

CLIENT ALERT: DESIGNATION OF ROSNEFT TRADING S.A. TO THE SDN LIST

February 18, 2020

On February 18, 2020, OFAC designated Rosneft Trading S.A. (“Rosneft Trading”) to the SDN List pursuant to E.O. 13850 for operating in the oil sector of the Venezuelan economy. In addition to Rosneft Trading, OFAC also designated to the SDN List Didier Casimiro, Rosneft Trading’s Vice President for Refining, Petrochemical, Commerce and Logistics. Mr. Casimiro was designated for acting or purporting to act on behalf of Rosneft Trading.

According to a Press Release issued by the U.S. Department of State concerning this matter, Rosneft Trading acted as “the primary broker of global deals for the sale and transport of Venezuela’s crude oil,” thereby supporting the Maduro regime and “enabling his repression of the Venezuelan people.” In addition, in a Press Conference held earlier today Special Representative for Venezuela Elliott Abrams warned that “[t]here will be more steps and further pressure in the coming weeks and months” regarding Venezuelan sanctions.

General License 36

In conjunction with Rosneft Trading’s designation to the SDN List, OFAC also issued General License 36 (“GL 36”). GL 36 authorizes “all transactions and activities” prohibited by E.O. 13850 “that are ordinarily incident and necessary to the wind down of transactions involving Rosneft Trading S.A., or any entity in which Rosneft Trading S.A. owns, directly or indirectly, a 50 percent or greater interest...**through 12:01 a.m. eastern daylight time, May 20, 2020.**” GL 36 also makes clear that it does not authorize:

- (1) Any debit to an account of Rosneft Trading S.A., or any entity in which Rosneft Trading S.A. owns, directly or indirectly, a 50 percent or greater interest, on the books of a U.S. financial institution; or
- (2) Any transactions or activities otherwise prohibited by the VSR [Venezuelan Sanctions Regulations], or any other part of 31 C.F.R. chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

FAQs 817 and 818

Additionally, OFAC also issued FAQs 817 and 818 concerning the designation of Rosneft Trading and the issuance of GL 36. FAQ 817 contains a number of key points with respect to Rosneft Trading's designation. First, the FAQ makes clear that following the completion of the May 20, 2020, wind-down period, "unless exempt or authorized by OFAC, U.S. persons will be prohibited from engaging in transactions with Rosneft Trading S.A., or any entity in which Rosneft Trading, S.A. owns, directly or indirectly, a 50 percent or greater interest, and must block property or interests in property of Rosneft Trading S.A. that are in, or come within, the United States, or the possession or control of a U.S. person."

Next, FAQ 817 also clarifies that "[t]he E.O. 13850 blocking sanctions apply only to Rosneft Trading S.A., or any entity in which it owns, directly or indirectly, a 50 percent or greater interest. **Blocking sanctions do not apply to this entity's ultimate parent, Open Joint-Stock Company Rosneft Oil Company (Rosneft Oil Company)**. Similarly, blocking sanctions do not apply to Rosneft Oil Company or other subsidiaries or affiliates, provided that such entities are not owned 50 percent or more in the aggregate by one or more blocked persons or otherwise explicitly designated or identified by OFAC." (emphasis added). This means that U.S. persons "are not prohibited under E.O. 13850 from dealing with Rosneft Oil Company, its non-blocked subsidiaries, or non-blocked affiliates to the extent the proposed dealings do not involve any blocked persons or any other activities prohibited pursuant to any OFAC sanctions authorities."

In addition, FAQ 817 also reiterates that, because both Rosneft Trading and Rosneft Oil Company have also been designated to the SSI List, transactions with those entities not prohibited by E.O. 13850 must nonetheless comply with the prohibitions in Directives 2 and 4 to E.O. 13662 under the Ukraine-/Russia-related sanctions program. This means that any company doing business with either Rosneft Trading or Rosneft Oil Company must remain mindful of the restrictions on such dealings as set forth in Directives 2 and 4 to E.O. 13662.

FAQ 818 clarifies a number of aspects to the wind-down period created in GL 36. First, FAQ 818 confirms that GL 36 authorizes U.S. persons "to engage in certain activities prohibited by E.O. 13850 necessary for the wind down of transactions involving Rosneft Trading S.A., or any entity in which Rosneft Trading S.A. owns, directly or indirectly, a 50 percent or greater interest, through 12:01 a.m. eastern daylight time, May 20, 2020." Next, FAQ 818 also contains an important explanation concerning the impact of Rosneft Trading's designation to non-U.S. persons. The FAQ states:

Non-U.S. persons may wind down transactions with Rosneft Trading S.A. without exposure to sanctions under E.O. 13850, provided that such wind-down activity is: (i) consistent with General License 36; and (ii) completed prior to 12:01 a.m. eastern daylight time, May 20, 2020. Entering into new business involving Rosneft Trading S.A. will not be considered wind-down activity. Non-U.S. persons unable to wind down activities with Rosneft Trading S.A. before 12:01 a.m. eastern daylight time, May 20, 2020, may seek guidance from OFAC.

Potential Implications for Non-U.S. Shipowners

Today's designation and the FAQs issued in conjunction therewith are telling insofar as non-US persons are concerned. First, the designation of Rosneft Trading under E.O. 13850 confirms the Administration's focus on oil transactions emanating from Venezuela and willingness to use the "oil sector" provision of

the E.O. to sanction non-US/non-Venezuelan entities engaged in transactions involving Venezuelan oil. Thus, while E.O. 13850 was generally considered not to set forth express secondary sanctions, it is clear that it is and will likely continue to be used as a secondary sanctions tool to target the actions of non-US persons.

Second, E.O. 13850 contains a “material assistance” provision by which non-US persons may be sanctioned if they are determined to have “materially assisted, sponsored, or provided financial, material, or technological support for” any entity designated to the SDN List pursuant to E.O. 13850. Material assistance is not defined in the E.O. although other authorities suggest it targets the types of activities for which the entity was designated. See Venezuela Defense of Human Rights and Civil Society Act of 2014, 113 P.L. 278, 128 Stat. 3011 § 5(F)(6). It is, however, not clear how broadly OFAC will construe the material assistance provision of E.O. 13850 insofar as Rosneft Trading's designation is concerned and in particular whether the authorities will construe this provision as potentially applicable to non-US persons only in regards to Rosneft Trading's Venezuelan-related transactions or more broadly to any transactions in which it engages. U.S. persons are clearly prevented from engaging in any transactions with Rosneft Trading whether related to Venezuela or not (unless the transaction is specifically authorized by OFAC). Moreover, it is clear that the designation of Rosneft Trading impacts all transactions with that entity, not just transactions concerning Venezuela.

Nevertheless, FAQ 818 clearly implies that non-US persons who continue to engage in transactions with Rosneft Trading beyond the wind-down period face potential sanctions - whether that risk exists under the oil sector and/or material assistance provision is not yet clear. Transactions with and involving Rosneft Trading should therefore be examined carefully.

In addition, despite the wind-down period, vessel owners should consider whether any payments remain to be made by or on behalf of Rosneft Trading for any existing charters that fall within the wind-down period. As U.S. persons, U.S. banks and their foreign branches are generally prohibited from processing any U.S. dollar transactions involving entities on the SDN List. Moreover, these banks often have internal protocols which are stricter than the sanctions provisions. Thus, regardless of whether the wind-down encompasses a particular charter, payments from or on behalf of Rosneft Trading as of today may experience delays or stoppage.

We continue to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions, please feel free to contact the authors, Gina Venezia at venezia@freehill.com or Bill Juska at juska@freehill.com.

This Client Alert is only a general summary for informational purposes. It and its content are not intended to be and should not be used or construed as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

FREEHILL HOGAN & MAHAR LLP
80 Pine Street, 25th Floor
New York, NY 10005
212-425-1900
www.freehill.com

Gina M. Venezia
venezia@freehill.com

William L. Juska, Jr.
juska@freehill.com