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Sanctions Round Up: First Quarter 2015

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After months of intense negotiations, this quarter saw the announcement of a framework agreement between the P5+1 and Iran that, if it results in a final agreement, will lead to a suspension of Western sanctions. In another historic moment, US announced the first Cuba-related regulatory reforms following President Obama's 2014 announcement that his administration would seek to improve economic ties with the country. The US and EU continue to implement tough sanctions targeting Russia despite the negotiation of a new Ukraine armistice in February. In the spotlight for enforcement actions this quarter was the long-anticipated settlement between Commerzbank AG and US authorities over alleged sanctions violations.

Included in this quarter's sanctions round up is a discussion of:

- US and EU continue targeting Russia for its activity in Ukraine
- Cuba-related regulatory reforms announced
- P5+1 and Iran reach framework agreement
- US enforcement actions: Spotlight on Commerzbank AG
- US uses sanctions to target terrorists abroad
- OFAC continues use of Kingpin Act to target drug traffickers worldwide

Russia Related Sanctions for Q1 2015

On January 30, the US Office of Foreign Assets Control (OFAC) published three Ukraine-related general licenses allowing for certain personal remittances and communications. In doing so, these general licenses authorize certain transactions that would otherwise be prohibited under E.O. 13685 of December 19, 2014, “Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine.”

- **General License 6:** “Noncommercial, Personal Remittances Authorized,” allows US persons to send and receive personal remittances to individuals living in Crimea and allows US financial institutions to facilitate such transactions. No personal remittances may be made to specifically designated nationals (SDN) under any of the Ukraine-related sanctions orders.
- **General License 7:** “Operation of Accounts Authorized,” allows US financial institutions to facilitate the operation of personal, noncommercial accounts for individuals living in Crimea, except for SDNs.
- **General License 8:** “Transactions Related to Telecommunications and Mail Authorized,” allows for all transactions related to the receipt and transmission of telecommunications involving Crimea. The license explicitly does not allow for the provision, sale, or lease of telecommunications equipment, technology or capacity on telecommunications transmissions facilities (such as satellite or terrestrial network activity). The license further allows all transactions of common carriers related to the receipt of mail and packages between the US and Crimea. No such transactions may be made on behalf of an SDN.

On February 16, the EU extended individual sanctions against nineteen individuals and nine entities from Ukraine and Russia over their alleged role in the destabilization of Ukraine. The list includes two members of the Russian parliament, as well as senior military figures. The individuals and entities are subject to EU travel bans and asset freezes. None of nineteen individuals are currently sanctioned by the US; however, two of the entities, the Oplot Brigade and the Novorossiia Party, are subject to US sanctions.

In February, the Russian state-owned oil group Rosneft challenged UK sanctions in the European Court of Justice. The EU imposed sweeping sanctions against Russian oil producers last September, preventing European companies from drilling, well-testing, and providing other services to Rosneft. Rosneft mounted a similar challenge in the UK to its sanctions, which having failed in the lower courts, it is currently appealing.

On March 11, OFAC announced new designations of Ukrainian separatists and Russian supporters, citing ongoing assaults in Eastern Ukraine in violation of the Minsk agreements (an agreement between Ukraine and the Russian Federation to halt the war in the Donbass region of Ukraine). Specifically, OFAC designated eight Ukrainian individuals holding leadership positions within the self-proclaimed rebel governments in Donetsk and Luhansk regions for undermining Ukraine’s sovereignty in violation of E.O. 13660. OFAC also designated the Russian pro-separatist organization Eurasian Youth Union and three of its leaders under the same order. Additionally under E.O. 13660, OFAC designated three former officials who served in the Yanukovich government (**Mykola Azarov, Serhiy Arbuzov and Raisa Bohatryiova**) for misappropriating Ukrainian assets.

Simultaneously, OFAC designated the **Russian National Commercial Bank (RNCB)** under E.O. 13685 for operating in Crimea. OFAC alleged that RNCB had no presence in Crimea before its annexation and has since used its operations to facilitate Russian intervention in the region. RNCB is currently the largest banking network in Crimea.

Cuba-Related Sanctions for Q1 2015

On January 15, the US Treasury Department and US Commerce Department issued amendments to the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR), respectively. The amended regulations are the first implementation of President Obama's announced policy of loosening travel and economic prohibitions against Cuba. The new regulations became effective on January 16. Notable amendments include:

▪ **Financial Amendments:**

- The limits on periodic remittances that may be sent to Cuban nationals have been raised from \$500 per quarter to \$2,000 per quarter.
- Under the new general licenses, banking institutions are permitted to process authorized remittances to Cuba without having to obtain a specific license.
- Authorized travelers in Cuba may now use credit cards, debit cards, travelers' checks, and other financial instruments issued by US financial institutions.
- US banking institutions may confirm or advise a banking institution in a third country on the financing of exports from the United States to Cuba.
- Depository institutions are permitted to open correspondent accounts at banks in Cuba. However, Cuban banks are still not generally licensed to open such accounts at US banks.

▪ **Travel Amendments:**

- Twelve categories of travel to Cuba by US citizens, US residents and individuals located in the United States which were previously permitted only with special licenses and under certain restrictions will now be permitted by general license. General tourist travel will remain prohibited.
- Travel agents and airlines will be able to provide authorized travel and carrier services without seeking specific licenses.

▪ **Communications Services:**

- Certain consumer communications products and software (such as computers, mobile phones, televisions, radios, digital cameras and certain telecommunications and information security-related software) can now be exported or re-exported under Commerce's Consumer Communication Devices (CCD) license exception to eligible recipients in Cuba. A list of the eligible items is located in Section 740.19(b) of the EAR. Eligible recipients are individuals in Cuba, other than certain Cuban Government and Communist Party officials, and independent non-governmental organizations in Cuba. Organizations administered or controlled by the Cuban Government or the Cuban Communist Party, including schools and hospitals, are not eligible recipients.
- OFAC is generally authorizing commercial telecommunications services linking the United States and Cuba, as well as such services within Cuba. US communications companies are now authorized to establish roaming service agreements with service providers in Cuba and to establish facilities to provide telecommunications within Cuba or between Cuba and the United States, such as fiber-optic cable and satellite facilities.

▪ **Commercial Businesses:**

- US persons may now export or re-export for commercial sale, without a license, building materials, equipment and tools for use by the Cuban private sector to construct or renovate privately-owned buildings and residences.
- US persons may now export or re-export for commercial sale, without a license, tools and equipment for private sector agricultural activity.
- US persons may now export or re-export for commercial sale, without a license, tools, equipment, supplies and instruments for use by private sector entrepreneurs, such as auto mechanics, barbers and hairstylists and restaurateurs.

On March 24, OFAC announced it was de-listing 45 Cuba-related individuals and entities from the SDN list this month, but emphasized that the action was intended to remove outdated listings and not related to the US's recent efforts to improve diplomatic and economic ties with Cuba.

On April 14, the White House announced that President Obama intends to remove Cuba for the list of state sponsors of terrorism. Cuba has been on the State Department's list for over 30 years. The announcement followed a meeting between President Obama and President Raúl Castro of Cuba during the Summit of the Americas meeting in Panama. However, Congress still has a 45-day review period, during which a joint resolution to block Cuba's removal could be considered in the House and the Senate.

Syria-Related Sanctions for Q1 2015

On March 31, OFAC designated as SDNs one individual and three entities related to the Assad regime in an effort to curtail the Syrian government's financial and weapons networks. Accordingly, OFAC designated **Batoul Rida**, an official of the Central Bank of Syria, under E.O. 13582 for allegedly providing financial support to the government of Syria in its military campaigns against Syrian civilians. OFAC also designated three entities: Syria-based **Sigma Tech Company**, Lebanon-based company **Shadi for Cars Trading** and Lebanon-based **Denise Company**, pursuant to E.O. 13382, for allegedly acting on behalf of the Scientific Studies and Research Center (SSRC). SSRC is a Syrian government agency responsible for non-conventional weapons production that is currently sanctioned by both the US and EU

Iran-Related Sanctions for Q1 2015

US Sanctions against Iran Remain in Place Following Announcement of Framework Agreement on Nuclear Program

After months of negotiations, on April 2, the P5+1 announced the framework of an agreement that, if it results in a final agreement, would limit Iran's ability to develop nuclear weapons in exchange for the lifting of Western sanctions. The framework is contingent on the parties reaching a comprehensive agreement by June 30, and **all sanctions on Iran remain in place until a final deal is reached**. US officials released the following descriptions of key terms of the agreement:

- **Centrifuges:** Iran will have to reduce its number of centrifuges (currently around 19,000) – down to 6,104 under the deal, with only 5,060 allowed to enrich uranium over the next 10 years. All excess centrifuges will be placed in International Atomic Energy Agency (“IAEA”)-monitored storage and will be used only as replacements for operating centrifuges.
- **Enrichment:** For 15 years, Iran's centrifuges will only enrich uranium to levels suitable for power generation, but not enough to build a nuclear weapon. Iran further agreed not to build any new uranium enrichment facilities over that

period. In addition, Iran will reduce its current stockpile of 10,000 kilograms of low-enriched uranium to 300 kilograms for 15 years. Iran will cease all enrichment of weapons-grade plutonium and will only be permitted to enrich plutonium to fuel-grade levels.

- **Breakout time:** The period of time that it would take for Iran to acquire the material it needs to make one nuclear weapon, currently assessed at two to three months, will be extended to about one year under the deal. Iran is required to maintain this breakout period for at least 10 years.
- **Fordow facility:** Iran's Fordow nuclear reactor will stop enriching uranium for at least 15 years. It will not have enriched material at the facility, nor conduct research and development associated with uranium enrichment there. About 1,000 non-enriching centrifuges will be allowed to remain at Fordow "for peaceful purposes."
- **Research and development:** Iran can continue its research and development on enrichment, but that work will be limited to keep the country to its breakout time frame of one year. Though Iran will be required to make changes at a number of its facilities, the country will be allowed to maintain its current facilities.
- **Inspections:** Iran will be required to provide inspectors from the IAEA "unprecedented" access to all of its nuclear facilities so that the UN can ensure there is no potential for weapons development. The IAEA will also have authority to investigate "suspicious sites" and allegations of covert enrichment activities. A dedicated procurement channel for Iran's nuclear program will be established by the UN to monitor and approve, on a case by case basis, the supply, sale or transfer to Iran of certain nuclear-related and dual use materials and technology.
- **Sanctions:** The US and the EU will lift their nuclear-related sanctions on Iran as soon as the IAEA verifies it has taken key steps in the agreement. If there are violations, the sanctions will "snap back" into place. UN sanctions will also be lifted when Iran completes its nuclear-related steps, though some peripheral restrictions (those that deal with transfers of sensitive technologies, ballistic missiles, cargo inspections and other activities) will be contained in a forthcoming Security Council resolution.

Diplomats from the P5+1 will continue to negotiate the technical aspects of the agreement in order to reach a comprehensive deal by June 30. President Obama described the deal as "historic" and the "best option" for ensuring that Iran does not develop a nuclear weapon. He also emphasized the international cooperation involved in reaching the agreement and warned the US Congress that if it took action to undermine the framework agreement, "the United States . . . will be blamed for the failure of diplomacy." On April 14, the US Senate Foreign Relations Committee unanimously approved a proposed bill that would give Congress authority to effectively reject the final deal with Iran. After bipartisan negotiations, the bill would not require Congress's approval of a final agreement, but it would allow for a 30-day review period during which time Congress may vote to prevent the Obama Administration from lifting legislative sanctions. After initially lobbying against it, President Obama subsequently announced he would not veto the bill should Congress pass it, emphasizing that the legislation would not derail negotiations with Iran.

Other Iran-Related Developments

On January 22, the EU's second-highest court struck down sanctions on Bank Tejarat, a leading Iranian bank, as well as 40 shipping companies, holding that the EU had provided insufficient evidence to justify the sanctions. On April 8, the EU re-imposed sanctions on the bank and 32 Iranian shipping companies, purportedly based on new legal grounds. The EU stated that Bank Tejarat "provided significant support to the Government of Iran by offering financial resources and financing services for oil and gas development projects" and was involved in the "procurement of prohibited goods and technology."

On February 6, US District Court Judge Richard Leon rejected a proposed settlement agreement between Dutch aerospace company Fokker Technologies Holding (“Fokker”) and the Department of Justice, describing the proposed settlement as too lenient and “grossly disproportionate to the gravity of Fokker Services’ conduct.” Fokker had agreed to enter an 18-month deferred prosecution agreement and pay a \$21 million penalty to resolve claims that it sold aviation parts and services to Iranian customers, including the military, in violation of US sanctions. While recognizing that Fokker voluntarily disclosed its misconduct, Judge Leon wrote that it would “promote disrespect for the law” to allow such conduct to be “prosecuted so anemically.” In rejecting the settlement, the court took issue with several aspects in particular: the proposed penalty matched the revenue generated by the misconduct, no Fokker employees would be prosecuted or terminated, and no independent monitor would be required. The DOJ has historically granted more leniency during settlement negotiations to parties who voluntarily disclose possible violations. Before the decision was announced, both the DOJ and Fokker had argued that the court did not possess the legal authority to reject the settlement. Specifically, the DOJ asserted that the law does not “authorize the court to approve or deny” deferred-prosecution agreements, which it described as “contractual in nature and not created or governed by statute.” Fokker has appealed the ruling.

On February 12, the EU announced it would re-list the National Iranian Tanker Company (NITC), Iran’s biggest tanker company. The EU’s second-highest court ruled last July there were no grounds to blacklist the NITC after the company contested the designation, but the EU said it would seek new legal means to keep the company on the list of companies under asset freezes.

Other Notable Developments

Venezuela

Relations between the US and Venezuela further deteriorated, as evidenced by new sanctions against Venezuelan officials this quarter. On March 9, President Obama issued a new executive order, E.O. 13692, “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela,” targeting property and suspending entry of “certain persons” in Venezuela contributing to alleged human rights abuses and political persecution there. The order asserts that the “curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests,” as well as public corruption in Venezuela constitute a threat to US national security and foreign policy, warranting sanctions against individuals found to be complicit in those activities. OFAC simultaneously listed under E.O. 13692 seven Venezuelan officials, including the director of the country’s Bolivarian National Police.

Sudan

On February 18, the US Treasury and Commerce Departments amended the Sudanese Sanctions Regulations (SSR), 31 CFR 538, to issue a new general license for the exportation, reexportation and provision of certain hardware, software and personal-communications services to Sudan. Specifically, the General License permitted:

1. the exportation of certain fee-based, personal-communications software and service;
2. new authorizations for the exportation to Sudan of certain software and hardware not subject to the Exchange Act Regulations by US persons located outside the United States. For example, a foreign branch of a US company is now authorized to export to Sudan certain hardware or software that is not subject to the EAR (including foreign-origin hardware or software containing a *de minimis* amount of US controlled content);
3. new authorizations for the exportation to the Government of Sudan of certain no-cost services and software that are “widely available to the public.”

OFAC also published comprehensive guidance about the amended general license in ten new “Frequently asked Questions” on its website.

Commerzbank AG Settlement Headlines this Quarter’s Enforcement Actions

After a multi-year investigation, on March 12 **Commerzbank AG** (“Commerzbank”) agreed to pay approximately \$1.45 billion in a global settlement with five different US regulators over potential liability stemming from apparent violations of US sanctions against Iran and Sudan, as well as a lack of money-laundering controls. Between 2002 and 2008, Commerzbank is alleged to have purposefully processed thousands of US dollar transactions through its US branch and other institutions on behalf of prohibited entities and individuals, including the Islamic Republic of Iran Shipping Lines. Most notably, the bank admitted to engaging in systemic practices involving the concealment, removal and omission of references to sanctioned parties in US-dollar SWIFT payment messages. Commerzbank also admitted to using “cover” payments and special purpose entities to conceal identifying information from correspondent banks in order to facilitate US-dollar payments. The settlement noted that Commerzbank continued to engage in these practices even after its management became aware of their illegal nature. In numerous instances, if red flags were raised internally about sanctions-violating transactions, they were allegedly covered up or disregarded by senior management. The global settlement resolves investigations by five US agencies: OFAC, the Department of Justice (DOJ), Federal Reserve, New York District Attorney, and New York Department of Financial Services. In addition to the \$1.45 billion in aggregate penalties, the Commerzbank was required to terminate four senior employees in Germany, as well as the senior compliance manager in its New York subsidiary. Additionally, Commerzbank agreed to enter a 3-year prosecution agreement, retain an independent monitor for 2 years, and undertake significant compliance and reporting obligations.

On March 25, **PayPal, Inc.** agreed to pay \$7.6 million in a settlement with OFAC over potential liability stemming from apparent violations of various sanctions including the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMD sanctions), the Iranian Transactions and Sanctions Regulations (ITSR), the CACR, the Global Terrorism Sanctions Regulations (GTSR) and the SSR. According to OFAC, Paypal, Inc. failed to implement adequate screening technology to identify the involvement of US sanctions targets in the transactions it processed. Between 2010 and 2013, the company allegedly processed 486 transactions totaling \$43,934 on behalf of blocked countries or SDNs. OFAC noted that on six different occasions PayPal, Inc. employees dismissed automated alerts that signaled the involvement of at least one SDN listed under the WMD sanctions. Although OFAC described some violations as egregious, it noted as mitigating factors PayPal Inc.’s self-disclosure, remedial efforts and cooperation during the investigation. The civil penalty imposed reflected a reduction of at least 50% of the recommended base penalty.

On March 25, OFAC announced that **Life for Relief and Development (LRD)**, a US company, agreed to pay \$780,000 to settle potential liability for apparent violations of the former Iraqi Sanctions Regulations. OFAC alleged that during 2002 and 2003, LRD willfully transferred funds from the US to Iraq through Jordan. OFAC noted that despite the willfulness of the violations, LRD undertook remedial actions and cooperated by waiving the statute of limitations, meriting a 40% reduction in the civil penalty imposed.

Also on March 25, **Schlumberger Oilfield Holdings Ltd.**—the world’s largest oil-field services company—pled guilty and agreed to pay \$232 million to the DOJ to settle allegations that it violated US sanctions targeting Iran and Sudan. The payment includes a record-setting criminal fine of \$155 million, plus \$78 million in disgorgement. The government alleged that between 2004 and 2010, a Schlumberger Ltd. subsidiary in the US illegally facilitated the export of drilling equipment to Iran and Sudan by using complex shipping arrangements. The company is also alleged to have covered up the nature of the business in prohibited countries by using coded words. As part of the penalty, will company will enter a

three-year probation period during which it must notify the government of any other potential sanctions violations, as well as hiring an independent consultant to review its sanctions policies. This enforcement action's reliance on a "facilitation" theory dramatically and aggressively expanded the scope of criminal liability in the OFAC arena. If you are interested in more details, please see "[Facilitation": A New Tool for Extraterritorial Sanctions Enforcement.](#)"

US Uses Sanctions to Target Terrorists Abroad

On January 13, OFAC designated **Maulana Fazlullah** (Pakistan) as a Specially Designated Global Terrorist ("SDGT") under E.O. 13224. Fazlullah, a.k.a. "the Radio Mullah," is alleged to be a senior leader of the Taliban's Pakistan organization, the khārijī Tehrik-i-Taliban Pakistan (TTP). Fazlullah is alleged to have orchestrated the attack against Pakistani activist Malala Yousafzai.

On January 14, OFAC and the US Department of State designated **Abdallah al-Ashqar** (Palestine) as an SDGT. Abdallah al-Ashqar is a Palestinian national reported to be a leader of the Mujahidin Shura Council in the Environs of Jerusalem (MSC), an entity formerly designated as an SDGT. Al-Ashqar is alleged to have sought missiles and other materials with which to attack Israel.

On January 27, OFAC designated German militant Islamist **Denis Mamadou Cuspert** as an SDGT. In 2013, Cuspert, a former rap artist known as Deso Dogg, allegedly travelled to Syria to fight alongside ISIL. Cuspert has since appeared in propaganda videos produced by ISIL.

On February 26, OFAC designated three individuals and three entities, described as "a key Hizbollah support network based in Africa." **Mustapha Fawaz, Fouzi Fawaz and Abdallah Tahini**, each Nigerian nationals, were designated as SDGTs for allegedly providing financial and operational support to Hizbollah cells in Nigeria. OFAC also designated three Nigerian entities owned and directed by the designated individuals: **Amigo Supermarket Ltd., Wonderland Amusement Park and Resort, Ltd.** and **Kafak Enterprises, Ltd.**

On March 25, OFAC designated **Aliaskhab Kebekov**, a Russian citizen from Dagestan, as an SDGT. Kebekov is alleged to be the current leader of the Caucasus Emirate, an SDGT entity operating primarily in the Russian North Caucasus. Last year, Kebekov declared his group's subordination to al-Qaeda, and he is alleged to have ordered the killing of Sheikh Said-Afandi Chirkeyskiy, a prominent moderate religious leader in Dagestan. Kebekov is also listed by the United Nations 1267/1989 al-Qaeda Sanctions Committee.

OFAC Uses Kingpin Act to Target Drug Traffickers in Asia, Mexico and Europe

On January 16, OFAC designated **Aziz Moosa Bilakhia** and **Shaikh Anis Ibrahim Kaskar**, two Indian nationals, as Specially Designated Narcotics Trafficking Kingpins ("SDNTKs") under the Foreign Narcotics Kingpin Designation Act. On the same day, OFAC also designated the **Mehran Paper Mill**, a company in Kotri, Pakistan. Both the individuals and the entity are alleged to have ties to "D Company"—an alleged transnational crime syndicate that principally operates in India, Pakistan, and the United Arab Emirates. According to OFAC, the individuals were long-time members of the organization, involved in narcotics trafficking, extortion, contract killings and money laundering.

On January 27, OFAC designated two Mexican nationals, **Victor Manuel Felix Beltran** and **Alfonso Limon Sanchez**, both alleged associates of the Sinaloa Cartel. Beltran is alleged to be a high-ranking trafficker who operates from Culiacan and Guadalajara, Mexico. Limon Sanchez allegedly supplied Sinaloa Cartel leadership with multi-ton quantities of cocaine prior to his arrest in Mexico last year. The designations coincided with the Department of Justice's unsealing of indictments against the two individuals in Illinois and California courts.

On February 17, OFAC designated **Francisco Javier Gastelum Serrano**, a Mexican national, as an SDNTK for his alleged trafficking activities on behalf of the Sinaloa Cartel. OFAC simultaneously designated **Andamios Dalmine de Mexico, S.A.**, a Mexico City-based scaffolding company reportedly owned by Gastelum Serrano. The company has thirteen regional offices throughout Mexico, and its warehouses have purportedly been used to store and traffic narcotics. Francisco Javier is the fifth brother in the Gastelum Serrano drug trafficking network to be designated since December 2014.

On February 24, designated as SDNTKs five Slovenian nationals: **Dejan Donko, Alenka Karner, Matevz Karner, Uros Slivnik** and **Savo Stjepanovic**. On the same day, OFAC designated 14 related entities from throughout Slovenia, Panama, the Republic of Seychelles, Gibraltar, Liechtenstein, the Commonwealth of Dominica and Belize. The individuals and entities were reportedly “key figures” within an international steroid trafficking organization led by Slovenian national Mihael Karner (designated in 2013).

On March 18, OFAC designated three Mexican nationals, **Alejandro Cabrera Sarabia, Felipe Cabrera Sarabia** and **Jose Luis Cabrera Sarabia**. The three brothers are allegedly major heroin and marijuana suppliers for the Sinaloa Cartel.

On March 24, OFAC designated four individuals from Kosovo as SDNTKs: **Besnik Kelmendi, Donata Kelmendi, Elvis Kelmendi** and **Liridon Kelmendi**. OFAC also designated five related entities in Bosnia and Herzegovina and Montenegro. The individuals and entities were designated for their alleged role in the criminal organization led by Albanian narcotics trafficker Naser Kelmendi (designated in 2012). The criminal family organization reportedly operates a network distributing heroin, cocaine, and ecstasy through Afghanistan to Turkey and into Europe. The Kelmendi organization is also suspected of laundering money through front companies.

If you have any questions on any of these matters, please feel free to contact one of our partners or counsel.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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