

United States Adopts Second Round of CBW Sanctions Targeting Russia

August 9, 2019

In response to the U.S. State Department's determination that the Russian Government used chemical weapons against a former Russian spy in Britain, on Thursday, August 1, 2019, President Trump signed Executive Order 13883 ("the "Order"), authorizing the second tranche of sanctions required by The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 ("CBW Act").¹ According to a fact sheet issued by the U.S. Department of State and the accompanying implementation measures of the U.S. Department of the Treasury, the newly authorized sanctions will:

- Restrict certain U.S. financial institutions from participation in the primary market for non-ruble denominated bonds issued by the Russian government and lending non-ruble denominated funds to the Russian government;
- Require the United States government to oppose the extension of any loan or financial or technical assistance to Russia by international financial institutions; and
- Impose a "presumption of denial" on applications for licenses for exports to Russia of dual-use chemical and biological items controlled by the Department of Commerce.

"U.S. Bank" Restrictions. On August 1, 2019, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") issued a "Russia-Related Directive Under Executive Order of August 1, 2019" (the "Directive") to implement the restrictions on U.S. financial institutions, with an effective date of August 26, 2019. OFAC also issued guidance in the form of six Frequently Asked Questions ("FAQ").

The Directive gives effect to the Order by prohibiting "U.S. banks" from participating in the primary market for non-ruble denominated bonds issued by "the Russian sovereign" and lending non-ruble denominated funds to "the Russian sovereign." FAQ 675 advises

¹ On August 6, 2018, the U.S. State Department made a formal determination that Russia used chemical or biological weapons against Sergei Skripal and his daughter, Yulia Skripal, who were poisoned in Salisbury, England, earlier that year. This determination triggered two rounds of sanctions under the CBW Act. The first round, which became effective on August 27, 2018, included, among others, a ban on exports to Russia of security-sensitive goods and technology. See our previous [Update](#) on the subject.

that these restrictions do not apply to bonds or loans denominated in Russian rubles, and FAQ 678 states that these restrictions on U.S. banks do not apply to transactions in non-ruble bonds on the secondary market. There are no restrictions targeting similar activities by non-U.S. banks.

Under the Directive, a “U.S. bank” is defined broadly to contain institutions beyond traditional banks, including, among others, “trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing.” This broad (and possibly nonintuitive) definition of the term captures a wide array of U.S. financial institutions, preventing them from participating in the primary market for non-ruble bonds (e.g., denominated in U.S. dollars) of the Russian Government. The term “participating” is potentially broad enough to prohibit U.S. banks, as defined, from financing or otherwise facilitating any such transactions by non-U.S. banks or other non-U.S. persons.

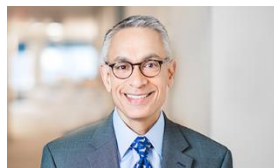
The Order, on its own, is a general authorization for certain sanctions mandated by the CBW Act, without reference to a particular target. For purposes of the Order, the relevant financial sanctions may be imposed against a “government,” where that term is defined broadly to include the government, its political subdivisions and instrumentalities, as well as any person owned or controlled by, or acting on behalf of, that government. However, the term used in the Directive, “Russian sovereign,” covers “any ministry, agency, or sovereign fund of the Russian Federation, including the Central Bank of Russia, the National Wealth Fund, and the Ministry of Finance of the Russian Federation.” Thus, the restrictions do not apply to state-owned enterprises of the Russian Federation.

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Please do not hesitate to contact us with any questions.

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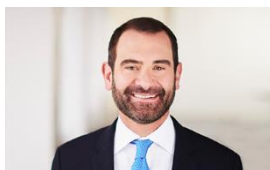
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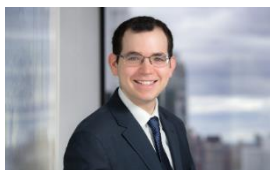


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