

## CLIENT ALERT: OFAC ISSUES PRICE CAP POLICY REGARDING SHIPMENTS OF RUSSIAN CRUDE OIL

December 6, 2022

Further to OFAC's initial press release on September 9, 2022, the United States has now implemented a price cap policy with respect to the sale and purchase of Russian Federation crude oil. The price cap policy has been implemented in concert with the G7 (Canada, France, Germany, Italy, Japan, UK & US), the EU and Australia. The initial price cap has been set at **\$60 per barrel**, effective as of December 5, 2022, but will be subject to periodic review by the Department of Treasury, presumably in consultation with the G7, EU and Australia. OFAC has provided for a grace period whereby crude oil of Russian Federation origin that is loaded onto a vessel at the port of loading prior to 12:01 AM eastern standard time (EST), December 5, 2022, and unloaded at the port of destination prior to 12:01 AM EST, January 19, 2023, is not subject to the price cap policy.

The U.S. price cap policy is based upon a [Determination](#) issued pursuant to Sec. 1(a)(ii) of E.O. 14071, dated April 6, 2022. This section of the E.O. provides that:

*"Section 1. (a) The following are prohibited:*

*(ii) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation."*

The price cap policy will be enforced by targeting the providers of various "Covered Services" which are critical to the sale, transportation and insurance of Russian Federation crude oil. In accordance with the Determination issued by OFAC, these "Covered Services" are prohibited under E.O. 14071 unless the crude oil is sold at or below the applicable price cap. The "Covered Services" consist of the following:

- Trading/commodities brokering;
- Financing;
- Shipping;
- Insurance, including reinsurance and protection and indemnity;
- Flagging; and
- Customs brokering.

The U.S. policy is directed at the provision of such services "from the United States, or by a United States person, wherever located." Thus, the policy targets U.S. providers of "Covered

Services.” Presumably, the G&, EU and Australia will be enforcing the policy against service providers in their own respective jurisdictions.

According to [OFAC Guidance](#), “the price cap applies from the embarkation of maritime transport of Russian oil (e.g. when the crude oil is sold by a Russian entity for maritime transport) through the first landed sale in a jurisdiction other than the Russian Federation (through customs clearance).” Once the Russian oil has cleared customs outside of the Russian Federation, “the price cap does not apply to any further onshore sale.” However, if the Russian oil is taken back out on the water by way of maritime transport “without being substantially transformed,” the price cap will still apply. The OFAC guidance further provides that once the crude oil is substantially transformed (such that it becomes a new product with a new name, character, and use) in a jurisdiction outside the Russian Federation, “it is no longer considered to be of Russian Federation origin, and thus the price cap no longer applies (even if the refined oil is further exported using maritime transport).” Notably, the Guidance states that “OFAC does not consider blending of crude oil alone to be substantial transformation for the purpose of the determination.”

The OFAC Guidance further provides for a “Safe Harbor” provision whereby U.S. service providers may avoid OFAC enforcement by complying “in good faith with a record keeping and attestation process” that “allows each party in the supply chain of Russian oil shipped via maritime transport to demonstrate or confirm that the Russian oil has been purchased at or below the price cap.” This “Safe Harbor” provision “is designed to shield such service providers from strict liability for breach of sanctions in cases where service providers inadvertently deal in the purchase of Russian oil sold above the relevant price cap owing to falsified or erroneous records provided by those who act in bad faith or make material misrepresentations.”

Clients are urged to familiarize themselves with the OFAC Guidance, as the specific record keeping and attestation requirements necessary to be afforded “Safe Harbor” will vary depending upon the nature of the service provider and its role in the supply chain. In this regard, OFAC has developed a three (3) “tier” approach for service providers, with the specific record keeping and attestation requirements varying based upon the tier. For example, commodity brokers, traders and others who “have direct access to price information in the ordinary course of business” will be considered “Tier 1 Actors,” whereas parties further removed from the specifics of the transaction, and “who do not regularly have direct access to price information in the ordinary course of business,” such as shipowners and P&I Clubs will be deemed to be “Tier 3 Actors.”

The OFAC Guidance cautions that “[t]o be afforded the safe harbor, U.S. service providers must retain relevant records for five years, in accordance with 31 CFR § 501.601.”

We also note that OFAC will also be implementing a similar price cap policy with respect to Russian Federation origin “petroleum products” effective as of February 5, 2023. OFAC has advised that additional guidance relative to that policy will be forthcoming.

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, Bill Pallas at [pallas@freehill.com](mailto:pallas@freehill.com), or Mike Dehart at [dehart@freehill.com](mailto:dehart@freehill.com).

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FREEHILL HOGAN & MAHAR LLP  
80 Pine Street, 25<sup>th</sup> Floor  
New York, NY 10005  
212-425-1900  
[www.freehill.com](http://www.freehill.com)

*William J. Pallas*  
[pallas@freehill.com](mailto:pallas@freehill.com)

*Michael J. Dehart*  
[dehart@freehill.com](mailto:dehart@freehill.com)