



International Trade & Regulatory ADVISORY ■

SEPTEMBER 18, 2014

OFAC Issues New SSI Directives

On September 12, 2014, the Department of the Treasury's Office of Foreign Assets Control (OFAC) announced it added seven new entities to the Sectoral Sanctions Identifications (SSI) List pursuant to OFAC's authority under Executive Order (EO) 13662. Also included in the September 12 announcement were significant changes to the SSI program, including modification of the previous two directives and the issuance of two new directives. The impact of OFAC's amended and new directives is to create a more complex sanctions regime, requiring additional due diligence for firms dealing with SSI listed entities. This client advisory highlights the substantive changes of OFAC's new directives.

Originally the SSI sanctions were implemented under two directives issued on July 16, 2014. Under the [previous Directive 1](#), U.S. persons were prohibited from financing or otherwise dealing in new equity or new debt of longer than 90 days' maturity for SSI listed financial institutions. Similarly, the [previous Directive 2](#) prohibited new debt of longer than 90 days' maturity for SSI listed energy companies. [Directive 1](#), as amended, now prohibits new debt of longer than *30 days'* maturity, while [Directive 2](#), as amended, maintains its previous prohibition (including the 90-day standard). The new [Directive 3](#) prohibits new debt of longer than 30 days' maturity in SSI listed entities in the defense and related material sectors. OFAC also expanded the SSI program beyond capital restrictions with [Directive 4](#), which prohibits U.S. persons from providing goods, services (but not financial services) or technology to support exploration and production of oil projects involving deepwater, Arctic offshore or shale. In addition, all four directives prohibit transactions that evade, avoid or otherwise attempt to violate any of the applicable restrictions.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Overview of OFAC's SSI Directives

	Industry Targeted	Prohibition(s)
Directive 1	Financial Services	New equity New debt of longer than 30 days' maturity
Directive 2	Energy Sector	New debt of longer than 90 days' maturity
Directive 3	Defense Sector	New debt of longer than 30 days' maturity
Directive 4	Energy Sector (Oil Production)	Provision of exploration goods, services or technology

OFAC also issued a number of new [Frequently Asked Questions \(FAQs\)](#) describing these directives. A few notable clarifications presented in the FAQs:

- [FAQ 394](#): If a U.S. person entered into a long-term credit facility or loan agreement prior to the sanctions' effective date, drawdowns and disbursements with repayment terms of 30 days or less (for persons subject to Directives 1 and 3) or 90 days or less (for persons subject to Directive 2) are permitted. Drawdowns and disbursements whose repayment terms exceed the applicable authorized tenor are not prohibited if the terms of such drawdowns and disbursements (including the length of the repayment period, the interest rate applied to the drawdown and the maximum drawdown amount) were contractually agreed to prior to the sanctions' effective date and are not modified on or after the sanctions' effective date. U.S. persons may not deal in a drawdown or disbursement initiated after the sanctions' effective date with a repayment term of longer than 30 days (for persons subject to Directives 1 and 3) or 90 days (for persons subject to Directive 2) if the terms of the drawdown or disbursement were negotiated on or after the sanctions' effective date. Such a newly negotiated drawdown or disbursement would constitute a prohibited extension of credit.
- [FAQ 395](#): U.S. persons may advise or confirm a letter of credit issued on behalf of a non-sanctioned entity in which an entity subject to Directive 1, 2 or 3 is the beneficiary (i.e., the exporter or seller of the underlying goods) because the subject letter of credit does not represent an extension of credit to the SSI entity.

U.S. persons may not advise or confirm a letter of credit if these three conditions are met: (i) the letter of credit was issued on or after the sanctions' effective date, (ii) the letter of credit carries a term of longer than 30 days' maturity (for persons subject to Directives 1 and 3) or 90 days' maturity (for persons subject to Directive 2), and (iii) an SSI entity is the applicant of the letter of credit (i.e., the importer or buyer of the underlying goods or services). This would constitute prohibited activity because the subject letter of credit would represent an extension of credit to the SSI entity.

[FAQ 415](#) makes it clear that each directive is independent of each other. Therefore, an SSI listed entity could be subject to more than one directive or only subject to a single directive. For example, one of the SSI listed entities is Lukoil, which is subject to Directive 4 (see [here](#)). Directive 4 prohibits the provision of exploration goods, services or technology, but it does not contain, unlike the other directives, any restrictions on debt dealings. Thus, Lukoil is not subject to debt restrictions, although other SSI entities listed under Directives 1, 2 and 3 are subject to such restrictions.

The issuance of the amended and new directives clearly indicates that OFAC's SSI program is still evolving in its response to the activities of the Russian Federation. When evaluating potential transactions, firms should not only determine if they are dealing with an SSI listed entity by examining the SSI List (available on OFAC's website), but they also must understand which specific directive (or directives) is in force for that entity, as shown on that SSI List under the name of that entity. OFAC has decided to pursue a nuanced sanctions approach and, as a consequence, the compliance burden has increased as firms will have to analyze transactions with SSI entities on a case-by-case basis to identify prohibited and permissible dealings.

In addition to OFAC's SSI program changes, the Commerce Department's Bureau of Industry and Security published a [final rule](#) on September 17, 2014, which added five Russian energy companies to the Entity List. These energy companies are now subject to a license requirement for the export, reexport or foreign transfer of items subject to the Export Administration Regulations when the exporter, reexporter or transferor knows those items will be used directly or indirectly in exploration for, or production from, deepwater, Arctic offshore or shale projects in Russia that have the potential to produce oil. License applications for such transactions will be reviewed with a presumption of denial.

Please direct any questions concerning this matter to [Thomas E. Crocker](mailto:thomas.crocker@alston.com) (thomas.crocker@alston.com, 202-239-3318), [Kenneth G. Weigel](mailto:ken.weigel@alston.com) (ken.weigel@alston.com, 212-239-3431) or [Guillermo E. Cuevas](mailto:guillermo.cuevas@alston.com) (guillermo.cuevas@alston.com, 202-239-3205) of the firm's [International Trade & Regulatory Group](#).

If you would like to receive future *International Trade & Regulatory Group Advisories* electronically, please forward your contact information to trade.advisory@alston.com. Be sure to put “**subscribe**” in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Thomas E. Crocker
202.239.3318
thomas.crocker@alston.com

Diego Marquez
202.239.3003
diego.marquez@alston.com

Jason M. Waite
202.239.3455
jason.waite@alston.com

Guillermo E. Cuevas
202.239.3205
guillermo.cuevas@alston.com

BJ Shannon
202.239.3344
bj.shannon@alston.com

Kenneth G. Weigel
202.239.3431
ken.weigel@alston.com

Jon M. Fee
202.239.3387
jon.fee@alston.com

Eric A. Shimp
202.239.3409
eric.shimp@alston.com

Chunlian Yang
202.239.3490
lian.yang@alston.com

Elizabeth M. Hein
202.239.3478
elizabeth.hein@alston.com

ALSTON & BIRD LLP

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2014

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333