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Locke Lord QuickStudy: Russia-Related Sanctions Update: SEC ?Disclosures and New U.S. Measures

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On May 3, 2022, the U.S. Securities and Exchange Commission (“SEC”) staff issued a sample comment letter to alert public companies to potential disclosure obligations relating to the impact of Russia’s invasion of Ukraine and the international response may have on their business. In the comment letter, the SEC’s Division of Corporate Finance staff notes that it is providing a non-exhaustive list of potential issues that serves to highlight common issues that companies may need to examine and which may vary based on their specific facts and circumstances. The sample comment letter covers six disclosure areas of staff focus:

- general disclosures based on the impact of U.S. and allied sanctions, shareholder and investor pressures to sustain or refrain from business with Russia, and the impacts of Russian counter-sanctions;
- heightened risk of cybersecurity intrusions as well as additional costs to protect against such matters (including the cost to adopt off-line back-up systems and the potential for insurance coverage issues);
- management’s discussion and analysis relating to (i) cash flows, currency volatility, and inventory and investments valuation, (ii) uncertainties relating to contractual obligations, (ii) import and export restrictions, and (iii) impacts from supply chain disruption;
- disclose any changes to accounting relating to non-GAAP measures, particularly as they may relate to revenue recognition and expenses related to one-time charges for changes to business in or with Russian counterparties;
- potential impacts to disclosure controls and procedures and effectiveness when tested against the impacts of Russia’s invasion of Ukraine on your business, and
- any changes to internal control over financial reporting that may have been predicated by of Russia’s invasion of Ukraine specifically or disruptions to the supply chain that are having an adverse effect on your business.

The SEC further notes that financial statements may need to reflect and disclose any impairment of assets, changes in inventory valuation, deferred tax asset valuation allowance, disposal or existing of a business, deconsolidation, and changes in exchange rates, and changes in contracts with customers or the ability to collect contract considerations. In addition, regardless of whether companies have operations in Russia, Belarus, or Ukraine that warrant disclosure, they should also disclose any heightened cybersecurity risks, increased or ongoing supply chain challenges, and volatility related to the trading prices of commodities.

The SEC expects companies to consider how these matters may affect management’s evaluation of disclosure controls and procedures, management’s assessment of the effectiveness of internal control over financial reporting, and the role of the board of directors in risk oversight of any action or inaction related to Russia’s invasion of Ukraine, including consideration of whether to continue or to halt operations or investments in Russia and/or Belarus.

On May 5, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") updated two general licenses, General License ("GL") 7A and GL 26A, and issued two new Russia-related general licenses, GL 31 and GL 32. In addition, OFAC amended one "FAQ" regarding Ukraine-Russia-Related Sanctions.

GL 7A, GL 26A, GL 31, and GL 32.

- GL 7A (replacing GL 7) continues to permit all transactions ordinarily incident and necessary to: (i) the receipt of and payment for charges or services rendered in connection with overflights of the Russian Federation or emergency landings in the Russian Federation by aircraft that are U.S.-registered or owned, or controlled by or charted to U.S. persons; and (ii) provide air ambulance and related medical services to individuals in the Russian Federation. However, GL 7A now includes an additional prohibition that prohibits U.S. financial institutions' loans to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation.
- GL 26A (replacing GL 26) adds Sberbank (Switzerland) AG to the general license and now authorizes through July 12, 2022, the wind down of transactions involving Joint Stock Company SB, Sberbank Kazakhstan, Sberbank Europe AG, or Sberbank (Switzerland) AG (collectively, the "Blocked Sberbank Subsidiaries"), or any entity that is 50% or more owned, directly or indirectly, by any of the Blocked Sberbank Subsidiaries.
- GL 31 authorizes U.S. Persons to file and prosecute patent, trademark, copyright, and other forms of intellectual property protection, and to renew and maintain patent, trademark, copyright, and other intellectual property protections, unless otherwise prohibited such as if the counterparty is an SDN, a blocked financial institution or otherwise violates U.S. Sanctions.
- GL 32 extends the time to wind down of transactions involving Amsterdam Trade Bank NV ("ATB"), or any entity that is 50% or more owned, directly or indirectly, by ATB to July 12, 2022. In April 2022, OFAC added ATB to the Specially Designated Nationals and Blocked Persons ("SDN") List pursuant to Executive Order ("E.O.") 14024 of April 15, 2021 ("Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation"). ATB is a subsidiary to Russia's Alfa Bank, which has also been designated as an SDN.

FAQ 1009. In the revised FAQ 1009, OFAC provides guidance on how to interpret the restrictions and prohibitions related to E.O. 14065 of February 21, 2022 ("Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine"). E.O. 14065 prohibits new investment, trade in goods and services, and financing by U.S. persons with respect to the Donetsk People's Republic and Luhansk People's Republic regions of Ukraine or other regions of Ukraine as may be determined by the U.S. Secretary of the Treasury. OFAC states that in determining whether a location is within the regions subject to sanctions, U.S. persons may reasonably rely on vetted information from reliable third parties, such as postal codes and maps.

On May 8, 2022, OFAC issued Russia-related GL 25A, GL 33, GL 34, and GL 35 and [designated](#) new individuals, entities, and vessels as SDNs. OFAC also published a "Determination Pursuant to Section 1(a)(i) of Executive Order 14024" and "Determination Pursuant To Section 1(a)(ii) Of Executive Order 14071" and new FAQs 1033-1040.

GL 25A, GL 33, GL 34, and GL 35.

- GL 25A (replacing GL 25) continues to authorize until further notice (subject to other blocking laws) transactions related to the exportation or reexportation, sale, or supply by U.S. persons to the Russian Federation of services, software, hardware, or technology incident to the exchange of communications over the internet, such as instant messaging, videoconferencing, chat and email, social networking, sharing of photos, movies, and documents, web browsing, blogging, web hosting, and domain name registration services that is otherwise

prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (“RuHSR”).

- GL 33 extends from May 8, 2022 to June 7, 2022, the time to wind-down operations, contracts, or other agreements involving (i) Joint Stock Company Channel One Russia; (ii) Joint Stock Company NTV Broadcasting Company; or (iii) Television Station Russia-1; and their controlled subsidiaries.
- GL 34 authorizes through July 7, 2022, all transactions ordinarily incident and necessary to the wind down of the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of account, trust and corporate formation, or management consulting services to any person located in the Russian Federation that would otherwise be prohibited by section 1(a)(ii) of E.O. 14071.
- GL 35 authorizes through August 20, 2022, all transactions ordinarily incident and necessary to the wind down of the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of credit rating or auditing services to any person located in the Russian Federation that would otherwise be prohibited section 1(a)(ii) of E.O. 14071.

Determination Pursuant to Section 1(a)(i) of Executive Order 14024 and Determination Pursuant to Section 1(a)(ii) of Executive Order 14071. OFAC has determined that section 1(a)(i) of E.O. 14024 allows the sanctioning of transactions with Russian companies that provide accounting, trust and corporate formation services, and management consulting. However, section 1(a)(ii) of E.O. 14071 supersedes the prior section with respect to:

- any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person; and
- any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person.

These two determinations build on previous determinations providing for sanctions against participants in Russian aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors.

New SDN Designations. OFAC has also designated additional entities, vessels, and individuals on the SDN List, including executives from Sberbank and Gazprombank, the Joint Stock Company Moscow Industrial Bank and its ten subsidiaries, a Russian Federation state-supported weapons manufacturer, Limited Liability Company Promtehnologiya, three of Russia’s top state-owned television stations (i.e., Joint Stock Company Channel One Russia, Television Station Russia-1, and Joint Stock Company NTV Broadcasting Company), and seven shipping companies and a marine towing company.

FAQ 1033 through FAQ 1040.

- FAQ 1033, FAQ 1034 and FAQ 1037 expand on GL 34, the Determination Pursuant to Section 1(a)(i) of Executive Order 14024 and Determination Pursuant to Section 1(a)(ii) of Executive Order 14071 by providing the following definitions:
 - “Accounting services” includes services related to the measurement, processing, and transfer of financial data about economic entities. Please note that OFAC has issued GL 35 to authorize certain transactions ordinarily incident and necessary to the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of credit rating or auditing services to any person located in the Russian Federation through 12:01 a.m. eastern daylight time, August 20, 2022. See FAQ 1035.
 - “Trust and corporate formation services” includes services related to assisting persons in forming or structuring legal persons, such as trusts and corporations; acting or arranging for other persons to act as directors, secretaries, administrative trustees, trust fiduciaries, registered agents, or nominee shareholders of legal persons; providing a registered office, business address, correspondence address, or administrative address for legal persons; and providing administrative services for trusts. Please note that all of these

activities are common activities of trust and corporate service providers, although they may be provided by other persons.

- “Management consulting services” – includes services related to strategic advice; organizational and systems planning, evaluation, and selection; marketing objectives and policies; mergers, acquisitions, and organizational structure; staff augmentation and human resources policies and practices; and brand management.
- “Accounting sector” includes the measurement, processing, and transfer of financial data about economic entities.
- “Trust and corporate formations services sector” includes assisting persons in forming or structuring legal persons, such as trusts and corporations, acting or arranging for another person to act as directors, secretaries, administrative trustees, trust fiduciaries, registered agents, or nominee shareholders of legal persons, providing a registered office, business address, correspondence address, or administrative address for legal persons, and providing administrative services for trusts.
- “Management consulting sector” includes strategic advice, organization and systems planning, evaluation and selection, marketing objectives and policies, mergers, acquisitions and organizational structure, staff augmentation and human resources policies and practices, and brand management.
- FAQ 1035 defines “credit rating services” as services related to assessments of a borrower’s ability to meet financial commitments, including analysis of general creditworthiness or with respect to a specific debt or financial obligation and “auditing services” as examination or inspection of business records by an auditor, including checking and verifying accounts, statements, or other representations of the financial position or regulatory compliance of the auditee.
- FAQ 1036 and FAQ 1037 allows that the prohibitions on accounting, trust and corporate formation services, and management consulting commence on June 7, 2022. FAQ 1037 provides further that not all businesses in that sector are subject to U.S. sanctions. U.S. agencies will specifically add the names of the sanctioned parties to one or more OFAC sanctions lists based on the type of sanction, including the SDN List, the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (i.e., the CAPTA List), and the Non-SDN Menu-Based Sanctions List (i.e., the NS-MBS List).
- FAQ 1039 provides guidance regarding the prohibition on exportation or reexportation of agricultural commodities to, from, or transiting the Russian Federation that involve Agropromyshlennyi Kompleks Voronezhskii OOO, Anninskii Elevator OOO, and Azovskaya Zernovaya Kompaniya OOO.
- FAQ 1040 expands on GL 25A and states explicitly that transactions related to telecommunications and certain internet-based communications that involve Joint Stock Company Channel One Russia, Television Station Russia-1, or Joint Stock Company NTV Broadcasting Company are excluded from the authority provided in GL 25A.

The United States banned importation of Russian oil, gas, and coal on March 8, 2022. In a public statement on May 8, 2022, the G7 nations committed to phase out or ban the import of Russian oil. In order to limit Russia’s access to items and revenue that could support its military capabilities, the U.S. also imposed further export restrictions that put controls on industrial engines, boilers, motors, fans, and ventilation equipment, bulldozers, and other items with industrial and commercial applications. The Nuclear Regulatory Commission will also suspend general licenses for exports of source material, special nuclear material, byproduct material, and deuterium to Russia. In addition, the U.S. imposed around 2,600 visa restrictions on Russian and Belarusian officials in response to their ongoing efforts to undermine the sovereignty, territorial integrity, or political independence of Ukraine.

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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