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Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?April 20, 2023? Russian Tactics to Evade the Oil Price Cap ?

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On December 7, 2022, the United States, along with the EU and other G7 nations, imposed a price cap of $60 per barrel on crude oil of Russian Federation origin ("Russian oil"), effective December 5, 2022 (see our related QuickStudy). The U.S. price cap bans U.S. persons from providing a variety of services, such as insurance, trading/commodities brokering, shipping, trade finance, flagging and customs brokering related to the maritime transportation of Russian oil ("Covered Services"), unless the price of the Russian oil at its first non-Russian port is at or below $60 per barrel, the current price cap.

On April 17, 2023, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued an Alert regarding tactics that are being used to assist in the possible evasion of the Russian oil price cap. The Alert calls out examples involving oil exported through the Eastern Siberia Pacific Ocean ("ESPO") pipeline and ports on the eastern coast of the Russian Federation. OFAC is aware of reports that ESPO and other crudes exported via Pacific ports in the Russian Federation, such as Kozmino, may be trading above the price cap and utilizing Covered Services provided by U.S. persons.

The Alert advises that non-U.S. persons involved in the export of Russian oil may be using deceptive practices, including providing incomplete or false documentation to obfuscate the fact that the Russian oil was purchased above the price cap. Those practices also include manipulating the Automatic Identification Systems ("AIS") on transport tankers to disguise the fact that the product on board was loaded in the Russian Federation or mask ship-to-ship transfers to hide the origin of Russian oil.

Ship owners and other Covered Service providers are asked to consult the "OFAC Guidance on Implementation of the Price Cap Policy for Crude Oil and Petroleum products of Russian Federation Origin" issued on February 3, 2023 ("Price Cap Guidance") for further guidance on red flags related to evasion of the Russian oil price cap.

U.S. Covered Service providers are required to maintain records demonstrating that Russian oil or Russian petroleum products were purchased at or below the relevant price cap. Any refusal by a counterparty to provide documentation proving that Russian oil was purchased at or below the price cap, should be considered a red flag for possible evasion of the price cap. Providers who act in good faith can utilize the recordkeeping and attestation methods outlined in the Price Cap Guidance to receive protection from OFAC enforcement if they are tricked into inadvertently violating the price cap determinations.

To mitigate any potential risks associated with U.S. sanctions violations, Companies should evaluate their compliance programs and business practices to ensure they are in compliance with applicable U.S. sanctions laws and regulations. OFAC cautions that U.S. persons that engage in such evasive activities could face severe penalties, including fines and criminal prosecution.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or ?tax advice. ?Please ?reach out to the authors for any specific questions. We expect ?to continue to monitor the ?topics ?addressed in this paper and provide future ?client updates when useful.?

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