

Export-Import Bank of the United States

Board of Directors

Open Meeting

Thursday, January 14, 2021

The Board of Directors convened via webinar at 1:00 p.m. EST, Kimberly A. Reed, President and Chairman, presiding.

Present:

Kimberly A. Reed, Chairman
Spencer Bachus, III, Member
Judith Delzoppo Pryor, Member

Staff Present:

John Connor, Assistant General Counsel for
Fraud and Compliance
David Slade, General Counsel

Also Present:

Tony Ieronimo, Department of the Treasury

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Proceedings

(1:01 p.m.)

I. Open.

Chairman Reed: Good afternoon, this is EXIM Chairman Kimberly Reed. I would like to welcome everyone in attendance this afternoon. I call the meeting to order.

May I have a motion to consider Item Number 1 on the agenda?

Director Pryor: Yes, Good afternoon, Chairman Reed, this is Director Pryor. Motion to consider Item Number 1, State Department vetting of EXIM transactions.

Review required, none. Decision required is approval.

Chairman Reed: Thank you. Is there a second?

Director Bachus: This is Director Bachus, I second the motion.

1. State Department Vetting of EXIM Transactions

Chairman Reed: Thank you. I would like to thank our Assistant General Counsel for Fraud and Compliance, Mr. John Connor.

Mr. Connor, please introduce yourself for the record and present Item Number 1?

Mr. Connor: Thank you, Chairman Reed, and thank you Director Pryor and Director Bachus. My name is John Connor, I am in the Office of the General Counsel and I am the Assistant General Counsel for litigation, fraud, and compliance. And I am presenting to you today a resolution approving and adopting the State Department vetting procedures.

These procedures implement the requirements of Section 408 of the EXIM charter, and they also

implement procedures to fulfil EXIM's agreement with the State Department to have the State Department review all EXIM transactions greater than \$25 million.

Before I jump into it, I would like to thank some people. First, I'd like to thank both the folks at the Department of State and Treasury for working with us on this.

We've been discussing these procedures for quite some time. Probably the most difficult aspect of these discussions had to do with determining control of end users, obligors, and lenders by the Government of China.

And the Treasury Department was very helpful in guiding us to an appropriate definition of control that worked in this situation.

I would also like to thank Sierra Robinson, who was tremendously helpful throughout this process, as well as my boss, David Slade, who was also tremendously helpful.

Finally, these procedures were actually shared internally very widely and we received very many helpful comments from internal staff from the business units, legal, and other areas.

And I'd like to thank all of those people, not by name obviously but I would like to thank them all for their help on giving us feedback on these procedures.

These procedures include two annexes, the guidance on control that I mentioned before, that we discussed with the Department of the Treasury, as well as a form of requests for the State Department review.

In the memorandum, we refer to a disagreement that we had with State which was continuing at the time of the drafting of the Board memo, and has since been resolved.

And so I would like to clarify that we are going to be adding in some language at the end of Section 1 of the State Department vetting procedures. It's just one sentence so I'll read it now.

And that language says, at the end of Section 1, in such an event at the time EXIM provides the new information to the State Department, EXIM and the State Department will meet and discuss with a view to expeditiously and thoroughly considering the new information, and agree upon what additional period for the review would be appropriate, up to 25 days.

As I indicated, there's resolution seeking the approval and adoption of these State Department vetting procedures with the two annexes, which will implement the requirement of Section 408 and the EXIM agreement to send all transactions over \$25 million to the State Department for review.

I'm happy to address any questions, thank you.

Chairman Reed: Thank you very much, Mr. Connor, and on a personal note, I just want to say thank you as well for your tremendous excellence in our Office of the General Counsel throughout my tenure here at EXIM.

I really appreciate all that you do and all that the Office of the General Counsel does on a regular basis for us as we focus on our mission.

If there are no comments from the NAC, do my fellow Board Members have any comments? Director Pryor?

Director Pryor: Thank you, Chairman Reed, and thanks, John Connor, and thanks to Sierra, who also joined for my briefing, and the detailed memo that you provided and for your comments this afternoon.

I know you have a network of support within the Office of the General Counsel and throughout the building but I'm still very impressed with your ability to keep so many balls in the air at once.

So, thank you for your work to bring these procedures required by the 2019 authorization to the Board today, along with my thanks to Treasury and State to get us over the finish line.

So, I know you continue to resolve conflicts, as testament to the sentence we're now adding, working to the bitter end of today's meeting and today's vote.

So, thank you for your work to address that last outstanding issue with State. It's clear we're making good progress implementing the provisions, as our authorization, not just this one.

I believe it's important for all to be reminded, however, that we very much welcome the comments of our sister agencies. They provide us with different perspectives, useful information to help inform our decisions.

It's also important to note that while we value their input and comments through the NAC process and elsewhere, we need to retain the EXIM independence that's enshrined in our statute.

So, I believe these procedures really do strike the right balance. Thank you again, John, for your work on this and for your presentation today.

That concludes my remarks.

Chairman Reed: Thank you very much, Director Pryor. Director Bachus?

Director Bachus: Thank you.

As most of you know, I served on the Financial Services Committee -- at one time it was called the Banking Committee, until 2001 I believe -- and during that entire period of time, there was only one EXIM employee who committed illegal activity or attempted to.

And we're talking about due diligence here, of other people, but I just wanted to remind everyone that

he was actually -- the EXIM Staff and the controls we had at EXIM actually exposed him.

So, there was an internal system of controls that actually disclosed that.

And I've been in trouble for almost my entire career in Congress and since I've been at EXIM of some pretty wild accusations from some Members of Congress, some former members, and from some professors talking about widespread fraud at EXIM and a fraudulence-ridden agency, which is just nothing but misrepresentation. In fact, it's a lie and it's very unfortunate.

So, I wanted to kind of get that out of the way now and I also want to comment on something you have said. We don't want to lose our independence.

And I think the way that it's gone with our NAC partners is when we're talking about credit issues, we're an independent agency and the statute and the law and the authorization. Credit issues are our jurisdiction.

Now, credit can become a national interest or national security issue and in those cases, NAC and State and Treasury do need to weigh in and they're welcome.

But we just need to know there's a separation there. Now, we're charged with lots more duties here, more due diligence, and we're going to have to have more resources.

And I think the State Department would readily agree with us. When we review the lenders, we're going to need a separate compliance and due diligence group because there are going to be lots more requirements for us.

There's going to have to be definition of control, new management detail. We're going to have get from lenders and other participants -- we're going to be dealing with ownership and control issues.

And probably we're obviously -- I think we've done that but OFAC and FinCEN, with the Working Group there, we're obviously going to have to be reaching out to them.

So, I would just conclude by saying I would love to have State Department's cooperation and our NAC partners in supporting us because we're going to have to have more resources. And I think we're going to have to have a separate compliance and due diligence group.

I don't see any way around that. John, you may want to comment on that but that concludes my remarks.

Chairman Reed: Thank you very much, Director Bachus. I just want to underscore both Directors' points.

I also know that I had a detailed conversation on the history of the NAC, which I think is very interesting as we look back to post World War II and the Bretton Woods agreement Act of July 31, 1945 that established the National Advisory Council and the International Monetary and Financial Policies.

David Slade, I would just love to call on you because I gave this task, really educating me on the NAC, anything you'd like to just share since this is a public meeting?

Mr. Slade: Thank you, Chairman, this is David Slade, General Counsel.

Yes, I guess I don't have any prepared remarks but as we have been ramping up over the last year and having Board Meetings and more and more transactions, the relevance and the usefulness and the importance of the NAC review process has reawakened and become a very important issue for us.

I think even at the suggestion of some of our fellow

agencies and members of the NAC, it is apparent that it is time to really take another look at what the underlying mission, statutory mandate of the NAC is, what the proper scope of review is going forward so that it can be going forward as efficient and effective a process as possible, serving its purpose, striking the right balance, as Director Bachus and Director Pryor, yourself, has said, between respecting our independence as an agency and our need to function as such, but obtaining every bit of useful external support and advice from the members of the NAC, which they're able to give.

And I am confident and optimistic that the lessons learned from the last year are all being taken into account and will be very, very useful as we take a fresh look at how that process can function most effectively going forward.

I hope that's responsive to your request.

Chairman Reed: Thank you, and I'm just also raising this as a placeholder for future leadership at EXIM. And General Counsel Slade, I just want to commend you, we will do that as well and our own meeting January 19th.

But you have been dedicated for more than 40 years to the world of export credit financing for those in the private sector and now as our General Counsel.

And I want to just commend you for your expertise and always ensuring that I am upholding the law and that our Agency is following policies. And I want to thank you, sir, from the bottom of my heart and I know Director Pryor will join me in this for your service as our General Counsel. Your wisdom and insight and history has been invaluable.

A few weeks ago, at the history of the NAC, it was an interesting and fruitful process so thank you to the Staff, including Jenny Porter, who are doing that. And Mr. Connor.

Also, I just have a question, when it comes to the NAC, the President of the United States can raise national interest is a reason as to why we might do a transaction.

Off the cuff, has there ever been any interplay or thinking of how NAC processors as the President of the United States who sets the policy in many respects for what we do.

Has that ever come into play to your knowledge? And I want to just share publicly for the record, several weeks ago I was in Romania and I visited a nuclear power-plant facility.

And I was really surprised when they presented me with a piece of paper that was from back in 1981 and it had the signature of President Ronald Reagan on the piece of paper.

Our charter prevented support of a Marxist and Leninist country and President Ronald Reagan declared national interest and said that we, EXIM, should finance the financing and construction of the Cernavoda Nuclear Power-Plant in Romania.

But that just gets to the point, how would the NAC process versus President's declaration of national interest on certain transactions mesh?

Mr. Slade: Okay, thank you, Chairman, this is again David Slade, General Counsel.

I think first I would make the point that the NAC review process, as I think you are already suggesting, is really a very separate process from the national review process, which is sometimes referred to as the Chafee Amendment.

It's right at the beginning of our charter, to be something.

The national review process basically says that EXIM Bank shall not deny any transaction for anything other than commercial and financial reasons unless

the president has made a determination that there is some national interest concern.

And there is some that are listed although we've interpreted that more broadly as national interest concerns generally.

And then the president delegated that responsibility to make those national interest reviews to the State Department, pursuant to an executive order.

I can't quite remember what year that was but it was quite a long time ago, and that executive order is still in effect.

And that, by the way, is the very foundation for the review procedures, for the consultation procedures, which the Board just voted on today.

And what we have done under your tenure and under this Board of Directors has been to broaden, make more robust, more thorough that review process to take really all national interests considerations into account, rather than just human rights, a limited list of human rights countries, as we've done in the past.

That is part of the renewal, the expansion, the revitalization of the review processes that we've put in place under your tenure.

Again, though, I would draw the distinction between that process, the national interest review process, on the one hand, and the NAC review process, which is really a process intended to coordinate foreign loans made by federal agencies and the IMF and multilateral agencies with any policies, international or other national policies, that are applicable to those loans.

That's a coordination process, not a national interest process as such. In fact, the executive order governing the NAC review process makes it clear that is not in any way to delegate with the political foreign policy interest to be considered by State.

I think that may be more of an answer than you were looking for but I'll pause at that.

Chairman Reed: Thank you very much, and I'm just doing this all for educational purposes and for the record.

And so a president of the United States could take back that authority that was given to state, is that right?

Mr. Slade: Of course, the president could modify any executive order. That's an administrative matter. It would be within the discretion of the president to do so.

I think there was some consideration given to that under this administration but it was apparently decided to keep the executive order in effect.

Chairman Reed: thank you very much.

Mr. Slade: Could I just make this one other remark?

If, by the way, that executive order were changed, then we presumably would have to reconsider the very procedures we voted on today, I suppose, because it is sort of the underpinning for these procedures.

Chairman Reed: And again, this is for historical purposes and for education as we are undergoing a transition in the administration, where it's the backbone of this.

So, thank you very much and I hope that has been helpful. And again, General Counsel Slade, thank you for always doing research and providing education to me and the other Directors and to your entire team.

So, I would now like to call this item for a vote.

Director Pryor?

Director Bachus: Actually, before you vote,

Chairman, I had asked a question probably to be addressed by John Connor, and that's the question of do we need more resources for review? Because we're going to be required to do more due diligence and I think probably we'll even have a separate compliance and due diligence group.

But that's going to need an appropriation, additional funding, because we're a small agency as it is and I'd at least like to hear someone else comment on that.

Chairman Reed: Absolutely.

Mr. Connor, or anyone who could comment on our very limited resources and the need that might be needed so as future directors are prepared?

Mr. Connor: Yes, this is John Connor. Thank you for your question, Director Bachus. I certainly agree we will need more resources, as Chairman Reed alluded.

More resources are often hard to come by but we really would need more resources to bring ourselves up to a level of due diligence and compliance that we really should reach in connection with these procedures being approved today or presented to the Board today in terms of the due diligence necessary to look into control by the Government of China.

We have limited capacity to do that. Outside resources are developing to make that easier but we would have to tap into funds to be able to take advantage of those resources.

So, I certainly agree and would love to be able to see more resources for this kind of work. And that's something that EXIM will have to address in the coming months and even years.

Director Bachus: Great, okay. And I think the State Department would agree that we need more resources. I don't know if they're on the line, I think

they are, but if they want to weigh in.

And of course, we do have OFAC, FinCEN, and other agencies and we will rely on them, as we do now.

That completes my remarks.

Chairman Reed: Thank you very much, it's very much appreciated. I now call for the vote. Director Pryor?

Director Pryor: I vote aye.

Chairman Reed: Director Bachus?

Director Bachus: I vote aye.

Chairman Reed: I vote aye. Item Number 1 is approved. If there's no further items on the agenda the meeting is adjourned.

Thank you very much, everyone, I know we've had a great Board Meeting, both private and public today. Thank you.

Mr. Fletcher: Chairman Reed, this is James speaking. We did get one question from the audience to bring up. Steve Swartz asked, can Treasury comment?

Chairman Reed: Yes, Treasury may comment, of course.

Mr. Fletcher: Okay, give me just a second, I will promote him so he can speak. Steven Swartz, you should be able to speak now.

Mr. Ieronimo: Can you hear me?

Chairman Reed: Yes, sir, thank you so much, Mr. Swartz, how are you?

Mr. Ieronimo: Hello, actually, this is Tony Ieronimo at Treasury instead. We weren't planning to comment but we were confused when the NAC process was added to the agenda.

We didn't see it on the agenda so we weren't expecting the NAC process to come up on this call. The General Counsel did circulate a memo indicating his views on the NAC process.

We have concerns about that analysis and our General Counsel's Office is reviewing that analysis. We will be back in touch but we don't believe that discussing of the NAC process, of which the Secretary of the Treasury is the Chair is appropriate at this time.

And it shouldn't be a topic of this meeting's agenda. If you'd like to have another Board Meeting and put this on the agenda, we're happy to oblige but we're very surprised that the NAC process, which the Secretary of the Treasury is the Chair, has been brought up at this meeting. We're surprised it's come up and again, we have serious concerns about the analysis that the General Counsel has done. Our General Counsel will come back and will engage.

Thank you.

Chairman Reed: Thank you very much, Mr. Ieronimo. So, with that, I would like to say thank you. We have voted on the item and there are no further items on the agenda. This meeting is adjourned. Thank you very much.

(Whereupon, the above-entitled matter went off the record at 1:29 p.m.)