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Sham Transactions Still Obscure Sanctions Risk, Former OFAC Counsel Says

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Sanctions compliance requires looking beyond name matching to understand how sanctioned parties behave across complex ownership and proxy networks, according to a former chief counsel of the Office of Foreign Assets Control.

Speaking during a July 30 webinar by global trade data and compliance technology company Trademo on sham transactions and sanctioned ownership, Rachel Alpert said OFAC's March 2026 sham-transaction guidance (see 2603310050) didn't create new obligations but consolidated expectations companies "should have been aware of."

"It's important to track everyone you're dealing with, who makes decisions, and who acts on behalf of whom -- not just those on the paperwork," she said.

Sanctioned actors often obscure their interests through relatives, trusts, proxies or layered corporate structures that appear legitimate on paper but fail under OFAC's functional definition of continuing interest, Alpert said. She pointed to examples where oligarchs transferred assets to spouses or minor children while continuing to use or benefit from them.

"The key point is the transfer point," she said. "The most challenging thing is there isn't just one factor that is a red flag. But a couple of key factors are the role of family members acting as an extension of the sanctioned person and the use of complicated trust structures that appear intended to obfuscate ownership."

Alpert, now a partner at law firm Jenner & Block, emphasized that OFAC's 50% rule, which treats an entity as blocked when sanctioned persons own 50% or more in the aggregate, is a strictly ownership-based standard. She said that the rule "speaks only to ownership," noting that unlike the U.K. and EU, "control" is not part of the U.S. legal assessment of whether an entity is automatically blocked.

"Control alone will not cause a sanctions violation in the United States, but a sanctioned party that controls a business is a big red flag," she said.

The distinction matters in jurisdictions such as Russia, Alpert said, where sanctioned individuals may sit on boards or represent companies that are not themselves designated. If dealings with the entity are authorized, she said, "it would be prohibited to enter into a contract signed by that blocked person, even if they're signing on behalf of the non-blocked entity."

Alpert also highlighted sanctions programs that block persons without a designation, such as those involving Cuba or Iran. She said compliance teams must understand "not just who is on the list but who they are, who they represent and whether they might be blocked for another reason."

Alpert also discussed sham transactions, which OFAC defines as arrangements that "conceal rather than genuinely extinguish a continuing interest in property." She described cases involving private jets transferred to trusts, bank accounts funded by designated narcotraffickers but held in a spouse's name, and corporate structures with "no legitimate business reason" for a corporate structure other than to obscure ownership.

"It's very important to look beyond legal formalities to see the underlying practical and economic realities of a transaction to assess whether or not there's truly a sanctions risk," she said.

While Alpert's comments underscored the operational challenges companies face in detecting hidden ownership, Shalabh Singhal, CEO of Trademo, said periodic screening is no longer sufficient.

"Periodic screening programs fail here," he said. "As ownership structures change, there should be a notification alert to companies rather than checking months later."

Singhal described the challenge as "a graph problem," requiring continuous monitoring of ownership, trade relationships and relative-and-close-associate data.

He said a graph-based, continuously updated monitoring helps identify "sanctions by extension," where minority stakes held by sanctioned parties aggregate to 50% or more, or where trusts benefit relatives of designated individuals.

Singhal also noted that OFAC penalties often hinge on the strength of a company's compliance program.

"A large company can be fined hundreds of millions for a small transaction if there are gaps, whereas a company that invested in technology and screening might avoid a penalty or receive a low one," he said.

After Singhal discussed screening and enforcement challenges, Alpert turned to downstream exposure, saying OFAC is pragmatic about how far responsibility extends once goods are in circulation. But she said companies must still take reasonable steps to prevent sanctioned parties from accessing products, including identifying customers and limiting updates.

"But the key is: what steps can you take to ensure it does not enter the hands of a sanctioned person?" she said. "Can you identify customers and cut off access to updates?"

She added that businesses "should have known a sanctioned oligarch was making decisions because they dealt with him five years ago," underscoring OFAC's expectation that companies understand not only who owns an entity, but who benefits, who decides, and who acts on its behalf.
