

Morgan Lewis

informed



# Economic and Political Environment in Ukraine and Russia

Presented by

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July 22, 2014

# Update on Russia – Ukraine Sanctions

- Not country-based sanctions
- Trade and investment with Russia are not restricted
- Executive Orders (EOs) issued prior to July 16, 2014:
  - imposed sanctions against specified individuals and entities in Russia and Ukraine; and
  - set the stage for sectoral / industry-specific sanctions to be adopted, if determined appropriate by U.S. authorities

# Update on Russia – Ukraine Sanctions

- Individuals and entities sanctioned under EO's are designated as Specially Designated Nationals (SDNs)
  - Assets of SDNs are “blocked” and subject to special procedures if in the U.S. or in the possession of U.S. Persons
  - U.S. persons may not have any dealings with SDNs or with entities owned 50% or more by an SDN (direct or indirect)
  - U.S. guidance also advises caution in dealing with entities under “control” of SDNs via means other than 50% or more ownership
  - Strict rules against assisting circumvention

# New Sanctions Imposed Against Russian Sectors

- On July 16, 2014 OFAC announced additions to the Ukraine-related sanctions, by issuing a new Sectoral Sanctions Identifications (“SSI”) List pursuant to Executive Order (EO) 13662
  - SSI List is separate and distinct from:
    - OFAC’s SDN List and
    - OFAC’s Foreign Sanctions Evaders (FSE) List
- Sectors sanctioned pursuant to EO 13662:
  - Russian financial institutions specifically named on SSI List; and
  - Russian energy companies specifically named on SSI List

# New Sanctions Imposed Against Russian Sectors

- Two Directives issued on July 16, 2014 pursuant to EO 13662
  - Directive 1 prohibits U.S. persons from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity for Russian financial institutions named on the SSI List
  - Directive 2 prohibits U.S. persons from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity for Russian energy companies named on the SSI List
- Directives reference SSI List

# New Sanctions Imposed Against Russian Sectors

- Directives 1 and 2 in clearly state that all other transactions with an SSI List specified entity or involving any property in which SSI List specified entity has an interest are permitted, as long as no SDNs are involved.
- The SSI List is not a blocking action
  - SSI entities not considered to be on the OFAC SDN List
  - US Persons do not need to block the property or interests in property of SSI entities
- SSI entities can be added by OFAC to the SDN List at any time.

# New Sanctions Imposed Against Russian Sectors

- OFAC has published guidance on OFAC's website in the form of FAQs (see the Sectoral Sanctions FAQs available on OFAC's website.)
- Guidance provided by OFAC includes the following:
  - The new SSI List restrictions apply not only to the named entities above, but also to entities owned 50 percent or more by such entities, directly or indirectly
  - "Debt" in the SSI List context includes:
    - bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper; and
    - rollover of existing debt, if such rollover results in the creation of new debt with a maturity of longer than 90 days.

# New Sanctions Imposed Against Russian Sectors

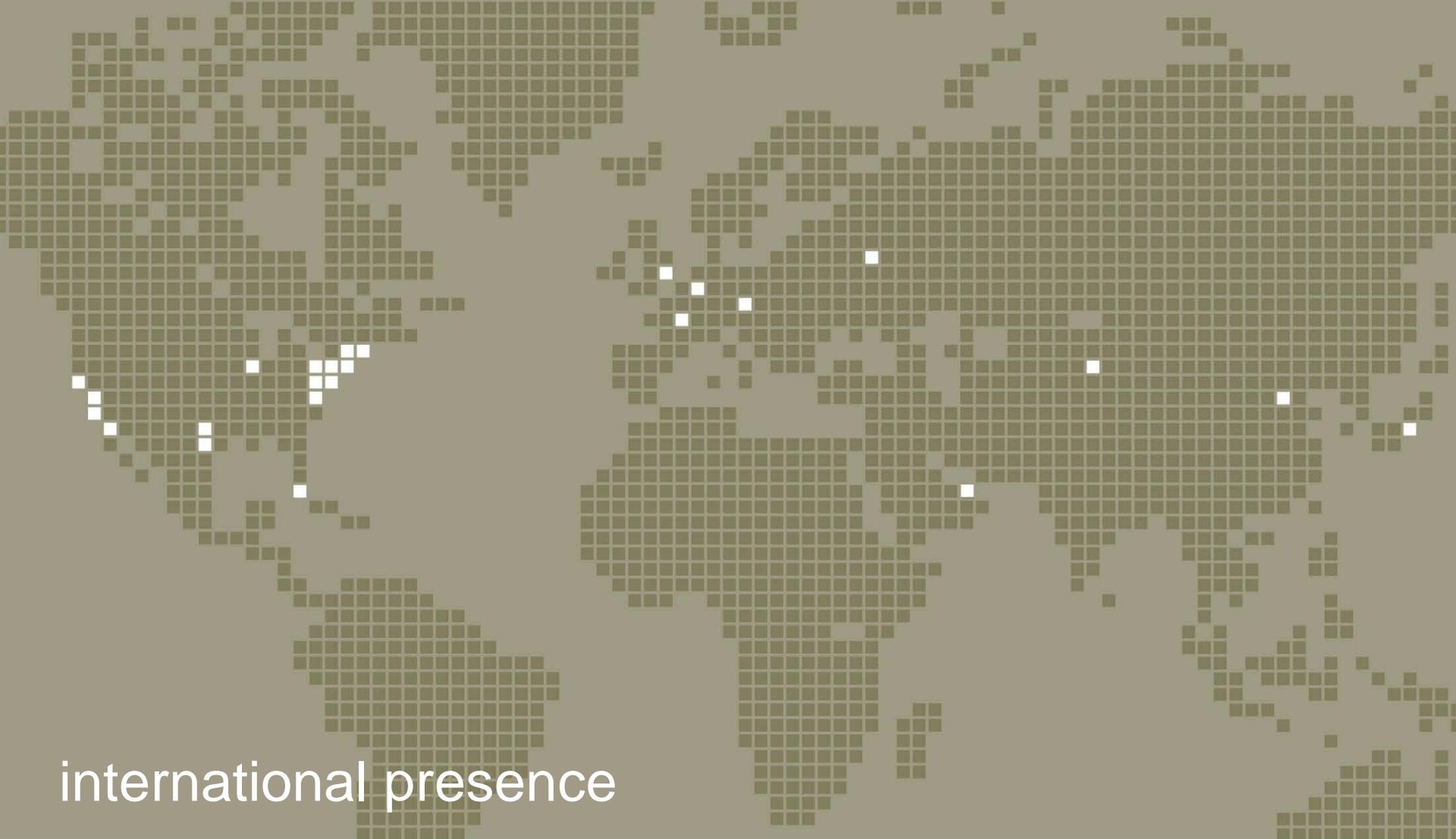
- OFAC guidance (continued)
  - "Equity" in the SSI List context includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership.
  - Types of "Debt" and "Equity" listed in FAQs are illustrative only.
  - U.S. persons should reject transactions or dealings that are prohibited by the SSI List directives, and report such rejections to OFAC as required under 31 C.F.R. 501.
  - Transacting in, providing financing for, or otherwise dealing in any debt or equity issued prior to the sanctions' effective date by, on behalf of, or for the benefit of the entities operating in the financial and energy sectors that are identified in the directives is permissible.

# New Sanctions Imposed Against Russian Sectors

- OFAC guidance (continued)
  - Transacting in, providing financing for, or otherwise dealing in debt instruments with maturities of 90 days or less issued by or on behalf of the entities identified in the directives, even if they are issued after the sanctions' effective date, is permissible.
  - U.S. financial institutions may continue to maintain correspondent accounts and process U.S. dollar-clearing transactions for the entities identified in the directives, so long as those activities do not involve transacting in, providing financing for, or otherwise dealing in prohibited transaction types identified by the directives.
  - OFAC is assessing the types of activities that will be grandfathered and will provide additional guidance.

# Commerce Department Sanctions Also Imposed Against Russian Entities

- Separate from OFAC's July 16, 2014 actions, the U.S. Commerce Department's Bureau of Industry and Security (BIS) also announced that it added eleven parties to its Entity List because of concerns regarding Russia's continued action in Ukraine.
- The Entity List designations result in a licensing requirement for the export, re-export, or in-country transfer of items subject to the Export Administration Regulations (EAR) to these parties, with a presumption of denial of such requests.
- For Entity List entities recently named by BIS, see BIS' website. Also see Entity List FAQ on BIS website.



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