a high level sort of who we are and happy to talk more about what we do and specific issues you all may see. But I would say sort of at a bottom line, we also, although we're responsible for

implementing U.S. economic sanctions and developing them, we recognize that the folks who actually are the ones on the front line is the private sector. It's financial institutions and industry that on a day in and day out basis is administering and actually enforcing and ensuring that transactions that have been, we've determined through our foreign policy apparatus to be threats to our national security are stopped. So, thank you for your work on that front.

MR. KINI: Thanks for that introduction, that's very helpful. One thing I should have mentioned at the outset, for those who may have questions, I think there is an app and if you send the questions via the app we will try and get them in.

But Brad, I wanted to follow up on something that you said you noted the interagency processes that you participate in, what do you view as your relationship to the banking community? And in particular, in some of those interagency dialogues are you bearing in mind the impact of what you all are doing on the financial community, the burden that some of these sanctions, regimes play, the efficacy of them.

Can you talk to that a little bit?

MR. SMITH: Sure. You know, we always like to say at OFAC we're ultimately an implementer of foreign policy. We participate in the decision making, we offer our input, we offer advice. But at the end of the day, decisions are made often at the highest levels by the President or others as to what sanctions will be imposed. And once made, our job is to really go out there and ensure that they are fully complied with to the best of our ability.

But in those interagency discussions and obviously I can't get into the back and forth of certain issues or particular policies. Frequently, we will be articulating concerns about how things are going to be implemented. Because we receive upwards of 60,000 questions a year on our hotline from industry where they're signaling concerns, confusion, where they think there needs to be additional guidance.

And one thing that is always discussed as part of the interagency process is the impact of sanctions and impact is two-fold. One, will this meaningfully advance the national security objective we're trying to

achieve. Will be stopping bad transactions, will you be imposing a cost on the countries of the individuals we're targeting.

The second part though of impact is what is this going to do to U.S. companies, what is this going to do to western and allied countries and how can we mitigate that impact when we roll it out. Now sometimes there will be decisions, take actions that we know are going to have a harsh impact on U.S. industry that is going to have a harsh impact on our allies. Because in the risk, the calculus, the decision is that impact is worth it given the objective we're trying to achieve.

But in those discussions, we often take the input we've received, the questions we've received from industry from the banking community and tried to design sanctions in a way that at least provides as much clarity as possible up front. Now we're not perfect at that. We have a lot of room for improvement. Like I mean it when I say I learn from you all because we take things back and we learn how to refine our programs.

But over time, based on the feedback we receive from industry, based on sort of the complexity

of the way sanctions have evolved, we try in those discussions to sort flag those concerns and think of ways in which we can articulate and advance our policy while minimizing some of the collateral impact.

MR. KINI: Great, thank you. Donna, I'm going to ask you to join the conversation. How do you all intersect with OFAC and maybe you could contrast a little bit or compare how you look as a supervisor at sanctions versus the AML.

MS. MURPHY: Sure. So, first of all, I just want to thank you, Satish and Angelina and BPI for asking the OCC to join the panel the panel this morning. We appreciate the opportunity for the discussion. And as Brad said, we learn from all of you and also, I've been learning from my fellow panelists. So, it's always a great opportunity.

And it's a great opportunity in part because I do think there can be confusion. Or at least not, you know, people don't often think about what are really pretty significant differences between the BSA AML regime and what the federal banking regulators do in terms of OFAC administered sanctions. Because on the

BSA AML side, of course, the OCC and the other FBAs have our own BSA compliance regulation. We have our SAR regulation, we have specific regulations that we are looking to ensure compliance with and have the whole regime that's built around them.

One the OFAC side, you know what we are looking at is under our safety and soundness authority to ensure compliance with the regulation. And to look at the programs that are designed and implemented by our supervised institutions to comply with those requirements.

So, for example, we do look at the policies and the procedures and processes that are in place. And then we don't determine sanctions violations. If we see evidence or information about an apparent sanction's violation, we refer that to OFAC. If we see, on the other hand, that an institution does not appear to have an effective program in place in order to ensure compliance then we would handle that generally through a supervisory action. Where we would determine that the institution needs to enhance their program to address the particular gaps that we saw.

And in terms of your question about interacting with OFAC, I should say, we do have an MOU with OFAC. A Memorandum of Understanding that provides for information sharing between the OCC and OFAC. And I shouldn't speak for the other regulators but the other FBA's have the same MOU essentially. And that means that OFAC can share information with us about the sanctions programs and we can share information with them about the institutions that we supervise, including as I mentioned a minute ago, certain information if we determine or see information indicating apparent violations.

MR. KINI: So, I think one of the things some institutions have experienced is encouragement to self-disclose apparent violations. And I guess that is because of the MOU that exists? I mean, maybe you can talk to that.

MS. MURPHY: Well, certainly in looking at the programs that our institutions have in place we support bank programs that provide for voluntary self-disclosure. That's something that OFAC strongly encourages and we support that as well. You know, our

examiners will often ask banks whether they have policies that provide that in appropriate circumstances and, you know, that's not a requirement of the regulation but it is something certainly that we look at.

And, you know, I think your point was that, you know, if a bank doesn't have that policy in place and we come in later and find evidence of an apparent violation, that may be something that we need to then provide to OFAC. It also may well be in some circumstances an indication of a program that's not effective in terms of, you know, implementing the sanctions regulation which says that you may not do business with X. So, if we find a violation, that's often evidence of a potential problem with the program.

MR. KINI: Okay. So, maybe we'll turn it now as well to bring in Brian and Sahand into the conversation. So, the title of the panel is challenges when it comes to sanctions. I think Brad talked a little bit about how sanctions have evolved. What are you both seeing in terms of what are the challenges? Where are the pitfalls, what makes sanctions, maybe

there aren't any but I suspect there are. So, what do you think are the principle ones and how has that changed over time?

MR. GRANT: Great. Well there are certainly challenges of plenty in the sanctions field. I mean, I would break it down sort of broadly into two buckets, external and internal. With respect to external, what I'm talking about is the dynamic nature of economic sanctions, right. Brad spoke to the evolution, the sort of pace of change both in terms of the types of sanctions programs and the subjects of sanctions programs has really increased significantly.

And you have, you know, sanctions are about foreign policy, right. Foreign policy has changed. They've changed in response to geopolitical circumstances and they change in response to administrations. And this is kind of in stark contrast to AML which is rooted in kind of longstanding laws and by design, sanctions were flexible and dynamic in that.

What we have now is a situation where we're kind of back in a unilateral era, right, where the majority of U.S. sanctions programs and the biggest and

most impactful sanctions programs have been and will remain sanctions programs targeting jurisdictions. Jurisdictions, countries are the largest actors that are subject to sanctions. And we had sort of pre-2016, a degree of multilateralism around some of the core sanctions program, most notably Iran. Iran is part of the most significant target, put Russia in a slightly different bucket because the sanctions there are a little bit more constrained.

And so, we've had multilateralism, backed unilateralism. We have a situation where there are a number of jurisdictions that not only do not enforce the majority of U.S. economic sanctions programs against countries but actively oppose. We see that in Europe, we see that elsewhere.

So, that creates a challenge for a global financial institution when we have overseas customers who face different pressures. So, I think that, you know, when you have a multilateral environment it's a little bit safer because most jurisdictions are prohibiting this activity. And that's actually helpful for a compliance program so I think that is sort of

number one.

And then internally, I would say try and strike the right balance between regulatory expectation around our control, specifically around sanctions screening which is set against a backdrop of strict liability. So, the OFAC regime is strict liability. You know, if you process a transaction or it failed to block a property interest of a sanctioned party you have violated the law. And so, that's given rise to a tremendous amount of focus on sanctions screening as a tool and that's important, sanction screening is important. But there are other tools in the toolbox that I think can yield more in terms of identifying sanctions circumvention networks, things like that.

So Hans, I'm going to steal something you said but I'm going to give you credit for it. So, Hans said to me earlier right before I spoke, you know, sanctions -- screening you catch things for your first month, the immediate imposition of sanctions and then after that you're catching stupid. You're catching targets that don't understand that there are sanctions or that transactions are going to flow through the United

States.

But where you really catch things involving hard targets and some these targets are very hard targets. Sanctions going way back to the start of OFAC in the 50s, North Korea. You're looking at you need to use investigative techniques. You need to use the sort of blocking and tackling of an AML program, knowing your customer, identifying anomalous activity. Using information that's out in the open source that the UN has put out that Treasury has put out to look at your transactional activity to zero in on things. So, kind of balancing those things, I think, is a really big internal challenge.

MR. BOORBOOR: I would add to that that the challenges are, you know, the external challenges get even more complicated. Not only because the politics and the foreign policy changes but also because the mix of products the financial institutions have changes also very rapidly and at an increasingly rapid pace. Things like real time payments and other types of fintech innovations are bringing into this environment something that is more complex, something that is moving much more

quickly. And it's trying to sit on top of these traditional controls that I think you could sort of glean from Brian's comments that are kind of ossified. They're effective to an extent but they're not everything.

And so, you know, I think BPI put out a paper not too long ago that shows that the real, the true match rate across the industry for sanctions screening is something like .0001 percent. So, very, very inefficient process across the spectrum that catches very few true matches.

But the challenge that the industry faces is that if you miss one of these things, the consequences of getting it wrong are not just very detrimental to the reputation of a bank but are probably detrimental to the broader financial community and the security of the globe. The North Korean weapons proliferation is not a thing to be taken lightly. And the tools with which you bring to bear to try to counter that, you know, either on the agency side or the bank side. Whether it be the sort of slower rather black and white sanctions screening systems versus something more bespoke as

everything is evolving very quickly. I think those are the things that we really struggle with.

And it's not just in the payment space either, right, it's the way that OFAC is designing its sanctions programs with new things like the Russia related programs that are looking at what are called sectoral targets. They for the first time had started targeting large multinational global corporate entities. And going after their securities and their issuances of debt.

And I think the industry, controls had been set up by banks to handle things for country based sanctions such as Cuba which were all or nothing. And within the past couple of years with Russia related sanctions and Venezuela related sanctions, those security restrictions are less all or nothing but much more who is selling what to whom under what circumstances for what period of time. And legacy controls that had existed in the street may not be up to snuff to meet those challenges in an efficient way.

MR. KINI: That was very helpful and you touched upon a lot of different elements there. So, one

of the elements I think was sanctions screening which I think has been the principle way in which people have looked to intraduct sanctions matches. I think you both kind of hinted on there should be other things. What other approaches could be taken and then I'm going to pass it back to the government side say, you know, what are you seeing, what are you supporting et cetera. But maybe I can start with Donna.

MR. BOORBOOR: Yeah, it's interesting and timely question. Because not too long ago there was the guidance from the FFIEC on innovation. And you have --

MS. MURPHY: You stole my thunder.

MR. BOORBOOR: Well, I was going to pass that back to you, Donna. Because, you know, on the one hand, Brad has to discharge his duties to enforce a strict liability regime. On the other hand, the prudential regulators and the FFIEC is coming out with guidance that says innovate. And we are living in an environment where lots of innovation is happening on the business side with the way payments flow. But you also have on top of that a very high risk, high impact regulatory regime and enforcement regime and how do you square the

circle with those different things. How do you navigate that and how would, you know, the agencies and the regulators want banks to navigate that?

MR. KINI: Brian, do you want to add anything?

MR. GRANT: Yeah. I would just add that what I said before right, it's the basic elements of a good financial crime's compliance program, anti-money laundering program. So, it's understanding your customer, so what they do, what their business is, what's the expected and usual pattern of activity in and out of their accounts. Being able to identify that anomalous activity.

It's doing proactive investigation potentially using post facto historical data. You know, one of the things that I experienced when I first left government was in consulting talking to clients. You mentioned that, you mentioned the notion of mining transactional activity to identify sanctions. Whereas people were almost uncomprehending of that. Sanctions is about real time screening, otherwise there's no value. That's not true, right, there are patterns you can detect AML style I'll call it and I think that that really is the primary

means of doing it.

Look, screening is important, you know. You do catch billions upon billions in assets, I mean, that's the reality. It has to be done and it really is just a degree of focus. And what I think we need to do collectively as an industry and working in partnership with our regulators is figure out a way to maybe elevate the profile of other tools. And, you know, maybe not view screening as the only or even in some instances depending upon the product of the situation, the primary tool.

MR. KINI: So, does OFAC, the OCC support that or I mean what can you say? Obviously if you both saw institutions that weren't screening or were not screening a large percentage of the transactions that flow through is that something that's okay?

MR. SMITH: Yeah, no, you know, it's a very interesting discussion. And in some ways, it's fascinating for me to hear from industry because we're doing the same thing, facing the same challenges but from a targeting perspective. You know, we're looking for evasion, we're trying to mine data, we're doing data

analytics to look maybe the next target. And they're trying to rerecognize that once you go out with your initial designation then, of course, the person you're targeting moves to sort of invasion space.

And so, with the some of the challenges I think I'm hearing, I think we see too and there's probably a useful discussion that we can have. I think in terms of screening and sort of the question of like should we screen shouldn't we screen. I think you're never going to get me to say right now you shouldn't screen. If you're sophisticated financial institution -

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MR. GRANT: Come on, it's off the record.

MR. SMITH: I mean just common sense. A sophisticated multinational company that's engaged with a lot of foreign actors, we want you to be checking to make sure your transactions aren't going after someone who's on our sanctions list.

But that's not the same thing to necessarily say it's the be all and end all of sanctions compliance. And I think where there's probably room for us to grow and learn is to understand what the industry is seeing

as a challenge. And the cost that they're feeling in terms of, you know, 99.99 or whatever percent it is where you have, you know, no hits or hits that aren't good that you then release but you're spending most of your resources on it. That's probably not the best use of your time, it's probably not what we're trying to achieve. And how we figure out the way to thread that needle is something that we need to think about.

In conversation earlier this morning with Donna, one thing that was striking me from our end is, you know, at OFAC and I mention this deliberately. The vast majority of our enforcement actions are closed with no action or a cautionary letter. Which means essentially you don't have to report it to a regulator, we didn't take any action. That means a lot of times if you have a bad screen, a transaction got through. We view that as just part and parcel to doing business. It's going to happen, we're all human.

I mean, I can tell you at OFAC, we've gone out with designations where it turns out we had the wrong guy. Why, because we got bad intel from someone, we had to go back and correct it. That's egg on our face, I

feel bad about it, it's not good, we're human and that's going to happen. And we understand that that happens in industry as well.

But at the same time, we also have a regime and statutory authority that is strict liability. And I think we need to think of ways in which we can kind of communicate with industry that we recognize there may be imperfections at times. And it doesn't mean that you're necessarily going to be, you know, hung up by your toes because you may have let a transaction go through that shouldn't.

But how we get there, I don't have a great answer yet. But at least I can signal, I think we're open to that discussion, it's one we probably need to have. Particularly as technology evolves, as transactions, you know, change. And as we go out with much more sophisticated tools, targeting quite candidly countries and regimes that five or six years ago we were actively encouraging U.S. industry to go into. So, we need to think about that.

MR. KINI: Brad, just to pick before I turn it to Donna, sorry. You mentioned yes, we're not going to

penalize an institution or, you know, won't take action and we don't in many instances, majority of instances where something fits through without maybe gets through a screening mechanism. But I think the question is a little different, right, I mean, what if we said there's a segment we aren't going to screen because of --

MR. SMITH: And that's where I think we'd have to have more of a discussion to understand it. Because from where we sit, we'd want to understand what that means. And it's maybe simple on our part. Again, we're learning. But from our perspective when you're saying you're not screening, that gets translated in OFAC. And maybe it's you know, we're speaking a similar language but it's not perfect. It's like Spanish French. There's overlap, you can maybe understand but Italian it's all in there but it's not identical. We think not looking.

Now what I hear sort of Brian saying, everyone, industry saying is like we're looking, we're looking differently, we're trying to catch things. Are we looking, is this the right way to try and identify it? And I think that's a discussion we probably need to

have and think about.

MR. KINI: Okay. Donna, I'm sorry, I didn't mean to cut you off.

MS. MURPHY: So, in some ways the answer to this goes back to the distinction I was talking about earlier. But first I'm going to address the innovation statement which we issued. And I do think that that applies, you know, applies in the OFAC sanctions area. We definitely encourage institutions to look for more effective ways of complying.

And one thing I would mention is there's been a lot of discussion. There's a reference in that statement to pilot program. From the OCC's perspective, a pilot program is something that is running in parallel to your existing program. So, you have a continuing obligation to comply with the regulation which is, I think, a couple people have mentioned it's a strict liability regulation. If you as an institution are looking to try out new things, we strongly encourage that. And in many cases the best way and maybe particularly in this space, the best way is going to be to sort of try it out as a parallel pilot within your

institution to what you're already doing.

And, of course, to have discussions not only with OFAC but also with your supervisor, you know, if you're an OCC supervised institution to talk to your examiners while you're looking at how to innovate this. And to explain how it is that an innovative or changed compliance program is going to comply with the existing regulations.

Because that's ultimately and that's why I'm bring it back to what I think I originally said. Our role in this it to look at the effectiveness of the programs that are designed and implanted by our institutions to comply with the regulation. Which as others have noted, is a strict liability regulation.

So, we are, you know, we are very much in this space of encouraging institutions to look at technology, to see how it can be more effective, how it can improve what you do, hopefully make it more efficient as well. But, you know, it's not a sort of probably not a flip the switch kind of thing where you're going to say oh, look at this new technology we're going to change from screening to something else.

MR. KINI: Maybe I'll pick up there and ask you, Donna. Given what you have been seeing across national banks, are there lessons that you can impart to folks in terms of what you're seeing in terms of sanctions compliance programs. Things that people should be watchful, things to think about, maybe things you've seen well. If there are innovations that people are already thinking about, what you've seen, anything there that you could share.

MS. MURPHY: So, I think that in terms of the last one first, I mean, I would say we're probably not seeing as much innovation in this space as we are in the AML space. I think that institutions are a little bit more forward leaning in the AML space. And in part that that may be because we focused as agencies, our interagency efforts have been focused on sort of trying to modernize and update and reform how we're looking at AML and specifically to encourage the innovation there.

So, you know, maybe we should be doing a little more of that. That's probably an area that we can focus on a little more. But in terms of the issues that we're seeing, you know, they're in my mind anyway,

probably the current iteration of sort of the issues that we've seen on a recurring basis in this area. So, for example, effective management of third parties when you're using third parties either software or programs or, you know, screening processes or other kinds of investigative services. You know, making sure the OCC has pretty detailed third party risk management guidance. It applies in this area in terms of making sure that you as an institution are monitoring what's going on.

And in this area, the changing pace of sanctions makes it particularly challenging, I think, at times. To make sure that your software provider or your third party is keeping up with those changes. So, that's a key area.

And similarly, you know, tuning your systems and your, you know, whether they're internal or external to make sure that you are, you know, effectively implementing the sanctions program as it exists currently and changes to it. The change management piece here is huge. And where see, you know, we do see institutions that are struggling to keep pace and

that's, I would say, is one area of focus.

Also, you know, the effectiveness and this is sort of more of a traditional one that we see. Some institutions, you know, are not implementing or are sometimes having problems with the investigative procedures to dispositional alerts that come from their screening systems. To make sure that they are, in fact, looking at all the appropriate information across their institution and public information as it's available to come to an appropriate resolution. And, you know, making sure that their analysts have access to that.

I will say that we are starting to see a little bit of innovation here in some institutions, my understanding is. That we're automating some of that information gathering process in particular so that not that you're taking the people out of the investigation piece but there's a lot of, I guess, manual information gathering that goes on.

And I think that's a place where some of our institutions are seeing some efficiencies by automating some of the information gathering. So that it's not, you know, it's not quite as -- not to say it's not cost

intensive, I'm not going to say that because I know it is. But that's one place we have seen some innovation.

And then finally, just making sure that your testing and validation of your systems, including screening systems, to ensure that they're accurate and they're complete. That those are up to date and that those keep pace as well with the changes. Those are sort of pretty much the areas of where we see issues on a more repetitive basis I would say.

MR. KINI: That's helpful. Sahand, earlier you talked about kind of technology, changes in product mixes. I don't know if you can come back to that a little bit. Is it the speed of the payments that are increasing that puts pressure on screening? What is it about product mixes?

MR. BOORBOOR: Yeah, it's the speed and it's the new types of products. I think I mentioned real time payments which is, it's still a payment but it's happening in a slightly different way. The institutions on two sides are dealing with it in a different way and the expectations of consumers on getting their money is going to be different.

So, if that real time payment is going through a sanctions screening process which if it continues to work as it traditionally has, would stop some percentage of those payments. You know, perhaps the perception is that's no longer real time and it's not an effective and actually working type of thing. There are technical challenges with the way those systems are set up to be able to put screening in there.

And it presents challenges of well, what do you screen. Do you screen all of those things, can you apply older OFAC guidance that had come out that apply to different types of screening systems to this new -- to different types of payment systems to this new product. What's the difference in risk between U.S. domestic payment types versus cross border international types? Can it even work, technically speaking.

And those are the types of things that present challenges. And as the real time payment type continues to expand throughout the world, right, there's not just one monolithic system that exists right. Every individual country and every individual system is going to have its particular flavor and particular quirks.

Particularly when you have global institutions that are trying to have not 20 different screening processes which can lead to lots of inconsistency and problems. How do you interact all of those different payment systems on top of this one screening, ideally one screening system.

It presents a pretty big tech challenges as well as operational challenges. In addition to presenting very complex compliance problems as well as business problems. How do you resolve all of those things is, I don't think that the industry has figured that quite out yet.

MR. KINI: You know, I think you picked up on something I actually got a question on. Which is payments, the question reads, the payments data quality can vary depending upon the country the payment was generated in. And that impacts the effectiveness of screening. And the question, first of all, I think that's one of the points that you're making there.

MR. BOORBOOR: Yeah.

MR. KINI: And the question is how do we address these issues with foreign governments and

foreign banks. I don't know if any of you would like to speak to that if you've had experience trying to do that. I throw that out for anyone who'd like to take it on the panel.

MR. BOORBOOR: I mean, I think it's a problem that has existed. Whether you're looking at the old school swift payments and correspondent bank transactions. You know, if your correspondent banking partner is giving you garbage data, you put garbage in and you get garbage out of your screening process. So, that has been a concept that's existed for sanctions screening since it really started.

It's interesting in that, you know, part of what I think would be good controls for a bank that's putting these through. Is make sure who you're working with is actually giving you good data. And I don't think that's any different from the normal sort of AML enhanced due diligence that you would have to do on your partners to make sure you know what they're sending to you. That they have programs and systems to send reliable information to you.

And I think the industry probably took some

element of a derisking exercise years ago to cut off certain banks that were sending potentially unreliable information. And that's obviously had broader impacts throughout the world. Because some institutions may have gone a bit too far and that can have real severe impacts on economies particularly of poorer countries.

MR. GRANT: I mean, you certainly have more options when you're talking about your own affiliate network, right. That's the sort of core elements in the data quality program, data quality monitoring. Making sure that your networks are sending in payment details that are complete and screening, right, because you do have the garbage in garbage out.

When it's outside of your network and it's a third party, it's difficult. I mean, you can't reach in and control their systems now. Again though, that's part of your overall due diligence and sort of monitoring of relationships, foreign correspondent banking relationships and that can factor into it.

MR. KINI: And how much now is that made more complicated, if at all, by what you made a point about earlier, the unilateralism of U.S. sanctions. Do you

find that that's having impact and where is that unilateralism having an impact for both of you in terms of what you're seeing in your compliance regimes? Are you getting pushback from counterparties, are your reps and warranties not being signed? You know, where is it now?

MR. BOORBOOR: Yeah, absolutely all of that. And then where it gets really scary is when it leads to conflicts of law. Where you have something that is happening outside of the U.S. where OFAC definitely has jurisdiction because, you know, you have let's say a branch or it's their honor, the Cuba program that applies to foreign incorporated subsidiaries. So, they definitely have jurisdiction and something to say about it.

At the same time, it's in another country whose law is directly designed to conflict with what OFAC wants you to do. And you're essentially there caught between mom and dad who are fighting with each other. And both saying, if you don't do what I'm saying which is directly opposite of what mom or dad is saying you're going to get grounded.

And there, those types of things, it can involve very small sums of money but the consequences can be very grand indeed if either mom or dad doesn't grant relief. And so, you know, oftentimes we have to go and talk to Brad and say, we need help please.

But those things are rare. I think a lot of it is much more often because you have all these differences, it takes up a lot of time and effort to negotiate these things. You do get a lot of the pushback and it seems to be increasing somewhat. And there's a corollary to that as well. But even if there isn't conflict, sanctions and lists and lists screening, it used to be that OFAC was the only game in town.

But in the United States as well as in other countries, you know, you're seeing more authorities issue list of various types of quality. Sometimes they overlap, sometimes they don't. And when you're dealing with tens of billions of transactions, the quality of those lists, the amount of overlap that hops from one place to another can magnify the amount of time and effort and resources you need to be able to handle these things for a global institution efficiently.

MR. KINI: Thanks. Let me switch a little bit, Brad. OFAC earlier this year issued a framework for OFAC's compliance commitments kind of guidelines. So, some folks view that as more addressed to non-banks and actually we have a question from the audience as well regarding non-bank compliance programs and are they commensurate with their profiles. Do you want to talk to what generated that document? Was it focused on non-banks? Are there things that the banking industry should be taking from it and how do you compare the non-bank versus bank compliance.

MR. SMITH: Yeah, no thank you for the question and thank you for flagging that. We started developing that guidance probably about 14 months ago and then, you know, went out within the last year. It was designed just really to try to be as transparent as possible with industry. To sort of explain both, you know, financial institutions but industry more broadly.

Here's what we're seeing as good compliance programs. It draws a lot upon themes that Donna touched upon that you see sort of in AML framework. It was also quite candidly it's designed to assist, sometimes,

inhouse folks who have challenges in advocating for resources. Who have internal, you know, dynamics and that they have to sort of handle. And it sort of was a way of signaling, hey here's what's expected of us from OFAC, help us to sort of make sure we're putting enough resources to fulfill our legal obligation here to comply with sanctions.

It was drawn a lot upon experience that we had with financial institutions. And so, in that sense I would say it was not aimed at them. Because by enlarge, many financial institutions, many probably that are represented here, we're already doing this in one form or another. But it is designed to highlight maybe where there had been some gaps in the past and what we would expect going forward.

From an OFAC perspective, I'll tell you, one of the things that I find fascinating when we go to conferences that are focused less on financial institutions, more on industry. Is how many people don't know who we are in the U.S. which is great, it's humbling. You know, you think you're something important and no one knows who you are and you show up

at the conference. But we'll be stunned when we go to let's say, commerce sponsored export events which you would think, you know, if this is sponsoring it, they would know who OFAC is. They don't even know who we are. One of the things where we probably --

MR. GRANT: You mean the company?

MR. SMITH: Yeah, the companies don't know who we are. And we actually get probably the greatest --

MR. KIKI: Hopefully this does.

MR. SMITH: This does. Sometimes we don't want to know each other. We cover about 120 outreach events a year, roughly, between compliance and enforcement at OFAC. And almost all of those are in smaller markets and they're going to industry that hasn't heard of us. And that's probably where we get the best return on investment. Because often those are going to be exporters who, let's say, are in the oil industry and you know, ship X hundred million billion dollars a year and didn't know we had sanctions on Iran.

And we've had cases like that. I wouldn't say in the last two years it's probably less likely. But historically we've had some and that's really who we're

trying to hit and trying to really arm folks to signal, this is what you should have in place.

MR. KIKI: Obviously, OFAC enforcement although you mentioned many turn out to be not public matters. There are public matters that they get a lot of attention, some high dollars many just for the reputational damage. And the things that people should be taking away, are there trends that you're seeing, are there takeaways there that the folks around this room should be thinking about.

MR. SMITH: You know, I would say that themes, if you look in the last year, we sort of have had an uptick in the number of cases and most of those are actually non-financial institutions. That's just honestly because of the push to close out cases and sort of just the timing. I would say the thing that we continue to see as being the most important in one, as Donna mentioned, ensuring that you have a program in place. That two, you're testing and updating it.

But three, I'd say if I were to think about financial institutions or large commercial actors where we've seen the most hiccups in recent years would be in

the acquisition space. Where you have due diligence. Where you're integrated two systems. And gosh, you know, we were alerted that there was this issue and as part of the due diligence or the initial six months when they're integrated systems and there was a lag in following up.

And so, let's say you see where okay things weren't quite right for a few months but then it went on for two years. That's where we start to alert and we're going to have a larger action. And I would say where I would probably encourage at least large actors to think creatively. And it's not just financial institutions. We see it in the technology companies that are increasingly operating in our space.

Make sure if you're acquiring a company that they're complying with the standards you probably have in house already. And that the subs that are coming online are going to be implementing those standards as quickly as possible.

MR. KINI: We have a question from the audience and Sahand, I'm going task this of you. The question is, in faster payment systems there is a risk

that any party that may match a screening list name gets prohibited broadly from accessing some of those innovations and then gets stuck in an older technology. And this introduces, you know, customer bias. It may have biases depending, because of the -- there may be biases that are based upon the region that the person is from or the type of name that the person has. And the question is is there anything that can be done about that or do you have thoughts, is there solutions?

MR. BOORBORR: I don't think that's a new problem, it's an existing problem under the existing systems. I think it can just become of greater scope and scale. Because I would expect that if real time payments and faster payments get bigger and bigger and easier and easier people are going to use less and less cash, use that for more and more small things. And, you know, one person who's got just the wrong name of, you know, we were mentioning earlier, Brian, what was it, let's say a Jorge Gonzalez, right. Who may have the same type of name as -- same name, first name last name as a designated narcotics trafficker is going to get excluded.

That has existed and I think the challenge is how do you resolve that in a more efficient manner. You know, I've heard ideas thrown out such as, you know, a digital ID. So, that each individual person who is in that system comes with a digital ID that is unique to them. So, that if their name is not unique, at least you carry that thing with you and that can get vetted centrally to try to reduce some of that friction.

But also, you know, Brad was saying that the sanctions cut both ways. That's exactly what it is, that's happening right there and it's one that's existed for a long period of time. Banks also sometimes as Brad was saying, you know, they get wrong intelligence at OFAC and list someone incorrectly.

OFAC has a rule that says anyone who is 50 percent or more owned by a blocked sanctioned person is also sanctioned by operation of law. But OFAC hasn't identified those individuals or companies for banks so we have to do some of our own research. And low and behold, banks also get it wrong sometimes too. And if we get it wrong, that can be really detrimental to a business, right.

Because you can also imagine in the existing spaces of correspondent banking payments if, you know, a major U.S. institution says I'm going to reject your payment because there's a sanctions thing going on there, the next bank that had that payment rejected down is going to say oh, I need to look at that. And maybe they'll do their research and find the same wrong information or just think this isn't worth the risk, I'm going to cut these guys off and then you can absolutely destroy someone's business if you're getting it wrong.

The scale and the scope of that is going to get even bigger as faster payments and real time payments really take off. You know, I would ask our friends at OFAC, the cuts both ways gets more and more meaningful and scary as these things pick up in speed and scale.

MR. KINI: Maybe question for Brian. I think Sahand mentioned some kind of informational like OFAC doesn't provide information about 50 percent owned entities. Is information sharing from OFAC a possible solution? Is there more information that would be helpful? Is that an issue that could help?

MR. GRANT: So, at the most basic level with respect to the designation of individuals, OFAC has made incredible strides since, I'm thinking about when I was on the compliance hotline at OFAC post 9/11. There were a lot of names put on lists, not by OFAC, right, by -- these things were included by the President in an annex to an executive order. So, OFAC had no administrative role in that. These names were listed, common names, no identifiers, that played havoc with a lot of people.

OFAC doesn't do that. OFAC puts out, I think pretty good and detailed information. Identifiers that allow banks to act in disposition things. So, I think, you know, I think that has helped with this. You know, I think kind of more broadly to my earlier point when you're talking about leveraging proactive analytic techniques, intelligence driven techniques.

I think the Treasury Department, U.S. government, UN have put out quite a bit into the public domain, things that you can action to identify kind of typologies of, you know, elicit financial activity. So, I think that's been useful. Is that the thrust of the question, I mean, in terms of information sharing?

MR. KINI: Yeah.

MR. GRANT: Yeah, I that's that' --

MR. KINI: Okay that's great. So, we have about five minutes left, I'm just going to go down the line and start with Donna. And just basically say if Angelina is kind enough to invite to do this five years from now, same panel. Are we talking about the same issues, are there different issues, are there new challenges? Maybe I'll just give everybody a chance to speak on that.

MS. MURPHY: Yeah. So, I think that the technology piece and the innovation piece that we've all been sort of talking a little bit about. Hopeful. So, my optimistic self says that, you know, there's going to be developments there that are going to help us to address some of these problems and hopefully become more efficient and effective at that and that we'll be talking about that.

MR. SMITH: I'd say the same thing. I think that's a space where really, we can evolve and need to work on it. And need to think of ways that are creative in both achieving what we want from a U.S. foreign

policy and national security perspective but also what industry can manage and implement.

I also think, you know, thinking five years ago, it was essentially five and a half years ago is when we stood up the Russia program. Which, you know, it turned some banks and other folks on their head with like the complexity of trying to implement. It's still one of our highest licensing cases.

You know, two years ago Venezuela was a blip. And so, I think we'll probably be substantively talking about hopefully something else. Ideally nothing because it means our sanctions were effective, there was peace in our time. But I suspect five years from now --

MS. MURPHY: We're hoping for no panel.

MR. SMITH: Yeah, exactly. It will be probably a different program that's evolving to go after some new threat. But hopefully doing it in a way that incorporates some of these technological innovations.

MR. GRANT: So, I think with respect to the internal challenges I laid out sort of balancing kind of where we put our resources. I think that we will be more advanced in the screening conversation. I think

that's going to be driven in part by these faster payment things and I think sanctions screening will kind of take a place that's sort of one tool among many. So, I think we will move the ball forward on that, I think there's a lot of momentum there.

I think externally with respect to the use of sanctions is a tool of foreign policy. The trend line is distinctly up if you go over decades, right, and the slope has increased dramatically. It's an effective tool. It's a space between diplomacy and military action.

It's relatively easy to use and the U.S. has massive structural systemic power in the international financial system. Because, you know, three quarters of international payments are in dollars through New York. There will be more sanctions, it will be more complex, it will not get simpler, it will get harder.

MR. BOORBOOR: Yeah, more of the same, faster with more conflict. And the huge challenge of as the controlled technology as well on top of the payment's technology evolves. I think there's a realistic promise of machine learning and artificial intelligence giving

us better tools that can help manage this stuff in a more efficient way.

The huge risk that comes with that is how do you manage those different systems. Because they offer great promise of being able to do it more quickly and more efficiently. But if you get, like if there's one mistake in that machine, they will also continue to replicate those same mistakes more quickly and more efficiently. And so, you know, if you got that North Korean proliferation payment wrong once and the machine keeps on reapplying it over and over again that missile program is going to really advance.

And how do you both from a programmatic perspective as well as an individual payments perspective manage that. And I think, you know, our friends at the OCC are going to also have a difficult time figuring out, you know, what's the right mix. In terms of innovation and oversight of those types of very complex technologies that will be doing it for us much more quickly.

MR. KINI: All right, we have one more minute left so I'm going to sneak in a last question,

moderators' prerogative. Brian, you said a lot of payments still going to the United States, very effective tool. Is that still going to be the case? There was a big article in the *New York Times* on Saturday talking about how the U.S. unilateral approach has caused many foreign actors to really look for alternatives to the U.S. dollar and the U.S. financial system. Brad, you get the last word.

MR. SMITH: So, you know, I'd say on the unilateral point and this is, you know, something that I think is an important issue. Secretary Liu, before he left, touched on it. You always have to be concerned about if you overuse sanctions, do we lose the power because, you know, the dollar does not become the reserve currency. A hundred years ago the pound was the reserve currency and the U.S. was trying to play catchup from an economic tool.

There's always going to be an evolution. It's a challenge for a decisionmaker if you're sitting in the national security space where you have this power and you know it's effective and you're confronting a real time threat to the national security. It's a

challenging thing to say don't use it, right, if it is an effective tool.

So, I think there's going to be some play in the joints. I'd say more broadly, there are still multilateral programs. Ironically, Iran is by in large a multilateral program. There's a lot of fire on areas where we disagree from the nuclear. But there continues to be sort of joint action on terrorism, on weapons of mass destruction. We continue to have CT and most of our programs aren't in the news but actually are UN backed and deal with Africa and other programs.

So, I think there is common ground where we're going to continue to be leveraging our tools. And there's always going to have to be the question if you don't go to the dollar than you have the pound. Are people going to retreat to the Chinese currency and others. That brings its own issues, right, for industry and I think that's something that we'll have to see. But it's an issue that we're sensitive too and I think it's good for us all to think about as sanctions evolve because we can't ignore it.

MR. KINI: Well, that will be the last word.

So, please join me in thanking a terrific panel.

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