

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 47 No. 8 April 16, 2014

U.S. SANCTIONS ON IRAN: THE JOINT PLAN OF ACTION FOR CONTAINING IRAN'S NUCLEAR PROGRAM

U.S. sanctions on Iran are affected by a complex web of numerous statutes and executive orders. Under the current temporary easing agreement, known as the Joint Plan of Action, in return for Iran freezing key elements of its nuclear program, non-U.S. persons engaging in certain transactions with Iran prior to July 20, 2014, will not be targeted for secondary sanctions under U.S. law. Also allowed are repatriation of some blocked funds and certain humanitarian transactions. The author discusses the current status of sanctions, and the scope and limitations of the relief provided by the easing agreement.

By Jeanine P. McGuinness *

After years of expanding sanctions on Iran, the United States government announced on January 20, 2014, that it has begun to ease temporarily certain secondary sanctions in connection with the November 24, 2013, Joint Plan of Action (“JPOA”)¹ between the permanent members of the United Nations Security Council, plus Germany (the “P5+1”) and Iran. The USG has agreed that non-U.S. persons (other than foreign companies owned or controlled by U.S. persons) that engage in certain transactions initiated and completed between January 20 and July 20, 2014, relating to Iran’s

petrochemical and automotive sectors, trade in gold and precious metals, exports of crude oil, and the supply and installation of certain spare parts and services for Iranian civil aircraft, will not be targeted for sanctions under U.S. law. Below, we discuss the current status of sanctions on Iran and the scope and limitations of the specific relief from sanctions provided by the JPOA.

OVERVIEW OF U.S. SANCTIONS

The current broad sanctions against Iran evolved from an import ban imposed by Executive Order 12613, which was signed October 29, 1987.² President Clinton later issued three E.O.s,³ between 1995 to 1997,

¹ The full text of the JPOA is available at http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf. Under the JPOA, Iran has made various commitments regarding its nuclear program. This article does not discuss the actions that Iran has agreed to take under the JPOA.

² 52 Fed. Reg. 41940 (October 30, 1987).

³ E.O.s 12957 of March 15, 1995, 60 Fed. Reg. 14615 (March 17, 1995); 12959 of May 6, 1995, 60 Fed. Reg. 24757 (May 9,

* JEANINE P. MCGUINNESS is counsel in Davis Polk & Wardwell LLP’s Corporate Department, practicing in the Washington, D.C. office. Her e-mail address is jeanine.mcguinness@davispolk.com. Britt K. Mosman of Davis Polk & Wardwell LLP also assisted with this article. Her e-mail address is britt.mosman@davispolk.com.

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expanding sanctions to prohibit all trade with and investment in Iran for its support of international terrorism and efforts to acquire weapons of mass destruction. Current sanctions block the property and property interests of the government of Iran (“GOI”) within the possession or control of U.S. Persons⁴ and include comprehensive prohibitions on most transactions with Iran and the GOI worldwide by U.S. Persons and their non-U.S. subsidiaries.

The Iranian Transactions and Sanctions Regulations (the “ITSR”),⁵ formerly known as the Iranian Transactions Regulations, implement the comprehensive trade and financial prohibitions on transactions by U.S. Persons with or involving Iran or the GOI. The Iranian Transactions Regulations were reissued as the ITSR in October 2012 to implement extensive changes to sanctions against Iran, including the blocking of the property of the GOI pursuant to E.O. 13599.⁶ The ITSR were amended in December 2012 to implement section 218 of the Iran Threat Reduction and Syrian Human Rights Act of 2012 (the “TRA”),⁷ which generally requires entities owned or controlled by a U.S. Person and established or maintained outside the United States (e.g., foreign subsidiaries of U.S. companies) to comply with the prohibitions of the ITSR.

Since 2010, numerous statutes and E.O.s⁸ have expanded sanctions against Iran, including the Comprehensive Iran Sanctions and Divestment Act (“CISADA”),⁹ the National Defense Authorization Act of 2012 (the “2012 NDAA”);¹⁰ the TRA; and the Iran Freedom and Counter-Proliferation Act of 2012 (“IFCA” – part of the National Defense Authorization Act for FY 2013).¹¹ A number of these recent statutes and E.O.s, certain of which amend or reference the Iran Sanctions Act of 1996 (as amended, the “ISA”),¹² provide for the imposition of extraterritorial, or secondary, sanctions on non-U.S. persons that conduct targeted business activities with Iran, even when those activities have no connection to the United States, U.S. Persons, or U.S. dollars. Certain of these sanctions authorize the USG to restrict or eliminate access to the U.S. economy and financial system by targeted persons.

CISADA and the TRA vastly strengthened the ISA, which now requires the U.S. Department of State to impose five or more sanctions from a menu of 12 sanctions (including restrictions on exports from the United States, loans from U.S. financial institutions, and sales of goods or services to the USG, as well as asset blocking, among others) on a person that engages in specified activities involving Iranian petroleum

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1995); and 13059 of August 19, 1997, 62 Fed. Reg. 44531 (Aug. 21, 1997).

⁴ “U.S. Persons” include (i) U.S. citizens and permanent resident aliens (“green card” holders), wherever in the world they are located; (ii) entities organized under U.S. law, including their non-U.S. branches, and (iii) persons (including entities) actually located in the United States (even temporarily – on vacation or at a meeting). U.S. branches of non-U.S. companies are U.S. Persons. For Cuba and, more recently, Iran, entities owned or controlled by U.S. Persons, wherever organized or located (e.g., foreign subsidiaries), must also comply. This expansion of OFAC’s jurisdiction with respect to the Iran sanctions took effect in 2012, as discussed below.

⁵ 31 C.F.R. Part 560.

⁶ 77 Fed. Red. 6659 (Feb. 8, 2012).

⁷ Pub. L. No. 112-158, 126 Stat. 1214 (2012).

⁸ Nine Iran-related E.O.s have been issued since mid-2010: E.O. 13553, 75 Fed. Reg. 60567 (Oct. 1, 2010); E.O. 13574, 76 Fed. Reg. 30505 (May 25, 2011); E.O. 13590, 76 Fed. Reg. 72609 (Nov. 23, 2011); E.O. 13599, 77 Fed. Red. 6659 (Feb. 8, 2012); E.O. 13606, 77 Fed. Reg. 24571 (Apr. 24, 2012) E.O. 13608, 77 Fed. Reg. 26409 (May 3, 2012); E.O. 13622, 77 Fed. Reg. 45897 (Aug. 2, 2012); E.O. 13628, 77 Fed. Reg. 62139 (Oct. 12, 2012); and E.O. 13645, 78 Fed. Reg. 33945 (June 5, 2013). A number of these E.O.s are list-based sanctions programs, blocking the property and property interests of targets, while E.O. 13608 restricts dealings with identified “foreign sanctions evaders” but does not impose a blocking regime.

⁹ Pub. L. 111-195 (2010), 124 Stat. 1312.

¹⁰ Pub. L. 112-81 (2012), 125 Stat. 1298.

¹¹ Pub. L. 112-239 (2013), 126 Stat. 1632.

¹² 50 U.S.C. § 1701 note.

resources, refined petroleum products, or petrochemical products, among other things.

The Iranian Financial Sanctions Regulations (the “IFSR”)¹³ implement subsections 104(c) and 104(d) of CISADA, which provide for restrictions on the maintenance of correspondent or payable-through accounts by U.S. financial institutions for foreign financial institutions (“FFIs”) found to have knowingly engaged in activities that facilitate Iranian efforts to acquire or develop WMD or to support terrorism, facilitate activities of persons designated under United Nations Security Council sanctions against Iran’s nuclear program, or engage in various related activities.¹⁴

E.O. 13622, as amended, further expanded sanctions by authorizing the imposition of correspondent and payable-through account sanctions on any FFI determined to have knowingly conducted or facilitated a significant financial transaction with the National Iranian Oil Company or the Naftiran Intertrade Company, or for the purchase, sale, transport, or marketing of petroleum, petroleum products, or petrochemical products from Iran. The E.O. also provides for blocking of the property of persons determined to have knowingly engaged in a significant transaction for the purchase, sale, transport, or marketing of any such products from Iran.

Finally, IFCA, effective July 1, 2013, imposed new sanctions with respect to the following:

- the energy, shipping, and shipbuilding sectors of Iran and port operators in Iran (including requiring the blocking of property of persons that knowingly provide significant financial or other support to, or goods or services in support of, a transaction involving any persons determined to be part of these sectors);
- the sale, supply, or transfer to or from Iran of certain precious and other metals and materials;
- the provision of underwriting services, insurance, or reinsurance with respect to certain activities relating to Iran; and
- FFIs that facilitate certain transactions involving Iran.

IFCA also provides for the blocking of the property of persons that knowingly provide significant support to any Iranian person included on the Specially Designated Nationals and Blocked Persons List (the “SDN List”) maintained by the Treasury Department’s Office of Foreign Assets Control (“OFAC”) (other than Iranian financial institutions not designated for WMD proliferation, terrorism, or Iranian human rights abuses). Also effective July 1, 2013, E.O. 13645 authorized new secondary sanctions targeting Iran’s currency and automotive sector. In addition, the E.O. provides for correspondent and payable-through account sanctions on FFIs that facilitate significant transactions by certain Iranian SDNs or the GOI, or for the supply to Iran of significant goods or services used in connection with Iran’s automotive sector.¹⁵

JPOA SECONDARY SANCTIONS RELIEF

For the first time in many years, there has been a pause in the expansion of sanctions on Iran. The P5+1 and Iran reached a preliminary agreement in Geneva on November 24, 2013 to freeze key elements of Iran’s nuclear program in exchange for temporary, limited, reversible economic sanctions relief and the repatriation of certain blocked funds held outside of Iran. On January 20, 2014, the U.S. State Department announced that the International Atomic Energy Agency verified that Iran had fulfilled its initial nuclear commitments pursuant to the JPOA and that, accordingly, the United States had begun to implement limited sanctions relief pursuant to the JPOA. As outlined by the State Department,¹⁶ the JPOA sanctions relief applies to a limited number of activities and “associated services” related to:¹⁷

¹⁵ Among other things, E.O. 13645 implements certain provisions of IFCA.

¹⁶ *Overview of Temporary Suspension of Certain U.S. Sanctions Pursuant to the Initial Understanding Between the P5+1 and Iran*, <http://www.state.gov/r/pa/prs/ps/2014/01/220046.htm>; *Guidance Relating to the Provision of Certain Temporary Sanctions Relief in Order to Implement the Joint Plan of Action Reached on November 24, 2013, Between the P5+1 and the Islamic Republic of Iran*, <http://www.state.gov/p/nea/rls/220049.htm>.

¹⁷ According to the State and Treasury Departments, the term “associated service” means any necessary service – including any insurance, transportation, or financial service – ordinarily incident to the underlying activity for which sanctions relief has been provided pursuant to the JPOA, except in the case of Iran’s exports of crude oil, for which the JPOA only references associated insurance and transportation services. The Treasury

¹³ 31 C.F.R. Part 561.

¹⁴ The IFSR were subsequently amended to implement certain provisions of the 2012 NDAA and the TRA.

- Iran’s petrochemical exports;
- the provision of goods and services to Iran’s automotive sector;
- Iran’s trade in gold and precious metals;
- Iran’s exports of crude oil; and
- the supply and installation of spare parts, inspections, and associated services necessary for safety of flight for Iranian civil aviation.

Unless otherwise noted, such services, even when supplied by a non-U.S. person, may not involve persons identified on the SDN List.

The JPOA sanctions relief allows Iran’s six current customers for crude oil exports – China, Japan, South Korea, India, Turkey, and Taiwan – to maintain purchases of crude oil at their pre-January 20, 2014, average levels during the JPOA Period. Furthermore, Iran and the P5+1 have committed to establishing a financial channel to facilitate Iran making payments for humanitarian transactions and medical expenses, payments of Iran’s UN obligations, and up to \$400 million toward university tuition for Iranian students studying abroad. To implement this limited sanctions relief, the USG has executed temporary, partial waivers of certain statutory sanctions and has issued guidance regarding the suspension of new sanctions under relevant E.O.s and regulations.

The JPOA sanctions relief applies only to activities and associated services that are initiated and completed exclusively during the JPOA Period. Activities undertaken before or after that period, even if they are undertaken pursuant to contracts entered into during the JPOA Period, are sanctionable. This includes, *inter alia*, the shipping and delivery of goods, the receipt of payments, and insurance activities. Except for the relief provided pursuant to the JPOA, which the USG can revoke at any time if Iran fails to meet its commitments under the JPOA, all U.S. sanctions with respect to Iran remain fully in force. In particular, as Treasury Department Under Secretary for Terrorism and Financial

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Department further explained that to the extent that the provision of insurance or reinsurance is an associated service of an activity for which the JPOA provides temporary relief, the provision of that insurance or reinsurance during the JPOA Period would not be sanctionable. Otherwise, sanctions on the provision of insurance or reinsurance for certain types of activities involving Iran remain in place.

Intelligence David Cohen has pointed out, all the U.S. banking sanctions – which call for the exclusion from the U.S. financial system of any foreign bank that knowingly engages in significant transactions with designated Iranian banks – remain in place. Thus, businesses that want to get paid for delivering goods to Iran will continue to confront an Iranian financial sector that is largely cut off from the SWIFT network and restricted from transacting internationally.¹⁸ Moreover, the JPOA sanctions relief has almost no impact on persons subject to the ITSR, including U.S. Persons and their foreign subsidiaries, which continue to be subject to the ITSR and prohibited from conducting transactions with Iran unless licensed by OFAC or exempt from regulation.¹⁹ As U.S. officials warned France after it sent a delegation of more than 100 business executives to Tehran in early February to explore trade opportunities, “[Iran] is not open for business,” and companies that contravene U.S. sanctions will be penalized.²⁰

JPOA SECONDARY SANCTIONS RELIEF BY SECTOR²¹

1. IRAN’S EXPORT OF PETROCHEMICAL PRODUCTS

The USG will not sanction non-U.S. persons that are not subsidiaries of U.S. Persons for participating in the export of petrochemical products²² from Iran, or providing associated services, as long as such transactions do not involve persons on the SDN List, other than Iranian depository institutions listed solely pursuant to E.O. 13599 (i.e., institutions listed solely with the “[IRAN]”²³ identifier on the SDN List), and the

¹⁸ *Written Testimony of David S. Cohen Before the U.S. Senate Committee on Foreign Relations, “Negotiations on Iran’s Nuclear Program”* at 4 (Feb. 4, 2014), http://www.foreign.senate.gov/imo/media/doc/Cohen_Testimony2.pdf.

¹⁹ As discussed below, as part of the JPOA, OFAC has established a favorable licensing policy with respect to certain activities involving Iran’s civil aviation industry.

²⁰ “U.S. has warned France about doing business with Iran,” <http://www.reuters.com/article/2014/02/05/iran-france-delegation-idUSL5N0LA1HK20140205> (last viewed March 31, 2014).

²¹ As noted above, in all cases, the relief discussed below extends only to transactions that are commenced and completed within the JPOA Period.

²² E.O. 13622, section 10(m) provides a non-exhaustive list of petrochemical products.

²³ The [IRAN] identifier signifies that a listed person is part of or is owned or controlled by the GOI, or has been found to be

14 petrochemical companies listed in footnote 24 (“Exempted Petrochemical Company SDNs”).²⁴ Specifically, the USG will not impose the following secondary sanctions:

- **Correspondent or Payable-Through Account Sanctions.** The USG will not impose correspondent or payable-through account sanctions²⁵ on FFIs that conduct or facilitate transactions by non-U.S. persons not otherwise subject to the ITSR for exports of petrochemical products from Iran.
- **Blocking Sanctions.** The USG will not impose blocking sanctions under section 2(a)(i)-(ii) of E.O. 13645 with respect to persons that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, the Exempted Petrochemical Company SDNs for exports of petrochemical products from Iran.
- **Menu-based Sanctions.** Sanctions will not be imposed under section 2(a)(ii) of E.O. 13622 (as amended by section 16(d) of E.O. 13645) on non-U.S. persons not otherwise subject to the ITSR who engage in transactions for exports of petrochemical products from Iran.

As the Treasury Department emphasized in a series of FAQs,²⁶ any transaction with the Exempted Petrochemical Company SDNs not for the export of petrochemical products from Iran or associated services that are required to facilitate such transaction remains sanctionable. Thus, any investments in the Exempted Petrochemical Company SDNs or sales of petrochemical

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acting for or on behalf of the GOI, or is an Iranian financial institution.

²⁴ Bandar Imam Petrochemical Company; Bou Ali Sina Petrochemical Company; Ghaed Bassir Petrochemical Products Company; Iran Petrochemical Commercial Company; Jam Petrochemical Company; Marjan Petrochemical Company; Mobin Petrochemical Company; National Petrochemical Company; Nouri Petrochemical Company; Pars Petrochemical Company; Sadaf Petrochemical Assaluyeh Company; Shahid Tondgooyan Petrochemical Company; Shazand Petrochemical Company; and Tabriz Petrochemical Company.

²⁵ Section 1(a)(iii) of E.O. 13622, as amended; section 3(a)(i) of E.O. 13645; and sections 561.204(a) and 561.204(b)(3) of the IFSR.

²⁶ FAQ #5, http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_faqs.pdf.

precursors, equipment, or services would continue to expose a non-U.S. person engaged in such activity to U.S. secondary sanctions.

2. IRAN'S AUTO INDUSTRY

The USG will allow for the sale, supply, or transfer to Iran of significant goods (including complete knock-down kits) or services (including shipping, warranty, insurance, and maintenance services) used in connection with the automotive sector of Iran by non-U.S. persons not otherwise subject to the ITSR, as well as the provision of associated services. Such transactions may not involve any person on the SDN List, other than Iranian depository institutions listed solely pursuant to E.O. 13599. Specifically, the USG will not impose the following secondary sanctions:

- **Correspondent or Payable-through Account Sanctions.** The USG will not impose correspondent or payable-through account sanctions under section 3(a)(ii) of E.O. 13645 with respect to FFIs that conduct or facilitate financial transactions for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran.
- **Menu-based Sanctions.** The USG will not impose the sanctions described in section 6 of E.O. 13645 (ranging from a ban on the USG contracting with the sanctioned person to the blocking of all property of the sanctioned person within U.S. jurisdiction) with respect to persons that engage in transactions involving Iranian automotive sales.

Within 10 days of the implementation of the JPOA, one of Europe's largest automakers, Renault S.A., had already resumed shipments of car parts to Iran, according to reports.²⁷

3. IRAN'S TRADE IN GOLD AND OTHER PRECIOUS METALS

The USG will not consider participation in the sale of gold and other precious metals²⁸ to or from Iran, or the

²⁷ See, e.g., “Renault resumes Iran shipments for car production,” Reuters, available at <http://www.reuters.com/article/2014/01/29/renault-iran-idUSL5N0L31FY20140129> (last viewed March 31, 2014).

²⁸ FAQ #6 notes that for purposes of the sanctions relief, “precious metals” include silver (including silver plated with gold or platinum, unwrought or in semi-manufactured forms, or in powder form); gold (including gold plated with platinum, unwrought or in semi-manufactured forms, or in powder form);

provision of associated services, by non-U.S. persons not otherwise subject to the ITSR to be the basis for secondary sanctions. This sanctions exception applies only to transactions that do not involve persons on the SDN List other than any political subdivision, agency, or instrumentality of the GOI or any Iranian depository institution listed solely pursuant to E.O. 13599. In addition, the funds for these purchases of gold or other precious metals may not be drawn from “Restricted Funds,” defined as (i) any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held and (ii) any Central Bank of Iran funds, with certain exceptions for non-petroleum Central Bank of Iran funds held at a foreign country’s central bank. Specifically, the USG will not impose the following secondary sanctions for conforming precious metals sales:

- **Correspondent or Payable-through Account Sanctions.** The USG will not impose correspondent or payable-through account sanctions under section 3(a)(i) of E.O. 13645 with respect to FFIs that conduct or facilitate transactions by non-U.S. persons not otherwise subject to the ITSR for the purchase or acquisition of precious metals to or from Iran.
- **Blocking Sanctions.** The USG will not impose blocking sanctions²⁹ with respect to persons that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of precious metals to or from Iran or by the GOI.

4. IRAN’S EXPORT OF CRUDE OIL

As noted above, during the JPOA Period the USG will not seek further reductions in the purchase of Iranian crude oil from the current purchasers, China, India, Japan, South Korea, Taiwan, and Turkey. These countries are permitted to maintain their pre-January 20,

2014, average level of imports from Iran. The USG has emphasized that no other countries may commence purchasing Iranian crude oil. Specifically, the USG will not impose the following secondary sanctions with respect to transactions involving the purchase of Iranian crude oil, provided that the transactions do not involve persons on the SDN List other than the National Iranian Oil Company, National Iranian Tanker Company, or any Iranian depository institution listed solely pursuant to E.O. 13599:

- **Correspondent or Payable-through Account Sanctions.** The USG will not impose correspondent or payable-through account sanctions³⁰ with respect to FFIs that conduct or facilitate transactions by non-U.S. persons not otherwise subject to the ITSR for exports of petroleum and petroleum products from Iran to China, India, Japan, South Korea, Taiwan, or Turkey, and associated insurance and transportation services (“Exempted Petroleum Exports”).
- **Blocking Sanctions.** The USG will not impose blocking sanctions³¹ with respect to non-U.S. persons not otherwise subject to the ITSR that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, Exempted Petroleum Exports.
- **Menu-based Sanctions.** The USG will not impose sanctions under section 2(a)(i) of E.O. 13622 (as amended by section 16(c) of E.O. 13645) on non-U.S. persons not otherwise subject to the ITSR who engage in transactions for Exempted Petroleum Exports.

All other U.S. sanctions on Iran’s energy sector, including sanctions on providing goods and services to or investment in the energy sector, remain in effect.

Even prior to January 20, 2014, the secondary sanctions relating to the purchase of Iranian crude oil were generally inapplicable to companies in China, India, Japan, South Korea, Taiwan, and Turkey because each of these six countries was already covered by an

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base metals or silver, clad with gold, not further worked than semi-manufactured; platinum, unwrought or in semi-manufactured forms, or in powder form; iridium; osmium; palladium; rhodium; ruthenium; base metals, silver or gold, clad with platinum, not further worked than semi-manufactured; waste and scrap of precious metal or of metal clad with precious metals, other waste and scrap containing precious metal or precious-metal compounds, of a kind used principally for the recovery of precious metal.

²⁹ Section 5(a) of E.O. 13622; sections 2(a)(i)-(ii) of E.O. 13645; section 560.211(c)(2) of the ITSR.

³⁰ Sections 1(a)(i)-(ii) of E.O. 13622, as amended; section 3(a)(i) of E.O. 13645; and sections 561.201(a)(5), 561.204(a), and 561.204(b)(1)-(2) of the IFSR.

³¹ Section 1(a)(iii) of E.O. 13382; section 5(a) of E.O. 13622; sections 2(a)(i)-(ii) of E.O. 13645; section 544.201(a)(3) of the Weapons of the Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. part 544; and section 560.211(c)(2) of the ITSR.

exception under section 1245(d)(4)(D) of the 2012 NDAA. This statutory provision permits the president to grant exceptions to sanctions authorized by the 2012 NDAA to countries that have “significantly reduced” their purchases of Iranian crude oil. These exceptions are effective for 180 days and are renewable. Thus, the JPOA did not change the sanctions risk for companies in these countries that engage in the purchase of Iranian crude oil; they were already protected from the risk of sanctions for such purchases. These countries’ 2012 NDAA exceptions were effectively superseded by the JPOA relief described in this section and related limited waivers granted under the JPOA (discussed further below).³² It appears that a company from one of these six countries could be exposed to sanctions, however, if the country having jurisdiction over it increases its volume of Iranian crude purchases during the JPOA Period. Such companies would likely want to be in close contact with their respective governments in connection with any potential purchases of Iranian crude oil during such period. In addition, a State Department official clarified during a recent panel discussion that this prong of the JPOA sanctions relief does not cover FFIs located outside one of these six countries, e.g., a European financial institution cannot facilitate the purchase of Iranian crude by an Indian company.

Although the JPOA did little more than preserve the status quo for companies purchasing Iranian crude in those six countries, the easing has temporarily removed the pressure on these countries to continue reducing their crude purchases from Iran. In addition, the relaxation of sanctions with respect to Iran’s export of crude oil permits non-U.S. companies not subject to the ITSR to provide associated transportation and insurance services, such as insurance coverage to ships carrying Iranian oil during the JPOA Period to any of these countries without risk of sanctions. However, a group of insurers has warned that because of the uncertainty over whether relevant insurance claims will be able to be paid after the sanctions relief ends in July, the suspension of sanctions on ship cover is “of very limited, if any, value to ship owners.”³³ Indeed, USG officials have subsequently asserted that no payments may be made after July 20, 2014, essentially rendering this relief of little practical use to insurers and ship owners.

³² It is uncertain whether the USG will grant new 2012 NDAA exceptions to these six countries at the expiration of the JPOA Period.

³³ *Insurers group sounds alarm over Iran ship insurance*, Reuters, available at <http://www.reuters.com/article/2014/01/30/iran-oil-ship-idUSL3N0L42WW20140130> (last viewed March 31, 2014).

5. REPATRIATION OF RESTRICTED FUNDS TO IRAN

The USG has committed not to impede or sanction the phased repatriation of \$4.2 billion of Iranian revenue held abroad, in eight installments. FAQ #8 explains that the P5+1 and Iran have agreed on a process to authorize the release, in installments on specified dates during the JPOA Period, of the specified \$4.2 billion of Iran’s Restricted Funds. The USG is working with its partners and relevant FFIs to implement this provision. Unless an FFI is notified directly in writing by the USG that an installment release is not sanctionable, any release or receipt of Restricted Funds would expose an FFI to U.S. sanctions.

6. IRANIAN CIVIL AVIATION

OFAC issued a new Statement of Licensing Policy on Activities Related to the Safety of Iran’s Civil Aviation Industry³⁴ establishing a favorable licensing policy regime with respect to the supply and installation of spare parts and associated services, and safety-related inspections and repairs designed to ensure the safe operation of Iranian commercial passenger aircraft (including transactions with Iran Air, an SDN, but no other SDNs). U.S. Persons, U.S.-owned or -controlled foreign entities, and persons involved in the export of U.S.-origin goods that want to provide such parts and services to approved end-users for approved purposes may apply for a specific license from OFAC.

In addition, the USG will not impose correspondent or payable-through account sanctions on FFIs³⁵ with respect to activities of a type covered by the Statement of Licensing Policy by non-U.S. persons not otherwise subject to the ITSR.

Would-be exporters of such goods and services have expressed concern over how quickly OFAC will be able to process relevant license applications. OFAC has orally pledged to act as quickly as possible but has not set a timetable for processing such requests, which typically take substantial time. In addition, U.S. Persons have questioned whether, if they are not paid by Iran by the end of the JPOA Period for goods and services provided to Iran pursuant to specific licenses, the USG will permit them to receive payment after the JPOA

³⁴ http://www.treasury.gov/resource-center/sanctions/Programs/Documents/civil_aviation_slp_iran.pdf.

³⁵ Section 3(a)(i) of E.O. 13645 and section 561.201(a)(5)(ii) of the IFSR, or blocking sanctions on non-U.S. persons under section 1(a)(iii) of E.O. 13382; sections 2(a)(i)-(ii) of E.O. 13645; or section 544.201(a)(3) of the Weapons of the Mass Destruction Proliferators Sanctions Regulations.

Period, to avoid a windfall to Iran. USG officials have provided no assurances that the USG would permit receipt of payment after July 20. Rather, they have recommended that U.S. and non-U.S. companies that wish to take advantage of this sanctions relief arrange to be paid cash up front or cash on delivery.

7. FACILITATION OF HUMANITARIAN AND CERTAIN OTHER TRANSACTIONS

The P5+1 and Iran are establishing a mechanism to further facilitate the purchase of and payment for, the export of food, agricultural commodities, medicine, and medical devices to Iran, as well as to facilitate Iran's payments of: its UN obligations; certain medical expenses incurred abroad by Iranian citizens; and agreed amounts of Iranian governmental tuition assistance for Iranian students studying abroad. The Treasury Department is contacting FFIs directly and will provide specific guidance if Iran seeks their assistance in hosting or facilitating any of these new mechanisms. In FAQ #9, the Treasury Department notes that, independent of the JPOA, transactions for the sale of food, agricultural commodities, medicine, and medical devices to Iran by non-U.S. persons not otherwise subject to the ITSR are not generally sanctionable, so long as such transactions do not involve persons designated in connection with Iran's proliferation of WMD or Iran's support for international terrorism.³⁶ Thus, these transactions are not required to be processed through the new mechanism being developed.

WAIVERS

To implement the JPOA, the USG has issued limited waivers of certain statutory provisions contained in the 2012 NDAA, the TRA, the ISA, and IFCA.³⁷

EU ACTIONS

In exchange for Iran meeting its initial commitments under the JPOA, the EU has also begun formal implementation of the suspension of restrictive measures

³⁶ For prior OFAC guidance on the sale of certain humanitarian-related goods to Iran, see http://www.treasury.gov/resource-center/sanctions/Programs/Documents/hum_exp_iran.pdf and http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_guidance_med.pdf.

³⁷ For further details about the waivers, see Section VII of the State Department guidance, *Guidance Relating to the Provision of Certain Temporary Sanctions Relief in Order to Implement the Joint Plan of Action Reached on November 24, 2013, Between the P5+1 and the Islamic Republic of Iran*, <http://www.state.gov/p/nea/rls/220049.htm>.

against Iran. On January 20, the *Official Journal of the European Union* published a Council Regulation³⁸ and Council Decision,³⁹ which eased, for six months, the prohibition on the provision of insurance and reinsurance, and transport for Iranian crude oil; the prohibition on the import, purchase, or transport of Iranian petrochemical products and on the provision of related services; and the prohibition on trade in gold and precious metals with the GOI, its public bodies, and the Central Bank of Iran, or persons and entities acting on their behalf. The EU also increased by tenfold the authorization thresholds in relation to the transfers of funds to and from Iran, as contemplated by the JPOA. The EU sanctions relief differs from the U.S. relief in that under EU sanctions, the relevant contracts must be "executed" (undefined) within the JPOA Period,⁴⁰ although it appears, and certain EU lawyers have interpreted the EU sanctions to mean, that a party that provides goods or services as permitted during the JPOA Period may be paid after July 20 for such goods or services.

SANCTIONS DEVELOPMENTS OF INTEREST TO THE SECURITIES INDUSTRY

Many U.S. and non-U.S. companies, concerned about their sanctions exposure in an environment of increasingly tough sanctions enforcement by OFAC and other U.S. regulators, have taken defensive measures to reduce this risk. Their risk mitigation strategies are unlikely to be significantly affected by the JPOA implementation. As noted, USG officials have repeatedly emphasized that the USG will maintain its rigorous enforcement policy with respect to sanctions violations.

For example, over the past several years, the Depository Trust Company ("DTC") had been requiring participants in certain securities offerings to provide certifications regarding compliance with OFAC

³⁸ Council Regulation of 20 January 2014 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (2014/42/EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:015:0018:0021:EN:PDF>.

³⁹ Council Decision 2014/21/CFSP of 20 January 2014 amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:015:0022:0023:EN:PDF>.

⁴⁰ Council of the European Union press release, January 20, 2014, 5321/14, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140660.pdf; see also the Council Regulation and the Council Decision, *supra* notes 38 and 39.

regulations where the offering memorandum indicated that the issuer conducted business with targets of U.S. sanctions, particularly Iran. Often DTC made its request for the certification very late in the process, which at times jeopardized a deal's timing. The application of this certification requirement was not uniform and the language was negotiated on a deal-by-deal basis. After discussions with a number of banks, DTC standardized its requirements. It notified all participants that as of June 21, 2013, crediting participants are required to provide an "OFAC Confirmation" for all new corporate issues being presented for eligibility, not just offerings that involve an issuer that conducts business with U.S. sanctions targets.⁴¹

This DTC certification requirement is designed to insulate DTC to the extent possible from sanctions risks arising from the activities of issuers that are beyond DTC's knowledge and control. The JPOA implementation has no impact on this requirement. In order to make the certification, banks can employ the typical strategies used to mitigate the risk of economic sanctions violations when working with foreign issuers that may engage in activities involving U.S. sanctions targets. First, they should obtain assurance that neither the issuer nor any of its group members who may receive offering proceeds is itself a U.S. sanctions target or is located in a target country. This minimizes the risk that a U.S. financial institution will export services to a sanctions target. Second, to avoid a facilitation violation,⁴² banks should try to ensure that the proceeds

⁴¹ The certification states:

IMPORTANT – STOP AND READ –[OFAC]
CONFIRMATION REQUIRED

By submitting this transaction to [DTC] for processing in accordance with its Rules & Procedures, the Participant hereby confirms, as to this transaction, that the transaction was reviewed pursuant to its OFAC risk-based compliance program and, to its knowledge, the transaction so submitted does not violate OFAC sanctions regulations.

Participants are also reminded that pursuant to DTC's Rules, the obligations relating to any transaction or activity submitted through a Participant's account, whether by the Participant itself or initiated by an authorized third party, are the full responsibility of the Participant.

<http://www.dtcc.com/~media/Files/pdf/2013/5/17/0850-13.ashx>.

⁴² OFAC's sanctions programs contain prohibitions on the facilitation of a non-U.S. person's transactions with a target person where the transactions could not be engaged in by a U.S. Person or from the United States directly due to sanctions. OFAC interprets this prohibition very broadly to cover a U.S.

of the offering will not be used directly or indirectly by the issuer or its affiliates for transactions in or with a sanctions target, ordinarily by seeking a "use of proceeds" covenant (backed by due diligence about the nature and extent of any potential contacts the issuer may have with sanctions targets to ensure credibility).⁴³

If an issuer or one of its affiliates engages in activity relating to Iran that is potentially sanctionable under U.S. sanctions, it is important to include adequate disclosure in the offering documents. Any disclosure made during the JPOA Period can legitimately refer to the limited relief from potential sanctions exposure but should be clear that the relief is temporary and that the issuer could therefore face sanctions if in the future it engages in activities targeted by U.S. secondary sanctions.

In addition, effective February 6, 2013, section 219 of the TRA imposed new disclosure requirements on both foreign and domestic reporting companies that have become a significant burden on many companies. It requires issuers to disclose in their annual and quarterly reports to the Securities and Exchange Commission certain Iran-related activities (and activities related to SDNs designated for WMD or terrorism reasons) conducted by the issuers and their affiliates (as that term is defined in the U.S. securities laws) during the reporting period, regardless of whether the reporting company is based in the United States or the relevant activities are legal under home country law. Reportable activities include knowingly engaging in activities targeted by the ISA, including certain activities involving the energy, petroleum, or petrochemical sectors, and unauthorized transactions with the GOI. The section 219 disclosure requirement is unaffected by the JPOA; reporting companies should continue to

footnote continued from previous column...

Person's approving, financing, guaranteeing, or otherwise facilitating an offshore transaction that could not be done by a U.S. Person or from the United States.

⁴³ OFAC practitioners generally agree that OFAC accepts the concept of a *de minimis* "rule" that arises from OFAC's understanding that a U.S. business cannot be competitive if it is unable to deal with third-country firms that, given different foreign and trading policies in other countries, do some small portion of their business with sanctions targets. However, no OFAC regulation or public guidance confirms this interpretation. The *de minimis* exception has usually been accepted as being not greater than 10 percent (10%) of sales or revenue. Where relations between the United States and the target country are particularly poor, such as is currently the case with Iran, OFAC could apply an even lower threshold.

disclose Iran-related activities pursuant to section 219, even if the activities are permitted by the JPOA.

DEVELOPMENTS RELATED TO JPOA IMPLEMENTATION

According to a briefing by senior U.S. administration officials on January 24, 2014, and subsequent statements by State and Treasury Department officials, USG officials have been traveling and reaching out to foreign governments and FFIs to explain the scope of the JPOA. Under Secretary Cohen has emphasized that the JPOA sanctions relief for Iran is narrow and that countries evading the sanctions will be punished, and he stated that both he and Secretary of the Treasury Jacob Lew met with government officials and business executives in many countries, including Britain, Germany, Italy, Austria, Turkey, and the United Arab Emirates, reiterating this message.⁴⁴ Officials at the January 24 briefing emphasized that the nuclear negotiations with Iran are independent from other foreign policy issues involving Iran, particularly its human rights record, and support of the Syrian Government and international terrorism. In fact, shortly after the USG's announcement of the implementation of the JPOA, it successfully pressured the UN to rescind its invitation to Iran to participate in the Geneva II peace talks on Syria that commenced in late January.

Senior administration officials have also noted that they are urging Congress not to enact legislation imposing additional sanctions on Iran, and in his State of the Union address on January 28, President Obama threatened to veto any new Iran sanctions legislation "that threatens to derail" the ongoing negotiations with Iran. Certain members of Congress had been calling for new sanctions targeting Iran; for example, on December 19, 2013, Senator Robert Menendez (D-NJ) introduced a bill (S.1881) to impose new economic sanctions on Iran. There have been no votes on this bill, but to date, it has 58 co-sponsors (43 Republicans and 15 Democrats). However, Senate Majority Leader Harry Reid (D-Nev.) has reportedly indicated that he will not bring the new Iran sanctions bill to a vote while negotiations with Iran are ongoing, and the bill has lost momentum in the Senate, with no new co-sponsors joining since January 9, 2013, and at least three co-sponsors reportedly opposing a vote on the measure. On February 12, 2014, more than 104 members of Congress

signed a letter⁴⁵ to President Obama expressing support for continued diplomatic engagement with Iran and stating that in light of the JPOA and accompanying negotiations:

At present . . . we believe that Congress must give diplomacy a chance. A bill or resolution that risks fracturing our international coalition, or, worse yet, undermining our credibility in future negotiations and jeopardizing hard-won progress toward a verifiable final agreement, must be avoided.

Given the President's threatened veto and the controversy over holding a vote on an Iran sanctions bill, it seems unlikely that any such legislation will pass imminently.

CONCLUSION

The implementation of the JPOA offers limited relief from certain secondary sanctions on Iran, but in general, sanctions targeting Iran remain robust, expansive, and complex. As noted above, the JPOA has very little impact on U.S. Persons, who remain prohibited from engaging in most transactions with Iran. Non-U.S. companies seeking to avail themselves of the sanctions relief should proceed cautiously and should ensure that all relevant transactions can be fully completed during the JPOA Period. The P5+1 and Iran will negotiate during the JPOA Period with the goal of reaching a comprehensive agreement with respect to Iran's nuclear program. It is too early to predict whether the JPOA marks the beginning of a drawdown in Iran sanctions; in fact, a USG official recently warned against "irrational" optimism about the chance of reaching a comprehensive nuclear solution with Iran, which would lead to permanent easing of sanctions on Iran. Moreover, the State and Treasury Departments have repeatedly emphasized that the USG will continue to enforce U.S. sanctions against those who engage in targeted activities that are not covered by the limited JPOA sanctions suspensions. ■

This article is a summary for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. Neither Ms. McGuinness nor Ms. Mosman is admitted to practice within the European Union or any of its Member States.

⁴⁴ *Written Testimony of David S. Cohen Before the U.S. Senate Committee on Foreign Relations, "Negotiations on Iran's Nuclear Program" at 4 (Feb. 4, 2014), http://www.foreign.senate.gov/imo/media/doc/Cohen_Testimony2.pdf.*

⁴⁵ <http://price.house.gov/uploads/PriceDoggett-IranDiplomacy.pdf>.

CLE QUESTIONS on McGuinness, *U.S. Sanctions on Iran: The Joint Plan of Action for Containing Iran's Nuclear Program*. Please circle the correct answer to each of the questions below. If at least four questions are answered correctly, there is one credit for New York lawyers (nontransitional) for this article. Complete the affirmation and evaluation and return it by fax to RSCR-CLE, 212-876-3441, or by e-mail attachment to rscrpub@att.net. The cost is \$40, which will be billed to your firm. To request financial aid contact us by e-mail or fax as provided above.

1. A number of recent statutes and E.O.s provide for secondary sanctions on non-U.S. persons who conduct targeted business activities with Iran even when those activities have no connection with the U.S. **True** **False**
2. JPOA sanctions relief permits U.S. persons to conduct certain limited transactions with Iran. **True** **False**
3. The JPOA sanctions relief applies to activities that are initiated in the JPOA period and activities after the period that are conducted pursuant to contracts made in the period. **True** **False**
4. Under the JPOA, the U.S. government will not impose sanctions on foreign financial institutions that conduct or facilitate exports by non-U.S. persons not otherwise subject to ITSR of petroleum from Iran to certain countries. **True** **False**
5. In 2013, Depository Trust Company notified all participants that crediting participants are required to provide an OFAC Confirmation for all new corporate issues being presented for eligibility that the transaction does not violate OFAC sanctions regulations. **True** **False**

A F F I R M A T I O N

_____, Esq., an attorney at law, affirms pursuant to CPLR
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2106 and under penalty of perjury that I have read the above article and have answered the above questions without the assistance of any person.

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