

**CLIENT ALERT:
U.S. SANCTIONS ANOTHER ROSNEFT-RELATED ENTITY
– TNK TRADING INTERNATIONAL S.A. NAMED TO SDN & SSI LISTS**

Today (March 12, 2020), OFAC designated TNK Trading International S.A. (“TTI”) to the Specially Designated Nationals (SDN) list under E.O. 13850 for operating in the oil sector of the Venezuelan economy. TTI was also designated to the Sectoral Sanctions Identifications (SSI) list under E.O. 13662 dealing with the Ukraine. The Treasury Department confirmed in its press announcement today that:

As with previous OFAC designations, U.S. sanctions need not be permanent and are intended to change behavior. The United States has made it clear that we will consider lifting sanctions for those who take concrete, meaningful, and verifiable actions to support democratic order in Venezuela.

SDN Designation under E.O. 13850

E.O. 13850 authorizes the imposition of sanctions against any person (including a non-U.S. person) who is determined to operate in the oil or other identified sectors of the Venezuelan economy. This is the provision under which Rosneft Trading S.A. (“Rosneft Trading”) was designated to the SDN list last month. TTI has now been added too. According to a press announcement from the U.S. Treasury Department, TTI is a subsidiary of Russian state-controlled Rosneft Oil Company. “Following the February 18, 2020 Treasury designation of Rosneft Trading S.A. (RTSA), cargoes of Venezuelan oil allocated to RTSA were changed to TTI in order to evade U.S. sanctions.” The U.S. Treasury further explained that sanctions against TTI demonstrate that the Administration is “committed to targeting those who support the corrupt regime’s exploitation of Venezuela’s oil assets.”

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

- (1) Any debit to an account of Rosneft Trading, TTI or any entity in which either 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 Rosneft Trading, TTI or any entity owned directly or indirectly by either.

In conjunction with today's designation, OFAC also issued amended FAQs 817 and 818 concerning the designation and GL 36A. FAQ 817 contains a number of key points with respect to TTI'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, TTI, or any entity in which either owns, directly or indirectly, at least 50%. U.S. persons must also block property or interests in property of Rosneft Trading, TTI or any of their 50% or more owned entities, which property or property interests "are in, or come within, the United States, or the possession or control of a U.S. person."

Next, FAQ 817 also clarifies that **the blocking sanctions do not apply to Open Joint-Stock Company Rosneft Oil Company (Rosneft Oil Company) which is the ultimate parent entity of Rosneft Trading and TTI.** Similarly, blocking sanctions do not apply to other subsidiaries or affiliates within the Rosneft Group unless those entities are owned 50% or more "in the aggregate by one or more blocked persons [e.g., Rosneft Trading or TTI] or otherwise explicitly designated or identified by OFAC." 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 Rosneft Trading, TTI, and Rosneft Oil Company have also been designated to the SSI List (discussed below), 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, TTI, 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 36A. First, FAQ 818 confirms that GL 36A authorizes U.S. persons to engage in certain activities prohibited by E.O. 13850 necessary for the wind down of transactions involving Rosneft Trading, TTI or any entity in which either owns, directly or indirectly, a 50% 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 to non-U.S. persons as a result of the SDN designation of Rosneft Trading and TTI. The FAQ states:

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

SSI List Designation under E.O. 13662

TTI was also designated to the SSI list. Rosneft Oil and Rosneft Trading were designated to the SSI list in, respectively, July 2014 and July 2015. Thus, the designation of TTI to the SSI list is consistent with these prior designations.

The SSI list reflects the sectoral sanctions imposed by the U.S. on specified persons operating in the Russian economy. The sectoral sanctions were implemented under E.O. 13662 through “Directives” issued by OFAC. An entity that is 50% or more owned by an entity or entities on the SSI list is considered on the SSI list as well even if its name does not appear on the list. The entities on the SSI list are not “blocked entities” and transactions with them are not prohibited beyond the restrictions set forth in the applicable Directive issued under the E.O. (unless, like Rosneft Trading and TTI, the entity is blocked pursuant to other authorities).

Rosneft Oil, Rosneft Trading and TTI are subject to Directives 2 & 4. These directives impose prohibitions **on U.S. persons** and **activities within the U.S.** for certain specified transactions involving entities on the SSI list and subject to the particular directive indicated. FAQ 817 issued today thus warns that any wind-down activity with Rosneft Trading or TTI still needs to comply with any applicable Directive 2 and 4 prohibitions, because General License 36A only authorizes certain activities necessary to the wind down of transactions prohibited by E.O. 13850.

With respect to non-U.S. persons, TTI’s designation to the SSI list also has potential implications under the Countering America’s Adversaries Through Sanctions Act (“CAATSA”) which amended the Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act of 2014 (“SSIDES”). Section 10 of SSIDES makes the imposition of sanctions mandatory against any foreign person who knowingly facilitates a significant transaction for or on behalf of any person subject to the Russian sanctions. The OFAC FAQs indicate that this includes entities on the SSI list (like TTI) as well as those on the SDN list under the Ukraine/Russian program. “Significant” is decided on a case-by-case basis based on the facts. However with respect to entities which are only on the SSI list and not on the SDN list under the Ukraine/Russian program,¹ “significant” requires that the activity involve deceptive practices. Thus, the concern here would be against deceptive practices including any deceptive practice that allowed TTI to engage in activities with U.S. persons or within the U.S. that would otherwise violate Directives 2 & 4.

Potential Implications for Non-U.S. Shipowners

Today’s designation and the announcements from the U.S. authorities further confirm that the Trump administration is focused on oil transactions emanating from Venezuela. The administration is clearly willing to use the “oil sector” provision of the E.O. to sanction non-U.S./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 and will likely continue to be used as a secondary sanctions tool to target the actions of non-US persons particularly when Venezuela oil is involved.

E.O. 13850 also contains a “material assistance” provision by which non-U.S. 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 S.D.N. list pursuant to E.O. 13850. Material assistance is not defined in the E.O., but OFAC has stated that the wind-down announced in conjunction with the designations of Rosneft Trading and TTI is not limited to activity involving Venezuela or Venezuela oil. It therefore appears that the designation of TTI is intended to impact all transactions with that entity, not just transactions concerning Venezuela. As such, it is possible that the material assistance provision could be construed broadly in this context.

¹ While TTI and Rosneft Trading are on the SDN list, those designations are under the Venezuelan program.

Non-U.S. persons should accordingly be guided in any transactions with and involving TTI. As indicated in FAQ 818, non-U.S. persons who continue to engage in transactions with TTI beyond the wind-down period face potential sanctions – whether that risk exists under the oil sector and/or material assistance provision of E.O. 13850 is not yet clear. Transactions with and involving TTI (just like 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 TTI 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 TTI 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.

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