

RECORDS

McDow, Ann FIN:EX

From: Chong, Frank FIN:EX
Sent: Thursday, November 14, 2013 1:01 PM
To: McLean, Doug B FIN:EX
Subject: Re: FATCA compliance guidance issued for foreign financial institutions

Some do Sec 22 but those that do could be left in a tough spot to comply with the US/Canada agreement and meeting privacy rules.

Membership is not based on citizenship - you can be a non-resident too.

Regards,
Frank

From: McLean, Doug B FIN:EX
Sent: Thursday, November 14, 2013 12:56 PM Pacific Standard Time
To: Chong, Frank FIN:EX
Subject: RE: FATCA compliance guidance issued for foreign financial institutions

Do credit unions have very many US members?

From: Chong, Frank FIN:EX
Sent: Thursday, November 14, 2013 12:16 PM
To: McLean, Doug B FIN:EX
Subject: Re: FATCA compliance guidance issued for foreign financial institutions

I've been following this issue over the past year - the last time I checked it will impact any FIs with clients with US connections (eg., citizenship). I think there is recognition for smaller FIs with less than \$150 mil in assets, primarily to reduce admin burden. I also heard that CRA was going to be involved in collecting the information for US tax authorities.

Frank

Sent from my iPad

On Nov 12, 2013, at 10:58 AM, "McLean, Doug B FIN:EX" <Doug.McLean@ficombc.ca> wrote:

Is there any impact on provincial regulated financial institutions?

<http://www.treasury.gov/press-center/press-releases/Pages/jl2194.aspx>

Regards,

Doug McLean
Deputy Superintendent of Financial Institutions
Financial Institutions Commission
Ministry of Finance

Suite 2800, Box 12116 | 555 West Hastings Street | Vancouver, BC | V6B 4N6
Phone 604 660-3578 | Email Doug.McLean@ficombc.ca

McDow, Ann FIN:EX

From: Chong, Frank FIN:EX
Sent: Monday, November 5, 2012 4:32 PM
To: Chang, Ruth FIN:EX
Subject: RE: FATCA

I think the CUs were looking for options to have smaller CUs to be exempted if under a certain asset size – not sure if that will go anywhere.

It's certainly a huge burden administratively and potential conflict with privacy rules.

Frank Chong, Executive Director, Supervisory Support & Policy
Financial Institutions Commission
Suite 2800, Box 12116 | 555 West Hastings Street | Vancouver, BC | V6B 4N6
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www.fic.gov.bc.ca

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From: Chang, Ruth FIN:EX
Sent: Monday, November 5, 2012 4:30 PM
To: Chong, Frank FIN:EX
Subject: Re: FATCA

It does apply to the federal banks. They have been meeting for a couple of years to lobby and prepare. Now need to know if it applies to provincial FIs.

From: Chong, Frank FIN:EX
Sent: Monday, November 05, 2012 04:28 PM
To: Chang, Ruth FIN:EX
Subject: RE: FATCA

Hi Ruth –

This is an area that we've been following – the answer, in my opinion, is not clear as from the surface it appears that these rules would apply to Canadian FIs including BC credit unions (see some interesting articles on FATCA in the link below). If it did apply, there would be some serious and broader sovereignty issues that would need to be considered.

See attached and stay tuned!

Regards,
Frank Chong, Executive Director, Supervisory Support & Policy
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From: Chang, Ruth FIN:EX
Sent: Friday, November 2, 2012 3:08 PM
To: Chong, Frank FIN:EX
Subject: FATCA

Frank, do you know if FATCA applies to our FIs? In the op risk seminar I went to, the lawyer said it applies to all "financial institutions" around the world but need to look to IRS for definition of "financial institution." Could you add that to you list of "does this law or code apply to our FIs"? Thanks!

Ruth Chang, Managing Director
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McDow, Ann FIN:EX

From: Chong, Frank FIN:EX
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Regards,

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McDow, Ann FIN:EX

From: Chong, Frank FIN:EX
Sent: Monday, November 5, 2012 4:19 PM
To: Estoque, Katrina SDSI:EX
Subject: RE: FATCA Article

Thanks.

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From: Estoque, Katrina FIN:EX
Sent: Monday, November 5, 2012 4:18 PM
To: Chong, Frank FIN:EX
Subject: FATCA Article

Hi Frank,

The article is in P:\195 Circular, Directive and Manual Development\195-20 Internal Circulars and Directives\Reading Materials\FATCA.

Katrina Estoque, Administrative Assistant
Financial Institutions Commission
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From: Canadian Central - Connections Newsletter <escan=cucentral.com@createsend1.com>
on behalf of Canadian Central - Connections Newsletter <escan@cucentral.com>
Sent: Tuesday, July 9, 2013 12:07 PM
To: Chong, Frank FIN:EX
Subject: Connections - FATCA Guidance Notes, Nudging for Better Financial Behaviour and Meeting your MPs



July 9/ 13



FATCA: United Kingdom Guidance is Useful Reading

Guidance Notes that will assist financial institutions in the UK to comply with FATCA requirements will help Canadian credit unions start their own FATCA preparations. [Read more](#)



Urge Your MP to Support Your Credit Union: Hike the Hill at Home this Summer for a More Competitive Financial Sector

There's never been a more important time for your credit union to build a stronger relationship with your local MPs. [Read more](#)



Challenging the Concept of 'Business as Usual': World Council of Credit Unions Conference Begins this Weekend

The WCUC Conference was specifically designed to help credit union leaders better prepare for the shifting credit union landscape, and gain practical insight on new ways of doing business. [Read more](#)



Pulling Out Decision Bottlenecks: New Research Shows How a Nudge Can Lead to Better Financial Behaviour

Can a little nudge make a difference between wanting to save money and actually putting dollars away? Check out a new Report from Filene Research Institute. [Read more](#)



MemberNote3: Alerting Members to Make Better Financial Decisions

A one-branch credit union has designed software that uses real-time alerts to help members stay on top of their accounts and payments. [Read more](#)



Regulatory Performance Report: Q1 2013

The Report provides a summary of the national credit union system financial results, and explores important performance indicators. [Read more](#)

NEWS AND INFORMATION FROM CUSOURCE CREDIT UNION KNOWLEDGE NETWORK

Read the **July e-newsletter** for the latest on upcoming learning and development opportunities for credit union employees.

[READ NOW](#)

Admin assistants and coordinators - there's not much time left to register for the **EA MasterySkills courses** - a series of eight 1-hour webinars each Wednesday in August and September.

[LEARN MORE](#)



CANADIAN CENTRAL LAUNCHES CREDIT UNION INFORMATION PORTAL (CUIP)

This new CUIP database provides a single storage site for credit union compliance and information and supports local and mobile web-based locators.

Visit now to update your credit union's information and let us know what you think!

[Read the announcement here!](#)



REGISTER NOW: CREDIT UNION GOVERNMENT RELATIONS FORUM

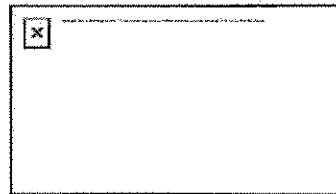
Space is limited at the credit union system's premier government affairs event. Register now if you haven't already!

November 4-5, 2013

Ottawa, ON

Note: discounted rate for *CU Nation™* Advocates.

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McDow, Ann FIN:EX

From: Chang, Ruth FIN:EX
Sent: Wednesday, January 23, 2013 7:33 AM
To: Chong, Frank FIN:EX
Subject: FW: Corruption Currents from Dow Jones

Frank, the FATCA article may be of interest.

From: Dow Jones Risk & Compliance [mailto:news@dj.com]
Sent: Wednesday, January 23, 2013 7:28 AM
To: Chang, Ruth FIN:EX
Subject: Corruption Currents from Dow Jones



Iran Ship's Escape Shows Cat-and-Mouse Game of Sanctions

A fleeing ship went back on the U.S. blacklist on Friday, proving the difficulty in enforcing some U.S. sanctions. »

Judge Denies IBM and SEC Request for More Time in FCPA Case

A federal judge denied a joint request by the Securities and Exchange Commission and International Business Machines Corp. for additional time to meet requirements the judge attached to their pending settlement over violations of an anti-bribery law.»

Insider Trading Study Shows Need for Integrating Social Networking into Compliance

The way people communicate has changed over the last few decades, and compliance programs should adapt to handle that change, according to the findings of a forthcoming study.»

Lower Fines the New Norm for the FCPA?

By now, FCPA aficionados have had a chance to digest last year's enforcement numbers.»

Experts Laud Extra Time to Implement FATCA Compliance

Financial institutions required by law to disclose information on U.S. account-holders received until the end of the year to implement policies to prevent those holders from evading taxes, a decision lauded by experts.»

Russia's Anti-Corruption Moves Draw Renewed Skepticism

Is Russia finally getting serious about corruption?»

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Canada Boosts Anti-Corruption Effort, Charges Energy Company

Canada, stung by criticism it was slacking in its enforcement of anti-corruption laws, is continuing to focus on increasing the numbers of investigations and prosecutions under its Corruption of Foreign Public Officials Act.»

Business Groups Fully Brief “Conflict Minerals” Legal Challenge

Several business groups challenging new rules that require companies to disclose whether their products contain minerals blamed for fueling violence in Africa said Wednesday regulators hadn't adequately analyzed the rules' impact.»

Lawmakers, Nonprofit Slam Lawsuit Over Extractive Rule

House and Senate lawmakers, and nonprofit Oxfam America, all used court filings to slam a lawsuit filed by business groups trying to block a rule mandating oil, gas and mining companies disclose their payments to foreign governments.»

Treasury Slaps Sanctions on Drug Trafficking Organization

The U.S. Treasury Department said Thursday it placed Kingpin Act sanctions for the first time on a Sinaloa, Mexico-based drug trafficking organization, the Meza Flores Drug Trafficking Organization.»



originally published January 18, 2013

Iran Ship's Escape Shows Cat-and-Mouse Game of Sanctions

A fleeing ship went back on the U.S. blacklist on Friday, proving the difficulty in enforcing some U.S. sanctions.

The MV Amina, an Iranian-flagged cargo ship, was detained by Sri Lanka in December after Germany's DVB Bank SE obtained a court order to hold the vessel after the owners defaulted on a payment, according to a Reuters report

Following its detention, the U.S. Treasury Department, which blacklisted the ship in 2008, issued a general license in early January that authorized certain transactions "related to the arrest, detention, and judicial sale" of the MV Amina.

"Such transactions include...bidding on the purchase of the vessel; paying deposits; providing financing, insurance, or funding in connection with the purchase; and, in furtherance of the arrest, detention, and judicial sale of the vessel, providing vessel management services; providing port agency services; purchasing of bunkers; repairing or modifying the vessel for commercial use; providing crewing; and hiring surveyors to inspect the vessel," the license said.

But the Reuters report said the ship fled, even after the Sri Lankan navy fired warning shots, and that it wasn't possible to immediately confirm the vessel's exact location. The report said it was unclear what cargo the vessel carried.

On Friday, the U.S. Treasury Department revoked the license to conduct the transactions.

"We revoked the license because we learned that the Amina had escaped arrest in Sri Lanka," said John Sullivan, a Treasury spokesman, in an email.

The MV Amina is managed by Tehran-based Rahbaran Omid Darya Ship Management, Reuters reported, citing public

shipping registers and ship-tracking data.

Washington and Brussels, according to Reuters, have accused the firm of acting as a front for Islamic Republic of Iran Shipping Lines, or IRISL, the state shipper that is a prime target of Western sanctions.

The U.S. and the European Union have accused IRISL of trying to dodge sanctions by changing its flags and setting up front companies.

Both the changing of flags and the fleeing of detention highlight the challenges the West faces in enforcing sanctions it imposes on Iran.

Other countries are coming to the aid of the West and canceling the flag registrations of Iranian cargo ships. But as one country cracks down, the shipper sometimes finds a new flag under which to sail.

Last year, Ali Ezzati, IRISL's manager for strategic planning and international affairs, obliquely referred to how the company dodges the increasing pressure of sanctions.

"When you push someone from a room, he should find a door," Ezzati was quoted as saying. "If he can't find a door then he should try to find a small hole."

[original post](#) | [return to top](#)



originally published January 18, 2013

Judge Denies IBM and SEC Request for More Time in FCPA Case

A federal judge denied a joint request by the Securities and Exchange Commission and International Business Machines Corp. for additional time to meet requirements the judge attached to their pending settlement over violations of an anti-bribery law.

During a contentious hearing in December, U.S. District Judge Richard Leon said he couldn't approve the \$10 million settlement unless the SEC and IBM agreed to abide by additional settlement terms imposed by the court or explain why the terms are "too burdensome," as lawyers for IBM argued. Leon gave the SEC and IBM until Feb. 4 to come up with a game plan.

They asked Leon for an additional 30 days last week. On Tuesday, Leon denied that request.

The SEC and IBM didn't immediately respond to requests for comment.

The two reached an agreement in March 2011 to settle civil charges that IBM bribed South Korean and Chinese government officials for more than a decade with cash payments, gifts and travel in violation of the Foreign Corrupt Practices Act. The company neither admitted nor denied the charges under, a common feature of SEC settlements.

The settlement subsequently stalled in Leon's Washington, D.C., courtroom. During the December hearing, IBM said that it couldn't comply with several additional reporting requirements Leon wants to impose as part of the settlement, because it would be impossible to collect the information Leon wants reported.

The FCPA prohibits improper payments to foreign officials to win business and also requires companies to keep accurate books and records. IBM said it was willing to report future improper payments, and books and records violations related to such payments, but was unable to report broader accounting inaccuracies that weren't tied to improper payments. The

SEC, to Leon's shock, backed IBM's position.

Leon repeatedly pressed lawyers for the SEC and IBM during the hearing about what data they had to prove reporting FCPA books and records violations would be burdensome. In order to convince him to drop the reporting requirements, Leon said he would need to see data about their cost. He said document production, affidavits, depositions and possibly even IBM staff taking the stand in court could be necessary.

IBM and the SEC must report to Leon by Feb. 4 about how they plan to collect such data.

[original post](#) | [return to top](#)

originally published January 17, 2013

Insider Trading Study Shows Need for Integrating Social Networking into Compliance

Communication consultants Montieth & Co. compared insider trading cases from the 1980s with those from the past couple of years prosecuted in the Southern District of New York, and found that insider trading has become "socialized," reflecting the way people now talk and interact with each other.

"There are no corporate boundaries any more," said Montieth M. Illingworth, the company's president, in an interview. "People are accustomed to sharing information liberally and indiscriminately... The medium is the model and the enabler."

Insider cases such as the Galleon Group show how social groups distribute information across networks in a democratic fashion, the study said.

The full study, which isn't due for release for a few months, was developed with EchoDitto, a firm that uses open source technology to create community building. Montieth released preliminary findings from the study on Wednesday.

Companies need to change their compliance programs to reflect the use of social media, the study found, because prosecutors now examine a person's relationships as well as their research when pursuing a case.

"You need a system that is not just an internal compliance system that records what you thought when you did research," Illingworth said. "You need a system that is so robust that it shows all of your relationships as you create your mosaic."

That system should include any postings on social networks, or within closed networking groups, that contributed to the research, he said.

Relationships are the currency of insider trading networks, as the cases no longer involve people at the helm of an investment firm pulling the strings of his underlings like a marionette, he said.

"In the new socialized insider trading network, there is no bottom and there is no top," said Illingworth. "It has to be seen like an organism with many entry and exit points, although there are nodes which are more powerful individuals who will show more linkages."

This makes the job of a prosecutor more difficult, he said, but it could result in more prosecutions because the cases are no longer linear. Rather than seeking the fastest path to the top, a case could zig and zag along the network's web.

"They have to change their visual metaphor and how people relate to each other, and how information is being related and shared," Illingworth said.

[original post](#) | [return to top](#)

originally published January 17, 2013

Lower Fines the New Norm for the FCPA?

By now, FCPA aficionados have had a chance to digest last year's enforcement numbers.

The undeniable fact is that fines levied by the Justice Department and the Securities and Exchange Commission were down in 2012, way down, actually. But what that means exactly is less clear.

Are smaller fines the new norm for the Foreign Corrupt Practices Act, a 1977 law barring bribery of foreign officials, or is this just a blip?

In 2012, the Justice Department and the SEC collected a combined \$260 million in criminal and civil penalties, down from \$652 million in 2011 and \$1.8 billion in 2010 (h/t to the FCPA Professor blog for compiling the numbers).

Unlike years past, neither agency put out press releases touting how much was collected under the FCPA. By comparison, the Justice Department trumpeted the nearly \$5 Billion in False Claims Act settlements it collected in 2012.

Some financial analysts have interpreted the numbers as a sign that FCPA penalties have plateaued. Susquehanna Financial Group advised that "economic penalties for FCPA violations have been coming down." In an analysis of ATM-maker NCR Corp., which is currently under investigation for potential FCPA violations, the group called worries that a large settlement would pull down the company's share price "an exaggerated risk."

Meanwhile, law firms warned their clients that "the relative downtick in 2012 FCPA enforcement is a slight blip in the landscape..."

So which is it?

"Fines are not down as much as people think, because they were never as high as they appeared," said Philip Urofsky, a partner at Shearman & Sterling LLP.

According to Urofsky, the average, run-of-the-mill FCPA settlement ranges from \$10 million to \$20 million, roughly. But the numbers are skewed by so-called "mega settlements." In 2010, for example, U.K. defense company BAE Systems PLC paid \$400 million, one of the largest FCPA settlements ever.

Last year, there were simply no mega settlements, Urofsky said.

Joseph Warin, a partner at Gibson Dunn & Crutcher, agreed, saying that FCPA settlements usually come in clusters. One cluster of settlements alone was responsible for \$1.7 billion in penalties — a four-company joint venture known as TSKJ that paid more than \$182 million in bribes to Nigerian officials to secure more than \$6 billion in contracts for gas facilities in Nigeria. That cluster and others have dried up, Warin said.

But Urofsky and Warin cautioned that there are still plenty of mega settlements and clusters on the horizon. Indeed, Oil major Total SA has disclosed its reserved EUR308 million to settle its long-running FCPA investigation. Warin said FCPA watchers should also continue to expect large settlements coming out of the government's industry-wide probe into pharmaceutical and medical device manufacturers.

"I fully expect 2013 to have some very substantial resolutions, that will underscore that [the government's] vigorous enforcement is ongoing," Warin said.

Mike Koehler, an assistant professor at Southern Illinois University School of Law, warned that, in fact, there may not be

much value in analyzing aggregate FCPA fines on a year-over-year calendar basis. The timing of FCPA settlements is not linear and has little to do with legal issues, and more to do with factors like the SEC and Justice Department's desire to announce settlements simultaneously, said Koehler, who writes the FCPA Professor blog.

"I debate whether [year-over-year comparisons] have much value, but that does not stop everyone from doing it, including myself," Koehler said.

[original post](#) | [return to top](#)

originally published January 22, 2013

Experts Laud Extra Time to Implement FATCA Compliance

Financial institutions required by law to disclose information on U.S. account-holders received until the end of the year to implement policies to prevent those holders from evading taxes, a decision lauded by experts.

The program, mandated under the Foreign Account Tax Compliance Act, or FATCA, became law in 2010. It requires foreign financial institutions to start reporting detailed information about U.S. account holders to the Internal Revenue Service. Final rules for the program were issued last week.

Responding to comments during the proposal period, the U.S. Treasury Department gave foreign financial institutions until Dec. 31 to modify their systems to comply with the rule. The change aligns the institutions' requirements with those required of countries under inter-governmental agreements signed with several countries, the rule said.

"The delay is welcomed but I'm sure everyone would appreciate even more time given the worldwide impact and significant changes," said Richard Kando, a director of Navigant Consulting's global investigations & compliance practice.

"Putting [a global compliance program] into operation in 11-and-a-half months is still a big task," he said.

But the deadline gives the financial institutions a certain date to work toward, said Joe Bognanno, director of anti-money laundering product marketing at NICE Actimize, which specializes in financial crime and risk-management products for financial institutions.

Bognanno said the rules, which make alignment with the intergovernmental models a priority, should make compliance with FATCA "much more operationally efficient."

Negotiations with several countries netted two intergovernmental model agreements. One allows financial institutions in countries that signed the first to report their account-holders to their respective governments, which will turn over the information to the IRS. The other agreement involves a jurisdiction telling its financial institutions to register with the IRS and report to the agency directly.

On Thursday, Treasury said Norway joined the U.K., Mexico, Denmark, Ireland, Switzerland, and Spain as countries that have signed or initialed model agreements. Treasury said it's talking with more than 50 countries on FATCA compliance.

The rules issued last week govern all sorts of financial institutions, from foreign banks to offshore hedge funds to private equity firms. Each industry will have to adjust accordingly, experts said.

Firms generally are going to have to bulk up their compliance staff, or look to outside firms to satisfy the requirements, said Jeff Mulligan, a partner at HedgeOp Compliance.

Folks in the private equity industry, according to David Miller, a chief marketing officer of eFront, a private equity software

provider, are already increasingly becoming transparent and this can almost be considered another step in that direction.

"It's just one of those steps that covers a lot of other areas but will serve that purpose in private equity," he said.

The rules, for example, do complicate some matters for those abroad looking to raise funds from the U.S., Miller said.

"There could potentially be a disincentive for non-U.S. based fund managers to receive investments from U.S.-based limited partners," he said.

[original post](#) | [return to top](#)

originally published January 16, 2013

Russia's Anti-Corruption Moves Draw Renewed Skepticism

Is Russia finally getting serious about corruption?

Russia's Interior Ministry has taken the rare step of spearheading a high-profile international investigation, charging a former member of the board of directors of the European Bank for Reconstruction and Development with seeking a bribe from a company that wanted a loan.

Yelena Kotova, who sat on EBRD board from 2005 to the end of 2010 as a representative of Russia, Belarus and Tajikistan, denies the allegations.

Coming after the introduction of higher fines for bribery, more investigations, official jawboning on the issue and a higher ranking in the latest Transparency International data, does this signify the turning of a page?

It does not, according to two attorneys who work with companies in Russia.

"It's good that the Russians are investigating corruption," said Danforth Newcomb at Shearman & Sterling, but he said he hasn't detected any significant improvement in the level of corruption there.

Likewise, Daniel Rothstein from a New York law firm with the same name, said his view, partly based on conversations with professional colleagues in Russia, is to "doubt there is a trend toward cleaning up private or public corruption."

Both lawyers point out corruption investigations in Russia are often used for settling scores. "Unless you're inside the case, it's impossible to know the significance of any corruption investigation in Russia," said Rothstein.

Opposition leader Alexei Navalny has been pursued for alleged fraud and money laundering, while the infamous case of Sergei Magnitsky involved the lawyer being arrested for the very allegations of plunder that he leveled against officials.

Russia's score in the Transparency International Corruption Perceptions Index did improve in 2012, rising to 2.8 on a zero-to-100 scale and its ranking rose to 133. In 2011 those numbers were 2.4 and 143, respectively, and in 2010 they were 2.1 and 154. Still, such numbers continue to depict Russia as one of the most corrupt major nations in the world.

Anton Pominov, research director at Transparency International Russia, was quoted at the time of the release of the 2012 index as saying corruption permeates all levels of society. "It's petty corruption, it's administrative corruption; I would say it's like a mid-level corruption and then there's political or grand corruption," he told Voice of America.

What of Vladimir Putin's remarks in his December presidential address that companies shouldn't use offshore tax havens and that officials should be barred from operating foreign bank accounts or owning securities abroad?

"I know of no national leader who is in favor of corruption when speaking to the media," said Newcomb at Shearman &

Sterling.

[original post](#) | [return to top](#)

originally published January 17, 2013

Canada Boosts Anti-Corruption Effort, Charges Energy Company

Canada, stung by criticism it was slacking in its enforcement of anti-corruption laws, is continuing to focus on increasing the numbers of investigations and prosecutions under its Corruption of Foreign Public Officials Act.

The latest case was announced this week when Griffiths Energy International Inc., which is involved in oil and gas exploration and production in the African nation of Chad, said it is being prosecuted for bribery related to contracts signed by the company's previous management and board.

The Public Prosecution Service of Canada charged privately held, Calgary-based Griffiths with one count under the CFPOA related to two consulting contracts signed between Aug. 30, 2009, and Feb. 9, 2011, the company said.

A spokesman said Wednesday the company would have no further comment at this time, but Griffiths said in a statement Tuesday it expects "a near-term negotiated resolution of all matters under review." The company is scheduled to appear in court for arraignment on March 15, according to court documents.

The Organization of Economic Cooperation and Development in March 2011 issued a mixed report on Canada, saying while it was beginning to boost enforcement activity of the CFPOA, there were institutional framework issues that needed to be resolved. Around the same time, Transparency International said Canada was the only G-7 nation with "little or no enforcement" of its law.

The country responded by engaging more actively in such matters, said Claudia Feldkamp, an attorney and co-chair of the corporate social responsibility practice group at law firm Fasken Martineau.

The two organizations "called out Canada for being weak in enforcement, and this is part of a larger international pressure coming down on countries not enforcing" their anti-corruption laws, said Feldkamp, who added the Royal Canadian Mounted Police has 23 cases of possible CFPOA investigations under way, though only one has led to a guilty plea so far. The RCMP said it was unavailable to comment.

Mining and energy companies appear to be the main targets of investigation, she said, in part because of the problems with corruption and bribery in the areas where such companies are doing their extracting and exploration.

Although activity is picking up, Feldkamp said one question is whether there will be sufficient resources devoted to following through for full investigations and prosecutions of these often-complex cases—and this was a point of concern for the OECD in its report, as well. Also to be determined is whether penalties levied against companies found in violation of the law will be strong enough.

Niko Resources, a Calgary-based oil and gas company, pleaded guilty in 2011 to bribing a Bangladeshi energy minister and paid a \$9.5 million fine. Feldkamp said some commentary at the time of the June 2011 plea deal was the penalty was not as strong as it should have been.

In the Griffiths case, the contracts in question—signed with two entities owned and controlled by a foreign public official and his spouse—were discovered by the company in November 2011, and an internal investigation was launched at that time and completed in May 2012, at which point the company shared its findings with investigators in Canada and the U.S., the

company said. The current management team and board were put in place between July and September 2011. The company's former chairman and co-founder, Brad Griffiths, died in a boating accident in July 2011.

"The outstanding question is what will the penalty be and whether it will be sufficient," said Feldkamp. "Negotiated settlements often end up happening, as this saves some costs of the prosecution and is better for companies to be seen working with the RCMP rather than forcing it through a prosecution. We'll see what comes out of this in the end."

[original post](#) | [return to top](#)

originally published January 17, 2013

Business Groups Fully Brief "Conflict Minerals" Legal Challenge

Several business groups challenging new rules that require companies to disclose whether their products contain minerals blamed for fueling violence in Africa said Wednesday regulators hadn't adequately analyzed the rules' impact.

The groups said in court papers that the Securities and Exchange Commission had itself admitted it didn't know if the rules would benefit the people of the Democratic Republic of the Congo and its surrounding region, the stated intent of Congress in creating the provision.

"Thus, the Commission violated its statutory obligations to apprise itself of the costs and benefits of the rule and the available regulatory alternatives before saddling U.S. public companies with billions of dollars in regulatory burdens," the groups said. "This failure of analysis infects the entire rule."

The U.S. Chamber of Commerce, the National Association of Manufacturers and the Business Roundtable asked the U.S. Court of Appeals for the District of Columbia Circuit to vacate the "conflict-mineral" rules in October. The groups fully explained their arguments for the first time on Wednesday in a 75-page brief.

John Nester, a spokesman for the SEC, defended the Commission's analysis in an email.

"We believe our legal interpretation and economic analysis are sound, and we look forward to defending the rule that Congress directed us to write," Nester said.

The "conflict minerals" rules, which were mandated by the 2010 Dodd-Frank financial overhaul, have been a source of friction between the SEC and companies ever since the law was passed. Under the current rules, U.S.-listed companies are required to disclose whether their products have been manufactured with any tantalum, tin, gold or tungsten used to finance violence in central Africa.

Companies have said the requirement would be burdensome and expensive. In August, the SEC estimated the rules would cost companies a total of \$3 billion to \$4 billion upfront to comply, plus more than \$200 million a year. The SEC also estimated around 6,000 U.S. and foreign companies would have to comply with the conflict-minerals rules, affecting manufacturers of a range of products, including smartphones, light bulbs and footwear.

On Wednesday, the groups said that the SEC's estimates are actually low, and that a financial burden of that size shouldn't be imposed without determining whether the rules will yield any benefits. The SEC's lack of analysis, according to the groups, violates the Administrative Procedure Act and the agency's heightened obligation under the Securities Exchange Act of 1934 to analyze the economic impact of its rules.

The groups also argued that the rules violate companies' First Amendment rights by compelling them to publicly state their products are "not DRC conflict free," that is, they contain conflict minerals.

"Even worse, this compelled disclosure will frequently be false," the groups argued. "Many of the companies forced to make it will not be manufacturing products containing minerals that funded armed groups. Rather, the companies will simply be unable to trace their supply chains to determine the minerals' origins."

[original post](#) | [return to top](#)

originally published January 17, 2013

Lawmakers, Nonprofit Slam Lawsuit Over Extractive Rule

House and Senate lawmakers, and nonprofit Oxfam America, all used court filings to slam a lawsuit filed by business groups trying to block a rule mandating oil, gas and mining companies disclose their payments to foreign governments.

The lawsuit, filed by the American Petroleum Institute, the U.S. Chamber of Commerce and two other business groups, contends that the Securities and Exchange Commission went beyond its authority when adopting the rule, ignoring companies' suggestions for limiting its cost, and claiming it violates the First Amendment as well as Congressional intent.

In a reply brief filed earlier this month, the SEC shot back, arguing, among other things, the business groups attempted "an eleventh-hour shift in strategy" when arguing that the rule violates the First Amendment.

A hearing date for the suit has not yet been scheduled.

The rule, promulgated by the SEC under Section 1504 of the Dodd-Frank Act and narrowly approved in August 2012, requires oil, gas and mining companies to disclose in their SEC filings payments of more than \$100,000 to foreign governments for things like licenses or royalties.

The rules don't contain exemptions for reporting "confidential or competitively sensitive information" or exemptions for instances in which reporting the payments might violate foreign laws.

Industry groups have been fighting Section 1504 since before it became law, but those involved in crafting the law fought back this week.

In one amicus brief filed Wednesday, Sens. Ben Cardin (D., Md.) and Carl Levin (D., Mich) joined former Sen. Richard Lugar (R., Ind.), arguing that Congress decides whether to enact laws that conflict with foreign laws, and that it regularly has done so. Moreover, the lawmakers said, U.S. courts routinely enforce American laws that conflict with foreign law, including laws that mandate transparency over secrecy.

"In making no provision for exemptions, the SEC acted consistently with the statutory language and purpose. On its face, the statute makes no provision for exemptions," the senators said.

Cardin and Lugar wrote the provision, and attacked the argument that the rule violates the First Amendment.

"There is nothing in the Cardin-Lugar Amendment that requires anything other than garden variety disclosure of factual, financial information by SEC issuers to the public," the amicus brief said. "These required factual disclosures are devoid of any ideological or political message."

House lawmakers, in a separate amicus brief, argued that Congress gave the SEC "no relevant discretion" when tasked with promulgating the rule.

"The Commission was therefore not required to make any additional findings regarding the benefits or costs of the rule, because Congress already did so when enacting Dodd-Frank," the House lawmakers said in their brief.

Oxfam America, a non-profit that sued to force the rule's implementation, is intervening in the lawsuit, and argued in its brief that the legislation helps people and investors track where money goes in the risky markets where oil, gas and mining companies operate.

"There simply is no constitutional right to keep payments to foreign governments secret," the Oxfam brief argued.

[original post](#) | [return to top](#)

originally published January 17, 2013

Treasury Slaps Sanctions on Drug Trafficking Organization

The U.S. Treasury Department said Thursday it placed Kingpin Act sanctions for the first time on a Sinaloa, Mexico-based drug trafficking organization, the Meza Flores Drug Trafficking Organization.

The network, a rival of the Sinaloa Cartel, operates out of Guasave, Sinaloa, Mexico, and since 2000 has been responsible for distributing methamphetamine, heroin, marijuana and cocaine to the U.S., Treasury said.

"By targeting the leaders of this extremely violent Sinaloa-based drug trafficking organization we are protecting the U.S. financial system from yet another source of illicit money tied to the narcotics trade," said Adam Szubin, director of Treasury's Office of Foreign Assets Control, in a statement.

The rivalry with the Sinaloa Cartel led to a violent turf war that resulted in the quadrupling of drug-war killings in the past four years, and an increase in kidnappings and arson within Sinaloa state, Treasury said.

As a result of the designation, anyone providing support to the organization can be placed under Kingpin Act sanctions in future OFAC actions.

In addition to targeting the organization itself, OFAC placed sanctions on its leader, Fausto Isidro Meza Flores, as well as several key family members and three companies. Among the family members are his wife, mother, father, sister and several uncles.

[original post](#) | [return to top](#)



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Dow Jones & Company, Inc., 1155 Avenue of the Americas, Third Floor, New York, NY 10036

McDow, Ann FIN:EX

From: Reddy, Uday P FIN:EX
Sent: Tuesday, September 13, 2011 4:40 PM
To: James, Harry FIN:EX; McLean, Doug B FIN:EX
Cc: Anderson, Sydney FIN:EX; Chong, Frank FIN:EX; Nagai, Wayne I FIN:EX
Subject: RE: FATCA

Hello Harry,

I was made aware of this IRS requirement when the legislation was proposed in the U.S.A. It is my understanding that the penalty on a foreign financial institution by the Inland Revenue Service (IRS) for not reporting would be based on the income being generated by the foreign financial institution in the U.S.A. There are no British Columbia Credit Unions operating in the U.S.A. and therefore, I was not too concerned about whether our credit unions would be able to meet this requirement since there is no U.S. income on which they can get penalized and therefore the legal and regulatory risk is minimal. There is a reputational risk though. However, we can look at whether there have been any changes upon enactment as it is quite a while since I looked at this reporting requirement.

Regards,

UDAY REDDY
A/Executive Director, Regulations
Financial Institutions Division
Financial Institutions Commission of BC
1200 - 13450, 102 Avenue
Surrey, B.C., V3T 5X3
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From: James, Harry FIN:EX
Sent: Tuesday, September 13, 2011 2:14 PM
To: Reddy, Uday P FIN:EX; McLean, Doug B FIN:EX
Cc: Anderson, Sydney FIN:EX; Chong, Frank FIN:EX
Subject: FATCA

FYI,

In case you were not aware, the U.S. Internal Revenue Service last year passed some changes to its tax act that may have a significant effect on our DTI's.

The Foreign Account Tax Compliance Act (FATCA) passed in 2010, will require

"taxpayers holding financial assets outside the United States will report those assets to the IRS. In addition, FATCA will require foreign financial institutions to report directly to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest." [quote from I.R.S. website]

Under this law foreign financial institutions will have to enter into a special agreement with the IRS by June 30, 2013. Under this agreement a "participating" FFI will be obligated to:

- (1) undertake certain identification and due diligence procedures with respect to its accountholders;
- (2) report annually to the IRS on its accountholders who are U.S. persons or foreign entities with substantial U.S. ownership; and
- (3) withhold and pay over to the IRS 30-percent of any payments of U.S. source income, as well as gross proceeds from the sale of securities that generate U.S. source income, made to (a) non-participating FFIs, (b) individual accountholders failing to provide sufficient information to determine whether or not they are a U.S. person, or (c) foreign entity accountholders failing to provide sufficient information about the identity of its substantial U.S. owners.

Sec 13

Sec 13

However, I see for us a bigger impact on the CU side. Not sure if you guys were aware of this but thought I'd raise it.

Here is a link to the I.R.S. website on this....

<http://www.irs.gov/businesses/corporations/article/0,,id=236667,00.html>

Harry James
Manager, Market Conduct Supervision
Financial Institutions Commission
604 953-5374
Harry.James@ficombc.ca

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McDow, Ann FIN:EX

From: Rogers, Carolyn FIN:EX
Sent: Wednesday, January 23, 2013 4:28 PM
To: [Redacted]
Cc: McLean, Doug B FIN:EX; Achtemichuk, Melanie FIN:EX; Chong, Frank FIN:EX
Subject: FW: FATCA Materials & C1
Attachments: WOCCU IRS FATCA Final Rule Short Summary 1-22-13.pdf; uk-us-fatca-regulations.pdf; uk-us-fatca-guidance-notes.pdf

Hi Andy, Guy,

Thanks for this info - we'll get it circulated to the CUPSA group ASAP.

Carolyn

From: [Redacted]
Sent: wednesday, January 23, 2013 12:26 PM
To: Rogers, Carolyn FIN:EX
Subject: FATCA Materials & C1

Hi Carolyn,

I hope you had a safe and comfortable trip home.

Attached is some materials from Michael Edwards at WOCCU regarding FACTA. I thought it might be useful information for our CUPSA colleagues.

Cheers,

[Redacted]



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[Redacted]

----- Forwarded by Andy Poprawa/DICO on 01/23/2013 03:15 PM -----

From: [Redacted]
To: [Redacted]
Date: 01/23/2013 02:27 PM
Subject: FATCA Materials

[Redacted]

Please find attached World Council's summary of the IRS FATCA final reg, and materials that the UK's HM Revenue and Customs issued regarding the UK FATCA Intergovernmental Agreement (which Canada will hopefully have something similar to the UK). Thanks.

Sec 22
Sec 22

From: Sec 22
Sent: Wednesday, January 23, 2013 2:10 PM

Sec 22
Sec 22

Subject: RE: Conference Call

I am dialed in but says leader not yet arrived. Will try dialing back in.

From: Sec 22
Sent: Wednesday, January 23, 2013 2:09 PM

Sec 22
Sec 22

Subject: Conference Call

Hi Larry,

Michael and I are on the line for our conference call. Are we still on?

Thanks,

Sec 22
Sec 22

