



**Morgan Lewis**

**RUSSIA SANCTIONS UPDATE –  
US / EU (AND BREXIT-UK)  
OVERVIEW AND ENERGY SECTOR FOCUS  
& RUSSIAN COUNTERSANCTIONS**

as of 7 April 2020

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# Our International Trade / Sanctions Team

## UNITED STATES



### **Giovanna Cinelli**

Partner/Head of Int'l Trade and National Security Practice  
+1.202.739.5619 | giovanna.cinelli@morganlewis.com



### **Kenneth Nunnenkamp**

Partner | +1.202.739.5618  
kenneth.nunnenkamp@morganlewis.com



### **Carl Valenstein**

Partner | +1.617.341.7501  
carl.valenstein@morganlewis.com



### **Brian Zimble**

Partner | +1.202.739.5650  
brian.zimble@morganlewis.com

## LONDON



### **Bruce Johnston**

Partner | +44.20.3201.5592  
bruce.johnston@morganlewis.com



### **Nicola Kelly**

Associate | +44.20.3201.5452  
nicola.kelly@morganlewis.com

## MOSCOW



### **Jon Hines**

Partner | +7.495.212.2552  
jon.hines@morganlewis.com



### **Vasilisa Strizh**

Partner | +7.495.212.2540  
vasilisa.strizh@morganlewis.com



### **Andrey Ignatenko**

Associate | +7.495.212.2407  
andrey.ignatenko@morganlewis.com

## DUBAI



### **Rebecca Kelly**

Partner / +971.4.312.1830  
rebecca.kelly@morganlewis.com

## SHANGHAI



### **Todd Liao**

Partner / +86.21.8022.8799  
todd.liao@morganlewis.com

## SINGAPORE



### **Wendy Tan**

Partner / +65.6389.3078  
wendy.tan@morganlewis.com

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*The Russia sanctions regime is quite complex. Many of its provisions overlap with one another, and are otherwise subject to varying interpretations and application. Thus, legal advice should be sought for each specific situation. (Even official FAQs or other “guidelines” published by the relevant government agencies are subject to change or withdrawal – and are, in any event, alone neither dispositive or sufficient for pursuing a particular course of action.)*

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# What's Newest

## United States

- Rosneft's 28 March surprise [announcement](#) of sale of all its Venezuela assets (E&P, services, commercial and trading operations) – apparently to a newly-formed Russian gov't co. Roszarubezhneft according to some most recent reports
  - Done in apparent hope that the recently-imposed US SDN designations of two Rosneft trading affiliates (see immediately below) will now be lifted, and USG is [reported](#) to be considering this, if/upon solid confirmation of the sale / full disengagement by Rosneft
  - The new Russian gov't co. owner presumably would have only these Venezuelan assets, so that possible US SDN designation of it would have only limited effect – but its trading of Venezuelan crude could well still run into sanctions complications
- Rosneft Trading S.A. (“RT”), and then TNK Trading International S.A. (“TTI”), both Swiss companies, were SDN-designated – *under the Venezuela sanctions program*
  - Per OFAC [18 Feb.](#) and [12 March](#) releases, under EO [13850](#) of 1 Nov. 2018
  - For their role as prominent buyers/traders of crude oil from Venezuela's state oil company PdVSA (which itself has been SDN-designated since Jan. 2019)
  - RT's Chairman and President, Didier Casimiro, was also SDN-designated
  - See slides [32-45](#) for general discussion of the SDN regime – re designation of legal entities and of individuals, relevant clarifications, interpretations etc.

# What's Newest (*cont'd*)

- Together with the RT and TTI (and Casimiro) designations, OFAC also issued (as updated)
  - General License (“GL”) [36A](#) – grants wind-down period to 20 May for dealings with RT or TTI
  - FAQ [817](#) – clarifies that the RT/TTI designations do not bar US persons from dealing with Rosneft parent co. itself (or with other Rosneft companies that aren’t 50%-or-more owned by RT/TTI)
  - FAQ [818](#) – clarifies that wind-down operations do not include entering into new business with RT or TTI (and see further slide [37](#) for general guidance on permissible wind-down activities)
- Per EO 13850, not only US persons are barred, but “secondary sanctions” (blocking all property in the US etc.) can be imposed against any *non-US persons as well* – for any further dealings with RT or TTI worldwide
  - such may be imposed on “*any person*” found to have “materially assisted, sponsored, or provided financial, material or technological support for, or goods or services to in support of” RT or TTI (see section 1(iii), and also 1(iv), of the EO)
  - this is distinct from the Russia-related secondary sanctions regime introduced by the CAATSA Act in 2017 (see slides [47-60](#)) – and not nearly as detailed
- These new RT/TTI designations were a significant ratcheting up of Venezuela-related pressure on Russia
- And [reported](#) to be causing major disruption of Rosneft’s trading and related finance contracts (even those having nothing to do with Venezuela), as companies worldwide seek to reduce/avoid risk

# What's Newest (*cont'd*)

- New sanction aimed at Russia's new export pipelines – Nordstream 2 and Turkstream
  - This is Section 7503 (pp. 2637-2646) of the [National Defense Authorization Act](#) (NDAA) for 2020, signed by President Trump into law on 20 Dec. 2019 with immediate effect
  - It enacts in essence what was the Senate draft so-called Protecting Europe's Energy Security Act (PEESA) from earlier 2019 (Senators Cruz and Shaheen as co-sponsors)
  - Real effect
    - on Nordstream very much so – undersea pipe-laying for which isn't quite complete: see remarkable 18 Dec. warning [letter](#) of Senators Cruz and Johnson to CEO of the contractor Allseas; and Allseas' 20 Dec. [statement](#) that it has suspended Nordstream pipe-laying operations pending hoped-for clarifications from USG (and subsequent 30 Dec. news [report](#) that Allseas has no current plan to resume the work)
    - evidently no real effect on Turkstream – given that the undersea pipe-laying is already complete
    - apparently supplements the pre-existing CAATSA sec. 232 (see slide [53](#)) – but aimed specifically at pipe-laying vessels and foreign persons that are participating in the activities (US persons are covered by CAATSA)
  - Essential contents
    - requires Administration report to Congress within 60 days of enactment (i.e., in mid-February 2020), and then each 90 days, identifying: (a) vessels involved in pipe-laying (at depth of >100 feet) for Nordstream 2, Turkstream, or any successor project to either; (b) foreign persons that knowingly have (i) sold, leased, provided those vessels, or (ii) facilitated deceptive or structured transactions to provide such vessels
    - President *shall* (upon the first 60-day report date) exercise powers to block all property/interests in the US etc. of any company that is violative as of 20 Dec. enactment date (and so on thereafter) – subject to wind-down, exceptions and waiver provisions (see next slide)
    - and exclude corporate officers and controlling shareholders of the above from entry into the US (or other involved foreign persons), and possible related blocking of property/interests

# What's Newest (*cont'd*)

- there is a de-facto wind-down period
    - ❖ The President may not impose the sanctions against a person identified in the first (60-day) report if certifies that the person has, not later than 30 days after the 20 Dec. enactment, engaged in good faith efforts to wind down operations that would otherwise subject the person to the sanctions
    - ❖ this could be subject to different interpretations – but in any event Allseas has suspended work (while there are also Russian gov't [statements](#) of possible Russian alternative vessels to finish the work)
    - ❖ see also OFAC FAQ [815](#) of 20 Dec. 2019 in this regard (and State Dept. 27 Dec. [Fact Sheet](#))
  - plus typical exception and waiver authorities, including for
    - ❖ repair / maintenance / environmental remediation re pipelines, or safety of vessels and crew
    - ❖ national security and national interest waivers
  - and a "termination and sunset" provision – which would end the sanctions authority (and any sanctions already imposed) on the earlier of (i) 5 years from enactment or (ii) the date on which the President certifies to Congress that appropriate safeguards have been put in place
    - ❖ to minimize Russia's ability to use the pipeline project as a tool of coercion / potential leverage (including by achieving unbundling of energy production/transmission in Europe), and
    - ❖ to ensure that the project would not result in a >25% decrease in volume of Russian energy exports transiting through existing pipelines in other countries, particularly Ukraine, relative to the 2018 average monthly volumes (note that the [reported](#) new Russia-Ukraine gas transit extension agreement for 2020-2024 might serve to satisfy this requirement – will need analysis over time)
- Also note Russia's [reported](#) intent to enact some responsive countersanction (see slide [82](#)) – but none yet

# What's Newest (*cont'd*)

- March 2020 – voluntary [disclosure](#) by Swedbank of Crimea-related USD transfers by its Baltic affiliates that violated US sanctions
- 31 Dec. 2019 [decision](#) of US federal court granting a large US company's motion for summary judgment rejection of OFAC's \$2 million penalty notice imposed in 2017 for the company's having entered into contracts in 2014 that were signed for Rosneft by its CEO Igor Sechin, who is an SDN (see slide [33](#) for context)
- 3 Dec. 2019 [announced indictment](#) of several Russian, Italian and US companies and persons for conspiracy to evade US trade sanctions (alleged attempt to export US-produced turbine for use in Russian Arctic offshore oil drilling)
- Chinese state-owned shipping giant – SDN designations in Sept. 2019 under Iran sanctions regime
  - Two specific subsidiaries sanctioned under EO [13846](#), for shipping Iranian crude oil
  - With a particular Russia-related effect: one of the two sanctioned subs had a venture whose tankers were carrying Yamal LNG product
  - On 31 Jan. 2020 OFAC delisted that sub; thus, no more obstacle to dealing with it (see further slide [44](#))
  - Note also related interesting FAQs [804-807](#) issued in Nov. 2019 (only the first two of which have survived the Jan. 2020 delisting)

# What's Newest (*cont'd*)

- The most recent further-expanded US sanctions against Iran (aimed in part at the mining & metals, manufacturing, construction, and textiles sectors), including new EO [13902](#) of 10 January, also require heightened caution by Russian cos.
- Also note in the new NDAA 2020 (see slide [7](#) above)
  - The Venezuela sanctions provisions (Section 890 et seq.), including US Defense Dep't procurement restrictions for any company (and its corporate group) that does unlicensed business with any Venezuelan Gov't authority/agency/entity
  - The Syria sanctions provisions (Section 7401 et seq.), requiring imposition of sanctions on non-US persons that knowingly engage with the Gov't of Syria (and its owned/controlled entities) in certain ways, including ... facilitating the maintenance or expansion of Syria's domestic production of natural gas, petroleum, or petroleum products
  - The North Korea sanctions provisions (Section 7101 et seq.) which could also have enhanced consequences for Russian companies and financial institutions
  - COVID-19 / Russia sanctions link: April 2020 [report](#) that the USG has purchased a large shipment of ventilators, face masks etc. from KRET, a Russian SDN subsidiary of Rostec

# What's Newest (*cont'd*)

- More notable new secondary sanctions-related actions (*again, not all relating to Russia – but to be kept in mind as fresh warnings*)
  - See a Jan. 2020 Finnish court decision discussing claim by Boris Rotenberg, a US-designated SDN, that certain Scandinavian banks refused to serve his accounts (see the court's [press release](#))
  - And a similar (Sept. 2019) English court [judgement](#) that upheld a bank's secondary sanctions risk argument against (non-USD) payment to creditor (a Vekselberg-affiliated entity)
  - Also a Singapore arbitration filed by Mordashov-owned Power Machines ("PM") vs. Petrovietnam ("PV" – Vietnam's state oil & gas co.) – per Nov. 2019 [press report](#)
    - the dispute relates to Vietnam thermal power plant project on which PM is general contractor
    - PV evidently stopped paying, on the basis of secondary sanctions risk, after PM was SDN-designated in Jan. 2018 (re turbines to Crimea scandal – see slide [39](#));
    - a US heavy equipment supplier is reported to have cancelled its contract with PM (and various int'l banks reported to decline further project payments involving PM), on same basis
    - and see late Jan. 2020 [press report](#) that PM willing to carry on with project per non-USD payments
  - And 17 Sept. 2019 OFAC [Settlement Agreement](#) with British Arab Commercial Bank (BACB):
    - London-based bank, having no US offices, business, or presence, was found to have violated the Sudan sanctions regs by processing many USD funding transactions for Sudanese financial institutions that involved a nostro account at a non-US bank but also indirectly involved funds flows to or through the US financial system
    - OFAC found that BACB "ignored warning signs that reasonably should have put the bank on notice" of violative conduct (as elaborated in the settlement [announcement](#))
  - See also interesting 2018 English court [judgement](#) in the Mamancochet case involving claim vs. UK insurers controlled by US persons on Iranian insured loss

# What's Newest (*cont'd*)

- Status of challenges to SDN or CAATSA sec. 241 designation of certain “oligarchs”
  - OFAC notified Mr. Deripaska in Jan. 2020 that he is unlikely to be delisted (see [letter](#) and [news report](#)), and formally denied his request in March 2020 (see federal court case [status report](#))
  - Mr. Vekselberg’s application / court challenge also still pending – see 24 March [court order](#)
  - But a wealthy Russian-American physicist/entrepreneur *was* delisted last Sept. (see slide [36](#))
  - Jan. 2020 [news report](#) of an Asian gov’t declining to go forward on a proposed project with a Russian co. – apparently just because its principal is in the Oligarchs List (see slide [56](#))
- OFAC has issued further license [extensions](#) of 20 March 2020 for dealings with the Deripaska-controlled major automotive co. GAZ Group (GLs 15H and 13N)
  - To 22 July 2020, for maintenance/wind-down of operations / contracts, and for divestment / transfer of holdings
  - And same extension to 22 July 2020 for maintenance/wind-down of R&D activities with GAZ re certain automotive safety and emissions standards
  - This seems to indicate that negotiations for delisting of GAZ (left as SDN when RUSAL, En+ and EuroSibEnergO were delisted in Jan. 2019 – see slide [34](#)) are ongoing/progressing (perhaps as Deripaska decontrol is being worked out)
- And OFAC’s 2 March 2020 [SDN-delisting](#) of Mr. Khudainatov’s NNK and a sub. (had been designated in 2017 for shipping petroleum products to North Korea)

# What's Newest (*cont'd*)

- Other OFAC enforcement actions teaching caution in/toward Russia
  - *Iran*: PACCAR/DAF (US/NL) August 2019 [Settlement Agreement](#) re trucks directed to Iran (including through a Russian front buyer)
  - *Cuba*: An Oct. 2019 Settlement Agreement with a US company, involving direct payments to it from Cuban SDN end-user of products – per sales through Canadian customer (see also slide [31](#))
- Some new Russian SDN designations (see slide [39](#) below)
- 25 Feb. 2020 [Notice](#) (by President Trump) of Continuation of the National Emergency with Respect to Ukraine – this is routine annual required extension on which the relevant EOs are based
- BIS (Commerce Dep't) 24 Feb. 2020 [final rule](#) tightening some Country Group designations for Russia – affecting some exports and reexports to there (based on missile, nuclear, and chemical & biological weapons proliferation concerns)
- Proposed further US sanctions legislation
  - DASKA Act: see the Dec. 2019 amended [draft](#) approved by Senate Foreign Relations Committee; and see Senate sponsors' 18 Dec. [statement](#), and State Dept's 17 Dec. [letter](#) stating Administration's opposing views (see further slide [66](#))
  - DETER Act: long and short versions – unclear prospect of further movement in Congress (see slide [67](#))

# What's Newest (*cont'd*)

## European Union / UK

- Routine sanctions extensions: sectoral to 31 July, and blacklist to 15 Sept. 2020 (see slide [17](#))
- UK / Brexit: the EU sanctions remain in effect in the UK until at least 31 Dec. 2020
  - While the UK adopted its own Russia sanctions in April 2019, effective 31 Jan. 2020 (see slide [81](#))
  - Which are similar to the EU sanctions, but have some differences (see further slides [69](#) and [81](#))
  - And see Feb. 2020 UK OFSI [announcement](#) of penalty imposition against a major UK-based bank for making several loans to then Sberbank subsidiary Denizbank of Turkey in violation of the EU's Russia sanctions (EU Reg. 833/2014 art. 5(3), etc. (see slides [75-76](#)))
- EU states are [reported](#) to be testing new INSTEX system as alternative to USD dealings (*this concerns the Iran sanctions but still noteworthy*) – and see recent Russian [news report](#) on it

## Russia

- Proposed (March 2020) constitutional amendment to expressly prohibit restriction of rights of Russian persons that have been designated under foreign sanctions – *but not adopted*
- No newest countermeasures against US/EU (see slides [82-85](#) for what exists) ... but note various reports of Gov't intent to enact something in response to new US Nordstream and Rosneft sanctions
- Some earlier 2019 efforts in Russian legislature ([link](#)) to stiffen the existing laws – but not supported by the Gov't, Central Bank, etc.
- Continuing reports of Russian companies (including oil producers) trying to move away from USD to Euro (or other currencies) for deals having no other US link – see slides [18](#) and [72](#) below
- And Gov't moving to direct pension and similar funds away from banks that are under or are supporting anti-Russian sanctions

# Basic Framework – US/EU

## United States

- Treasury Dep't (*Office of Foreign Assets Control – OFAC*) "sectoral" sanction Directives, amended to date – most recently in Aug. 2018 (based on EO 13662 from March 2014)
  - *generally applies only to "US persons" and any persons / entities in the US: citizens / US permanent residents, US companies (including branches abroad), and US subs / branches of foreign companies*
  - but may also be applied to non-US persons anywhere, for activity that causes (i) US persons to violate or (ii) a violation to occur within the US – this expansive application being somewhat controversial
  - and all the SDN designations / sanctions are also under OFAC (based on EOs 13660, 13661 etc. of 2014)
  - and Treasury's further expansive secondary sanctions authorities under CAATSA (slides [10](#), [47-60](#))
- Commerce Dep't (*Bureau of Industry and Security – BIS*) export restrictions – [15 CFR §746.5](#), "Russian Industry Sector Sanctions", amended most recently Dec. 2017
  - applies to activities of any "US person" or within the US
  - and also to US-origin goods, technology, software etc. or with sufficient US-origin controlled content, wherever located
  - see also 15 CFR §744.10 (Restriction on certain entities in Russia), §744.19 (Denial of BIS licenses for sanctioned countries or entities), and §744.21 (Restrictions on military end users in Russia)
  - *note: there may well be overlapping OFAC and BIS licensing and enforcement authority – and thus thorough analysis of both sets of rules (and perhaps authorizations from both agencies) re the same proposed transaction may be required in some cases*
- State Dep't
  - has primary authority for certain sections of CAATSA (see slide [48](#)); and contributing authority for most other Russia-related sanctions (now including those under the CBW Act – see next slide)
  - also has had / will continue to have important behind-the-scenes role in inter-agency consultations on Treasury / Commerce application of OFAC- and BIS-administered sanctions in general

# Basic Framework – US/EU (*cont'd*)

- CBW Act application to Russia of 2018-2019 (two rounds – see slides [61-65](#)) – involves Treasury, Commerce and State Dept's
- CAATSA enacted August 2017 (and State / Treasury Guidances of Oct. 2017) – and see:
  - full summary discussion at slides [47-58](#)
  - the Jan. 2018 CAATSA-based Reports/Lists for Congress (see slides [56-57](#))
  - and note the Sept. 2018 CAATSA-implementing EO (see slide [58](#)), and proposed DASKA Act would further broaden CAATSA – (see slide [66](#))... but not clear if/when will ever be enacted
  - various cyber- and defense-related CAATSA secondary-sanctions designations of Russian / other foreign entities to date
- Crimea-focused EO 13685 of 19 Dec. 2014 ... and Crimea-related SDNs
  - near-total embargo (as for Cuba), OFAC-administered, amended most recently in Sept. 2019
  - related BIS implementing [rules](#) of 29 Jan. 2015
  - most recent OFAC Sept. 2019 Crimea-related SDN designations (see slide [13](#))
- Application of various Iran, Venezuela, Syria, and North Korea sanctions (including against some Russian companies) authorized by a web of laws and executive orders (see slides [32](#), [39](#), [41](#), [48](#) and [50](#) below)
- *Bottom line: US Russia-sanctions analysis is now like peeling an ever more complex onion!*

# Basic Framework – US/EU (*cont'd*)

## European Union

- EU Council Reg. No. [833/2014](#) of 31 July 2014 – as amended and (several times, most recently by Reg No. 2019/1163 of 5 July 2019)
  - applies to EU nationals and companies
  - or anything happening in whole or part within EU territory
  - or involving an EU-registered aircraft / vessel
- Commission [Guidance Note](#) (16 Dec. 2014, last amended 25 Aug. 2017) on application of certain provisions (the “EU Guidance Note”)
- Currently in effect to 31 July 2020 (extended as of 19 Dec. 2019)
- And SDN-like “blacklist” Reg. No. [269/2014](#) of 17 March 2014
  - and updates since then (incl. re the Siemens turbines scandal and re the Kerch bridge – see slides [79-80](#))
  - currently in effect to 15 September 2020 (most recently extended on 13 March 2020)
- And, re Crimea
  - EU Council Reg. No. [692/2014](#) of 23 June 2014 – as amended by Reg. No. 825/2014 of 30 July 2014, and Reg. No. 1351/2014 of 19 Dec. 2014 (last extended on 20 June 2019 – now in effect to 23 June 2020)
  - hits investments in oil & gas and other mineral resources E&P, power, transport, telecoms
  - and further ban on business in various other sectors – see slide [79](#) for detail
- EU Council Reg. No. [2018/1542](#) of 15 Oct. 2018, Concerning Restrictive Measures Against Proliferation and Use of Chemical Weapons; and Implementing Reg. No. [2019/84](#) naming four Russians as violators
- *Post-Brexit UK: see slides [69](#) and [81](#)*

# US Sectoral Sanctions – OFAC

## Finance / Capital Markets

- The OFAC SSI sanctions *prohibit without license*:
  - Per [Directive 1](#) (as amended / effective Nov. 2017, per CAATSA addition): new debt financing with maturity of >14 days (*revised down from >30 days*), or new equity financing, for these designated entities or their subs (≥50%-owned), and transactions with or dealing in such debt or equity
    - *Bank of Moscow* (now merged into VTB)
    - *Gazprombank*
    - *Russian Agricultural Bank (Rosselkhozbank)*
    - *Sberbank*
    - *VEB*
    - *VTB*

(except depositary receipts based on pre-existing shares – per FAQ [391](#))

- And note OFAC’s expanded bank SSIs List (by several additions to date)
  - singling out many specific VEB, VTB, Sberbank, Gazprombank and Russian Agricultural Bank subs/affiliates – in Russia, Europe, and elsewhere
  - all of these were technically covered already under the 50%+ ownership rule – so they are also named / singled out just for emphasis / clarity, to help stop circumvention, etc.
  - but note that now any of these named subs would need specific OFAC delisting if/when no longer 50%+ owned by its “named SSI parent”
  - *e.g.*, Russian Direct Investment Fund (RDIF) – no longer a VEB sub, but still on SSI List
  - as opposed to, for example, Estonia’s Coop Bank (formerly Estonian Credit Bank) delisted in 2018 following 2017 buyout by Coop Eesti from VTB)

# US Sectoral Sanctions – OFAC (*cont'd*)

## Finance / Capital Markets (*cont'd*)

- Per [Directive 2](#) (as amended / effective Nov. 2017, per CAATSA): new debt financing with maturity of >60 days (revised down from >90 days) for these designated entities or their subs (50%-or-more owned), and transactions dealing in such debt
  - *Gazpromneft*
  - *Novatek*
  - *Rosneft*
  - *Transneft*
- and here again, note the amended SSI Lists issued since 2015 to date – naming / singling out several specific Rosneft, Novatek and Transneft subs – to which the same two above-noted (re Directive 1) coverage caveats apply
- Per [Directive 3](#) (still as of 12 Sept. 2014 – not amended): new debt financing, maturity of >30 days, for Russian Technologies (Rostec) or its subs (≥50%-owned), and transactions / dealing in such debt
  - and note that Rostec is now also a CAATSA section 231 listed defense-industry entity (see slide [52](#) re the added Rostec-dealings burdens/risks this entails, for US as well as non-US persons)
  - and Rostec subsidiary Rosoboronexport is now also an SDN (and its subs), per April 2018 designation
- And see related OFAC FAQs
  - FAQ [395](#) as amended, re permissible / prohibited US persons' activities with regard to L/Cs involving designated companies under Directives 1, 2 and 3
  - FAQ [419](#) as amended, re permissible / prohibited payment terms for US persons' sale of goods / provision of services to, and progress payments for long-term projects with, designated companies under Directives 1, 2 and 3
  - FAQ [371](#) re correspondent banking – OK only if the underlying transaction is permissible (thus seems stricter than under EU rules)
    - in other words, mere use of USD, without more, could violate – which is why Russian companies, including oil exporters, are trying to move from Euro (or other currencies) as possible for transactions that have no other US link*
- And note OFAC [General License 1B](#) (of Nov. 2017)
  - Authorizing transactions by US persons (and otherwise within the US) involving derivative products having value linked to underlying asset that is prohibited debt (or equity) under Directives 1-3 (and see related updated FAQ [372](#))
  - Note (see slides [64-65](#)) that the CBW Act ban on US banks' lending doesn't extend to Directives 1-3 state entities

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy

- [Directive 4](#) prohibits (*as amended / effective Jan. 2018*, per CAATSA) without license
  - The provision, export or reexport, directly or indirectly, of goods, services (except financial services) or technology
    - “in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil” in Russia
    - involving any of these designated entities or their subs (50%-or-more owned)
      - *Gazprom*      • *Gazpromneft*      • *Lukoil*      • *Rosneft*      • *Surgutneftegaz*
  - And keep in mind various SSI List amendments to date – singling out several Rosneft, Gazprom and Surgutneftegaz subs (and again with the same above-noted slide [18](#) coverage caveats applying)
  - Note also the 2015 BIS special [designation](#) of South Kirinsky field (only part of it is deep water) ... which hasn't yet been expanded to other such “borderline” fields

# US Sectoral Sanctions – OFAC (*cont'd*)

- *And, per CAATSA section 223 (enacted August 2017), the Directive 4 scope was expanded to cover such projects worldwide, where one or more of these five designated Russian companies has/have a (i)  $\geq 33\%$  ownership interest or (ii) a majority of the voting interests*
  - but this scope expansion applies only to such outside-Russia projects that are “initiated” after 29 Jan. 2018 – which means (per FAQ [536](#)) the date when the host government (or its authorized agency etc.) “formally grants exploration, development, or production rights to any party”
  - thus, should not apply to outside-Russia projects where the Russian company(ies) obtained its/their interest at any time after the relevant gov’t grant of rights (but there could be fact/law/interpretation nuances here)
  - note also that, per related FAQ [537](#), OFAC’s “50% rule” – regarding involvement of SSI entity(ies) in such project – will apply to determine whether either of the sanction thresholds ( $\geq 33\%$  direct or indirect ownership interests or majority of voting interests) is passed
- The further proposed DASKA Act, if ever passed, would further broaden sanctions coverage of oil E&P projects both inside and outside Russia (see slide [66](#) below)

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- Note OFAC FAQ [413](#) (and similar [BIS](#)) clarification that “deepwater” = over 500 ft.
- And OFAC FAQ [418](#) (and similar [BIS](#))
  - Clarification that “shale project” doesn’t include E&P *through* shale to locate or extract oil in reservoirs
  - Also, apparently, not all hard-to-extract = shale (not addressed further in later FAQ updates)
- And OFAC FAQ [421](#)
  - Re “Arctic offshore” = offshore field north of Arctic Circle
  - Including an Oct. 2017 clarification that this bar *doesn't* cover horizontal drilling operations originating onshore that extend to seabed areas above Arctic Circle
- And OFAC FAQ [420](#) – re only production (and *not* midstream / downstream) activities are covered

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- For in-Russia projects, the Directive 4 reference to "*in Russia or in other maritime area claimed by [Russia] and extending from its territory*" – is understood to mean/include
  - Any offshore areas (inland / territorial seas, EEZ or Shelf) - this is per a BIS FAQ [answer](#), and analogous explanations under other-country sanctions rules (and is consistent with EU Reg. [clarifications](#))
  - And Caspian Sea zone claimed by Russia (the similar EU sanction might not cover this?)
  - As well as the Black Sea shelf area extending from Crimea (despite non-recognition by US as being part of Russia)
- And note the FAQ [414](#) clarification that this sanction doesn't apply if an otherwise-covered project has the potential to produce only gas
  - But *does* apply if potential for both (often not clear; per factual / evidentiary showing)
  - *And note that BIS (and likely OFAC too) considers condensate = oil* (even though the old ban on export of US crude oil, which gave rise to the equivalence rule, has been lifted)
  - And most Russian gas fields have some condensate (as South Kirinsky does)

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- The Directive 4 export ban thus covers essentially
  - All US-origin goods, US-origin services (*except for financial services – covered in Directive 2*), tech. assistance and technology in respect of such projects
  - To the five main listed companies and their subs (and expressly including the added named Rosneft, Gazprom and Surgutneftegaz subs)
  - And likely also to / for use at the South Kirinsky field (and any others that may be so designated)
  - The carve-out for financial services (includes clearing transactions and providing insurance re such activities – per OFAC FAQ [412](#) – but see also the further explanation in FAQ [415](#))
- There have been some license applications / favorable actions under Directive 4 (but still a much stricter approach than in the EU to date)
- Note the “support services” compliance focus / risk

# US Sectoral Sanctions – OFAC (*cont'd*)

## General

- All four directives (re finance / capital markets, and energy) also expressly prohibit
  - Any transaction that evades or avoids, has that purpose, or causes a violation of, or attempts to violate any of the directive prohibitions
  - Any conspiracy formed to violate any of same
  - And again, note in this respect the several SSI List supplements to date – singling out, essentially just for anti-circumvention emphasis, several subsidiaries/affiliates of
    - Rosneft, Gazprom, Novatek, Transneft and Surgutneftegaz (under Directives 2 and 4)
    - VEB, VTB, Sberbank, Gazprombank and Russian Agricultural Bank (under Directive 1)
- Possible penalties
  - Civil: approx. \$302,600 (per latest June 2019 inflation adjustment) *per violation*, or up to twice the value of the transaction that was the basis for the violation
  - Criminal: up to \$1 million per violation
  - And individuals could be imprisoned (for up to 20 years) for criminal violations
- *And remember: while these OFAC Directives (and the CBW Act sanctions) generally apply directly only to US persons, now there is enhanced risk of application to non-US companies/individuals also – per the CAATSA secondary sanctions (slides [54-55](#) below)*

# US Sectoral Sanctions – BIS

## Export / Reexport Restrictions

- The basic-limited August 2014 initial BIS Russia sanctions / license requirements – applying to *any* Russian end-users / uses
  - When the exporter knows the items will be used directly or indirectly in exploration for or production of oil or gas in Russian deepwater, Arctic offshore, or shale formations
  - Or is unable to determine whether the item will be used in such projects
  - And *presumption of denial* when for use in such projects “that have the potential to produce oil” (here again, grey area where could produce both gas and oil)
  - And importantly, as noted above, BIS considers that condensate = oil
- This August 2014 reg. restricts (requires license for):
  - Only specifically designated ECCN items and also several listed types of drill pipe, casings, wireline, downhole equipment (per Supp. No. 2 to Part 746.5 of the EAR)
    - for *all* Russian entities
    - when used in Russian deepwater, Arctic offshore, or shale projects
  - Expressly including, but not limited to
    - *drilling rigs*
    - *parts for horizontal drilling*
    - *drilling and completion equipment*
    - *subsea processing equipment*
    - *Arctic-capable marine equipment*
    - *wireline & down-hole equipment*
    - *drill pipe and casing*
    - *software for hydraulic fracturing*
    - *high pressure pumps*
    - *seismic acquisition equipment*
    - *remotely operated vehicles*
    - *compressors, expanders, valves, risers*

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- Further, the same five OFAC-designated Russian energy companies (per OFAC Directive 4) have been on the BIS “Entity List” since Sept. 2014
  - *Gazprom*      • *Gazpromneft*      • *Lukoil*      • *Rosneft*      • *Surgutneftegas*
- Plus 15 specifically named Rosneft subs since 2015 and 51 named Gazprom subs since 2016 (essentially the same as those named by OFAC)
- Also likely (but not automatically) applies to some other owned or controlled subs – see BIS Entity List FAQ [134](#) (depends on nature of sub / its activities, control, and other factors)
- This specific Entity List designation imposes (re these companies, and at least several subs) – *see slide 20*
  - A new license requirement for export, reexport, or transfer of “*all items subject to the EAR*”
    - for the 5 initially named energy sector companies (and likely also most of their subs)
    - when used in Russian deepwater, Arctic offshore, or shale projects
    - and now also certainly for all the expressly named Rosneft and Gazprom subs
    - and for the South Kirinsky field too
  - *If... or if...* (the same previous-slide oil / gas target projects litany applies here – and the rules of (i) denial presumption for oil projects, and (ii) condensate = oil, are applied here too)

# US Sectoral Sanctions – BIS (*cont'd*)

- Export / Reexport Restrictions (cont'd)
  - And, as noted above, per a 2015 amendment, BIS added Gazprom's South Kirinsky field (Sea of Okhotsk, part of Sakhalin-3 areas project, off Sakhalin Island) to the Entity List
    - Regardless whether in deepwater portion or not (the field has both)
    - This special designation was likely based on some particular factors
    - More such fields might eventually be named too, as also noted above (but none yet)
- Also further 2015-20 Russia-related Entity List additions – adding many new Russian, Crimean, European and other OFAC-named SDN companies to this List (see slide [39](#))
  - Mostly in the cyber and/or defense categories; some of which are already OFAC-designated SDNs or may be indirect SSIs (as 50%-or-more owned by a directly designated SSI)
  - Most recent March 2020 [additions](#) – Aylon Ltd. and Technomar: “for acting on behalf of a listed company in circumvention of licensing requirements by procuring U.S.-origin items for Technopole Company”, which was listed in 2016
  - These companies are thus subject to BIS license requirement for all items that are subject to the Export Administration Regulations (EAR), with presumption of denial
- Still more new BIS tightening and broadening updates are possible
- See the current full BIS Entity List [here](#)

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- What is “*subject to the EAR*” (including all EAR99 items)?
  - All items in / moving in transit through the US
  - All US-origin items, wherever located
  - And
    - *foreign-made goods that incorporate controlled US-origin goods*
    - *foreign-made software that is comingled with controlled US-origin software*
    - *foreign-made goods that are “bundled” with controlled US-origin software*
    - *foreign-made technology that is comingled with controlled US-origin technology*
  - ... in quantities exceeding the de minimis levels (see [15 CFR §734](#))
    - currently 25% for Russia
    - *but there are intricate rules re what items “count” here, beyond encryption technology*
  - Certain foreign-made direct products of US-origin technology or software
  - Certain commodities, produced by any plant or major component thereof outside the US, that are direct product of US-origin technology or software
- *Note: includes even in-country transfers between entities (e.g., within Russia)*
- And BIS also has discretion to apply these sanctions more broadly (*i.e.*, without direct deepwater, Arctic offshore or shale status), for any Russian users, if there is perceived unacceptable *risk of diversion* etc. (per [15 CFR §746.5\(a\)\(2\)](#) etc. – see slide [20](#))

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- Some specific actions
  - Early 2019 reported opposition to a US company's export to affiliates of United Aircraft Corp. (which is owned by Rostec) of high-tech composite material needed for new-generation Russian passenger liner MS-21
    - and reported related US pressure on Japanese producer of same material
    - this sparked Russian gov't support development of local substitute (see most recent [report](#) of progress)
- BIS FAQ clarifications and license applications / actions (including re offshore drilling) – quite strict to date, like OFAC
- And see BIS May 2015 [Guidance](#) on Due Diligence to Prevent Unauthorized Transshipment / Reexport of Controlled Items to Russia
  - Expresses BIS concern “about efforts by front companies and other intermediaries who are not the true final end users...”
  - Special focus on third-country freight forwarders and other dubious parties listed as an export item's final destination

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- Related notes on transshipment etc.:
  - Be wary of relying on a “we only shipped to a third-country distributor / warehouse” defense (generally for Russia, and for Crimea in particular – see slide [40](#) below)
  - The prevailing “knowledge or reason to know” standard (developed for Iran, but applies generally)
  - Various pronouncements / cases to date (see the Epsilon Electronics case [decision](#) in particular)
  - And another OFAC similar enforcement action in 2018: a US company was fined for knowingly shipping controlled hi-tech goods (silicon diode switches, etc.) to like-named sub. of known Russian defense industry SDN Almaz-Antey through Canadian and Russian distributors (and the purchaser end-user evidently was known to the seller)
    - i.e., this was not a case of selling through distributor to unlimited/unknown buyers in Russia
    - provides vivid reconfirmation of the importance of a company’s having meaningful, not just facial, screening program and due diligence in all proposed Russian-related dealings
    - similar OFAC settlement agreement involving trucks diverted to Iran (see slide [13](#) above)
    - and recent OFAC Oct. 2019 enforcement action involving a large US company and Canada/Cuba (and various others since then)
- Possible penalties
  - Essentially same as for OFAC, and now CAATSA too, sanctions violations (see slides [25](#) and [60](#))
  - Plus denial of US export privileges (incl. that no one can export US items to the penalized co.)
- *Note again: BIS and OFAC licensing / enforcement authority often overlaps – and thus thorough analysis of both sets of rules, and perhaps authorizations from both agencies, may sometimes be needed for one and the same proposed transaction*

# US Direct Sanctions – SDNs

## Specially Designated Nationals (SDN) List

- Based on EOs 13660 and 13661 of March 2014, etc.
- These are the US “direct” sanctions (as opposed to the SSI “sectoral” sanctions)
  - All US persons’ dealings with – including payments to or receipt of goods / services from – individuals or company SDNs (and subsidiaries) are generally prohibited, and US persons must block their assets
  - Possible further penalties – essentially same as above for other OFAC (and BIS) sanctions violations
- Plus risk of application of CAATSA-based secondary sanctions – see slides [47-60](#) below
  - Against non-US companies / individuals that initiate or continue dealings with designated SDNs (“for knowingly facilitating significant transactions for or on behalf of” them – per OFAC April 2018 release)
  - See also OFAC FAQs [574](#), [579](#), [580](#) and [627](#) – and see generally slides [59-60](#) below
  - *Note: there have been some CAATSA-based SDN designations to date (including Russian companies and individuals in the cyber sector)*
- Some industry executives / oligarchs have been on OFAC’s SDN list since 2014 (and expanded further in 2015-20) – most notably
  - Initially Messrs. Sechin, Timchenko, Rotenberg – and then Technopromexport’s CEO (per the Siemens turbines scandal of 2017)
  - April 2018 dramatic expansion: including Messrs. Deripaska (control of RUSAL, En+, Basic Element, GAZ Group, etc.), Vekselberg (controls Renova, etc.), Miller (Gazprom CEO), Kostin (VTB CEO), Bogdanov (Surgutneftegaz CEO) and Kerimov
  - These designations followed the US Treasury Dept. CAATSA sec. 241 Report to Congress listing many of Russia’s senior political figures, oligarchs, and “parastatal entities” (see slides [56-57](#))
  - And most recently Didier Casimiro of newly SDN-designated Rosneft Trading S.A. under Venezuela sanctions (see slide [5](#)).

# US Direct Sanctions – SDNs (*cont'd*)

- Such individual-person listing
  - Bars US persons' dealings with them or their controlled companies, blocked assets etc.
    - generally measured by  $\geq 50\%$  shareholding (incl. by two or more SDNs) – see OFAC FAQs [398-402](#)
    - *the dramatic expansion per the April 2018 designations of Messrs. Deripaska and Vekselberg – and given their vast direct and indirect controlled-company holdings*
  - Doesn't bar dealing with *non-SDN company* where SDN person is just officer/director, etc. (e.g. Mr. Sechin - Rosneft ... and also Messrs. Miller, Kostin, Bogdanov, etc.)
    - except is now clearly interpreted to bar having an SDN-individual executive signing a contract on behalf of a non-SDN company with US person (OFAC FAQs [398](#), [400](#) – and see FAQ [585](#))
    - and US companies must also be cautious even re “mere” negotiating with such SDN-individual executive (or his/her signing non-binding preliminary documents) acting on behalf of a non-SDN company, or transactions where the SDN-individual is otherwise directly involved
    - note the July 2017 OFAC \$2 million penalty imposed on a large US company for Mr. Sechin's signing Rosneft JV documents in 2014 – *but see 31 Dec. 2019 US federal court decision vacating that penalty, while reinforcing that now US persons are on fair notice* (see slide [9](#))
    - in light of the above, is a US person serving on a Russian company board of directors together with an SDN person still OK – e.g. Rosneft - Dudley / Sechin? (but there is a clear bar on a US person's serving on the board of an SDN company (see FAQ [568](#)))
    - in any event, also need to keep in mind separate SSI sanctions / restrictions re such companies (e.g., Gazprom, Surgutneftegaz and VTB)

# US Direct Sanctions – SDNs (*cont'd*)

- Dramatic SDN company designations of April 2018 (and wind-down periods set by General Licenses (GLs) for dealings with them), including
  - En+, RUSAL, Basic Element, GAZ Group, EuroSibEnergO, Russian Machines, others (linked to Mr. Deripaska)
  - Renova (linked to Mr. Vekselberg)
  - As well as any other companies ultimately owned  $\geq 50\%$  by any of the SDN individuals
- Then OFAC's SDN delisting of Deripaska-controlled companies – RUSAL, En+, EuroSibEnergO
  - In Jan. 2019 per OFAC [Update](#)
  - Benefited these three companies and their subsidiaries, but Mr. Deripaska himself (and any company he continues to hold  $\geq 50\%$  of) remain as SDN per his April 2018 designation
  - Followed the three companies' petition to OFAC (per 31 CFR § [501.807](#)) and months-long negotiation (and several related General Licenses / extensions during that period – see slide [37](#)), and based on the following agreed strict restructuring and governance change undertakings:
    - reduction of Deripaska's direct and indirect shareholding stakes in these companies to below 50% (and a further limitation on his voting rights in En+)
    - overhauling the composition of their boards of directors (including majority to be independent directors, and half of board of En+ to be US or UK nationals)
    - various restrictive steps re corporate governance (to further assure that Deripaska can't exercise a controlling influence)
    - and further assurances of transparency via extensive ongoing audit, certification and reporting requirements vis-à-vis OFAC
  - Also conditioned on En+ (and RUSAL and all other companies controlled by En+) not shifting to incorporation in Russia without new Board and OFAC approval
  - And these companies are subject to redesignation if any of the agreed terms are violated

# US Direct Sanctions – SDNs (*cont'd*)

- Unclear why these particular private-sector individuals and companies were singled out in April 2018
  - See the OFAC 6 April 2018 [Press Release](#) which gave a reason for each designation (but many were vague)
  - These designations hit hard – for the first time in the heart of Russia’s private-sector economy
  - Note the remarkable rapidity and number of follow-on GL and FAQ issuances (see next slide) to help deal with the serious consequences of the April 2018 SDN designations – especially re RUSAL
  - More to come from the Jan. 2018 “Oligarchs List”? (depends ongoing course of US-Russia events) – *but nothing more yet* (and on the contrary, the Jan. 2019 En+, RUSAL and EuroSibEnergo delistings)
  - The proposed new DASKA Act, if ever enacted, would call for more such oligarch designations (see slide [66](#))
- *Further note: the Deripaska companies’ delistings were based in large part on the unintended consequences of the SDN designations for the US (and world) aluminum market etc. – and thus may well not be readily achieved by other Russian SDNs*

# US Direct Sanctions – SDNs (*cont'd*)

- And related OFAC [6 April](#), [23 April](#) FAQs [567-582](#) and more on [1](#), [22](#) and [25](#) May, and [14 Sept.](#) 2018 (FAQs 625 and 626 – see next slide) – giving guidance to US persons re continued relations with any such designated SDN company (or those also covered by the 50% rule) or individual, including:
  - Employment by or board service at such a company
  - Purchase / import of goods from such a company
  - Ownership of such a company's shares or GDRs
  - Holding accounts or other property of such a company or individual
- Note the possibility that Deripaska's GAZ Group (automotive giant) might eventually be SDN-delisted upon ownership restructuring etc. (see slide [12](#) re the most recent maintenance/wind-down extension GL to 22 July 2020 – and see next slide for interpretation of such GLs)
- And note Russian-American physicist/entrepreneur V. Gapontsev's successful legal challenge to his 2018 OFAC "Oligarch List" designation – seems a special case: notified by OFAC [letter](#) of 11 Sept. that he "is not an oligarch in the Russian Federation for purposes of Section 241 of CAATSA" (see slides [12](#), [57](#)); this lifts cloud from him and his Mass.-based company IPG Photonics
- Still pending Vekselberg and Deripaska US court challenges against their OFAC SDN designations (see slide 12 above re more recent status of both)
  - Vekselberg- and Renova-linked US investment management cos. and GP entities, who are not SDNs but whose assets were blocked because of Vekselberg/Renova majority ownership of the funds as LP, filed [complaint](#) in US federal court in 2019 – basically challenging OFAC's 50% rule as applied to them
  - Deripaska also filed [complaint](#) in US federal court in 2019 challenging his SDN designation
- *Specific advice should be sought for each particular situation involving these April 2018 designated SDN companies (or companies held ≥50% by them)*

# US Direct Sanctions – SDNs (*cont'd*)

- The OFAC FAQs re “maintenance” of operations, contracts etc. with SDNs En+, RUSAL, EuroSibEnergo, GAZ Group (and their subs) – *all of which except GAZ have now been delisted*
  - These are [FAQs 625 and 626](#) of Sept. 2018, which refer specifically to the General Licenses of earlier in 2018 re these specific companies (but may well also have more general application in other analogous GL-based maintenance/wind-down situations)
  - Interpretation is given (essentially formalizing existing OFAC practice) as to what may be considered “maintenance” (in context of those GLs’ phrasing “... ordinarily incident and necessary for the maintenance or wind down of operations, contracts, or other agreements ...”) re what ongoing activities are permitted until the current (and as may be extended) wind-down deadline
  - On condition that such activities are consistent with the applicable GL, and with “transaction history” / “past practices” with the blocked entity prior to 6 April 2018
  - And “transactions and activities that are not within the framework of a pre-existing agreement may be considered ‘maintenance’ if such activity is consistent with [the parties’ pre-designation transaction history].”
  - Also gives authorization for “contingent contracts” (again, only if consistent with the above) for transactions / activities extending beyond the current valid GLs expiration, where any performance after the expiration is contingent on such performance either not being prohibited or being authorized by OFAC (e.g., by possible GL further deadline extension or by specific license)
  - But stockpiling of inventory, even if pursuant to a pre-designation contract, is not authorized unless consistent with past practice in scope and extent, as evidenced by transaction history
  - *Note that GL 36A of 12 March 2020 re Rosneft Trading / TNK Int’l Trading doesn’t mention “maintenance” – only wind-down; significance?*

# US Direct Sanctions – SDNs (*cont'd*)

- Specific licenses – needed (especially by a US person) for any activity vis-à-vis an SDN that is otherwise prohibited by law, absent coverage by any general license or specific private license
  - These may be / are granted by OFAC to allow certain transactions such as purchases / sales or money transfers to or from an SDN for a longer period than an applicable general license allows (or if no general license applies)
  - For example, [see](#) the report of Swiss pump-maker Sulzer obtaining two such licenses in April 2018, allowing (i) its buyback of shares from new SDN Mr. Vekselberg to reduce his holding to below 50%, and (ii) the related unblocking of Sulzer's US bank accounts
  - Also the Oct. 2019 private license(s) reportedly granted for an SDN'd Chinese-owned ship to onload cargo (and various other examples reported from time to time)
  - And such licenses may be granted to allow US lawyers to advise / collect fees from SDNs on sanctions compliance (incl. possible help in trying for SDN delisting)
- Possible SDN delisting – e.g., En+, RUSAL, EuroSibEnergo Jan. 2019 success, GAZ possibly to come, and some other applications or challenges pending

# US Direct Sanctions – SDNs (*cont'd*)

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- Possible SDN delisting – e.g., En+, RUSAL, EuroSibEnergo Jan. 2019 success, GAZ possibly to come, and some other applications or challenges pending

# US Direct Sanctions – SDNs (*cont'd*)

- Further 2015-20 SDN designations – persons / companies under EOs 13661, 13662, etc. – including against:
  - Several more Russian officials in connection with the Ukraine/Russia Kerch Strait incident, Russian defense industry enterprises and four entities operating in Crimea, etc.
  - Some coordinated with similar EU and Canada actions
  - Including for alleged election interference operations
  - [30 Sept. 2019](#) designations of employees of already blacklisted Internet Research Agency (IRA), private jets and yachts of Evgeny Prigozhin (also an SDN already) and his front companies that allegedly finance IRA, under related Trump EO re election interference (see slides [13](#) and [42](#))
  - [5 Dec. 2019](#) cyber-criminal designations (re malware infesting financial institutions worldwide)
  - And most recent [29 Jan. 2020](#): further individuals in Crimea, and rail carrier running to Crimea across new bridge
- The Jan. 2018 addition of several Russian companies (including *Power Machines*) and officials involvement in transfer of turbines made by a Siemens Russian JV co. to Crimea
- Several Crimean commercial port and transport companies (and some Russian ships that call in Crimea), companies involved in the Kerch Strait and other Russia / Crimea transport projects, banks and resort complexes are also named
- Also a number of Russian defense industry companies (as supplemented 6 April 2018)
  - Including *Rosoboronexport* (ROE – Russia's giant arms-export enterprise, a sub of Rostec ... an existing SSI per OFAC Directive 3 and on LSP) – and ROE's sub Russian Financial Corp (RFK Bank)
  - And note Nov. 2018 SDN designations of three human rights abusers per CAATSA section 228
- And June 2017 (Independent Petroleum Co. – NNK, and a sub.) for dealings with North Korea – but now *delisted* as of 2 March 2020 (see slide [12](#))

# US Direct Sanctions – SDNs (*cont'd*)

- Note: the State Dep't Oct. 2017 CAATSA section 231(d) listing of Russian defense / intelligence sector entities (see slide [52](#)), supplemented with 45 additional individuals and entities in late 2018
  - This is the List of Specified Persons (“LSP”): doesn’t itself impose SDN (or any other sanctions) on them
  - *But*
    - many were already SDNs and some were SSIs (including Rosoboronexport – now is both), and
    - there is likely chilling effect in practice on US / other companies’ willingness to do business with them (see linked list of them at slide [49](#)), and
    - other companies risk having some SDN-like sanctions imposed on *themselves* under CAATSA section 235 for some kinds of “significant transactions” with them (see below-linked State Dep't announcement (slide [49](#)), and slides [52](#) and [54](#) below)
  - See further discussion on this at slides [52](#), [54-55](#) and [59](#) below
- And [SDN designations of Sept. 2018](#) – per CAATSA section 231 (defense/intelligence-related)
  - Against
    - EDD (Equipment Development Dep't), a weapons-purchasing entity of the Chinese military – for taking delivery of advanced aircraft and missiles from Rosoboronexport of Russia, which is on the CAATSA section 231 List of Specified Person (LSP), and is also an SDN (see slide [52](#) below) and EDD’s director
    - these were the first-ever SDN designations under CAATSA section 231 (for significant transactions with the Russian defense or intelligence sectors)
    - announced by State Dep't (see the above link – which also set out the specific sanctions chosen and being applied) – and see the corresponding OFAC SDN designations [announcement](#) of 20 Sept. 2018

# US Direct Sanctions – SDNs (*cont'd*)

- SDN designations per CAATSA sec. 224 (cybersecurity) and various EOs
  - Dec. 2018: against 18 individuals (including one associated with Mr. Deripaska) and four companies for 2016 election interference, WADA hacking, and other malign activities – see OFAC [Notice](#) and related [Press Release](#)
  - Nov. 2018: various Russia (and Middle Eastern) individuals and entities in connection with petroleum shipments to Syria – see OFAC [Notice](#) and related [Advisory](#)
  - Nov. 2018: several individuals and entities, mostly related to Crimea and the breakaway areas of eastern Ukraine – see OFAC [Notice](#) and related [Press Release](#)
  - Sept. 2018: against a Chinese company, its North Korean CEO, and its Russian Vladivostok-based sister company for allowing North Korea to earn revenue from overseas IT workers – thus undermining the US's denuclearization negotiations with North Korea – [link](#)
  - August 2018: against
    - (i) two Russian shipping companies, and six vessels, for helping North Korea evade the UN ban on its oil trade – [link](#); and
    - (ii) two Russian individuals and Russian and Slovak companies, for helping an already-sanctioned Russian company (Divetechnoservices) procure goods and services for the FSB – alleged thus to be helping improve Russia's cyber systems for RF gov't agencies – [link](#)
  - June 2018: against several Russian entities and individuals (including Divetechnoservices), for providing support for / enabling FSB – [link](#)

# US Direct Sanctions – SDNs (*cont'd*)

- [Executive Order 13848 of 12 Sept. 2018](#) – re election interference
  - Authorized imposition of asset blocking and exclusion from the US etc. against any individual or entity found to have directly or indirectly engaged in, concealed or otherwise been complicit in foreign interference in a US election, to have assisted in such, or to be owned or controlled by or to have acted for such, etc.
  - Builds on existing Obama Administration EOs 13694 of 1 April 2015 and 13757 of 28 Dec. 2016, and leaves them in effect
  - And sections 1 and 3, taken together, would authorize additional sanctions against individuals / entities found in the future to have directly or indirectly participated in any such foreign state-related US election interference activities
  - Attempts to specify what constitutes election interference (perhaps to clarify “red lines” for Russia)
  - Further OFAC implementing regs. are supposed to follow, but none yet
- The Mueller Report of March 2019 served to reignite this debate (and there are already some accusations re the upcoming US 2020 election)

# US Direct Sanctions – SDNs (cont'd)

- Two general licenses issued by OFAC to respond to / correct overbroad reach of the 1 Sept. 2016 and 29 Dec. 2016 designations of GGE and FSB as SDNs (re GGE activities in Crimea and FSB alleged involvement in hacking / election-tampering):
  - OFAC [General License No. 11](#) of 20 Dec. 2016 (entitled “Authorizing Certain Transactions with FAU Glavgosekspertiza Rossii” - GGE)
    - gives general authorization for “all transactions and activities ... that are ordinarily incident and necessary to requesting, contracting for, paying for, receiving, or utilizing a project design review or permit from [GGE]’s office(s) in [Russia]”
    - except for carving out (i.e., still prohibiting) anything to do with GGE relating to Crimea
  - OFAC [General License No. 1A](#) of (as amended 15 March 2018 to take account of / synchronize with CAATSA) under the cyber-related sanctions – entitled “Authorizing Certain Transactions with the Federal Security Service” (FSB)
    - gives authorization for “all transactions and activities ... that are necessary and ordinarily incident to ... requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by [FSB] for the importation, distribution, or use of information technology products in Russia”
    - but export, reexport, or provision of any goods or technology subject to the EAR requires BIS license, and fees payable to FSB shouldn’t be  $\geq$ \$5,000 annually
    - compliance with FSB law enforcement / administrative actions or investigations as well as regulations administered by FSB is authorized

# US Direct Sanctions – SDNs (cont'd)

- And note OFAC FAQs [501-504](#) (as amended in March 2018) repeating / clarifying certain points of General License No. 1A
  - Exportation of hardware and software directly to FSB or when FSB is end-user is prohibited
  - No license needed to clear Russian border control (which is under FSB jurisdiction)
- At the same time, keep in mind the various cyber-related SDN designations to date for assisting / enabling certain FSB activities etc. (see slide [41](#) above), and likelihood of more such
- And the related carve-out, per Oct. 2017 State Dep't CAATSA section 231 [Guidance](#), on required regulatory dealings with the FSB – while generally section 231 warns / sets new risk re “significant transactions” with FSB (see slide [52](#) below)
- Further recent SDN designations of note affecting Russia – though not under the Russian sanctions regime itself
  - Trading affiliates of Rosneft: Feb.-March 2020 SDN designations, re Venezuela/PdVSA crude oil business – but late-March reported Rosneft sale of Venezuela assets might lead to delistings (see slides [5-6](#))
  - Two subs of a Chinese state shipping giant, SDN-designated Sept. 2019 for carrying Iranian crude (then one delisted in Jan. 2020 – see slide [9](#))

# US Direct Sanctions – SDNs (cont'd)

- OFAC [“Guidance on the Provision of Certain Services ...”](#) of 12 Jan. 2017 (and [FAQs 495-499](#))
  - Provides some clarity as to what a US person (citizen or permanent resident) legal counsel (in-house or outside) or compliance officer can/can't do in advising a non-US company (employer, client) on the legality of proposed transactions under the US sanctions laws
  - Essential point: can advise on whether complies / violates (and approve if clearly complies ... e.g., upon OFAC authorization); but can't otherwise “facilitate” a violative transaction ... by voting at Board level, signing, etc.
  - *Indeed, as a general matter, “facilitation” (re a US person's direct or indirect participation in a non-US person's sanctions-relevant activity – involving not only SDNs but also SSIs) is a complex, case-by-case determination requiring careful factual analysis to determine whether any such US person's actions may be viewed as facilitating prohibited transactions or activities*
- And OFAC general (not Russia-specific) 2019-20 releases of note
  - New FAQs [819-820](#) of 20 Feb. 2020 on amendments to the OFAC's Reporting, Procedures and Penalties Regulations (RPRR)
    - clarifying that both US persons and *persons otherwise subject to US jurisdiction* (e.g., foreign banks handling USD transactions) are required to report to OFAC on a rejected transaction within 10 business days, and elaborating on the info required to be collected/submitted
    - see the underlying RPRR [amendments](#), 20 June 2019 (re blocking, unblocking, and rejected transactions reporting, and licensing procedures, etc.)
  - Framework for OFAC [Compliance Commitments](#), 2 May 2019 (including indication of OFAC intent to focus more on enforcement against responsible executives of companies, US as well as non-US, that have violated sanctions)
  - [List](#) of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA List) – 14 March 2019

# US Crimea Sanctions

- Crimea-focused Executive Order 13685 of Dec. 2014
  - Bars all new direct or indirect US investments / transactions into Crimea – including for energy sector / offshore areas
  - There are also Jan. 2015 BIS rules implementing this EO (see slide [16](#))
  - And many Crimea-related SDN designations (entities and individuals) from 2014 to date (slide [41](#))
- And see July 2015 OFAC [Advisory Release](#) re circumvention / evasion by omitting critical information in financial and trade transactions (further to the EO)
  - OFAC warns re
    - various patterns / practices in financial transactions that hinder correspondent banks' efforts to identify and interdict (*note the very substantial fines suffered in recent years by various European banks for similar-type violations of OFAC sanctions – against countries other than Russia / Crimea*)
    - and similar practices in trade transactions – incl. in distributorship arrangements covering Russia
    - and OFAC advises various types of mitigation measures for these risks
- Note also these OFAC Crimea-related General License exceptions, including:
  - No. [4](#) of Dec. 2014, permitting various food and agricultural products (including soft drinks, cigarettes, etc.) and medicines, medical supplies and devices
  - No. [9](#) of May 2015, permitting common internet communications (see related OFAC FAQ [454](#))
- Further SDN designations (somewhat coordinated w/Canada and EU) following 2018 Kerch Strait Ukraine/Russia navies incident: in Sept. 2019, of 3 officers and 5 vessels of already blacklisted Sovfracht and its front co. Maritime Assistance; and in Jan. 2020 (slide [39](#))

# CAATSA / Guidances / Lists

- CAATSA (Countering America's Adversaries Through Sanctions Act)
  - Signed into law by President Trump in August 2017 (after passage through both Houses of Congress by near-unanimous vote)
  - Full text is [here](#) (Public Law 115-44) – the Russia-related part is Title II, sections 201-292
  - Eastern Ukraine / Crimea situation, alleged US (and European) election meddling, and Syria were/are the three bases for it
  - Broadened / toughened the pre-existing sanctions as contained in six Executive Orders, the Ukraine Freedom Support Act of 2014 (the "UFSA") and another 2014 law in support of Ukraine (now amended by CAATSA)
  - Also has framework authorization for some new *primary sanctions* (aimed at US persons, or dealings having some other nexus to US) and *secondary sanctions* (aimed at non-US persons – and not needing any US nexus)
  - Dramatically widened the gap between US and EU sanctions against Russia

# CAATSA / Guidances / Lists (*cont'd*)

- By Presidential Memorandum of 29 Sept. 2017
  - CAATSA implementation functions are delegated mostly to State and Treasury Dep'ts (and in consultation with Director of National Intelligence)
  - with primary responsibility given to one or the other, on CAATSA article-by-article basis
- And note EO 13849 of 20 Sept. 2018 setting out certain CAATSA sanctions implementation details for State and Treasury (see slide [58](#) below)
- CAATSA also covers Iran and North Korea – introduced stiffened primary and secondary sanctions with regard to those two countries
- The ever-tightening Iran, North Korea, Venezuela and Syria sanctions, aside from CAATSA, can also continue to affect some Russian (and Chinese) companies, banks, etc. (but those other-countries sanctions regimes are not further covered in this CAATSA summary)
  - e.g., most recently, Feb.-March 2020 SDN'ing of two Rosneft subs. – re Venezuela (see slides [5-6](#))
  - and Sept. 2019 SDN designation of two Chinese cos. (and Jan. 2020 delisting of one of them) – re Iran (see slide [9](#))
- And keep in mind
  - potential application of CAATSA secondary sanctions to non-US companies for dealings now barred for US persons under CBW Act second-round sanctions of 2019 – e.g., primary-market purchase of Russian non-ruble sovereign debt, or US bank lending to Russian sovereign (see slides [64-65](#))
  - the possible further broad expansion of Russia primary and secondary sanctions provisions by the proposed DASKA Act which, if ever enacted, would amend CAATSA (see slide [66](#) below)

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA's basic content (as Russia-relevant)
  - Codification by statute
    - of the existing Russia blacklist (SDN) and sectoral (SSI) sanctions enacted by the series of EOs since 2014
    - which make it harder for President Trump (and successors) to narrow or otherwise loosen any of these sanctions by exec. action – would require new law to repeal CAATSA (*recall Jackson-Vanik Amendment's decades-long life*)
  - State / Treasury Dep'ts in Oct. 2017 issued important Guidances (and FAQs, Entity List, revised Directives) per various sections of the new law
    - State Dep't on 27 Oct. 2017 issued CAATSA section 231(d) List of entities in the Russian defense / intelligence sectors: section 231 requires President to impose sanctions on any US or non-US person, wherever located, that the President determines has knowingly engaged in a “significant transaction” with a Russian defense / intelligence sector entity on the [List of Specified Persons](#) as of now (and associated [Public Guidance](#) – and see further slides [52](#) and [55](#) below)
    - State Dep't also issued on 31 Oct. 2017 [Public Guidance](#) on CAATSA section 225 (requiring President to impose sanctions on non-US persons that invest in certain types of oil projects in Russia) and section 232 (giving President discretion to impose sanctions on US or non-US persons that invest or are otherwise involved substantially in construction / modernization / repair of Russian energy export pipelines) – see further slides [53-54](#) below
    - OFAC (Treasury Dep't) on 31 Oct. 2017 issued its initial [Guidance](#) (including some revised and new FAQs) to implement various CAATSA provisions for which it has primary authority – including amended / expanded Directive 4 (re Arctic offshore, deepwater and shale projects) and three other CAATSA provisions (see further slides [50-55](#) below)
    - and see FAQs [540-547](#), [579](#) and [589](#) (all from Oct. 2017 or after) re “significant transaction”, “facilitation” and other related CAATSA application issues

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA stiffened existing OFAC Directives 1, 2 and 4 (*this is essentially for US persons – see slides [18-20](#)*)
  - *Directive 1*: permissible “new debt” of designated Russian banks was reduced from max. 30 to 14 days
  - *Directive 2*: permissible new debt of designated Russian energy cos. was reduced from max. 90 to 60 days
  - *Directive 4*: the prohibition on goods / services / technology involvement in deepwater, Arctic offshore or shale projects was expanded from Russia to worldwide
    - ❖ but, for outside Russia, applies only to “new” projects (see slide [20](#) above)
    - ❖ if one / more of designated Russian energy companies has ≥33% ownership or >50% voting interest
  - All of this was then implemented by OFAC amendments of the relevant Directives – see slides [18-25](#) above
- Per [CAATSA section 223\(a\)](#), expansion of *potential* industry coverage of the OFAC sanctions (beyond financial services, energy, engineering / defense-related) – see FAQ [539](#)
  - to *state-owned* (i) railway (= RZhD, the Russian State Railway), and (ii) mining & metals companies
  - but shipping industry was left off this expanded list; and nuclear power industry also didn't appear despite previous consideration of including it
  - and even as to railway and mining & metals sectors, the Oct. 2017 OFAC Guidance makes clear that this is only discretionary – no such actual expansion to date, and no sign of its coming
- *Requiring review / approval by Congress*
  - per CAATSA section 216 – before President can terminate or waive existing sanctions (or grant any non-routine-type license that “significantly alters” foreign policy re Russia)
  - apparently including SDN delistings – such as those of En+, RUSAL and EuroSibEnergolast year (Congress was notified, and opposition was insufficient to block)
- Reality check: Despite all the “President shall impose” CAATSA sanctions language (see slides [51-54](#)), to date there has been no case of such imposition on any non-US person
  - save for a few in the cyber-security and defense sectors (i.e., none yet in the purely civilian-economy space (see slides [39-41](#) above)
  - *but* notable recent secondary sanctions imposed on non-US persons under Venezuela (two Rosneft oil trading subs.) and Iran (two Chinese entities) sanctions programs (see slides [5-6, 9](#))

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA: *requires* the President to impose sanctions – from a few menus of possibilities, mostly involving penalties re business with/in the US – in various contexts (*upon findings, and with some carve-outs / waiver possibilities – in other words, de facto discretion*) including against:
  - per CAATSA section 224 – US or non-US persons that knowingly engage in significant activities undermining cyber-security on behalf of the Russian gov't, materially assist, sponsor, or provide support for, or provide financial services in support of same (no general State or OFAC Guidance yet on this provision – but there has been some application ... see slides [39](#) and [41](#))
  - per CAATSA section 225 (and see the Oct. 2017 State Dep't Guidance), *non-US* companies and individuals that knowingly make significant investment in deepwater, Arctic offshore or shale oil projects in Russia (as written, could be whether or not one of the Directive 4 Russian cos. is involved – and the State Dept. Guidance doesn't clarify)
  - per CAATSA section 226 (and see the Oct. 2017 OFAC Guidance), *Russian and other foreign financial institutions ("FFIs")* that knowingly engage in / facilitate "significant" transactions involving any of the Directive 4-type oil projects in Russia, certain defense-related activities, or Gazprom's withholding of gas supplies
  - per CAATSA section 228 (and see the Oct. 2017 OFAC Guidance), *non-US* companies and individuals that knowingly – *this being the broadest / most worrisome CAATSA provision*
    - ❖ materially violate, attempt or conspire to violate or cause a violation of *any* Russia sanction
    - ❖ facilitate "significant transactions" (including "deceptive or structured transactions") for or on behalf of any person that is subject to *any* Russia sanction – or child, spouse, parent or sibling of same
    - ❖ though the related OFAC Guidance does go some way to calm fears of over-expansive application with respect to SSI sanctioned entities (see slides [58-59](#) below for details)
    - ❖ but note also the section 225 stiffened requirement to impose sanctions on any FFI that knowingly facilitates a significant financial transaction for any SDN

# CAATSA / Guidances / Lists (*cont'd*)

- per CAATSA section 231 (and see Oct. 2017 State Dep't List and Guidance), *US or non-US* companies and individuals that knowingly engage in a significant transaction with a Russian defense / intelligence sector entity on this List of Specified Persons
  - ❖ see the List, expanded as of December 2018 (see slides [39-40](#) above) – and again note that a company's appearance on it doesn't itself mean any new sanction against it ... (but some are already SDNs or SSIs – *e.g.*, *Rosoboronexport*, which was on the list, has since been made an SDN)
  - ❖ these include some defense-sector companies that also have important civilian-oriented production (*e.g.* Sukhoi, Tupolev, and holding companies United Aircraft, United Shipbuilding)
  - ❖ but the State Dep't Guidance (in FAQ) stresses that:
    - ✓ for now at least, purely civilian end-use / end-user transactions, and not involving intelligence sector, are not likely to be considered “significant”
    - ✓ and that transactions with the FSB (which is also on the List) are unlikely to be considered “significant” if necessary to comply with FSB rules or law enforcement / admin. actions / investigations involving FSB re import / distribution / use of IT products in Russia and payment of related processing fees to FSB (*i.e.*, this dovetails with OFAC General License No. 1 of Feb. 2017 – see slide [41](#) above)
  - ❖ and from another State Dep't release of Sept. 2018 it appears that only the actual listed companies and not necessarily their subsidiaries are covered (at least not yet)
- per CAATSA section 233 (and see Oct. 2017 OFAC Guidance), *US or non-US* cos. and individuals that with actual knowledge make or facilitate investments into privatization of Russian state-owned companies (of \$10M, or combination \$1M+ bites for \$10M total in a year) where the process “unjustly benefits” RFG officials or their close associates / family (*this is also one of the CAATSA sections covered in further Sept. 2018 EO – see slide [58](#)*)

# CAATSA / Guidances / Lists (*cont'd*)

- Per CAATSA section 232 (and see Oct. 2017 State Dep't Guidance), creating *discretionary* power for the President, *in coordination with US allies*, to impose various possible sanctions on US or non-US cos. or individuals that knowingly invest or are otherwise involved substantially in construction (or modernization, repair) of *energy export pipelines* by Russia – *e.g., Nordstream 2* – namely:
  - make an investment that directly and significantly contributes to the enhancement of Russia's ability to construct energy export pipelines, or
  - sell, lease or provide to Russia, for such construction purpose, goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of construction, modernization or repair of Russian energy export pipelines
  - if any of the above has fair market value of >\$1 million, or an aggregate fair market value of >\$5 million during any 12-month period
  - there are some further softening points re CAATSA section 232 in important 2017 State Dep't Guidance clarification – namely:
    - ❖ covers only energy export pipelines that originate in Russia, and not those originating outside and transiting through Russia – *thus, safe harbor for the CPC pipeline (but not gas lines from Central Asia?)*
    - ❖ and would not target investments/activities related to standard repair / maintenance of pipelines already in commercial operation as of 2 August 2017
  - BUT see slides 7-8 re the now-enacted Dec. 2019 actual sanctions against Nordstream 2 (and Turkstream)

# CAATSA / Guidances / Lists (*cont'd*)

- *Thus CAATSA has introduced a range of possible “secondary sanctions” – i.e., aimed at non-US persons (as well as potential new sanctions against US persons for certain conduct)*
  - whether or not there is any US person / US nexus
  - but OFAC’s Oct. 2017 CAATSA Guidance reflects recognition that it would be inappropriate to penalize any / all foreigners’ activities – *i.e.*, various possible dealings with SSIs (as opposed to SDNs) that aren’t prohibited for a US person
  - for example
    - ❖ per OFAC’s section 226 Guidance, FFIs are not to be subject to sanctions solely on basis of knowingly facilitating significant financial transactions on behalf of an SSI listed under Directives 1-4
    - ❖ and per OFAC’s section 228 Guidance (appearing as FAQs [544-546](#) – and see FAQ [585](#) as well):
      - ✓ a transaction isn’t “significant” if US persons wouldn’t need a specific OFAC license to participate in it
      - ✓ and if involves only an SSI entity there must also be a deceptive practice (attempt to obscure, conceal, evade) to be considered “significant”
      - ✓ and even if an SSI entity is involved, and also involves deceptive practices, it is still not automatically “significant” – rather, totality of circumstances (bearing in mind the below-specified factors) are considered
  - *but, caveat re the above and below references to US gov’t agency “guidances” or FAQs:*
    - ❖ *they may be changed without notice*
    - ❖ *and in any event are not alone dispositive or otherwise sufficient to pursue a particular course of action, without specific agency authorization and/or targeted professional advice*

# CAATSA / Guidances / Lists (*cont'd*)

- what is a “significant” transaction (in “totality of the facts and circumstances”)?
  - ❖ in the State Dep't and OFAC Oct. 2017 Guidances, there are slightly differing elaborations of the “totality of facts and circumstances” factors taken into account, in view of the differing focuses of the specific CAATSA provisions at issue – but basic similarity
  - ❖ the State Dep't Guidance on section 231 implementation (re transactions with LSP-listed Russian defense / intelligence entities) highlights
    - ✓ relation to / significance of US national security and foreign policy interests, and significance of defense / intelligence nature
    - ✓ versus goods / services for purely civilian end-use / end-user weighing heavily against determination of significance
    - ✓ and also notes that unity with allied countries will be taken into account as a factor ... even with regard to such countries' purchase of Russian military equipment (from entities on the CAATSA section 231 List)
    - ✓ and see elaboration on this in State Dept's release and press conf. transcript of Sept. 2018 (see slide [58](#) for links)
  - ❖ the State Dep't Guidance on section 225 (re investments into certain Russian oil projects) notes, among relevant factors, “the relation and significance of the investment to the Russian energy sector”
  - ❖ the OFAC Guidances on sections 226 (re certain energy or defense-related activities etc.) and 228 (facilitating significant transactions for any sanctioned entity etc.) set out several factors
    - ✓ keying on size, number, frequency, nature, management's level of awareness / whether part of pattern of conduct / nexus with blocked person (for FFIs' financial transactions) / impact on statutory objectives / whether involves deceptive practices
    - ✓ and other factors deemed relevant on case-by-case basis

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA section 241 Report and Lists:
  - US Treasury Dep't in January 2018 issued its required Report to Congress (per CAATSA sec. 241) re Russia's senior political figures, oligarchs and parastatal entities
  - Comprising an [unclassified main report](#) with list-appendices, and a classified annex
  - This Report was not a sanctions list (as stated in the Report itself, and in OFAC's accompanying FAQ [552](#), and in CAATSA sec. 241 itself)
  - The unclassified part
    - listed 114 senior political figures – in the Presidential Administration, Cabinet of Ministers, and “other senior political leaders” (including the CEOs of many of Russia's largest majority state-owned companies such as Messrs. Miller, Sechin, Gref, Kostin and Chemezov – *some of whom were already or have since become SDNs*)
    - and 96 “oligarchs” – Russian individuals having a net worth estimated at \$1 billion (apparently just taken from the Forbes list, set out in alphabetical order ... *a few having since become SDNs – see slide [32](#) above*)
  - The classified annex (submitted only to Congress) apparently featured
    - a list of Russia's “parastatal entities” (companies having  $\geq 25\%$  state ownership and 2016 revenues of  $> \$2$  billion – see such an unofficial [list](#), in Russian, created / published by *Kommersant* newspaper on 30 Jan. 2018), an assessment of their role in Russia's economy, etc.
    - the oligarchs' (apparently including some not included on the unclassified list of 96) “closeness to the Russian regime” and sources of income, location of assets, etc.
    - an overview of key US economic sectors' exposure to Russian persons and entities
    - an analysis of possible impact of additional sanctions on these persons / entities

# CAATSA / Guidances / Lists (cont'd)

- Mixed messages from Trump Administration upon/since release of those Jan. 2018 Report / Lists
- But the April 2018 SDN individuals designations came from among those on the Jan. 2018 List (and there have since been some threats of more, including per the proposed DASKA Act if ever enacted)
- And subsequent public news reports and further private sense
  - that some leading oligarchs have been restructuring holdings (such as Messrs. Abramovich and Mordashov) to reduce potential or actual sanctions exposure
  - and a number of state / “parastatal” companies are making preparations for possible further sanctions imposition
- And a few legal challenges against inclusion on this List (e.g., successful Gapontsev case – slide [12](#))
- *Bottom-line note: companies considering dealing with any individuals or entities on these lists should have in mind the additional risks / due diligence concerns raised, and proceed with caution*
- And companion January 2018 report to Congress on the Effects of Expanding Sanctions to include Russian Sovereign Debt and Derivative Products (per CAATSA sec. 242)
  - Had an [unclassified main text](#); not clear if it also had a classified annex
  - Did not recommend in favor of such sanctions expansion (given the effects this would have on the ban on US and European, as well as the Russian, financial markets)
  - But note that a limited version of this sanction – ban on US banks’ participating in primary market for Russian non-ruble sovereign debt – is one of the new CBW Act second-round measures (see slides [64-65](#) below)
  - This limited Trump Administration measure may serve to forestall Congressional appetite for possible broader Russian sovereign debt ban

# CAATSA / Guidances / Lists (cont'd)

- [Executive Order 13849](#) of 20 Sept. 2018 – re implementation of certain CAATSA sections
  - Its detailed provisions, in four main sections, essentially authorize / amplify / guide implementation by State Dep't and Treasury Dep't (the two agencies that share most CAATSA application/enforcement authority), for cases where the President has determined to impose sanctions under four specific CAATSA sections
  - The CAATSA sanctions sections singled out here are
    - section 224(a) – re Russian activities undermining cyber-security (see slide [51](#))
    - section 231(a) – re transactions with the Russian defense/intelligence sectors (see slide [52](#))
    - section 232(a) – re development of Russian energy export pipelines (see slide [53](#))
    - section 233(a) – re investment in or facilitation of Russian privatizations (see slide [52](#))
    - *note that the sanctions authorized under all four of these CAATSA sections are impossible against both US persons (primary sanctions) and foreign persons (secondary sanctions)*
  - And see related OFAC FAQ [627](#) of 20 Sept. 2018 on this
  - Selection of these four CAATSA sections: some insights / questions
    - thus far, flowing from this EO the Trump Administration has imposed only new section 231 defense-related sanctions – against a Chinese state military enterprise and its director (see slide [40](#))
    - the special focus on section 231 enforcement is shown in the 20 Sept. 2018 [State Dep't release](#) and a related public release – and further emphasized in State's background briefing of same date (see the [Transcript](#))
    - not yet clear why only the specific other three CAATSA sections (re cyber, export pipelines and privatization – see above) were included – but there has been no CAATSA enforcement to date re pipelines (despite the new Nordstream sanctions basis – see slides [7](#) and [54](#)) or re privatizations
    - note that there *have been* some CAATSA section 224 (cyber-related) SDN designations (see slide [41](#)) – against Russian and other non-US entities and individuals (though not specifically linked to this EO)

# CAATSA / Guidances / Lists (*cont'd*)

- Some further CAATSA interpretative / application points
  - *Important issue*: whether all / any of these tightened and new anti-Russia secondary sanctions may be imposed against *Russian* as well as other non-US companies / individuals
    - by the technical CAATSA wording, yes – though such imposition against “target-country” persons isn’t traditional in US sanctions practice
    - and the fact of only CAATSA section 226 (amending UFGA section 5) being expressly aimed at “*Russian and* other foreign financial institutions” (emphasis added) might be taken as another sign that otherwise Russian entities/individuals are not intended to be caught – *i.e.*, that they are and can continue to be more easily targeted by existing/future *primary* sanctions as SDNs or SSIs
    - *but* in fact in 2018 a number of Russian companies and individuals have been SDN-designated for cyber-related activities under CAATSA section 224 (and we suppose that some Russian companies / individuals already put on the section 231 LSP List, or others, might be vulnerable to same); and there can be no guarantee that this trend may not spread to targeting Russian companies / individuals under other CAATSA sections too – but no such new enforcement actions yet in 2019
  - In any event, here again, the mere possibility / threat of such application against otherwise non-sanctioned or at least non-SDN Russian companies / banks now makes some of them pause before doing possible sanctions-targeted business with sanctioned or possibly sanctioned Russian companies (especially with SDNs) under any of the CAATSA provisions – *and see OFAC's 6 April 2018 press release re this*
  - And *non-Russian* companies / banks certainly have become more cautious about doing any such business with Russian companies (whether sanction targets or not) in general ... all the more so with the April 2018 SDN designations (core-economy oligarchs / their companies) and some newer US actions
  - Note: there is still an exemption for Russian suppliers for NASA or DoD space launches
  - And note the Russian counter-measures enacted in response to CAATSA and the April 2018 SDN designations (see slides [81-85](#) below) – and more still to come?

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA – potential penalties (same as for OFAC / BIS regs. violations – based on underlying laws)
  - Civil: approx. \$302,600 (per most recent inflation adjustment) *per violation*, or up to twice the value of the transaction that was the basis for violation
  - Criminal: up to \$1 million per violation, and individuals could be imprisoned (for up to 20 years) for criminal violations
  - These being in addition to the CAATSA-referenced menus of potential sanctions themselves – for non-US persons, involving various penalties re business in/with the US (and which can also include some possible personal penalties against CEOs / other officers of a sanctioned company)
- Possible consultation with US authorities
  - Many US, allied-nation and other companies have been seeking private clarifications from State and Treasury Departments re the possible CAATSA application to their Russian dealings
  - For example, note the reported approach to / blessing from State Dep't re a major non-US energy company's participation in Russia deepwater drilling in 2017 (and other companies' reported similar consultations re Russian unconventional resource project participation)
  - And India's apparently getting a specific waiver to protect it from CAATSA section 231 sanctions in connection with a major new arms purchase from Russia, under a special US defense law provision amending CAATSA to allow this (*contrast with treatment of China – see slide 40*)
  - But most Russian companies seem hesitant to do seek such, unless they need to
    - e.g., already-designated SDNs applying for delisting – *including En+, RUSAL etc. ... see slide 34*)
    - and some more direct court challenges to SDN and/or Oligarch List designations (see slides [12](#) and [36](#) above)

# The CBW Act

- History / first round – August 2018
  - Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (the “CBW Act”) and related EO 12851 of 11 June 1993
  - First announced by State Dep't [Determinations](#) notice in Aug. 2018 (as slightly amended in Sept. 2018)
  - Triggered by finding that the Russian gov't was responsible for the Skripal poisoning by Novichok in England in March 2018 (which Russia continues to deny)
  - The first round of these new sanctions went into effect immediately in Aug. 2018 – with certain exceptions/waivers (per State Dep't finding that such are essential to US national security interests) – *namely*:
    - a ban on foreign assistance, arms sales and related financing (with exception granted for gov't space cooperation and commercial space launches), and denial of US gov't credit / guarantees / other financial assistance
    - and a ban on exports/reexports of national security-sensitive goods and technology to Russia
      - ❖ these being items designated as “NS 1” or “NS 2” on the [Commerce Control List](#) (“CCL” – Supp. No. 1 to Part 740 of EAR), all of which previously have been exportable with license for Russia
      - ❖ there are many such items – spanning the whole CCL: nuclear materials, facilities and equipment; special materials, equipment, chemicals, microorganisms, toxins etc.; materials processing; electronics; computers; technology and information security; sensors and lasers; navigation and avionics; marine; and aerospace / propulsion

# The CBW Act (*cont'd*)

- But at the same time, the following exceptions/waivers from the ban on national security goods/technology were also stated:
  - items eligible for several standard License Exceptions will remain so (i.e., no license application needed)
  - safety-of-flight items (for civil passenger aviation) – case-by-case licensing still OK
  - “deemed exports/reexports” to Russian nationals in the US – licensing permitted on case-by-case basis unless otherwise prohibited
  - to wholly-owned US (and other foreign-company) subsidiaries in Russia – on same basis
  - in support of gov’t space cooperation and common space launches – on same basis
  - to commercial end-users (for civil end-uses) – on same basis
  - for state-owned/-funded enterprises – case-by-case licensing, but presumption of denial
- And the law provides for a rebuttable presumption against retroactive application to contracts already entered into prior to 27 Aug. 2018
- *Keep in mind also the BIS Feb. 2020 final rule (see slide [13](#)), which may have narrowed the above-noted August 2018 exceptions/waivers; careful case-by-case consultation is needed in this area*

# The CBW Act (*cont'd*)

- Per the CBW Act, if Russia hadn't met the following three conditions by 90 days after the initial determination (so, in Nov. 2018), as certified by the President to Congress:  
... that the RF gov't (i) is no longer using chemical / biological weapons etc.; (ii) has provided reliable assurances that it won't do so in future; and (iii) is willing to allow relevant on-site inspections by UN or other internationally recognized impartial observers etc. to confirm same
- This of course didn't happen (indeed, the State Dep't on 6 Nov. 2018 notified Congress that Russia ignored the deadline)
- So the President (in consultation with Congress) was required to impose at least three of the following six possible further sanctions:
  - opposing loans/assistance from multilateral development banks (IFIs – e.g., World Bank, IMF)
  - ban on US banks making almost any loan or providing any credit to the RF Gov't
  - additional restrictions on exports of goods or technologies to Russia
  - restrictions on the imports into the US of articles (which may include petroleum or any petroleum products) produced in Russia
  - downgrading or suspension of diplomatic relations
  - ban on air carriers owned or controlled (directly or indirectly) by the RF Gov't from flying to or from the US

# The CBW Act (*cont'd*)

- Second round – August 2019
  - Trump Administration in fact imposed the required three of six menu-items – and with various narrow interpretations, exceptions and waivers
    - by Executive Order (“EO”) [13883](#) of 1 August 2019, and follow-on clarifying State and OFAC releases
    - these sanctions (taken together with the waivers also simultaneously granted) seem to have quite narrow/limited “bite” as a practical matter
  - State Dep’t [Release](#) of 2 August 2019 announced the three selected new sanctions:
    - 1) US opposition to any loan or financial assistance to Russia by int’l financial institutions (IFIs) such as World Bank or IMF
      - ❖ but there has been very little if any such loan / assistance activity to Russia in recent years in any event
      - ❖ and the US, while having weighty vote, doesn’t have formal veto power over these
    - 2) prohibition on US banks’ (i) participating in the primary market for non-ruble denominated Russian sovereign debt, and (ii) lending non-ruble denominated funds to the Russian government
      - ❖ thus, US banks are still free to purchase Russian sovereign debt on the secondary market
      - ❖ and the ban on lending to the Russian “government” is narrowly defined as being only to the “Russian sovereign” – so that lending to Russian gov’t-owned companies is untouched by this new sanction (but OFAC Directives 1 and 2 still restrict lending to the designated state-owned banks and energy companies – see slides [18–19](#) below)
    - 3) additional export licensing restrictions on Dep’t of Commerce controlled goods / technology
      - ❖ stated to apply only to items controlled for chemical and biological weapons proliferation reasons
      - ❖ and the same waivers (license exceptions) that applied to first-round CBW Act sanctions (slide [62](#)) will continue to apply here on case-by-case basis (and with same presumption of denial for state-owned / -funded entities)
      - ❖ see also slides [13](#) and [62](#) above

# The CBW Act (*cont'd*)

- OFAC CBW Act [Directive](#) of 2 August 2019 (published in Fed. Reg. 16 Sept. 2019) – provides definitions/details on the US banks lending sanctions, confirming that:
  - foreign branches of US banks, as well as US branches and subs of foreign banks, are covered
  - gives further wide definition of US “bank” – including depositories, securities/options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, investment companies, and employee benefit plans
  - confirms that “Russian sovereign” means any Russian ministry, agency or sovereign fund (including Central Bank, National Wealth Fund, Ministry of Finance) – but does *not* include Russian state-owned enterprises (though again, keep in mind OFAC Directives 1 and 2)
- Finally (for now) State Dep't [Notice](#) in 26 August 2019 Fed. Reg. not only memorialized the new CBW-related export control sanction, but also incorporated and appeared to somewhat expand / adjust the first-round export control sanction (see slides [61-63](#) above) – *so special caution is needed with regard to any possibly sensitive exports / reexports to Russia*
- And note risk of imposition of secondary sanctions on non-US persons under CAATSA (see slides [47-60](#)) for certain violations of the CBW Act sanctions
  - the CBW Act (and the EO triggering this second round) isn't among the sanctions acts specifically covered under CAATSA (see its section 222(a))
  - but CAATSA section 228 catches anyone who “facilitates a significant transaction” for or on behalf of “any person subject to [US] sanctions...” (i.e., could mean *any* sanctions)

# Proposed Further US Laws

- DASKA Act proposed – as further amended in Dec. 2019 – see slide [13](#)
  - Would amend/enlarge CAATSA in various ways (includes enlarging scope of possible secondary sanctions – applicable to non-US persons) ... including mandating sanctions against:
    - persons making investments in LNG “export facility located outside of [Russia]” (with low \$ thresholds)
    - persons making investments in an energy project (unclear meaning) outside of Russia that also has involvement by a Russian parastatal or state-owned/controlled company (where total value of project is >\$250 million)
    - persons that sell, lease, provide to Russia goods, services, technology, financing or support that could directly/significantly contribute to Russia’s ability to develop/produce crude oil resources in Russia (including with respect to associated infrastructure)
      - ❖ excludes maintenance of existing projects
      - ❖ USG to issue guidance as to (i) scope/application of the exception, and (ii) listing specific covered goods, services, technology, financing, support
  - Menu of possible sanctions is from existing CAATSA (mainly re commerce in/with US)

# Proposed Further US Laws

- DETER Act – short form (seems meaningless for business)
  - Passed unanimously by US Senate (June 2019); still no action to date in House
  - Aimed just at foreign persons who participate in actual election interference (bars entry to US)
- DETER Act – long form (and similar House Financial Services Committee bill)
  - If ever enacted (introduced in Senate in April 2019 – no movement forward since then) ... and if future Russian interference in a US election is found
  - Would mandate that the President impose the following sanctions (among others)
    - Essentially, SDN designations on 2 or more of Russia's state banks – Sberbank, VTB, Gazprombank, VEB, Rosselkhozbank (i.e., the current OFAC Directive 1 SSI banks – but the House bill also includes RDIF and Promsvyazbank)
    - prohibition on new investments in energy sector / energy companies (unclear meaning) in Russia
      - ❖ by US persons (or in the US)
      - ❖ and SDN-type designation of foreign persons that make such investments
    - “new investment”
      - ❖ includes “significant upgrades or expansions to projects and construction underway”
      - ❖ excludes “routine maintenance of such projects and construction”
      - ❖ possible national security waiver
  - The House bill would also include some mandated sanctions in response to already-established Russian interference into the 2016 and 2018 elections, including
    - SDN designation of any energy projects (unclear meaning) outside Russia in which a Russian parastatal or state-owned company invests  $\geq$ \$5 million after enactment
    - and various other sanctions, not specifically relevant to energy sector
  - But no apparent recent movement forward on either one

# EU Sectoral Sanctions

## Overview

- The EU sanctions regime (in Council Reg. No 833/2014 of 31 July 2014, most recently amended by Reg. 2019/1163 of 5 July 2019 ([link](#)) focuses on financial, energy, and dual-use / military sectors
  - Recently extended again; now in effect to 31 July 2020
  - Was fairly well coordinated with US ... but no longer, with CAATSA / Nordstream / secondary sanctions, etc.
  - *E.g.*: no sanctions on anything re Russian gas-focused projects (given Europe's dependence on Russian gas supplies) ... and maybe not interpreted to cover condensate (see slide [23](#) above)?
  - And no sanctions on any oil & gas projects with Russian participation outside Russia (or on Russian energy export pipelines)
  - And guidance notice exempting mere correspondent banking (payment / settlement services) from the loan / credit bans – thus seems more lenient than analogous US rule / interpretation
  - *And, unlike the US, no broad-reach blacklisting into leading commercial entities, CEOs of leading state-owned cos. (and no Rosneft Trading for business with Venezuela, no Chinese cos. for business with Iran)*
  - And there is nothing like the US CBW Act application to Russia (even though triggered by event in England)
- Much easier to grasp the basic EU rules than the US ones (and all the more so now, with all newer US acts and regs.) – essentially all in one document's four corners
- *But the devil (?) is in the diversity:*
  - Each member state competent authority interprets, authorizes (where called for) or denies, enforces, ... and sets / imposes its own penalties
  - Unlike the US ... where this is all a uniform, federal-level matter
  - Though some coordination / consistency is called for in the Regulation
  - And see EU Commission [Guidance Note](#) of 16 Dec. 2014 (as amended most recently 25 Aug. 2017) – FAQs

# EU Sectoral Sanctions (*cont'd*)

- And now must have in mind Brexit – the EU sanctions continue to apply in UK during the transition period (i.e., at least to 31 Dec. 2020)
  - But independent UK rules have already been adopted
  - And minor differences between the EU and UK Regs already create some real questions (see slide [81](#) below, and recent FT [report](#))

## Energy

- Per the initial July 2014 energy-sector sanctions / authorization regime (Reg. art. 3):
  - Prior authorization is required for sale, supply, transfer or export, directly or indirectly, of the items listed *in Annex II* (see link to the Reg. at slide [17](#))
    - to any person or entity in Russia or elsewhere
    - if for use in Russia (clarified to include its EEZ and Continental Shelf – but not clear whether includes Russian sector of Caspian Sea)
  - Authorization is to be considered / granted by competent authority "*of the member state where the exporter is established*", per some general EU rules

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- But authorization shall *not* be granted for supply etc. of Annex II items
  - if reasonable grounds to determine that is for Russian oil (incl. condensate?) E&P projects:
    - ❖ in waters deeper than 150 meters (circa 492 feet)
    - ❖ in offshore areas north of the Arctic Circle
    - ❖ in shale formations by way of hydraulic fracturing (but not including E&P activities *through* shale formations to locate/extract oil from non-shale reservoirs)
  - *except for*
    - ❖ execution of obligation arising from contract concluded before 1 Aug. 2014 – or, per Dec. 2014 liberalization, from “ancillary contracts necessary for the execution of such contracts”, or
    - ❖ items necessary in case of certain events threatening health, safety or environment
  - in fact, there have been many such license applications / approvals to date (for European and US companies, and EU subsidiaries / JVs of Russian energy companies)
  - and further note – EU has not followed US CAATSA / OFAC Directive 4 expansion of coverage to any such project worldwide having ≥33% ownership or >50% voting interest by designated Russian company(ies)

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- Restricted activities include (per Reg. art. 3a, as amended Dec. 2014):
  - Provision, directly or indirectly, of specified types of “associated services necessary for” deepwater, Arctic offshore, shale oil E&P projects (same litany-detail as for art. 3 – see slide [69](#) above) in Russia including in its EEZ and Continental Shelf (again note uncertainty re Russia’s Caspian zone):
    - these specified types of services:
      - *drilling*
      - *well testing*
      - *logging*
      - *completion services*
      - *supply of specialised floating vessels\**

[\* Note: EU Guidance Note FAQ 10 exempts “supply vessels such as platform supply vessels, anchor handling tug and supply vessels or emergency response vessels”]

- and the same exceptions apply for
  - ❖ execution of an obligation arising from a prior (pre-12 Sept. 2014) contract / agreement or follow-on ancillary contracts, or
  - ❖ services necessary in case of certain events threatening health, safety or environment
- *again, otherwise apparently no scope for authorization here – rather, a pure prohibition for / to all (if neither of the above two carve-outs applies)*

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- Also, provision of the following services related to any Annex II items *needs authorization* from national competent authority (per art. 4.3 – existing since the initial July 2014 version of the Reg., and as refined by the Dec. 2014 amendment):
  - Technical assistance (or brokering services) re Annex II items and re provision, manufacture, maintenance and use of those items directly or indirectly
    - to anyone in Russia (including its EEZ and Shelf)
    - or to anyone in any other country if concerns items for use in Russia (including EEZ / Shelf)
  - Financing or financial assistance re Annex II items – including grants, loans and export credit insurance
    - for any sale, supply, transfer or export of those items
    - or for any provision of related technical assistance
    - also (as above for technical assistance) directly or indirectly to anyone in Russia (including its EEZ / Shelf) or to anyone in another country for use in Russia (including its EEZ / Shelf)
  - Per art. 4.4, authorizations may be granted on same basis as set out in art. 3 (and possible emergency services, with prompt post-reporting – per arts. 4.3 and 3.5)

# EU Sectoral Sanctions (*cont'd*)

## Finance – for Energy (and Military) Sector Companies

- Prohibits (per Reg. art. 5.2) direct or indirect purchase or sale of, provision of investment services for or assistance in issuance of, or other dealings with, certain debt or equity “transferable securities” (and money-market instruments) issued after 12 Sept. 2014 by
  - *Rosneft, Transneft, Gazpromneft* (the three currently designated entities engaged in “sale or transportation of crude oil or petroleum products” (... not including *Novatek*) – per Annex VI), their non-EU subs (>50% owned), or persons or entities acting at their behalf / direction
  - Applies to debt securities, including money market instruments, with maturity >30 days (note OFAC Directive 2 now is = 60 days max.)
  - And note the relevant “transferable securities” definition: “... which are negotiable on the capital market” (some uncertainty re whether equity investment in LLC-type cos. is covered: some specialist practitioners take the view that it isn’t – but can’t surely rely on this)
  - And see EU Guidance Note FAQ 36 allowing modifications to transferable securities depending on materiality – *i.e.*, if would not “actually or potentially result in additional capital being made available to a targeted entity”
- Same basic prohibition re the three designated Russian entities connected with military-sector goods / services – including United Aircraft Corp. (per Annex V), with exception for space / nuclear sector entities (and a hydrazine exception)
- And note that the EU rule / interpretation re depositary receipts (GDRs etc.) appears to be stricter than that of the US (compare EU Guidance Note FAQ 37-39 with OFAC FAQ 391)

# EU Sectoral Sanctions (*cont'd*)

## Finance – for Russian Banks

- Prohibits (per Reg. art. 5.1) purchase or sale of, provision of investment services for or assistance in the issuance of, or other dealings with, “transferable securities” or money-market instruments
  - issued by the 5 Russian banks designated in Annex III (Sberbank, VTB, Gazprombank, VEB, Rosselkhozbank – Russian Agricultural Bank)
    - or their non-EU subs (>50% owned)
    - so, essentially the same coverage as the US OFAC sanctions
  - or persons or entities acting on their behalf or at their direction
- Applies to
  - debt securities issued (i) 2 Aug. - 12 Sept. 2014, with maturity >90 days; and (ii) after 12 Sept. 2014, with maturity ≥30 days (*note OFAC Directive 1 now is = 14 days max.*)
  - and to equity securities issued after 12 Sept. 2014
- See EU Guidance Note FAQs 33-34, addressing what EU subs of targeted Russian bank entities can / can't do (including warning re passing on funds = circumvention)

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Companies and Banks

- Prohibits (per Reg. art. 5.3) directly or indirectly making or being “part of any arrangement to make” new loans / credits with maturity >30 days after 12 Sept. 2014 to any entity covered under the previous two slides – namely
  - the three Russian energy-sector companies (per Annex VI)
  - the five Russian banks (per Annex III)
  - the three Russian military-sector companies (per Annex V)
  - or their non-EU subs, or persons acting on their behalf or at their direction
- And see EU Guidance Note, FAQ 31
  - rollover of an existing debt is allowed, subject to 30-day maturity restriction
  - but succession of rollovers each with maturity of  $\leq 30$  days may = circumvention

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Companies and Banks (*cont'd*)

- Certain carve-outs provided (per Reg. art. 5.3, amended as of Dec. 2014)
  - *Trade finance exemption*: for “loans or credit having a specific / documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the [EU] and any third State” (intended for use by targeted entity)
  - *But not* for purpose of *funding* any such entity (see art. 12)
  - Practical approach to the interplay here: compliant vs. circumvention? (see Reg. art. 12)
  - And see EU Guidance Note FAQ 11: this exception “should be interpreted narrowly” (but also FAQs 11-21 clarifications)
- And note these further EU Guidance Note FAQ clarifications
  - Post-Sept. 2014 cancellation of a pre-Sept. 2014 loan = prohibited new loan (FAQ 25)
  - A new term deposit at a targeted bank isn't barred (but see FAQ 27 re circumvention)
  - Correspondent banking (or other payment / settlement services) is in itself ≠ making or being part of arrangement to make new loan or credit (FAQ 28, and see FAQs 1 and 2) – *contrast this with the US/OFAC position, see slide 19*
  - Payment terms / delayed payment for goods / services ≠ prohibited loan/credit – but warning that may suggest circumvention if (per FAQ 30)
    - “not in line with normal business practice”, or
    - “have been substantially extended” since 12 Sept. 2014
- Some forms of prepayment finance for Russian oil producers are permissible (and occurring daily)
- Note the new (Feb. 2020) UK Office of Financial Sanctions Implementation announcement of penalty imposition against a major UK-based bank, for violations of Reg. article 5.3 (see slide 14)

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Companies and Banks (*cont'd*)

- And note art. 5.4 (introduced by Dec. 2014 clarification) – carving out from the general prohibition *new drawdowns / disbursements under pre-12 Sept. loan / credit contracts*
  - If
    - “all the terms and conditions” were agreed pre-12 Sept. 2014 and haven’t been modified since then; and
    - before 12 Sept. 2014 “a contractual maturity date has been fixed for the repayment in full of all funds made available ...”
  - Possible issues re
    - whether “all” terms and conditions really mean *all* (ref. FAQ 30 by analogy?)
    - treatment of typical carry-type loans – re the “repayment in full” aspect (in case no commercial discovery)
- Again, see the various EU Guidance Note FAQ clarifications
- Note – here again, there have been many such license applications / approvals to date (experience varying by member state)
- Also note a UK law granting power to impose fine of £1 million or 50% of transaction value, for EU financial sanctions breaches as of 1 April 2017 (only minor enforcement action to note)

# EU Sectoral Sanctions (*cont'd*)

## Important Overarching Provisions

- The Reg. also bans knowing and intentional participation in activities having object or effect of circumventing the above prohibitions (Reg. art. 12)
- But, per art. 10, no liability w/o knowledge or reasonable cause to suspect that actions would violate
- Jurisdictional reach – the Reg. applies (art. 13, and see EU Guidance Note FAQ 8):
  - Within EU territory (or on board aircraft / vessels under member state jurisdiction)
  - To any person, wherever located, who is an EU member state national
  - To any entity, wherever acting, that is incorporated in an EU member state
  - To any entity “in respect of any business done in whole or in part within the Union”
- *Note the distinctions between US / EU regs. overall reach – especially now with CAATSA*
- And the “no claims ... shall be satisfied” provision but without prejudice to “judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation” (Reg. art. 11) – interesting for lawyers
- And note the 13 Sept. 2018 EU General Court decisions upholding the sectoral sanctions against challenges by Rosneft, Gazpromneft, Sberbank, VTB, VEB and others
  - Finally rejecting challenges brought some years ago by Rosneft, Gazpromneft, Sberbank, VTB, VEB and others
  - See the Court’s [Press Release](#), which gives the various case judgment numbers for those interested in reviewing

# EU Crimea Sanctions

- Reg. No. 692/2014 as amended
  - Bars sale, supply, transfer, export of goods and technology (per an Annex II) to any Crimean entity or individual or for use there
  - Covers oil & gas / other mineral resources and E&P, transport, telecoms, power sectors
  - And further general ban on financing, corporate acquisitions, JVs, investment in real estate, construction / engineering services, investment services, tourism services
- And see EU [Information Note](#) to EU Business Operating and/or Investing in Crimea / Sevastopol (Joint Working Doc. SWD/2014) of July 2014
  - As amended August 2014, June 2015 and most recently Jan. 2018
  - Gives updated summary of restrictions now in effect for EU-connected commercial activity there (though no real interpretive guidance)
- And EU's Sept. 2017 blacklist reg. (see next slide) amendment to allow member state authorities to permit certain types of payments to Crimean Sea Ports
- Note the still-reverberating 2017 scandal re Siemens gas turbines that found their way to Crimea (evidently without the company's knowledge and despite its compliance program / efforts)
- And NL-based Booking.com's July 2018 announcement of discontinuing tourist booking services for Crimea
- Some new EU designations in March 2019 following the Russia-Ukraine Black Sea naval incident, and in Jan. 2020 in connection with Crimean elections

# EU Direct Sanctions (SDN-like, etc.)

- The EU's SDN-like "blacklist" Reg. No. 269/2014 of 17 March 2014, and with updates
- And more names have been added in several update regs. to date
- Individuals and entities, including those added
  - in January 2020, in connection with Crimean elections
  - in March 2019, in connection with the Ukraine/Russia Kerch Strait naval incident
  - in July 2018, in connection with construction of Kerch Bridge (to Crimea)
  - in 2017 per the Siemens turbines affair
- All dealings with the blocked assets of listed persons (or their subs or certain other affiliates) etc. are generally prohibited
- Currently in effect to 15 Sept. 2020 (extended as of 13 March 2020)
- And in January 2019 four Russians (the two direct accused last year's Skripal poisoning in England, and two GRU top officials) on its new list of chemical weapons proliferation/use violators – [link](#)

# UK Sanctions (post-Brexit)

- UK left the EU on 31 Jan. 2020, but transition period until (at least) 31 Dec. 2020
- The EU sanctions (see slides [68-80](#)) continue to apply during this period
  - But the UK has already adopted its own Russia sanctions, which diverge from the EU sanctions to some extent (e.g., the finance sanctions carve-out is limited to *UK-based*, rather than EU-based, subsidiaries of five targeted Russian banks – see slides [74-75](#))
  - This is the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#); enacted in April 2019 and the substantive provisions came into force on 31 Jan. 2020
  - The Regulations revoke and replace the EU Regs (and the UK laws which give effect to them) as of transition period end, and allow the government then to autonomously amend/lift the existing sanctions, impose new sanctions etc.
  - See also the accompanying [Explanatory Memo](#) from April 2019
    - explaining the reasons for keeping sanctions on Russia and justifying associated criminal sanctions and penalties
    - and two related reports per Sections [2\(4\)](#) and [18](#) of the underlying Sanctions and Anti-Money Laundering Act of 2018
- And see the Russia sanctions [guidance](#) of 9 May 2019 (and further guidances are anticipated)

# Russia's Countersanctions

- March 2020 proposed constitutional amendment – not adopted (see slide 14)
- Russia enacted in June 2018 a “Law on Countermeasures against Unfriendly Actions of the United States of America and/or Other Foreign Governments”, (full text is [here](#), unofficial English translation available on request), which provides essentially as follows:
  - Basic thrust is not to impose automatically – but rather to authorize the President or the Government to institute – various countermeasures (bans on import of goods / work / services, export bans, etc.)
    - upon finding of justification in anti-Russia sanctions measures (presumably including already-effective and possible future ones) of the US and other countries that commit unfriendly actions
    - “as well as against organizations located in the jurisdiction of [such countries], directly or indirectly controlled by [such countries] or affiliated with them, officials and citizens of [such countries], in the event such organizations, officials, and citizens are involved in the commission of unfriendly actions” vs. Russia
  - Thus, this Law as enacted may well not have substantial effect on international trade with Russia, unless/until the Western sanctions and/or general political relations worsen to an extent deemed sufficient to trigger discretionary Russian executive actions under the Law
  - These specific types of countermeasures are authorized (in most cases seemingly stated to be applicable to unfriendly foreign governments and to organizations located “under their jurisdiction” that are directly or indirectly controlled by or affiliated with them)
    - perhaps narrow application only to companies having state ownership / control etc.
    - this language uncertainty (see next slide) awaits authoritative interpretation and/or practice to clarify

# Russia's Countersanctions (*cont'd*)

- Here are the countermeasures specifics:
  - termination or suspension of “international cooperation” of Russia and Russian legal entities with such countries and organizations, in sectors to be determined by decision of the President
  - prohibition or restriction on import into Russia of products or raw materials that originate from such countries or are produced by such organizations, with a list of such products / raw materials to be determined by the Government – and exceptions provided for (i) goods that are indispensable to life, analogues of which are not produced in Russia (e.g., certain pharmaceuticals), and (ii) goods imported for personal use
  - prohibition or restriction on export from Russia of products or raw materials by such organizations or by citizens of such countries, again with a list of such products / raw materials to be determined by the Government
  - prohibition or restriction on performance of public-procurement-type works / services in Russia for Russian state agencies and certain state-owned legal entities, by such organizations, again with a list of such works / services to be determined by the Government
  - prohibition or restriction on participation by such organizations or by citizens of such countries in Russian privatizations, as well as in performing services on behalf of Russia in connection with such privatizations of federal state property
  - and “other measures” by decision of the President (of course, this “catch-all” provision could be the basis for enactment of possible additional countermeasures, if sanctions-related tensions deteriorate further)

# Russia's Countersanctions (*cont'd*)

- There are these additional closing provisions of note:
  - the countermeasures provided in the Law are to be introduced (and removed) by the Government by decision of the President – or by the President on the basis of proposal by the Security Council
  - the President may introduce a special “national regime” (or exceptions from it) with respect to goods and services originating from unfriendly countries if such countries introduce same for Russian goods and services
- And there is another proposed set of Russian law amendments – a sort of blocking statute – that would, as seems to have evolved helpfully (but there can be no certainty here, given ongoing political tensions) per lively Russian business community opposition to an initial together draft bill, impose
  - Substantial administrative fines on any (foreign or local) person or company in Russia for compliance with US sanctions, and
  - Criminal liability on any Russian citizen who by willful action facilitates the imposition of such anti-Russian sanctions
- Further in brief summary as follows:
  - The administrative violation part would be aimed at acts or omissions, for the purpose of implementing / complying with foreign sanctions, resulting in limitation or refusal of the ability of Russian citizens, companies and state entities (and their subsidiaries anywhere) to conduct “ordinary business operations or transactions”
  - The criminal violation part would be aimed at commission by a Russian citizen of willful actions facilitating the imposition of foreign sanctions against Russian private and public persons and entities and their subsidiaries, including by providing recommendations and transfer of information that led or could have led to the imposition of foreign sanctions. The possible criminal penalties for such a violation could include substantial fine or imprisonment

# Russia's Countersanctions (*cont'd*)

- There have been a series of statements from the leading Duma sponsors of this proposed legislation, upon dialogue with Russian business leaders and supported by the President's Administration, accentuating that the proposed administrative violation part (assuming this softened part remains as such if/when the bill is enacted) would be meant to cover
  - only “practically automatic”-type business dealings such as opening bank accounts, or sales that are by law open to any bidders etc.
  - as opposed to more individualized-type dealings such as opening / closing of bank branches (e.g., in Crimea), extending long-term credits
- Per various fresh reports over the past months, it appears this proposed Russian blocking statute bill may remain altogether dormant for now
- Foreign blocking statutes (such as Russia has been considering) and US law / practice:
  - What would be OFAC's (or a US court's) reaction, if Russia's blocking legislation is enacted in some form, and a company (US, European, Russian, etc.) acts in a way that violates a US sanction (e.g., deals with an SDN individual or entity) on account of the new Russian-law mandate not to reject such dealings?
  - This is a complex subject in itself, which can't be quickly summarized. Suffice it to say here that
    - OFAC might take such claimed foreign-law mandate into account as one mitigating factor in an enforcement proceeding, but will not be controlled by it
    - the leading US court [decision](#) in the United States v. Brodie case on this subject to date – essentially rejected such a defense raised by a US company
- Russia has also enacted an SDN-like sanctions [act](#) in Nov. 2018, with specific designations, against Ukraine and further expanded it on 25 Dec. 2018 ([link](#))
- Gov't Decree No. 1767 of 30 Dec. 2018 ([link](#)) includes threat of withholding/removing state pension funds etc. from Russian banks that cooperate with foreign sanctions against Russia (see its art. 2)

# QUESTIONS?

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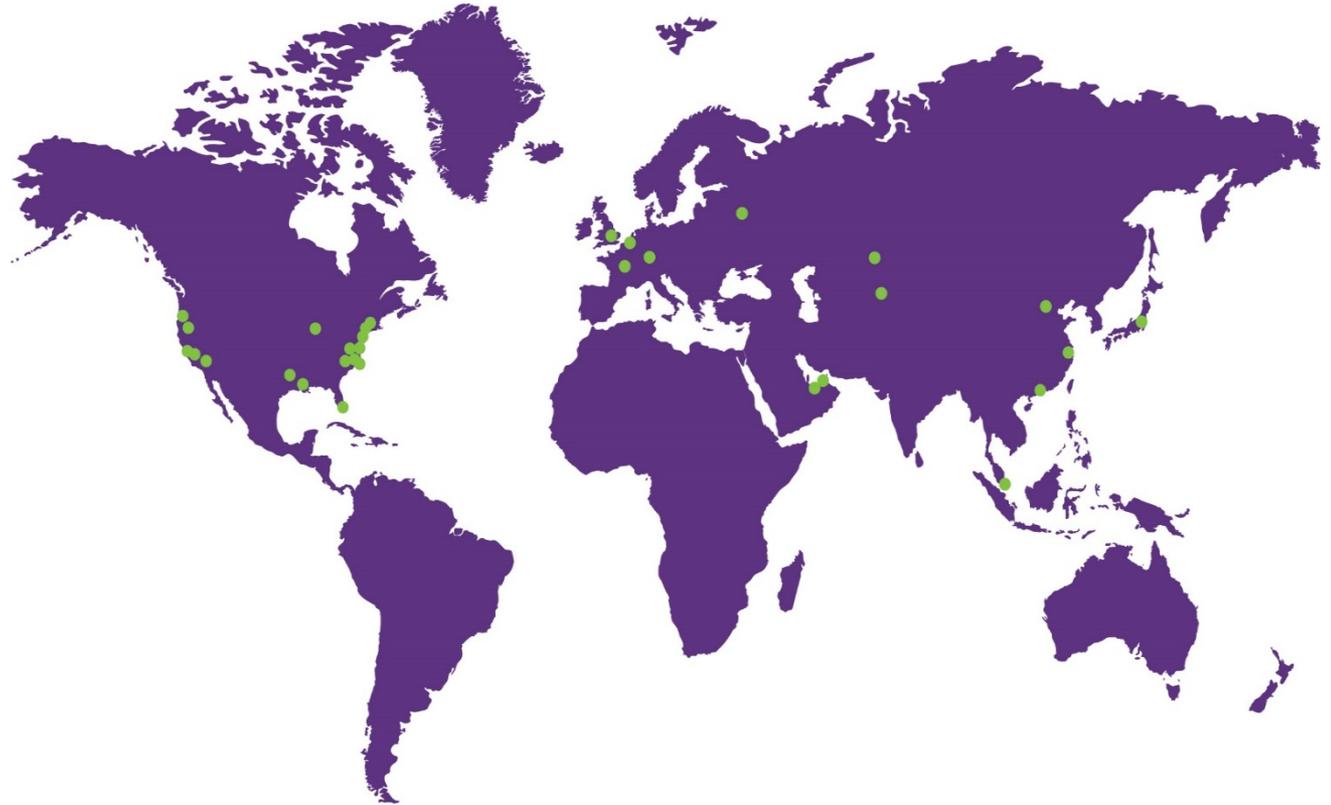


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