

April 6, 2022

OFAC Enforcement Action Shows Risk of Extending the Length of Credit Extended to Russian Companies Targeted by Debt Sanctions

On April 1, 2022, the U.S. Department of the Treasury's Office of Assets Control ("OFAC") announced a \$78,750 settlement agreement with S&P Global, Inc. ("S&P Global"), a New York-based company that provides business information and financial analytics, to resolve apparent violations of OFAC's sectoral sanctions program.¹ OFAC determined that, from 2016 to 2017, a then newly-acquired U.S. subsidiary of S&P Global, Petroleum Industry Research Associates, Inc. ("PIRA"), had engaged in apparent violations of OFAC's sectoral sanctions program by dealing in prohibited new "debt" of JSC Rosneft ("Rosneft"), a state-owned Russian oil company that is subject to Directive 2 of OFAC's sectoral sanctions program.² Specifically, OFAC determined that by re-issuing and re-dating an August 2015 invoice to Rosneft multiple times in 2016 and 2017, and ultimately receiving three payments against these invoices more than 90 days after the date of the original invoice, S&P Global had engaged in dealings in new "debt" of Rosneft with a maturity of greater than 90 days in apparent violation of U.S. sanctions.³

While this action represents OFAC's second-ever enforcement action involving apparent violations of OFAC's sectoral sanctions program (the first, targeting Haverly Systems, Inc.⁴ ("Haverly Systems") in 2019, involved similar facts relating to re-issued and re-dated invoices to Rosneft), this enforcement action also has implications for the recently imposed sanctions targeting Russia for its invasion of Ukraine (discussed in greater detail in our prior memorandum⁵). Among other things, these sanctions include a prohibition on U.S.-nexus transactions or dealings in new "debt" of longer than 14 days maturity of 13 major Russian companies and entities owned 50 percent or more by such companies.⁶ OFAC has made clear through this enforcement action and the Haverly Systems actions that it views transactions in new "debt" of longer than 14 days as including the extension of payment

¹ OFAC, "OFAC Settles with S&P Global, Inc. for \$78,750 Related to Apparent Violations of the Ukraine-Related Sanctions Regulations in 2016 and 2017," (Apr. 1, 2022), available [here](#) (the "OFAC Web Notice").

² See Directive 2 Under Executive Order 13662, available [here](#).

³ At the time of the conduct at issue, the relevant tenor of prohibited debt under Directive 2 was longer than 90 days maturity. From November 28, 2017, the applicable tenor of prohibited date is longer than 60 days maturity.

⁴ OFAC, "Haverly Systems, Inc. Settles Potential Civil Liability for Apparent Violations of the Ukraine Related Sanctions Regulations," (Apr. 25, 2019), available [here](#).

⁵ Paul, Weiss "The Biden Administration's First Week of Sweeping Sanctions on Russia/Ukraine," (Feb. 26, 2022), available [here](#).

⁶ These 13 identified Russian companies are: Sberbank, AlfaBank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways. Transactions or dealings involving new equity of these entities are also prohibited.

terms exceeding 14 days. Therefore, companies doing business in Russia would be well advised to review their sanctions compliance and monitoring procedures regarding counterparties that are the target of debt-related U.S. sanctions.

This OFAC action comes at a time of heightened enforcement activity around pre-existing and recent Russia-Ukraine sanctions, including the creation of a DOJ KleptoCapture task force (which recently announced its first seizure of a sanctioned Russian oligarch's yacht⁷), the first-ever criminal indictment against a U.S. business person for providing services to a sanctioned Russian oligarch, and the formation of the transnational REPO task force.⁸

Below we provide more detail on OFAC's enforcement action and its implications.

The Apparent Violations

According to OFAC, in August 2016 S&P Global acquired PIRA, a U.S. company that provides research and forecasting products and services to energy and commodity customers, and, ultimately, in the fall of 2016, fully integrated PIRA's business into S&P Global's operations.⁹ OFAC noted that in August 2015, PIRA had issued an invoice for \$82,500 to Rosneft related to an ongoing subscription service that offered bespoke advisory services and market analysis. OFAC stated that the August 2015 invoice had a due date of October 18, 2015, but that Rosneft did not make any payment by this deadline and did not attempt to make payment until May 2016.

OFAC determined that PIRA's bank rejected Rosneft's attempted May 2016 payment and Rosneft subsequently informed PIRA of the rejection, specifically informing PIRA that the bank had stopped the payment "in accordance with the sanctions program" and that Rosneft would attempt to make another payment.¹⁰ According to OFAC, in June 2016 Rosneft attempted a second payment, which PIRA's bank again ultimately rejected (and when the bank asked Rosneft for additional information regarding the transaction Rosneft did not respond to these inquiries). After this second failed payment attempt, OFAC noted that PIRA suggested that Rosneft should pay the overdue invoice by check. OFAC stated that in response to this suggestion, Rosneft informed PIRA that the rejected payments were "returned by the bank because of sanctions policy" and suggested that PIRA speak with its bank to resolve the issue.¹¹

According to OFAC, in August 2016 S&P Global employees (who had formerly been PIRA employees) re-issued and re-dated the August 2015 invoice with a new due date of August 26, 2016 (OFAC noted this as being 374 days after the invoice for the debt was originally issued).¹² OFAC determined that when sending the revised invoice to Rosneft, S&P Global management emphasized to Rosneft the importance of timely payment, cautioning that "when the payment is made against an old invoice (as recent ones were), the bank may perceive that to be 'extending credit' to a Russian company, which we cannot do by law."¹³ OFAC stated that in October 2016 S&P Global received a \$55,000 wire transfer from Rosneft, which partially settled the original \$82,500 invoice.

OFAC determined that in November 2016 S&P Global followed up with Rosneft regarding the outstanding \$27,500 balance and that S&P Global then re-issued the August 2015 invoice by creating two "new" invoices of \$13,750 each (OFAC noted that these

⁷ DOJ "\$90 Million Yacht of Sanctioned Russian Oligarch Viktor Vekselberg Seized by Spain at Request of United States," (Apr. 4, 2022), available [here](#).

⁸ Paul, Weiss "Biden Administration Warns of Increased Sanctions and Export Controls Enforcement," (Mar. 8, 2022), available [here](#).

⁹ OFAC Web Notice at 1.

¹⁰ *Id.*

¹¹ OFAC Web Notice at 2.

¹² *Id.*

¹³ *Id.*

were issued 462 days after the invoice for the debt was originally issued).¹⁴ According to OFAC, Rosneft paid one of these invoices in full in December 2016. OFAC stated that in August 2017 Rosneft still had not paid the final outstanding \$13,750 and that S&P Global then re-issued and re-dated a fourth “new” invoice for Rosneft in September 2017 (OFAC noted that this was 749 days after the invoice for the debt was originally issued). According to OFAC, in October 2017 Rosneft remitted the remaining \$13,750 to S&P Global.

Factors Affecting OFAC’s Penalty Determination

OFAC determined that when S&P Global extended the payment date of its invoices, S&P Global had transacted and dealt in new debt of longer than 90 days maturity of Rosneft, in apparent violation of Directive 2 of OFAC’s sectoral sanctions program. OFAC determined that these apparent violations were not self-disclosed and did not constitute an egregious case. According to OFAC, the statutory maximum civil monetary penalty amount for the apparent violations was \$1,246,248 and the base penalty amount was \$175,000.

OFAC noted as aggravating factors that: (1) S&P Global and PIRA “failed to exercise a minimal degree of caution or care when it reissued and re-dated four invoices to extend the payment date of invoices far beyond the authorized debt tenor, knowing or having reason to know such conduct would violate U.S. sanctions regulations;” (2) PIRA and, later, S&P Global managerial staff were aware of and involved in the conduct related to the apparent violations; and (3) PIRA and S&P Global are commercially sophisticated companies with a large global presence.¹⁵

OFAC noted as mitigating factors that: (1) S&P Global has not received a penalty notice or finding of violation from OFAC in the last five years; (2) S&P Global took remedial measures to enhance their compliance program, including creating “more robust” training, adding periodic testing of invoices involving customers on the sectoral sanctions identification list (“SSI List”), and adding additional compliance staff to manage sanctions issues; and (3) S&P Global cooperated with OFAC, was responsive to OFAC’s requests, and entered into tolling agreements.¹⁶

Implications

OFAC noted that this enforcement action underscores the importance of careful adherence to OFAC’s regulations, particularly in cases where companies have counterparties that present compliance challenges such as companies on the SSI List. OFAC also referred to FAQ 419¹⁷ and encouraged companies that face similar circumstances with regard to payment delays or other actions taken by SSI List clients to contact OFAC for guidance. OFAC also stated that this enforcement action emphasizes the importance of acquiring companies taking active steps to extend their sanctions compliance program (including training and monitoring) to newly acquired businesses and their employees and to continue to closely monitor newly acquired businesses for potential sanctions-related issues.

Additionally, while this enforcement action arose in the context of OFAC’s sectoral sanctions program, its implications also apply to the recent sanctions targeting Russia as a result of its invasion of Ukraine. Among other things, these recent sanctions include a prohibition on U.S. persons engaging in any transactions or dealings in new debt of longer than 14 days maturity of 13 major Russian companies and entities owned 50 percent or more by such companies. Companies that do business with these 13 companies or other entities that are the target of debt-related U.S. sanctions would be well advised to review their compliance and monitoring procedures in light of this enforcement action, including, for example, controls regarding the re-issuing and re-dating of invoices.

¹⁴ *Id.*

¹⁵ OFAC Web Notice at 3.

¹⁶ *Id.*

¹⁷ FAQ 419 states in relevant part that in “the event that a U.S. person believes that it may not receive payment in full by the end of the relevant payment period, the U.S. person should contact OFAC to determine whether a license or other authorization is required.”

We will continue to monitor enforcement actions taken by OFAC and provide further updates as appropriate.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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