OFAC Guidance on Doing Business with Companies Owned by SDNs

Last week on August 14, 2014, OFAC published revised guidance with regard to doing business with entities that are owned by persons whose property or interests in property are blocked. This guidance raises the stakes for banking organizations because it makes it clear that doing business with an entity that is not itself on the SDN list may still result in an OFAC violation because an entity is owned more than 50% by a blocked person. The guidance can be found at:
http://www.gpo.gov/fdsys/pkg/FR-2014-08-14/html/2014-19252.htm

OFAC stated that:

> "any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person. The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the annex to an Executive order or otherwise placed on OFAC's list of Specially Designated Nationals (``SDNs'')."

The Guidance is even more difficult because it aggregates holdings by unrelated blocked parties For example, if 10 blocked parties each held 5% of the voting shares of an entity—that entity would itself be a blocked party. A bank doing business with that entity would have an extremely difficult time cutting through such an ownership structure.

U.S. Banks are used to dealing with the Bank Holding Company Act's stringent definition of "*control*" that assumes control at a 25% ownership level and further imputes control of any companies owned by a 25% owned companies *ad infinitum.*
But even the Bank Holding Company Act does not aggregate share ownerships of unrelated entities in making *control* determinations.

This really means that in order to avoid violating OFAC rules when doing business with certain corporations, a safety minded bank would have to do more searching on the SDN lists of all the shareholders of a client customer

and then the shareholders of the shareholders and so on until the new client is in the clear. Maybe back to Adam and Eve.