

International Trade Alert

October 4, 2017

Key Points

- On September 29, 2017, OFAC modified Directives 1 and 2 of Executive Order 13662 to reduce the permissible maturity for new debt issued by Russian financial and energy entities designated under these directives, as well as entities owned, directly or indirectly, by 50 percent or more by such entities, either individually or in the aggregate. These modifications become effective on November 28, 2017.
- To ensure compliance with these changes to U.S. sectoral sanctions relating to new debt, which were required by the Countering America's Through Adversaries Act (CAATSA), U.S. persons must remain vigilant in reviewing pre-existing financial arrangements and proposed new transactions to ensure that they do not involve new debt issued by designated entities and entities owned 50 percent or more by such entities that have a maturity exceeding 14 days for entities subject to Directive 1 or 60 days for entities subject to Directive 2.
- Despite a statutory deadline of October 1, 2017, as of the date of this writing, October 4, 2017, the President has not issued regulations or other guidance or designations of "persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation" that are to be subject to mandatory sanctions pursuant to Section 231 of CAATSA. This inaction has not gone unnoticed by certain members of Congress who have advocated for robust enforcement of CAATSA.



Implementing CAATSA - OFAC Issues Amended Russian-Related Sectoral Sanctions Under Directives 1 and 2

On September 29, 2017, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued amended directives shortening the permissible maturity windows of new debt issued by designated financial and energy companies under Ukraine-/Russia-related Directives 1 and 2 of

Executive Order 13662 (“Amended Directives”), pursuant to the Countering America’s Adversaries Through Sanctions Act (CAATSA).¹

The Amended Directives become effective on November 28, 2017.

Under Directive 1 and Directive 2 restrictions that are currently in effect, U.S. persons are respectively prohibited from dealing in new debt of (1) longer than 30 days’ maturity issued by certain sanctioned entities in the financial services sector and (2) longer than 90 days’ maturity issued by certain sanctioned entities in the energy sector. As amended by CAATSA, the permitted maturities of new debt were further reduced. As a result, U.S. persons must be diligent to ensure that they do not engage in transactions involving new debt (e.g., bonds, loans, extensions of credit, loan guarantees, extended payment terms) issued on or after November 28, 2017, with a maturity exceeding 14 days if issued by entities subject to Directive 1 or 60 days if issued by entities subject to Directive 2. Under the so-called “50 Percent Rule,” these restrictions apply to designated entities, as well as entities owned, directly or indirectly, by 50 percent or more by those designated entities, either individually or in the aggregate.

In updated FAQs released in conjunction with the amendments, OFAC provided helpful tables to clarify the requirements and maturity limitations applicable to new debt, depending on the date the debt is issued:

Amended Directive 1

Date on which the debt was issued	Applicable tenor of prohibited debt
On or after July 16, 2014, and before September 12, 2014	Longer than 90 days’ maturity
On or after September 12, 2014, and before November 28, 2017	Longer than 30 days’ maturity
On or after November 28, 2017	Longer than 14 days’ maturity

Amended Directive 2

Date on which the debt was issued	Applicable tenor of prohibited debt
On or after July 16, 2014, and before November 28, 2017	Longer than 90 days’ maturity
On or after November 28, 2017	Longer than 60 days’ maturity

¹ The Russia sanctions provisions were included in the Countering Russian Influence in Europe and Eurasia Act of 2017 (CRIIEEA), which was passed as Title II of CAATSA. See previous in-depth Akin Gump analysis of CAATSA [here](#).

Six major Russian banks are currently designated under Directive 1 (Bank of Moscow, Gazprombank, Russian Agricultural Bank, Sberbank, VEB and VTB Bank), and four major Russian energy companies are currently designated under Directive 2 (Novatek, Rosneft, Gazprom Neft and Transneft). Moreover, as a result of the so-called “50 Percent Rule,” each directive also applies to each entity that is directly or indirectly owned by 50 percent or more by entities subject to these directives (either individually or in the aggregate), leading to an important diligence compliance requirement to ascertain the ownership of potential counterparties. To assist with compliance, over the past several years, OFAC has designated a significant number of additional companies that meet this requirement of the “50 Percent Rule” and consequently are also subject to Directive 1 or 2.

CAATSA Cybersecurity Provisions Come Into Effect

October 1, 2017 also marked the effective date of certain cybersecurity sanctions provisions in Section 224 of CAATSA. This measure requires the U.S. President to impose sanctions on any party that he determines “knowingly engages in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation,” and agents of such persons. Section 224 also requires the President to impose sanctions on “any person that [he] determines knowingly materially assists, sponsors, or provides financial, material, or technological support for, or goods or services” in support of such activities, and the provisions also target “any person that the President determines knowingly provides financial services” in support of such activities.

As of the date of this writing, October 4, 2017, sanctions have not been imposed on any person pursuant to this section. On September 29, 2017, President Trump delegated much of his authority to designate persons under Section 224 to the Secretary of Treasury and the Secretary of State who, to date, also have not imposed sanctions pursuant to this section.

Other Required CAATSA Sanctions Modifications Still Pending Implementation

A number of other significant changes to U.S. sanctions affecting Russia required by CAATSA have not yet been implemented, including the following:

Section 223 of CAATSA requires the Secretary of the Treasury to modify Directive 4 of Executive Order 13662 by October 31, 2017, with effect by January 29, 2018, to prohibit U.S. persons from providing, exporting or re-exporting goods, services (except for financial services) or technology in support of exploration or production for new deepwater, Arctic offshore or shale projects located anywhere in the world (versus current restrictions on only such projects within Russia) that (i) have the potential to produce oil and (ii) involve a person subject to Directive 4, which “has a controlling interest or a substantial non-controlling ownership interest in such a project” of 33 percent or more.

Despite a statutory deadline of October 1, 2017, as of the date of this writing, October 4, 2017, the President has not issued regulations or other guidance or designations of “persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation” that are to be subject to mandatory sanctions pursuant to Section 231 of CAATSA. The new

law includes provisions for the imposition of U.S. punitive measures against parties that engage in “significant transactions” with such listed entities. The President has delegated authority to designate such entities to the Secretary of State (in consultation with the Secretary of the Treasury) under a presidential memorandum, but,, to date, the Secretary has not imposed sanctions pursuant to this section.

As recently as September 28, 2017, as critical deadlines were approaching, Sens. John McCain and Benjamin Cardin wrote to President Trump emphasizing “how critical it is that the U.S. Government robustly enforce [CAATSA].” Their letter focused on the following areas as top priorities: (1) defense and intelligence sectoral sanctions (mentioning a number of Russian companies by name and noting the October 1 deadline); (2) mandatory energy sanctions for arctic, deepwater and shale projects; and (3) the need for coordination with Europe for “a strong sanctions regime against the Russian Federation.”

In the weeks ahead, OFAC and other U.S. federal agencies are slated to issue additional new regulations, directives, guidance and/or designations to implement these additional provisions of CAATSA. Companies doing business with entities in these sectors or in these types of projects should consider and anticipate these further changes in U.S. sanctions, and monitor related developments, as well as broader developments in U.S.-Russia relations that could further affect U.S. and international sanctions regarding Russia.

Contact Information

If you have any questions concerning this alert, please contact:

Wynn H. Segall

Partner

wsegall@akingump.com

+1 202.887.4573

Washington, D.C.

Jonathan C. Poling

Partner

jpoling@akingump.com

+1 202.887.4029

Washington, D.C.

Melissa J. Schwartz

Senior Counsel

mjschwartz@akingump.com

+1 202.887.4539

Washington, D.C.

Nnedinma C. Ifudu Nweke

Senior Counsel

nifudu@akingump.com

+1 202.887.4013

Washington, D.C.

Dallas Woodrum

Associate

dwoodrum@akingump.com

+1 202.887.4591

Washington, D.C.

Sina Kimiagar

Law Clerk, Not admitted to practice

skimiagar@akingump.com

+1 202.887.4306

Washington, D.C.