

OFAC SETTLEMENT UNDERLINES SANCTIONS RISKS FOR DIGITAL CURRENCY SERVICES PROVIDERS

On December 30, 2020, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced a settlement of apparent US sanctions violations by California-based BitGo, Inc. ("BitGo") that involved its provision of non-custodial digital wallet management services for digital currency private keys to customers in Crimea, Cuba, Iran, Sudan and Syria.¹ The case highlights the sanctions risks for US companies that provide services in connection with digital assets and indicates sanctions compliance controls that may be appropriate to mitigate such risks. BitGo did not voluntarily self-disclose the apparent violations, but OFAC determined that they were not egregious and therefore assessed a base penalty of \$183,000. OFAC then reduced the final penalty to \$93,830 based on a number of mitigating factors including BitGo's cooperation with OFAC, remedial measures and compliance enhancements.

During March 2015 to December 2019, BitGo processed 183 transactions on behalf of individuals located in OFAC-sanctioned jurisdictions who were users of BitGo's "hot wallet" secure digital wallet management service. This service, which is connected to an online wallet, enables individuals to manage their private keys, including using them to send the digital currency to other wallets or addresses on a public blockchain network.² OFAC determined that BitGo had reason to know that individual users were located in sanctioned jurisdictions based on the users' Internet Protocol ("IP") addresses, which BitGo tracked for account login security, but not sanctions compliance. Further, although starting in April 2018, BitGo required users to attest to their location, it did not conduct checks to verify if the users were providing correct information. OFAC found that BitGo "failed to exercise due caution or care for its sanctions compliance obligations when it failed

¹ See https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.

² BitGo's non-custodial digital wallet management services that are the subject of the OFAC enforcement action, are distinct from the digital currency custody services provided by BitGo's affiliate, BitGo Trust Company, Inc., which were not a subject of OFAC's action.

to prevent persons apparently located in sanctioned jurisdictions to open accounts and send digital currencies via its platform as a result of a failure to implement appropriate, risk-based sanctions compliance controls."

After learning of the OFAC violations, BitGo adopted a sanctions compliance program that includes: (i) implementing mechanisms to block IP addresses from sanctioned jurisdictions; (ii) conducting sanctions screening of all accounts, including "hot wallet" accounts, against OFAC sanctions lists, including blocked cryptocurrency wallet addresses listed by OFAC; and (iii) hiring a Chief Compliance Officer.

Previous OFAC settlements also have identified that companies providing online services, including financial institutions providing online account services, should use IP blocking mechanisms and screening to mitigate sanctions risks. Companies providing digital currency services also should review OFAC's FAQs on virtual currency that among other things emphasize that "firms that facilitate or engage in online commerce or process transactions using digital currency, are responsible for ensuring that they do not engage in unauthorized transactions prohibited by OFAC sanctions, such as dealings with blocked persons or property, or engaging in prohibited trade or investment-related transactions."³

³ See <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1626>.

CONTACTS

David DiBari
Managing Partner
T +1 202 912 5098
E david.dibari
@cliffordchance.com

Steven Gatti
Partner
T +1 202 912 5095
E steven.gatti
@cliffordchance.com

Megan Gordon
Partner
T +1 202 912 5021
E megan.gordon
@cliffordchance.com

George Kleinfeld
Partner
T +1 202 912 5126
E george.kleinfeld
@cliffordchance.com

Celeste Koeleveld
Partner
T +1 212 878 3051
E celeste.koeleveld
@cliffordchance.com

Michelle Williams
Partner
T +1 202 912 5011
E michelle.williams
@cliffordchance.com

Philip Angeloff
Counsel
T +1 202 912 5111
E philip.angeloff
@cliffordchance.com

Jacqueline Landells
Counsel
T +1 202 912 5061
E jacqueline.landells
@cliffordchance.com

Robert Rice
Counsel
T +1 212 878 8529
E robert.rice
@cliffordchance.com

David Adams
Associate
T +1 202 912 5067
E davidg.adams
@cliffordchance.com

Jesse Overall
Associate
T +1 212 878 8289
E jesse.overall
@cliffordchance.com

John-Patrick Powers
Associate
T +1 202 912 5048
E john-patrick.powers
@cliffordchance.com

Holly Bauer
Associate
T +1 202 912 5132
E holly.bauer
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA

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