

Insights

RUSSIA NOW FOCAL POINT OF ADDITIONAL SANCTIONS AND EXPORT CONTROLS, WITH AN ADDED BONUS FOR PUBLIC COMPANIES (OH MY!)

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In response to a variety of activities allegedly undertaken by Russia, the U.S. Government has imposed a series of additional sanctions and export control measures since early March. Collectively, the March and April sanctions take a variety of forms, including the suspension of entry into the United States and the denial of visas to certain non-U.S. citizens, denial of government credit and financial assistance, cessation of all foreign military financing, export controls changes, expanded sanctions authority, and additional designations of blocked persons. These sanctions may affect anyone doing business with or in Russia. Public companies should be particularly mindful of the potential for more reporting pursuant to Section 13(r)(1)(D) of the Securities and Exchange Act of 1934 (“34 Act”) as a side effect of certain of the additional sanctions.

Additional Sanctions Introduced and More Designations Under Existing Authorities

Following the determination that the Government of the Russian Federation violated the Chemical Weapons Convention based on the Navalny attack, the U.S. Government designated multiple new parties under existing sanctions authorities. Pursuant to Section 231 of the Countering America’s Adversaries Through Sanctions Act (“CAATSA”), the U.S. State Department added six parties to its list of persons that are part of or act for, or on behalf of, the Russian intelligence or defense sectors. The newly added parties are:

- 27th Scientific Center;
- 48 Central Scientific Research Institute Sergiev Posad;
- 48 Central Scientific Research Institute Kirov;
- 48 Central Scientific Research Institute Yekaterinburg;
- State Scientific Research Institute of Organic Chemistry and Technology; and
- 33rd Scientific Research and Testing Institute.

As a result of these designations, any person (U.S. or non-U.S.) that engages in a significant transaction with any of these parties is itself at risk of having sanctions imposed, including being designated as a Specially Designated National And Blocked Person (“SDN”).

Further, the FSB, the Director of the FSB, the GRU, two GRU officers, and three of the above entities were designated as SDNs pursuant to Executive Order 13382 (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters). A further seven individuals (including again the Director of the FSB) were designated as SDNs under Executive Order 13661 (Blocking Property of Additional Persons Contributing to the Situation in Ukraine). .

In addition, on 15 April 2021, President Biden issued [Executive Order 14024](#) “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation.” In issuing this order, President Biden cited a range of activity as the reason for the sanctions, including Russia’s efforts to undermine the conduct of free and fair democratic elections and democratic institutions; engagement in and facilitation of malicious cyber-enabled activities against the United States and its allies and partners; and fostering and utilizing transnational corruption to influence foreign governments, among others. This Executive Order provides new authority to impose sanctions on any person that the U.S. Government determines:

- to operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;
- to be responsible for or complicit in any of the malign activities listed above;
- to be or have been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation, any entity that has, or whose members have, engaged in any of the malign activities listed above, or any entity whose property and interests in property are blocked pursuant to the Order
- to be a spouse or adult child of any person whose property and interests in property are blocked pursuant to the two above items;
- to be a political subdivision, agency, or instrumentality of the Government of the Russian Federation;
- to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any of the above listed malign activities or any person whose property and interests in property are blocked pursuant to the Executive Order.

Pursuant to EO 14024, the Office of Foreign Asset Control (“OFAC”) designated the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation as political subdivisions, agencies, or instrumentalities of the

Government of the Russian Federation meaning, as of 14 June 2021, U.S. financial institutions will be prohibited from lending funds to or participating in the primary market for Russian bonds issued by any of these institutions unless authorized by a license.

OFAC also updated its SDN list by designating more than 40 parties, including individuals and entities who attempted to influence the 2020 U.S. presidential election, entities determined to be disinformation outlets, and Konstantin Kilimnik, a Russian and Ukrainian political consultant. Moreover, five entities were designated as being part of the technology sector in Russia.

Dealings with all SDNs are prohibited for U.S. persons; in addition any property or interests in property of SDNs must be blocked when in the United States or in the possession or control of a U.S. person. OFAC did modify General License 1B to account for the additional designation authorities applicable to the FSB, given the role of the FSB in authorizing the importation of certain items, including encryption items, into Russia.

Impacts on Issuers Subject to SEC Reporting Requirements

Importantly, the additional sanctions designations pursuant to EO 13382 may trigger reporting to the Securities and Exchange Commission (“SEC”) pursuant to Section 13(r)(1)(D) of the ‘34 Act. Although Section 13(r)(1) of the ‘34 Act is typically associated with the sanctions against Iran, some of the reporting triggers are broader than just transactions involving Iran. Among the broader triggers are any transactions or dealings knowingly conducted with “any person the property and interests in property of which are blocked pursuant to Executive Order No. 13382.” (Section 13(r)(1)(D)(ii).)

Based on this, parties that engage in transactions with any of the parties now blocked pursuant to EO 13382 in connection with the Navalny poisoning must be cognizant of these reporting requirements if the party is an issuer or the affiliate of an issuer required to report on a periodic basis to the SEC. Keep in mind that, unlike the provision in these reporting requirements with respect to activities involving the Government of Iran, there is no exception or exclusion from the reporting requirements for transactions that are authorized. Thus, even if General License 1B authorizes a party’s transaction with the FSB from a U.S. sanctions perspective, the knowing conduct of such a transaction must be reported to the SEC if the party is an issuer under the U.S. securities laws. Moreover, because the reporting extends to activities of affiliates of issuers, it is important to ensure that the activities of non-U.S. parties with the FSB are also accounted for.

Stricter Export Controls for Russia

In addition to the above, changes concerning exports to Russia have been implemented under both the International Traffic in Arms Regulations (“ITAR”) and the Export Administration Regulations (“EAR”) as a result of this determination.

Russia has been added to the list of countries specifically called out in § 126.1 of the ITAR as a country subject to a policy of denial for items controlled under the ITAR. Licenses and other authorizations issued under the ITAR for exports to Russia will be terminated, although case-by-case review will apply for exports in support of government space cooperation and, for six months (until November 1, 2021), for exports in support of commercial space cooperation.

Under the EAR, even more stringent restrictions have been implemented than those put in place following the Skripal chemical weapons attack in 2018. License exceptions RPL, TSU and APR are no longer available for exports of national security (“NS”) controlled items to Russia. A presumption of denial is now applied to applications to export or reexport NS-controlled items to commercial end users in Russia for civil end uses. A presumption of denial will also apply to exports of NS-controlled items in support of commercial space cooperation after a six month period ending November 1, 2021 (parallel to the change for space items under the ITAR).

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