

OFAC UKRAINE-RELATED FAQ 28 JULY 2014

Questions Related to Sectoral Sanctions under Executive Order 13662

391. Can U.S. persons issue and deal in new depositary receipts that are based on the equity of an entity subject to the Sectoral Sanctions Identification List (an SSI entity)?

Yes, in certain circumstances. U.S. persons, including U.S. financial institutions, may issue and deal in depositary receipts that are based on equity issued by an SSI entity prior to the effective date of the sanctions. U.S. persons may not, however, deal in or issue depositary receipts that are based on equity issued by an SSI entity on or after the effective date of the sanctions. Such transactions would constitute prohibited transactions or dealings in new equity. [7-28-2014]

392. How are banks expected to distinguish between transactions involving new versus old equity if SSI entities issue new equity that utilizes the same International Securities Identification Number (ISIN) or other identifier as equity issued prior to the effective date of sanctions?

Directive 1 under Executive Order 13662 prohibits U.S. persons from transacting in, providing financing for, or otherwise dealing in new equity for named persons, their property, or their interests in property. Directive 1 also prohibits such transactions from occurring in the United States. If a U.S. person decides to transact or otherwise deal in equity issued by an SSI entity prior to the effective date of the sanctions, the U.S. person should ensure that it is not transacting in, providing financing for, or otherwise dealing in, the newly issued equity. To the extent that a U.S. person does in fact transact in, provide financing for, or otherwise deal in newly issued equity, such activity would constitute a violation of the prohibition set forth in Directive 1. [7-28-2014]

393. Does OFAC consider counterparty credit risk associated with derivatives transactions that are authorized pursuant to General License 1 to Executive Order 13662 to constitute new debt?

OFAC does not consider normal counterparty credit exposure encountered by a U.S. person to be an extension of credit when the U.S. person enters into an otherwise permissible derivatives transaction. U.S. persons engaging in such transactions should ensure that they do not hold, purchase, or sell the underlying asset in such transactions in violation of Paragraph (b) of General License 1 to Executive Order 13662. [7-28-2014]

394. If a U.S. person entered into a revolving credit facility or long-term loan arrangement for one of the SSI entities prior to the effective date of the sanctions, what are the restrictions on drawdowns from that facility? Do all drawdowns and disbursements pursuant to the parent agreement need to carry repayment terms of 90 days or less?

If a U.S. person entered into a long-term credit facility or loan agreement prior to the effective date of the sanctions, drawdowns and disbursements with repayment terms of 90 days or less are permitted. Drawdowns and disbursements whose repayment terms exceeds 90 days are not prohibited if the terms of such drawdowns and disbursements (including the length of the repayment period, the interest rate applied to the drawdown, and the maximum drawdown amount) were contractually agreed to prior to the effective date of the sanctions and are not modified on or after the effective date. U.S. persons may not deal in a drawdown or disbursement initiated after the effective date of the sanctions with a repayment term of longer than 90 days, if the terms of the drawdown or disbursement were negotiated on or after the effective date. Such a newly negotiated drawdown or disbursement would constitute a prohibited extension of credit. [7-28-2014]

395. Do Directives 1 and 2 under Executive Order 13662 prohibit U.S. persons from advising or confirming a letter of credit that was issued on or after the effective date of the sanctions and that carries a term of longer than 90 days maturity when the beneficiary of that letter of credit is one of the SSI entities?

U.S. persons may advise or confirm a letter of credit issued on or after the effective date of the sanctions on behalf of a non-sanctioned entity in which an SSI entity is the beneficiary (i.e., the exporter or seller of the underlying goods) because the subject letter of credit does not represent an extension of credit to the SSI entity.

U.S. persons may not advise or confirm a letter of credit if all of the following three conditions are met: (1) the letter of credit was issued on or after the effective date of the sanctions, (2) the letter of credit carries a term of longer than 90 days maturity, and (3) an SSI entity is the applicant of the letter of credit (i.e., the importer or buyer of the underlying goods or services). This would constitute prohibited activity because the subject letter of credit would represent an extension of credit to the SSI entity. [7-28-2014]

396. How do I know when a name has been added, changed or removed on the Sectoral Sanctions Identifications (SSI) List?

OFAC maintains "changes files" that record all significant changes to the SSI List. Any addition, alteration, or removal of an SSI record is considered a significant change and will appear in these files along with the date that such an action occurred. These files are offered in two formats and are called [SSINEW14.PDF](#) and [SSINEW14.TXT](#). The changes files are produced by year, thus future file names will be SSINEW15.PDF and SSINEW15.TXT and so on.

[7-28-2014]