OFAC FAQ CONCERNING EXECUTIVE ORDER AUTHORISING IMPLEMENTATION OF “ITRSHRA 2012” SANCTIONS

Questions Related to Section 4 of Executive Order Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions with Respect to Iran

An Executive Order of October 9, 2012, “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions with Respect to Iran,” (the “Order”) implements certain statutory requirements of the Iran Threat Reduction and Syria Human Rights Act of 2012 (the “TRA”), including amendments to the Iran Sanctions Act and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Specifically, the Order implements the requirements of Sections 204, 402, and 403 of the TRA. In addition, consistent with Section 218 of the TRA, Section 4 of the Order prohibits foreign subsidiaries (defined below) of United States persons from knowingly violating the Iranian Transactions Regulations, E.O. 13599, section 5 of E.O. 13622, or Section 12 of the Order, and provides for civil penalties on the U.S. parent company for any such violations.

---

238. What is the new prohibition on foreign subsidiaries of U.S. persons, and how does it work?

Section 4 of the Order prohibits an entity owned or controlled by a U.S. person and established or maintained outside the United States (a “foreign subsidiary”) from knowingly engaging in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if that transaction would be prohibited by certain Executive orders prohibiting trade and other dealings with, and investment in, Iran and blocking the Government of Iran and Iranian financial institutions, or any regulation issued pursuant to the foregoing, if the transaction were engaged in by a United States person or in the United States. Civil penalties for the foreign subsidiary’s violation shall be applied to the U.S. parent company to the same extent that they would apply to a U.S. person for the same conduct.

---

239. Are foreign subsidiaries of U.S. companies covered under OFAC general licenses and/or permitted to apply for specific licenses from OFAC?

To the extent a transaction is exempt from the prohibitions of the Iranian Transactions Regulations, E.O. 13599, section 5 of E.O. 13622, or Section 12 of the Order, or is authorized by a general license issued pursuant to these authorities if engaged in by a U.S. person, it would not be prohibited for a foreign subsidiary (as defined above) to engage in the transaction, provided that it satisfies all the conditions and requirements of the exemption or general license. Similarly, if the transaction is one for which a U.S. person might apply for a specific license — for example, the exportation of medical devices to Iran — a foreign subsidiary or its U.S. parent may apply for a specific license for the foreign subsidiary to engage in the transaction. Note: Whether a U.S. parent company’s specific license covers transactions by its foreign subsidiary that are otherwise prohibited by section 4 of the Order will depend on the terms of that license and the scope of the authorized activities.