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ALERT MEMORANDUM

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OFAC Issues New Guidance on Entities Owned by Blocked Persons

On August 13, 2014, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued new guidance and "Frequently Asked Questions" with respect to entities owned by persons whose property and interests in property are blocked under the Executive Orders and regulations administered by OFAC (Specially Designated Nationals and blocked persons, or "SDNs").[1] The new guidance generally confirms prior OFAC interpretations, but it reverses recent OFAC guidance in one important respect.

Aggregation of Ownership

Under OFAC's previous ownership guidance, entities owned 50% or more by a single blocked person were blocked by operation of law (whether or not the entities were themselves listed on any sanctions list). OFAC has now expanded this principle to cover ownership by multiple blocked persons, so that entities owned 50% or more in the aggregate by more than one blocked person are blocked by operation of law. It remains the case that entities that are controlled, but not in the aggregate 50% or more owned, by one or more blocked persons are not blocked by operation of law (though OFAC cautions that such entities may themselves be designated in the future and may present a risk that they are engaging in prohibited transactions on behalf of blocked persons). Parallel principles apply to the new Ukraine-related sectoral sanctions, and subsidiaries of entities named on the Sectoral Sanctions Identifications List are subject to the same restrictions as the named parent entities.

Attribution of Indirect Ownership

OFAC confirmed and clarified prior guidance regarding when shares held through intermediary companies should be considered in making the 50% ownership calculation. OFAC is using a "light switch" rule – if an entity that is not listed as a blocked person is 50% or more owned, in the aggregate, by blocked entities, it is itself a blocked person and all interests it holds are included in full in the calculation of whether another entity is 50% or more owned by blocked persons. If an entity is less than 50% owned by blocked persons, it is not itself a blocked person, and its ownership interests are disregarded in any future calculations (and not, for example, attributed pro rata to its minority sanctioned owners). For example:

Company A is 25% owned by SDN 1 and 25% owned by SDN 2

Company B is 45% owned by, and is controlled by, SDN 2

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[1] See Revised Guidance on Entities Owned By Persons Whose Property and Interests in Property Are Blocked, Aug. 13, 2014, *available at* http://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf; "Frequently Asked Questions," *available at* http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx#50_percent.

Company C is 20% owned by Company A, 60% owned by Company B, and 20% owned by Company C

- Company A would be blocked, because it is 50% owned by blocked persons.
- Company B would not be blocked, and any shares it holds would therefore be disregarded in further calculations of ownership by blocked persons.
- Company C would not be blocked, because it is only 40% owned by blocked persons (20% by Company A, which is a blocked person, and 20% by SDN 2); Company B's stake in Company C is not attributed in part back to SDN 2 because the 50% ownership chain has been broken.

Divestment Below 50%

In line with prior informal guidance, OFAC confirmed that entities that were once 50% or more owned by one or more blocked persons, but are no longer 50% or more owned as a result of a divestment that occurred outside U.S. jurisdiction, are no longer blocked. (Divestments within U.S. jurisdiction are void as a matter of law, because U.S. law blocks the sanctioned person's interest and prevents a valid transfer of ownership.) However, any property of that entity that was seized and blocked within U.S. jurisdiction prior to divestment by the sanctioned person remains blocked unless OFAC 1) authorizes the release or 2) removes the original blocked person from the Specially Designated Nationals and Blocked Persons List or, in the case of an entity owned by multiple blocked persons, delists sufficient blocked persons so that the total ownership by blocked persons falls below 50% under the principles above.

Dealings with Sanctioned Individuals Acting on Behalf of Non-Sanctioned Entities

OFAC reiterated and slightly clarified its prior guidance that U.S. persons may not deal with blocked individuals when they are acting on behalf of a non-blocked company (for example, a company for which the CEO is sanctioned but the company is not). OFAC stated that persons subject to U.S. jurisdiction may not engage in negotiations, enter into contracts, or process transactions involving a blocked individual even when that blocked individual is acting on behalf of the non-blocked entity that he or she controls rather than in his or her individual capacity.

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Please feel free to raise any questions you may have with any of your regular contacts at the Firm, or with Paul Marquardt in our Washington office.

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