

Fox Rothschild Podcast

The Presumption of Innocence Podcast Series: Episode 8

**Managing Sanctions Against Russia:
A Look Inside U.S. Financial Institutions**

*Featuring Matthew Adams of Fox Rothschild LLP with
Peter Kim, David Hazen and Mark Zilberzweig*

Adams: Hi everyone. Welcome to “The Presumption of Innocence,” a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice Group at Fox Rothschild.

I'm your host today. My name is [Matt Adams](#). I'm a partner with the firm and co-chair of the [White-Collar Criminal Defense and Regulatory Compliance](#) practice. Today, I have a terrific trio of guests with extensive experience in the banking and financial industry regulatory space who are going to help me unpack the Russia sanctions.

As many of you know, on February 24, 2022, Russia invaded the sovereign nation of Ukraine. The financial sanctions regime that has followed is quite honestly unprecedented in its scope and breadth. Today I'm joined by [Peter Kim](#), [David Hazen](#) and [Mark Zilberzweig](#). Each of them in their own right brings extensive knowledge from the Office of Foreign Assets Control (OFAC), Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) regulatory spaces.

Peter is the practice leader of Withum's Financial Crimes Advisory Consultant practice. He specializes in BSA, AML, OFAC and all those types of matters for banks and other non-banking financial institutions. David and Mark come to us from the banking industry themselves. David is currently a VP and the BSA, AML, OFAC officer at Atlantic Community Bankers Bank. Mark is Vice President of Third-Party Oversight at Metropolitan Commercial Bank.

As you can tell, we are really blessed to have some people with some really extensive knowledge on exactly how these regulatory regimes are taking shape in the real world.

Peter, I want to get started with you. Just how does the current Russian sanction regime impact the regular businesses and individuals? We've heard a lot about what it means to Russian oligarchs and those in the inner circle of Vladimir Putin, but how does it impact U.S. businesses and individuals on a day-to-day basis?

Kim: That's a great question, Matt. In terms of the Russian sanctions in light of what has happened, what we're seeing now is unprecedented. The OFAC sanctions regime that existed before for Russian individuals and the various sectorial sanctions were targeted. Now, with the actions in Ukraine and a willingness of the White House to do so much more than to levy individuals on sectorial sanctions, the sanctions regime that exists now for Russia is broader. It's as heavy as we have ever seen, on par with the sanctions regime that we have in Iran, with North Korea and some of the other folks who are deemed enemies to the state. The White House has decided to step up its game, and rather than to commit boots on the ground, they are taking economic warfare, basically.

In terms of how it impacts everyone else: The flow of business that existed between the U.S., the world and Russia has, in essence, come to a stop; whether it's doing business transactions with entities and persons on the OFAC list using financial institutional transactions to send or receive funds from Russia. All that is deemed currently not permissible by OFAC. It has caused an economic blockade of Russian individuals, parties and bringing all the economic might of the U.S. financial systems to bear.

Adams: Now, you mentioned, this is unprecedented. How specifically does this compare to sanctions against Russia in the past? Sanctions against Russia are not a new thing in the U.S. economy. I'm sure when we get to our other guests, Mark and David, we're going to hear about what that's like on a day-to-day basis, living with that in a financial services industry. But how specifically does this compare to prior sanctions regimes against Russia?

Kim: Broadly speaking, Matt, they were not permitting certain transactions such as equity or loan deals, or individuals who the White House deemed to be permissible enough to add to OFAC sanctions.

Now, they're going after people and parties, getting closer to the Kremlin and Vladimir Putin than administrations in the past had ever gone. Just recently, we've learned that two of Vladimir Putin's daughters were added to the Specially Designated Nationals and Blocked Persons (SDN) List. All the oligarchs that have supported the Kremlin and Vladimir Putin for decades have also been added to the list. By putting the pressure on those who are closest to the Kremlin and the leadership there, the White House is really stepping up its game and putting specific targets on people that were not part of the sanctions regime in the past.

The noose is tightening. The economic damages that are inflicted is unprecedented because we have never seen anything like this before.

Adams: That's a good segue over to our friends, David and Mark, from the banking side of this. David, would you concur with Peter that this is unprecedented from where you sit?

Hazen: Yes. First, thanks, Matt, for letting me join this. Yes, I would a hundred percent agree with Peter's assessment that this is unprecedented. I think partly what makes this different is the sheer magnitude of the number of sanctions, the number of changes per day, almost, and, the amount of industries that are being targeted by the U.S., its allies: Canada, Australia, the UK and the EU. The total agreement across the board to unify and have this number of sanctions from the time that this started in February till today. As Peter pointed out, Putin's daughters just joined the SDN List, I believe it was two days ago. As long as this keeps going forward, it seems as if OFAC and the White House continue to push forward with more and more sanctions targeting more and more industries.

I think the only industry that hasn't necessarily been jointly targeted is the energy industry, and that's specifically because of the reliance in Europe on Russian energy.

Adams: In your role as an OFAC officer and also somebody responsible for BSA and AML functions, you come to this with a law enforcement background. You worked as a police officer. You've worked as an IRS CID investigative analyst. Your bank, Atlantic Community Bankers Bank, is in a unique situation as a bankers' bank. For those that are not familiar with that concept, why don't you inform them with that is?

Hazen: Sure. It is a unique business model. We are a correspondent bank that is only chartered to bank federally regulated community banks and credit unions. Our primary bread and butter is providing correspondent services to those banks, and specifically a domestic and international wire. We are not a U.S. dollar clearer, so we're not banking anybody overseas, but there's a specific number of risks in processing these types of transactions, cross-border, overseas.

Adams: You're faced in that role with the most expansive sanction regimes that we've ever seen. What do you do?

Hazen: As this started to boil up, and before the sanctions actually were released, all compliance officers were paying attention. You're hearing the administration talk about how they're going to roll out substantial sanctions packages to try to ward off Putin from going into Ukraine.

I think as it starts to unfold, and then as it actually unfolds, there's a lot of sleepless nights. You're trying to make sure that your filtering systems are working appropriately, being updated appropriately and capturing these new names that are being added. On top of that, you need to understand as an OFAC officer where your actual Russian risks are within your respective institution. For us, the biggest amount of risk lay with our international wire business. You're trying to make sure that, for me specifically, 300 plus institutions that I'm banking understand the environment. I'm sure everybody was paying attention, but it's my job to make sure that they understand the new rules and regulations for ACBB.

We continually sent out communications to our client base to let them know. The way that this unfolded is, there are specific directives that block specific items and entities and financial institutions. Then, there's what they call a wind-down period. So, there was a wind-down period for other activities. At ACBB, in my role, I'm independent. As this started to get increasingly more substantial with the number of sanctions that were coming out, you have to start to look around and see, how much risk are you willing to accept?

At this time, a lot of organizations started to cut off their business in Russia ... specifically, the big four and MasterCard and some of these other large organizations. As things started to change and unravel, I decided in my role that the best way to handle this was to restrict Russia and Ukraine temporarily until this either changes or becomes more permanent. I went to my board of directors and made that decision and informed our clients that we would no longer process transactions to Russia and Ukraine.

Adams: It was just easier to shut it all down?

Hazen: It became easier to shut it all down based on the fact that the sanctions continued to get more and more. Each day, they keep changing. Almost every day, we're getting more and more updates on this. In order to manage that risk, you've got to understand that if you're going to keep the doors open there, you're potentially putting yourself in the crosshairs of a violation with OFAC, and you don't want to be in that position.

Obviously, we have the software and the filtering programs to mitigate those risks, but at some point, you have to decide how much risk you're willing to accept. I think that was the amount of risk we were willing to accept, that this is not going to be over any time soon. It's getting more expansive, and we're just going to restrict it.

Adams: Let's go over to Mark for a moment. I know, Mark, you have more than 25 years of experience in this sector. Do you concur with your colleagues that this is perhaps unprecedented in its scope?

Zilberzweig: Thank you for inviting me to this wonderful law podcast on a very important topic in this day and age.

I do concur with Peter and David that this is certainly unprecedented. The last time we saw major OFAC sanctions was back when in 2015, President Obama forced on the Crimea region a vast regime of sanctions. They were quite comprehensive. This is definitely a step up or a higher level of comprehensive sanctions now, and pointing forward. We have not seen something like this ever since OFAC began monitoring sanctions, for a number of years.

To add to what David has mentioned, from the day-to-day operations: My bank is not the risk-averse type of bank, where we do businesses with traditional credit funds, unions, banks and so forth. My area of expertise is in the FinTech program managers space, where we do have clients who work in FinTech, payment processing, domestic and international prepaid debit cards and so forth. We do have clients who have Russia's sanctioned ties as well as Ukraine. What David has mentioned is what we did at our bank. We made sure the educational level of these OFAC sanctions for Russia were discussed on a daily basis, along with senior management, and of course, the board. We came to a position where client activity would cease with these Russia and Ukrainian ties for those particular regions. As of now, and indefinitely, that has been a decision that has been made.

I just want to make a quick note that we are examining the ownership of all our client relationships as of now, and in particular, any clients who are new in the pipeline for prospective clients. Any ties to Russian ownership, we would, basically, pushed the business away at this moment. That decision has been made, and I'm sure other banks are doing that same type of mentality to ensure that the risk is not worse than the reward at this current time.

Adams: Let's talk a little bit about the specific methods and tools that you, in this regulatory space, with this level of OFAC regime pressing down on you, typically use to ensure compliance during times like these. Mark, go through some of those common methods and tools.

Zilberzweig: First and foremost, from the banking side, we would definitely re-examine our policy and procedures, in particular our restricted country list, to ensure that Russia and Ukraine and some of the allies of Russia, like Belarus and maybe China, are considered high on the risk-rating portfolio. We use transactional monitoring to make sure that those countries or any transactions touched on those would be flagged immediately for any internal review. Then, as I mentioned, I am responsible for, as program manager of FinTech, third-party oversight. We need to ensure that the transactions are not going to be touching those payment-processing countries of mention and, in particular, make sure their policy and procedures are in line with other commercial banks as well.

Adams: Is most of this software-based?

Zilberzweig: It's software and policy/procedures based. Software systems certainly need to be updated and reflective that these countries are being flagged correctly. Then internally, policies and procedures need to be reflected and escalated to senior management, and of course, presented to the board officially as well.

Adams: I would gather that, David and Mark, you have a close affinity and good working relationship with your respective IS departments at your organizations. I want to go back to Peter for a moment. In a broad way, Peter, what is the impact that this is having in the financial services industry?

We've heard now from two people with boots on the ground, in the day-to-day operations of a bank, talking to us about literally the sanctions were ratcheted up to a level that the risk tolerance was so great, you could no longer do business with entities and individuals from these particular countries. That's got to have an impact. What's the impact, Peter?

Kim: Just imagine what would happen if a flow of transactions and financial transfers came to a dead stop, not only for one person, one company, but for an entire country. As you heard from what David and Mark said, they are making the decision to cut off the wherewithal to send or receive money, anything associated with Russia. This is not only David and Mark. You could think about all the compliance officers at all the U.S. institutions that are facing this coming from OFAC. If the entire country is cut off from the financial space where you could send or receive money, that pretty much ensures that your economy, your activities, will come to a dead stop.

The only thing that you can rely on is transactions within the country. Transactions with folks who are not abiding by the OFAC countries. There's not that many countries that are not following OFAC and other regulatory regimes guidance. It basically means that the country and the folks who are on the OFAC sanctions list are no longer able to send or receive money. That pretty much means that your economic activities are coming to a dead stop.

Adams: We heard a lot, Peter, about Russia being removed from the [Society for Worldwide Interbank Financial Telecommunication \(SWIFT\)](#) and what that meant in terms of international finance. We're talking a lot about the domestic impact, but this is really a global phenomenon that's going on right now. Speak a little bit to the SWIFT removal.

Kim: SWIFT is, in simple term, a way that institutions and parties belonging to SWIFT can exchange information, to do transactions with each other, and also send money to and from each other across different countries and other boundaries. It's a broader system than what the U.S. would do to send money to each other through the fed system. During my time at the federal reserve, we saw a broad network of institutions within the U.S. sending money to each other.

SWIFT is a global system of exchanging information and also transfer of funds. If you are removed from the SWIFT system, that means that you will not be able to participate in international business dealings. If you're sending or receiving funds through commerce, where you are sending coal or gas or oil to another country and receiving the money, the way that you could exchange information, the way that you could do the deal, the way you could send money and receive money, is through SWIFT.

If you're cut off from SWIFT, that means that you will not be able to do business and send or receive money. So, again, this is a way to essentially cut off a country from doing business with the world's economy at large.

Adams: David, I want to go back to you, because this podcast is called "The Presumption of Innocence," the legal authority to act, that people have the right to due process.

How do you get your arms around the legal authority to block or reject these transactions that are constantly evolving in your day-to-day world?

Hazen: We continue to use the term “unprecedented” because when this first started to roll out, OFAC blocked, for instance, VTB bank, which is one of the Russian banks. If a transaction related to that bank came through our system, we'd have to block that transaction, and the legal authority would be Executive Order 14024. However, Sberbank, which is Russia's largest bank at the particular time when these sanctions started to roll out and specifically around the wind-down period, Sberbank was really just a rejection. It was not a blocked asset. You identify Sberbank, you wouldn't seize those funds. You would still report it to OFAC via the rejection form, but you wouldn't seize the funds. That's since changed this week, where Sberbank is now fully a blockable asset.

When you're trying to execute a transaction that's under review because your filtering software alerted you to it, you need to make sure that you're identifying the legal authority, the executive order that requires you to either block or reject that particular transaction, or it may be a false positive.

Adams: Mark, I'd imagine in the position that you hold at Metropolitan Commercial Bank, and, like David, you have a tremendous new obligation.

How do you ensure that your training program for various employees who are working in the compliance apparatus stays current? Where I sit, one of the best ways to ensure regulatory compliance for an institution is through demonstrating that you have a reasonable compliance program that includes education to your entire organization. That often holds you in good stead. When the regulator comes knocking, you can point to that compliance program. But when you're in this rapidly evolving environment from these sanctions regimes, how exactly do you pull that off?

Zilberweig: That's a good point, Matt. Since many financial institutions like banks rely on third-party vendors to perform their training, we have taken a positive approach to do in-house, targeted training with a presentation deck that's current, impactful and educational. Not just for employees of the immediate compliance team, but certain departments like the operations team, the sales team and, of course, senior management and the board. Everyone is well-equipped with the tools, the knowledge, the understanding of what these OFAC relationships are occurring on a day-to-day basis. We are very proactive at understanding of the risks involved.

Also, going to another level, the money cannot be moved out of Russia. What other methods of transfer can be done, like crypto? Many of the Russians are using crypto these days to mask transactions. We have seen a lot of transactions go through the dark market where monies you do not see are being done behind OFAC. Thirdly, we also see a lot of investments of the last few months in real estate in countries outside Russia. A lot of the Russians, oligarchs and very senior people who have a lot of money, need to invest the money and mask it and hide it because we feel that this war is going to go on for quite some time.

Hazen: Matt, so to Mark's point, sanctions evasion is a huge problem now. Financial Crimes Enforcement Network (FinCEN) recently sent out an advisory advising of the different red flags associated with sanctions evasion. Now that's the bigger concern. Specifically, when you look at North Korea, they really have an idea of how to avoid sanctions through shell companies and things like that. FinCEN's trying to drum up compliance officers to understand these other avenues. Specific to cryptocurrency, they're sanctioning several of the virtual exchanges that are over in Estonia and operating out of Moscow. Those are other avenues that Russia can use to maintain some kind of economic standing.

Now in my seat and in Mark's seat, we've got to pay more attention to areas, like Cyprus, that are close to Russia. There could be several shell companies that are operating there that are state-owned, and so that's another concern that we have to worry about these days.

Adams: Fascinating stuff, and it certainly complicates your day-to-day lives.

Peter, I want to come back to you. We've talked, perhaps at a 30,000-foot level, of the impact on the broader global economy from the sanction regimes that have flowed from Russia's invasion of Ukraine. We've talked about practically what that means in the day-to-day life of guys like David and Mark, who are actually carrying this out. You really are the frontline of this policy in implementing it.

But I want to go back to Peter, and I want you to just explain for our audience a little bit about what happens when an individual or entity is determined to be sanctioned and subject to the OFAC sanction program. What actually happens, and how is that carried out in real time?

Kim: I'll respond in two ways. Let's say you were the sanctioned person, and you are now finding yourself on the OFAC sanctions list. That pretty much means that you will not be able to open up an account with any of the financial institutions. You will not be able to send any money anywhere using any of the U.S. financial institution pipes. You will not be able to fly because you will be on the OFAC sanctions list. You're basically being separated from all things that we hold near and dear as a freedom-loving country. Being on the OFAC sanctions list is not someplace you want to be.

Now, from the other side, from a financial institution, the way that you would discover whether the person is on the sanctions list, as David and Mark said, the updates are daily and the number of entries are enormous. The only way you could do this is using the financial services and the software systems that monitor accounts and transactions. Once you're on it, once you become a sanctioned person, it will at that point be dealt with. People like David and Mark will find that if Peter Kim was on the sanctions list tomorrow, my account would not be available to me and would be dealt with, and, whether following instructions from OFAC, that account needs to be blocked or ultimately rejected or sent over to the OFAC administration.

Basically, if you are on the OFAC sanctions list, you're having a really bad day.

Adams: Yes, I'd imagine you are. David, all this begs the question: You got somebody who pops up on the OFAC sanctions list. How do you freeze their assets and what happens when they want their money and challenge your actions?

Hazen: Thanks, Matt. OFAC really has one rule: the 50% rule. Sometimes, there gets to be situations where you've identified an SDN, maybe in the back of a company, maybe a beneficial owner of some sort, maybe a board of director or a president of a company. They're not necessarily in the transaction, but through your investigation, you believe that they have enough control of that company to meet that 50% rule. You make that risk-based decision to block those funds. If that person or that company believes that you did that inappropriately or you didn't have the proper legal authority, they can contest that, but they have to go through OFAC.

Any compliance officer is not going to release any funds because somebody calls the phone and starts crying about it. They're going to only do what OFAC tells them to do once they make that decision to seize those funds. There is a hotline that a compliance officer can call to essentially talk to OFAC to see if they can give any appropriate guidance. The only other avenue to release those

funds is if they somehow become not an SDN any longer or if OFAC provides a specific license that advises you that you can release those funds.

Adams: Where do you put them once you seize it?

Hazen: When you seize funds, you're obligated to put them in an interest-bearing suspense account. Typically, at my institution, we'll put them in an interest-bearing GL. Or we have a couple accounts that we don't operate out of. It's essentially meant for when we hold funds. It's the same thing that we would do. It's not interest-bearing, but if you're holding a transaction for a couple of days, because you're looking into it, you're going to move it into a special account. That way, everything reconciles at the end of the night.

Adams: Excellent. Mark, in your day-to-day life, when you have to flag somebody who's on this sanctions list and essentially, as Peter said, deal with the account, what's the type of things you're hearing?

Zilberzweig: We do. I don't want to say it happens every day, but we do sometimes get positive hits. Well, sort of positive hits. The OFAC team basically works in conjunction, and there's usually a stand-alone team. They review it. They want to make sure that the individual's name actually does match. Sometimes, from a day-to-day operation, there might be a name that's very similar. We just need to get additional information, like a date of birth or a middle name to make sure that we concur that's the same individual.

To add to what Peter has said, not only having a bad day, but once your name is on the list, it's very hard to remove it. That's the most difficult part of being on the OFAC list. 99% of the time, that name usually sits there indefinitely. Having someone's name on that list is extremely crucial in financial transactions, from a geo-political point of view, as well as reputational for that individual. I believe the only time you could fall off that list is when you are deceased. It's a tough list to be on, but the OFAC program has become quite essential and quite important over the last number of years, especially now.

Adams: Shoot first, ask questions later, it seems to me.

Kim: Yes. Look at it this way, at least we're shooting financial bullets. The other thing that the White House has decided not to do was put boots on the ground and go to war in geographic area. We could look at OFAC sanctions as a tough thing to impose on a regime or individuals, but this is the economic warfare that's available to the White House, short of going to war. As tough as these measures are, the alternatives are so much worse.

Adams: Well said, Peter.

Mark, I want to finish with one additional transition in the day-to-day world of working as a compliance officer in a bank. Since the regime has gone into place, I would imagine you've had a lot of longer days. What kind of additional technology resources are having to be brought to bear in light of what we're experiencing?

Zilberzweig: From the day-to-day operation, from the OFAC systems point of view, we've got to make sure that the systems are being flagged for the actual, accurate names. FinCEN keeps sending these advisories.

What we have implemented is a four-eyes approach, where we have the names on the list and we want to make sure the systems actually fairly capture the names correctly. We do have an in-house quality assurance person who validates and checks that those names are in fact being flagged in the system. This is basically a quality assurance at its best, related to OFAC.

Adams: I'd imagine, David, this is on the incoming and the outgoing side from your financial institution perspective, correct?

Hazen: Correct. In our institution, our filtering software updates every single night. Whatever updates come during the day, they get updated at night. What we do is, within 24 or 48 hours, we check to ensure those names actually got captured within our system. Then on a quarterly basis, we actually create dummy wire files with test names and banks on them and route them through our system to see if they'd flag.

I think for me, it's reading what's going on and staying abreast of the different situations. At the time we have a true hit, my team's going to ultimately come to me to make that decision about blocking or rejecting those funds.

To the earlier discussion about the decision to seize funds and put them in a suspense account, it's a big decision. There's a lot of weight on your shoulders, because you've got to make sure you're right. If you're not right, you're holding somebody's funds that you shouldn't, or don't have the legal authority to do so. There's a lot of weight on compliance officer's shoulders. It's really a stressful time, I would say, for us. I would say most banks, if not all banks, they have an OFAC framework. It's there to make sure that we account for these types of changes. Changes in the sanction environment ... they're not a new thing. I think it's just the number of changes, the number of sectors that are being brought in, the number of banks, a lot of different situations that are going on in this specific, targeted sanction at Russia.

Our filtering software is what we rely on. I think I'm fortunate in my institution because we recently replaced ours last year. We just went through a whole slew of testing to make sure that the system was operating effectively, and so we might've gotten lucky with this situation.

Adams: Better to be lucky than good sometimes. The timing of that seems fairly fortuitous.

Hazen: Oh yeah. I'm pretty happy about it because the system is a lot easier to use. We probably would be expending a lot more resources if we were on the other system. Honestly, our OFAC framework has a manual aspect to it because we do batch screening every night on our customer accounts and our loan portfolio and things like that. We have the live wire screening for when wires are coming in a live environment.

We also have other areas within our bank that we have to ensure OFAC compliance. We have software that we use for what I would say is a manual search, to ensure that they're also not OFAC entities. It's a multi-prong approach.

Adams: The margin for error is razor thin in this environment. I think from my seat, I can see a whole avenue opening up for situations where people inadvertently find themselves on the receiving end of one of these regimes. They may want to try to figure out why they're there and if they can challenge it. I think that's probably where the next legal step is headed as we experience these unprecedented sanctions response to the Russian invasion of Ukraine.



We are at the end of our time together today. I can't thank you all enough for joining us on "The Presumption of Innocence." We'll see you next time.

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