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OFAC Hits ExxonMobil with \$2 Million Sanctions Penalty and Public Rebuke

On July 20, 2017, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") penalized ExxonMobil Corp. and two of its U.S. subsidiaries (collectively, "ExxonMobil") \$2 million for violations of the Ukraine-Related Sanctions Regulations. The penalty stems from legal documents that ExxonMobil entered into with Rosneft OAO ("Rosneft") in May 2014, less than two months after OFAC introduced sanctions in response to Russia's invasion of Ukraine. OFAC found ExxonMobil's conduct to violate the sanctions because the documents at issue were countersigned by Rosneft's Chief Executive Officer ("CEO"), Igor Sechin, who was personally targeted by U.S. sanctions when he executed them. Within hours of the penalty announcement, ExxonMobil filed a lawsuit in the Northern District of Texas, challenging OFAC's action and requesting that the court hold unlawful and set aside the imposed penalty.

The ExxonMobil enforcement action is significant for several reasons. Among them, the ExxonMobil penalty is the latest in a string of recent, increasingly aggressive OFAC enforcement actions targeting non-financial institutions. In addition, the ExxonMobil penalty confirms that OFAC, along with other U.S. regulators, continues to pursue oil and gas companies that violate the letter or spirit of U.S. economic sanctions.

I. OFAC Penalizes ExxonMobil for Dealings with Russian Oligarch

a. ExxonMobil's Conduct

Between May 14, 2014 and May 23, 2014, while Secretary of State Rex Tillerson served as CEO, ExxonMobil finalized eight legal documents (the "Documents") with Rosneft, a Russian state-controlled oil and gas company. Seven of the Documents were "completion deeds" that memorialized the completion of certain activities related to various contracts between ExxonMobil and Rosneft, but did not impose new rights or obligations on the parties. The eighth Document extended the term of an agreement between ExxonMobil and Rosneft related to a liquefied natural gas plant. Sechin signed all of the Documents on behalf of Rosneft.

A few weeks before ExxonMobil and Rosneft executed the Documents, OFAC had added Sechin, a longtime confidant of Russian President Vladimir Putin, to the Specially Designated Nationals and Blocked Persons List ("SDN List"). As a result, U.S. companies were prohibited from engaging in virtually all business and dealings with Sechin and were obligated to freeze his property that came within their control. Rosneft was not targeted by U.S. sanctions at the time the Documents were signed, and Sechin did not own a majority of Rosneft's equity.¹ As a result, ExxonMobil was permitted to do business with Rosneft.

ExxonMobil contended in discussions with OFAC—and still maintains—that its interactions with Sechin were permissible because they constituted "professional" interactions (*i.e.*, interactions with Sechin in his capacity as CEO of Rosneft, a non-sanctioned entity) as opposed to "personal" interactions (*i.e.*, interactions with Sechin in his personal capacity). More specifically, ExxonMobil claims that Sechin merely signed the Documents in his capacity as a Rosneft representative, but did not personally provide any services to ExxonMobil. In its defense, ExxonMobil

¹ OFAC subsequently imposed sectoral sanctions against Rosneft in July 2014. Currently, U.S. companies are prohibited from (1) dealing in certain medium- and long-term debt of Rosneft, and (2) exporting goods, services, and technology to Rosneft in support of specific types of oil-producing activities.

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has cited an April 2014 news article “that quoted a Department of the Treasury representative as saying that a U.S. person would not be prohibited from participating in a meeting of Rosneft’s board of directors.”² In addition, ExxonMobil focused on multiple statements by executive branch officials during the course of 2014. For example, ExxonMobil’s complaint quotes U.S. officials, who reportedly stated that OFAC’s aim in designating Sechin, along with other Russian oligarchs, was to target “personal assets and wealth, rather than the business entities and industries that they may manage or oversee.” The complaint also quotes an April 28, 2014 conference call, during which U.S. officials reportedly stated that Sechin’s designation “wouldn’t impact U.S. companies’ ability to do business with Rosneft[.]”

OFAC rejected ExxonMobil’s argument that sanctions regulations recognize a distinction between interactions with SDNs in their professional versus personal capacities. In particular, OFAC interpreted the Ukraine-Related Sanctions Regulations such that ExxonMobil could “not deal with . . . Igor Sechin, or receive, deal in, or benefit from any service a designated person might provide.” ExxonMobil thus violated the sanctions regulations by executing Documents that were countersigned by Sechin. In reaching this conclusion, OFAC cited the Executive Order under which Sechin was designated, a Frequently Asked Question (issued in 2013 in the context of the since-terminated Burmese sanctions program), and other press statements by the White House and Treasury Department (*i.e.*, aside from the statement by the Treasury Department official quoted in the April 2014 article). OFAC asserted that these sources “clearly put ExxonMobil on notice that OFAC would consider executing documents with an SDN to violate the prohibitions in the Ukraine-Related Sanctions Regulations.”

OFAC determined that ExxonMobil’s conduct constituted egregious violations of the sanctions regulations, warranting the statutory maximum civil penalty of \$2 million. ExxonMobil did not consent to a settlement agreement, so OFAC imposed the \$2 million penalty by issuing a penalty notice. OFAC concluded that ExxonMobil “demonstrated reckless disregard for U.S. sanctions requirements” by failing to “consider warning signs associated with dealing in blocked services of an SDN.” In addition, OFAC treated ExxonMobil’s sophistication, experience, and global operations as aggravating factors in determining the applicable penalty.

b. ExxonMobil’s Legal Challenge

On the same day that OFAC issued its enforcement information, ExxonMobil filed a lawsuit in the Northern District of Texas challenging OFAC’s determination and seeking to set aside the penalty. The complaint alleges that OFAC’s interpretation of the relevant Executive Order and Ukraine-Related Sanctions Regulations is “arbitrary, capricious, an abuse of discretion, and not in accordance with law.” In addition, ExxonMobil claims that OFAC’s penalty violates the so-called Fair Notice Doctrine, which prohibits federal agencies from imposing punitive sanctions against a person for misinterpreting an ambiguous regulation when the agency did not inform regulated parties of its preferred interpretation. The complaint includes a detailed chronology of purported statements by Obama administration and Treasury Department officials ostensibly supporting ExxonMobil’s position that its conduct was permissible.

II. Fresh off Recent Victories, OFAC Continues to Aggressively Pursue Non-Financial Institutions

The ExxonMobil penalty is only the latest in a series of notable OFAC enforcement actions targeting non-financial institutions. In March 2017, OFAC penalized Chinese telecommunications company Zhongxing Telecommunications Equipment Corp (“ZTE”) over \$100 million for alleged violations of the Iranian sanctions,

² OFAC’s enforcement information does not specify which article ExxonMobil cited in its defense. However, in 2014, *The Wall Street Journal* published at least two articles suggesting that BP CEO Bob Dudley’s participation on Rosneft’s board of directors had been approved by the Treasury Department. See Justin Scheck, [BP’s American CEO in Uncomfortable Place: Rosneft’s Boardroom](#), WALL STREET JOURNAL (May 15, 2014, 11:02 AM), (“A U.S. Treasury Department spokeswoman said Mr. Dudley may participate in board meetings with Mr. Sechin, as long as they are covering Rosneft business and not Mr. Sechin’s personal business.”); Liam Moloney, [Pirelli Names Rosneft Chairman Igor Sechin to Board](#), WALL STREET JOURNAL (Jul. 11, 2014, 8:37 AM), (“The U.S. government has said sanctions don’t preclude Mr. Dudley, a Rosneft board member, from interacting with Mr. Sechin as part of his role as a director.”).

marking the largest penalty that OFAC has extracted from a non-financial institution to date. ZTE entered into coordinated settlements with other U.S. regulators, which resulted in a total combined penalty of nearly \$900 million.

OFAC also has taken aggressive positions in recent enforcement actions targeting other non-financial institutions. For example, in February 2017, OFAC issued a finding of violation to Taiwan-based B Whale Corporation—whose only apparent connection to the United States was as a party in bankruptcy proceedings—because one of its vessels received a transfer of Iranian crude oil in international waters. In that case, OFAC determined that B Whale Corporation's receipt of Iranian crude oil in the Pacific Ocean constituted an "an importation from Iran to the United States" in contravention of the Iranian Transactions and Sanctions Regulations ("ITSR").

In another enforcement action, OFAC found that Epsilon Electronics, a U.S.-based audio electronics company, had committed egregious violations of the ITSR by exporting audio and video equipment to a Dubai-based purchaser. OFAC found that Epsilon violated the ITSR because the company had reason to know that the Dubai-based entity would resell the products to Iran, even though OFAC was not able to establish that the Dubai-based purchaser actually reexported the equipment to Iran.

Invigorated by its recent high-profile victories, OFAC seems likely to continue to pursue non-financial institutions, particularly those that fail to implement robust sanctions compliance programs.

III. Companies Operating in the Oil & Gas Industry Have Been Put on Notice

Since at least 2013, the U.S. government has been aggressive in pursuing oil and gas companies that violate economic sanctions and export control laws. For example, in 2013, Weatherford International Ltd entered into coordinated resolutions with DOJ, SEC, OFAC, and BIS to resolve alleged violations of the FCPA, sanctions regulations, and export control laws, agreeing to pay \$253 million in penalties. Among other violations, U.S. regulators alleged that Weatherford exported equipment from the United States to Cuba, Iran, Sudan, and Syria, in violation of U.S. sanctions. In 2015, Schlumberger Oilfield Holdings Ltd. entered a guilty plea and accepted a \$232.7 million penalty for violations of the International Emergency Economic Powers Act related to transactions involving Iran and Sudan. More recently, in 2016, National Oilwell Varco Inc. entered into concurrent settlements with OFAC, BIS, and DOJ, agreeing to pay at least \$25 million in penalties related to alleged violations of the Cuban, Iranian, and Sudanese sanctions regulations.

The ExxonMobil penalty confirms that OFAC is carefully scrutinizing oil and gas companies' compliance with U.S. economic sanctions. Accordingly, the penalty underscores the need for oil and gas companies to reassess regularly their existing sanctions compliance controls, to ensure that those controls are commensurate with their current risk profiles. In addition, companies that operate in and around Russia would be well served to reexamine their relationships with entities whose owners, directors, or officers have been—or foreseeably may be—targeted by U.S. sanctions. In particular, it is clear that OFAC takes a broad view of the scope of transactions prohibited by existing sanctions. In the wake of the ExxonMobil enforcement action, relationships forged, at least in part, in reliance upon previous public statements by White House and Treasury Department officials regarding the scope of the Ukraine-Related Sanctions Regulations may need to be reassessed.

IV. Conclusion

While the ultimate resolution of the ExxonMobil matter is unknown, non-financial institutions, and particularly entities operating in the oil and gas industry, should take notice of the current enforcement environment and OFAC's increasingly aggressive posture, mindful that violations of economic sanctions can result in significant penalties and non-monetary consequences. We will continue to monitor the ExxonMobil matter and will provide updates regarding subsequent developments.

This alert by partners Zach Brez and Marcus Thompson, counsel Michael Casey and associates Brendan Hanifin and Emerson Siegle was originally published in Law360 on July 21, 2017.