

## § 501.703

(i) *Prepenalty Notice* means a written notification from the Director informing a respondent of the alleged violation(s) and the respondent's right to respond.

(j) *Penalty Notice* means a written notification from the Director informing a respondent that the Director has made a finding of violation and, absent a request for a hearing, will impose a civil monetary penalty.

(k) *Proceeding* means any agency process initiated by an "Order Instituting Proceedings," or by the filing of a petition for review of an Administrative Law Judge's decision or ruling.

(l) *Respondent* means any individual alleged by the Director to have violated a TWEA-based sanctions regulation.

(m) *Secretary's designee* means a U.S. Treasury Department official delegated responsibility by the Secretary of the Treasury to consider petitions for review of Administrative Law Judge decisions made in civil penalty hearings conducted pursuant to this subpart.

(n) *Secretary* means the Secretary of the Treasury.

### § 501.703 Overview of civil penalty process and construction of rules.

(a) The administrative process for enforcing TWEA sanctions programs proceeds as follows:

(1) The Director of the Office of Foreign Assets Control will notify a suspected violator (hereinafter "respondent") of an alleged violation by issuing a "Prepenalty Notice." The Prepenalty Notice shall describe the alleged violation(s) and include a proposed civil penalty amount.

(2) The respondent will have 60 days from the date the Prepenalty Notice is served to make a written presentation either defending against the alleged violation or admitting the violation. A respondent who admits a violation may offer information as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(3) Absent a settlement agreement or a finding that no violation occurred, the Director of the Office of Foreign Assets Control will issue a "Penalty Notice." The respondent will have 30

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days from the date of service to either pay the penalty or request a hearing.

(4) If the respondent requests a hearing, the Director of the Office of Foreign Assets Control will have two options:

(i) The Director may issue an "Order Instituting Proceedings" and refer the matter to an Administrative Law Judge for a hearing and decision; or

(ii) The Director may determine to discontinue the penalty action based on information presented by the respondent.

(5) Absent review by a Secretary's designee, the decision of the Administrative Law Judge will become the final decision of the Department without further proceedings.

(6) If review is taken by a Secretary's designee, the Secretary's designee reaches the final decision of the Department.

(7) A respondent may seek judicial review of the final decision of the Department.

(b) *Construction of rules.* The rules contained in this subpart shall be construed and administered to promote the just, speedy, and inexpensive determination of every action. To the extent there is a conflict between the rules contained in this subpart and a procedural requirement contained in any statute, the requirement in the statute shall control.

### § 501.704 Appearance and practice.

No person shall be represented before the Director in any civil penalty matter, or an Administrative Law Judge or the Secretary's designee in a civil penalty hearing, under this subpart except as provided in this section.

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representative.* Upon written notice to the Director,

(1) A respondent may be represented by a personal representative. If a respondent wishes to be represented by counsel, such counsel must be an attorney at law admitted to practice before the Supreme Court of the United States, the highest court of any State, commonwealth, possession, or territory of the United States, or the District of Columbia;

(2) A duly authorized member of a partnership may represent the partnership; and

(3) A bona fide officer, director, or employee of a corporation, trust or association may represent the corporation, trust or association.

(c) *Director representation.* The Director shall be represented by members of the Office of Chief Counsel or any other counsel specifically assigned by the General Counsel.

(d) *Conflicts of interest*—(1) *Conflict of interest in representation.* No individual shall appear as representative for a respondent in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that representative's responsibilities to a third person, or by that representative's own interests.

(2) *Corrective measures.* An Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

#### § 501.705 Service and filing.

(a) *Service of Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request and Order Instituting Proceedings.* The Director shall cause any Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request, Order Instituting Proceedings, and other related orders and decisions, or any amendments or supplements thereto, to be served upon the respondent.

(1) *Service on individuals.* Service shall be complete:

(i) Upon the date of mailing by first class (regular) mail to the respondent at the respondent's last known address, or to a representative authorized to receive service, including qualified representatives noticed to the Director pursuant to §501.704. Absent satisfactory evidence in the administrative record to the contrary, the Director may presume that the date of mailing is the date stamped on the first page of the notice or order. The respondent may rebut the presumption that a no-

tice or order was mailed on the stamped mailing date only by presenting evidence of the postmark date on the envelope in which the notice or order was mailed;

(ii) Upon personal service on the respondent; or leaving a copy at the respondent's place of business with a clerk or other person in charge thereof; or leaving a copy at the respondent's dwelling house or usual place of abode with a person at least 18 years of age then residing therein; or with any other representative authorized by appointment or by law to accept or receive service for the respondent, including representatives noticed to the Director pursuant to §501.704; and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the notice or order was left; or

(iii) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (a)(1)(i) and (ii) of this section inappropriate or ineffective for service upon the non-resident respondent.

(2) *Service on corporations and other entities.* Service is complete upon delivering a copy of the notice or order to a partner, bona fide officer, director, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(1) of this section.

(b) *Service of responses to Prepenalty Notice, Penalty Notice, and requests for a hearing.* A respondent shall serve a response to a Prepenalty Notice and any request for a hearing on the Director through the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington DC 20220, with the envelope prominently