

Locke Lord QuickStudy: OFAC Targets Maritime Companies & Vessels for Violating Russian Oil Price Cap & Issues Related General Licenses

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On December 20, 2023, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued General Licenses ("GL") 81 and GL 82 under the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR Part 587 (the "RuHSR"). By sanctioning additional shipowners and vessels that transport Russian oil above the price cap, OFAC is sending a message to other shipowners and vessels that it is enforcing the price cap. Additionally, OFAC, in collaboration with the Price Cap Coalition, revised the Guidance on Implementing the Price Cap Policy for Crude Oil and Petroleum Products of Russian Federation Origin ("Guidance"). These recent initiatives align with the G7's dedication to enhancing oil price cap compliance and G7 policy on Russian oil. This commitment includes imposing sanctions on shipowners and vessels that use deceptive practices to evade enforcement and updating of compliance rules and regulations.

Sanctions Designations

OFAC sanctioned four additional entities, (i) SUN Ship Management D Ltd, (ii) Covart Energy Limited, (iii) Volition DMCC, and (iv) Bellatrix Energy Limited, and their controlled subsidiaries (collectively, "Blocked Persons"), that violated the Russian oil price cap. OFAC claims that these four oil trading companies increased their share of the trade of Russian oil since the price cap policy was implemented. These sanctions build upon previous actions taken by OFAC in October, November and December of 2023 (see our October 31, 2023 QuickStudy: Russian Oil Price Cap Advisory and Violation & Issuance of Russia-Related General License, November 20, 2023 QuickStudy: Oil Price Cap Violations & New OFAC GL for Crew Health and Safety and Safety of Blocked Vessels, and December 11, 2023 QuickStudy: OFAC Sanctions Additional Maritime Companies & Vessels for Violating Russian Oil Price Cap & Issues Related General License). These new sanctions underscore OFAC's ongoing commitment, in collaboration with its Oil Cap Coalition partners to curtail Russia's oil revenues utilized to fund its war against Ukraine. As a result of the designations, any property and interests owned by Blocked Persons within the U.S. or under the possession or control of U.S. individuals are now frozen and must be reported to OFAC. All transactions involving the property or interests in property of Blocked Persons within, transiting, or related to the U.S. are prohibited, unless specifically authorized by OFAC through a general or specific license or exempt by law.

Since the price cap was imposed, little known oil traders with opaque ownership structures have increasingly participated in transporting up to half of Russia's oil exports. The October 12, 2023 advisory from the Price Cap Coalition for the Maritime Oil Industry and Related Sectors urges industry stakeholders to conduct thorough due

diligence when dealing with intermediary companies that conceal beneficial ownership or engage in unusual practices. Such companies may pose higher risks due to potential deceptive practices, especially in cases where Russian oil prices exceed the price cap and the services of the Price Cap Coalition are involved.

GLs

GL 81 authorizes, through March 19, 2024, transactions that are ordinarily incident and necessary to the following limited activities involving the Blocked Persons: (1) ensuring the secure docking and anchoring of, or any part of any vessels in which any Blocked Person has a property interest (“Blocked Vessels”); (2) safeguarding the health or safety of the crew of any of the Blocked Vessels; or (3) conducting emergency repairs of any of the Blocked Vessels, or carrying out environmental mitigation or protection activities linked to any of the Blocked Vessels. However, any payments to the Blocked Vessels or Blocked Persons must be made into a blocked account.

GL 82 authorizes through March 19, 2024, the wind-down of transactions involving SUN Ship Management D Ltd (“SUN Ship”), or any entity in which SUN Ship owns, directly or indirectly, a 50% or greater interest, provided any payment to a blocked person is made into a blocked account. Of importance here and generally applicable to GLs that permit the “wind-down” with respect to a sanctioned entity, U.S. persons are required to decrease activity with the sanctioned party. During a “wind-down,” U.S. persons cannot either “stock-up” on products or ramp up services with a sanctioned party during a wind-down period.

Updated Price Cap Guidance

OFAC, in collaboration with the Oil Price Cap Coalition, has updated its Guidance to enhance the attestation in and record keeping processes for specific coverage service providers. The changes in the Guidance are directed at service providers seeking to maintain the benefits of the price cap policy safe harbor. This safe harbor shields providers from strict liability for sanctions breaches, provided they comply in good faith with recordkeeping and attestation processes identified in the Guidance. The revised Guidance introduces two new expectations for service providers to ensure continuous safe harbor protection. First, they must obtain attestations within a specified time for each lifting or loading of Russian oil or Russian petroleum products. Second, they are required to retain, provide, or receive itemized ancillary cost information as necessary. The updated guidance acknowledges that service providers will fulfill these expectations differently, depending on their classification within the following three tier systems of actors:

- **Tier 1 Actors:** Entities with routine access to price information, such as commodities brokers and oil traders, fall under the category of “Tier 1 Actors.” To qualify for the safe harbor, Tier One actors must maintain records demonstrating that their acquisition of Russian oil or Russian petroleum products adheres to or is below the applicable price cap. These records should encompass itemized details of ancillary costs, such as shipping, insurance, and freight expenses. Examples of acceptable documentation include invoices, common contracts, or receipts as proof of payment.
- **Tier 2 Actors:** Entities that occasionally request and receive price information from customers in their regular business operations, such as financial institutions, ship/vessel agents, and customs brokers, fall into the category of “Tier 2 Actors.” For eligibility for the safe harbor, Tier 2 Actors must, to the extent feasible, request and retain documentation confirming that their procurement of Russian oil or Russian petroleum products aligns with or is below the relevant price cap, inclusive of itemized ancillary cost information. These attestations involve the customer confirming that, for the service provider, the Russian oil or Russian petroleum products where you purchased or will be purchased are at or below the relevant price cap. Certain Tier 2 Actors are expected to acquire these attestations within 30 days of a counterparty’s lifting or loading of Russian oil or Russian

petroleum products, such as when calling at a port in the Russian Federation or performing a ship-to-ship to transfer to load such products.

- **Tier 3 Actors:** Entities that do not regularly access price information in their standard business operations, including insurers, P&I clubs, ship owners, and flagging registries, are categorized as “Tier 3 Actors.” To qualify for the safe harbor, Tier 3 Actors must acquire and retain customer attestations. In these attestations, customers commit to purchasing Russian oil or Russian petroleum products at or below the relevant price cap for the provided services. Most Tier 3 Actors are advised to obtain attestations each time a counterparty loads or lifts Russian oil or Russian petroleum products. This includes instances such as calling at a port in the Russian Federation or performing a ship-to-ship transfer to load these products. Additionally, Tier 3 Actors should request counterparties to share extra information upon request, including detailed incendiary costs like freight and insurance expenses. Triggers for requests for additional information, including ancillary cost details, may arise if a Tier 3 Actor becomes suspicious during their due diligence or if they receive information about a potential violation from sources, such as open reporting, or requests from relevant authorities. Reinsurers have the option to incorporate a sanctions exclusion clause in their policies or contracts.

If a service provider lacking direct access to price information reasonably relies on a customer attestation and retains it, the service provider will not be held responsible for sanctions violations caused by individuals acting in bad faith that leads to a breach of the crude oil determination, petroleum product determination, or evasions of OFAC sanctions. To qualify for eligibility for the safe harbor, U.S. service providers must keep pertinent records for a period of five years. To maintain the benefits of the outline safe harbor, OFAC anticipates U.S. service providers to adhere to the updated guidance by February 19, 2024.

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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