

WITH GREAT SPEED COMES GREAT RESPONSIBILITY

OFAC Compliance Expectations for the Instant Payment Industry

The US Department of the Treasury's Office of Foreign Assets Control ("OFAC") recently issued [guidance](#) reminding both financial institutions and entities who offer instant payment systems that despite the difficulty in reconciling instant payments with pre-transaction processing OFAC screening, risk-based compliance measures still should be taken. The new guidance underscores that OFAC is focussed on risks presented by the rise of instant payment systems that may be outpacing a financial institutions compliance systems and risk framework. Although OFAC falls short of requiring the use of Artificial Intelligence ("AI") tools and "other innovative compliance solutions" to manage instant payment risk, the guidance notes that OFAC "is aware" that such tools are available to financial institutions, perhaps messaging that failure to consider such tools may fall short of expectations. Finally, OFAC "encourages" payment system developers to imbed tools in their products to facilitate a financial institution's ability to adequately manage sanctions risk.

Styled as a "Compliance Communiqué" (the first of such), OFAC reiterates its consistent message that risk-based approaches are required to identify, assess, and mitigate sanctions risks associated with instant payment systems, which OFAC defines as "systems – which allow a payment's transmission and the availability of funds to payees to occur almost in real-time." OFAC recognizes that this payment mode presents risks for financial institutions but suggests that those risks will vary depending on several factors, including domestic versus cross-border payments, and the type and value of payments being processed. Identifying the factors most relevant to your financial institution will help, on a risk-basis, to calibrate your compliance approach to these types of payments.

OFAC provides two suggestions to modernize a compliance system and risk management framework: (1) harnessing technology; and (2) leveraging communication with other financial institutions. In terms of technology, OFAC "encourages" the use of technological tools, such as AI when and where it makes sense as part of the risk-based compliance program. OFAC's guidance should encourage financial institutions both to look for solutions that provide support to compliance functions, and to be prepared to explain when and why they are not taking advantage of these tools. OFAC had similarly encouraged the use of technological solutions for advancing risk-based compliance in its October 2021, "[Sanctions Compliance Guidance for the Virtual Currency Industry](#)," where it

stated that "Companies in the virtual currency industry may consider deploying blockchain analytics tools that help identify and mitigate these sanctions risks."

Regarding "sharing," OFAC recommends open lines of communications between financial institutions and the instant payment providers, and goes further, by suggesting that "establishing minimum sanctions compliance expectations for members," may help mitigate risk. Specifically, OFAC notes that minimum standards could include parameters around customer onboarding, ongoing due diligence, and screening. It's a good reminder to review your service agreements with instant payment providers and to be proactive in requiring them to support your OFAC compliance program.

OFAC's Compliance Communiqué also encourages developers of instant payment systems to build sanctions compliance features and tools into instant payment systems as they are being developed to facilitate sanctions screening and review. This guidance represents another acknowledgment by OFAC of the value of risk-based compliance measures not withstanding the strict liability nature of its sanctions regime, and augers further discussion between the industry and OFAC regarding compliance expectations for this growing industry segment.

As OFAC continues to issue guidance, and now a Communiqué, financial institutions and companies must take responsibility to heed the guidance and incorporate it in the development of robust and risk-based compliance programs.

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