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OFAC Settles with BIOMIN America, Inc. with Respect to Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations

BIOMIN America, Inc. (“BIOMIN America”), an animal nutrition company based in Overland Park, Kansas, has agreed to pay \$257,862 to settle its potential civil liability for coordinating sales of agricultural commodities to a company in Cuba without authorization from OFAC. BIOMIN America could potentially have availed itself of such authorization but failed to take the steps necessary to do so. Instead, BIOMIN America developed a transaction structure that it incorrectly determined would be consistent with U.S. sanctions requirements, which resulted in a total of 44 apparent violations. BIOMIN America subsequently implemented remedial measures intended to prevent future unauthorized sales.

Description of the Violations and the Conduct Leading to the Violations

From on or about July 11, 2012 to on or about September 29, 2017, BIOMIN America and its owned or controlled foreign entities engaged in a total of 30 sales of agricultural commodities produced outside the United States to Alfarma S.A. (“Alfarma”) in Cuba without authorization from OFAC, which resulted in 44 apparent violations of § 515.201 of the Cuban Assets Control Regulations (CACR), 31 C.F.R. part 515, by BIOMIN America or its owned or controlled foreign entities (the “Apparent Violations”).

Believing that BIOMIN America could not directly export its agricultural products to Cuba, and in order to secure a sales opportunity with Alfarma, BIOMIN America’s managers developed a transaction structure that they incorrectly determined would be consistent with U.S. sanctions requirements. Under this structure, BIOMIN America processed purchase orders from Alfarma on behalf of BIOMIN America’s foreign affiliates that would then fulfill the orders for Alfarma.¹ BIOMIN America coordinated, and received commissions on, these sales to Alfarma as executed by its foreign affiliates. As a result, BIOMIN America and its owned or controlled foreign entities dealt in blocked property in apparent violation of the CACR.

BIOMIN America could potentially have availed itself of an existing general license under § 515.533(a) of the CACR or applied for a specific license from OFAC, provided the exports had been consistent with the Export Administration Regulations, but it failed to seek appropriate advice or otherwise take the steps necessary to authorize these transactions. During the time in which the apparent violations occurred, BIOMIN America did not have an OFAC compliance program in place. The conduct of BIOMIN America and its owned or controlled foreign entities resulting in these violations had a transactional value of \$17,391,950.25.

¹ BIOMIN America owned a majority interest in several of the foreign affiliates and directly managed another foreign affiliate, which made them persons subject to the jurisdiction of the United States as defined by § 515.329 of the CACR.

Penalty Calculation and General Factors Analysis

The statutory maximum civil monetary penalty applicable in this matter is \$2,149,230. OFAC determined, however, that BIOMIN America voluntarily self-disclosed the Apparent Violations and that the Apparent Violations constitute a non-egregious case. Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), 31 C.F.R. part 501, app. A, the base civil monetary penalty amount applicable in this matter is \$973,691.

The settlement amount of \$257,862 reflects OFAC's consideration of the General Factors under the Enforcement Guidelines.

OFAC determined the following to be **aggravating factors**:

- (1) BIOMIN America was reckless in its actions to develop, direct, and execute a transaction structure to export its products to Cuba, as fulfilled by its owned or controlled foreign entities and a foreign affiliate, in a manner that violated the CACR for a period of several years;
- (2) BIOMIN America's management, as well as the management of another of its owned or controlled foreign entities, was aware of and involved in the development and execution of the transaction structure; and
- (3) BIOMIN America and its owned or controlled foreign entities are actively managed divisions of the ERBER Group, a commercially sophisticated, international company.

OFAC determined the following to be **mitigating factors**:

- (1) BIOMIN America and its owned or controlled foreign entities' transactions may have been eligible for authorization through an existing general license or a specific license, if the relevant general license conditions had been complied with or a specific license obtained;
- (2) BIOMIN America and its owned or controlled foreign entities have not received a Penalty Notice or Finding of Violation from OFAC in the five years preceding the earliest date of the transactions giving rise to the Apparent Violations;
- (3) BIOMIN America, on behalf of itself and its owned or controlled foreign entities, engaged with outside counsel and export control consultants to conduct comprehensive training sessions for logistics, compliance, and senior management on country-specific embargoes, denied persons screening, and export license requirements, among others. Further, BIOMIN America developed formal written policies and procedures to prevent sales to or for unauthorized destinations, parties, or activities; and
- (4) BIOMIN America provided information to OFAC in a clear, concise, timely, and well-organized manner, and executed a tolling agreement to extend the statute of limitations.

Compliance Considerations

This case demonstrates the importance of U.S. companies with a global presence maintaining appropriate sanctions compliance programs, particularly when dealing with foreign subsidiaries and affiliates. Furthermore, U.S. companies can benefit from seeking appropriate advice and guidance when contemplating business involving U.S. sanctions programs rather than developing alternative methods through non-U.S. companies in order to avoid prohibitions on U.S. companies.

OFAC Enforcement and Compliance Resources

As noted in [OFAC's Framework for Compliance Commitments](#), misinterpreting, or failing to understand the applicability of, OFAC's regulations, including general licenses and authorizations, has previously caused organizations to commit sanctions violations. U.S. persons can mitigate sanctions risk by exercising caution when dealing with foreign subsidiaries or affiliates and entities located in regions subject to U.S. sanctions programs and by understanding the full scope and applicability of authorizations as they relate to the prohibitions of the CACR and other sanctions programs.

Information concerning the civil penalties process is discussed in OFAC regulations governing the various sanctions programs and in 31 C.F.R. part 501. On November 9, 2009, OFAC published as Appendix A to part 501 Economic Sanctions Enforcement Guidelines. *See* 74 Fed. Reg. 57,593 (Nov. 9, 2009). The Economic Sanctions Enforcement Guidelines, as well as recent final civil penalties and enforcement information, can be found on OFAC's website at <http://www.treasury.gov/ofac/enforcement>.

For more information regarding OFAC regulations, please go to: www.treasury.gov/ofac.