



**CLIENT ALERT: THE UNITED STATES RATCHETS UP ITS FOCUS ON SHIPPING FOR ENFORCEMENT OF IRANIAN SANCTIONS**

September 9, 2019

**INTRODUCTION**

Likely triggered by the ongoing saga of the M/T Adrian Darya-1 (ex M/T Grace-1), the U.S. authorities took steps last week which further demonstrate their intent to enforce the Iranian sanctions program aggressively including against non-U.S. persons. The steps confirm that the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") continues to focus on international shipping as a means to implement the Iranian sanctions program and has now turned its attention as well to the bunkering of vessels engaged in Iranian trade or involving Iranian vessels. OFAC also continues to warn against deceptive shipping practices and provides further thoughts on due diligence steps that should be considered by those operating in the shipping industry to ensure sanctions compliance. These are the key developments.

**ADVISORY TO THE MARITIME PETROLEUM SHIPPING COMMUNITY**

***a. The Guidance***

On September 4, 2019, OFAC issued an "Advisory to the Maritime Petroleum Shipping Community" regarding the sanctions risk related to shipping petroleum and petroleum products from Iran.<sup>1</sup> To view this Advisory, click [here](#).

The Advisory was issued to "alert persons globally to the significant U.S. sanctions risks for parties involved in shipping petroleum or petroleum products from Iran after the expiration of any applicable significant reduction exceptions on May 2, 2019." The Advisory notes that these shipments "**create significant sanctions risk**" for entities and individuals in the shipping industry, including shipping companies, vessel owners, managers, operators, insurers and financial institutions.

In particular, the Advisory warns that anyone who knowingly engages in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran or of Iranian-origin or who knowingly provides significant support to an Iranian person on the Specially Designated Nationals ("SDN") list are at "**serious risk**" of being targeted by the U.S. for sanctions, "**regardless of the location or nationality of those engaging in such activities.**" The Advisory specifically

---

<sup>1</sup> The term "from Iran" includes products of Iranian-origin regardless of from where shipped.

mentions transactions involving the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC), and the Islamic Republic of Iran Shipping Lines (IRISL), although the Advisory is not limited to transactions involving these entities alone.

The Advisory also warns that persons providing bunkering services to vessels transporting petroleum or petroleum products from Iran risk being subject to sanctions themselves unless an applicable waiver or exception applies. The sanctions that can be imposed include being listed on the SDN list.

The Advisory explains that the U.S. is committed to “aggressively enforcing” sanctions against Iran and that targeting shipments of petroleum and petroleum products from Iran is a “critical element” of denying the Iranian regime access to financial resources to support its activities. As a consequence, the U.S. “is targeting private and public sector entities around the world that engage in sanctionable conduct, including those involved in procuring petroleum and petroleum products from Iran to Syria, China, and elsewhere.”

### ***b. Naming of Vessels to the SDN List & Warnings Against Deceptive Shipping Practices***

In conjunction with the Advisory issued on September 4, OFAC designated twelve (12) vessels to the SDN list. OFAC reports that these vessels are part of an IRGC-QF-led network that shipped Iranian crude oil and condensate to Syria. Those vessels can be found through a search of the SDN list and were also listed in an Annex to the Advisory. The Annex describes the list of vessels as being non-exhaustive and indicates that they are vessels in which persons blocked pursuant to Executive Order 13224 have an interest. Other vessels and their owners were also designated on September 4 even though not identified in the Annex.

OFAC also reiterated its belief that deceptive practices are being deployed by persons associated with the petroleum shipping industry to facilitate Iranian transactions. Examples of the practices include the following:

- Falsifying cargo and vessel documents
- Ship to ship (STS) transfers
- Disabling Automatic Identification System (AIS)
- Vessel Name Changes

### ***c. Warnings to Marine Insurers***

The Advisory also warns that there is a sanctions risk related to the provision of underwriting services or insurance or reinsurance to certain Iranian energy- or maritime-related persons or activity. In particular, persons who knowingly provide underwriting services or insurance or reinsurance to any Iranian person on the SDN List — such as NIOC, NITC, or IRISL — are exposed to sanctions. Additionally, transactions involving the designated entity Kish Protection & Indemnity Club (aka Kish P&I), a major Iranian insurance provider, are considered sanctionable activity.

#### **d. Risk Mitigation Measures**

The Advisory sets forth the following suggestions that can potentially mitigate the sanctions risk:

**Verify Cargo Origin:** Individuals and entities receiving petroleum or petroleum products shipments should conduct appropriate due diligence to corroborate the origin of such goods when transported or delivered by vessels exhibiting deceptive behaviors or where connections to sanctioned persons or locations are suspected. Testing samples of the cargo's composition can reveal chemical signatures unique to Iranian oil fields. Publicizing cases where certificates of origin are known to be falsified can deter efforts to resell the goods to alternative customers.

**Strengthen Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Compliance:** Financial institutions and companies are strongly encouraged to employ risk mitigation measures consistent with Financial Action Task Force standards designed to combat money laundering, and terrorist and proliferation financing. This includes the adoption of appropriate due diligence policies and procedures by financial institutions and non-financial gatekeepers and promoting beneficial ownership transparency for legal entities, particularly as related to the scenarios outlined above.

**Monitor for AIS Manipulation:** Ship registries, insurers, charterers, vessel owners, or port operators should consider investigating vessels that appear to have turned off their AIS while operating in the Mediterranean and Red Seas and near China. Any other signs of manipulating AIS transponders should be considered red flags for potential illicit activity and should be investigated fully prior to continuing to provide services to, processing transactions involving, or engaging in other activities with such vessels.

**Review All Applicable Shipping Documentation:** Individuals and entities processing transactions pertaining to shipments potentially involving petroleum or petroleum products from Iran should ensure that they request and review complete and accurate shipping documentation. Such shipping documentation should reflect the details of the underlying voyage and reflect the relevant vessel(s), flagging, cargo, origin, and destination. Any indication that shipping documentation has been manipulated should be considered a red flag for potential illicit activity and should be investigated fully prior to continuing with the transaction. In addition, documents related to STS transfers should demonstrate that the underlying goods were delivered to the port listed on the shipping documentation.

**Know Your Customer (KYC):** As a standard practice, those involved in the maritime petroleum shipping community, including vessel owners and operators, are advised to conduct KYC due diligence. KYC due diligence helps to ensure that those in the maritime petroleum shipping community are aware of the activities and transactions they engage in, as well as the parties, geographies, and country-of-origin and destination of the goods involved in any underlying shipments. This includes not only researching companies and individuals, but also the vessels, vessel owners, and operators involved in any contracts, shipments, or related maritime commerce. Best practices for conducting KYC on a vessel include researching its IMO number, which may provide a

more comprehensive picture of the vessel's history, travel patterns, ties to illicit activities, actors, or regimes, and potential sanctions risks associated with the vessel or its owners or operators.

**Clear Communication with International Partners:** Parties to a shipping transaction may be subject to different sanctions regimes depending on the parties and jurisdictions involved, so clear communication is a critical step for international transactions. Discussing applicable sanctions frameworks with parties to a transaction can ensure more effective compliance.

**Leverage Available Resources:** There are several organizations that provide commercial shipping data, such as ship location, ship registry information, and ship flagging information. This data should be incorporated into due diligence best practices, along with available information from OFAC as outlined below in the "Sanctions Resources" section of this advisory.

#### ***e. Impact***

The OFAC Advisory is a further reflection of OFAC's intent to focus on international shipping and non-U.S. persons. OFAC clearly expects those operating in the shipping industry to take steps to avoid any intentional or unintentional violation of U.S. sanctions. Anyone operating in the shipping industry, including owners, charterers, managers, and insurers, should take steps to ensure compliance. With this latest Advisory, OFAC will consider the international shipping community to be more than sufficiently warned of the potential for sanctions being imposed against anyone in the world.

### **Updated FAQs Involving Bunkering**

On September 5, OFAC updated its FAQs concerning Iran with a focus on bunkering. The FAQs provide guidance on the sanctions risk associated with bunker operations for vessels engaged in non-sanctionable conduct as well as sanctionable conduct. The FAQs provide as follows:

#### **296. Will the provision of bunkering services to a non-Iranian vessel carrying non-sanctionable goods to or from Iran be subject to sanctions?**

If a non-Iranian vessel is transporting non-sanctionable goods to or from Iran, the bunkering of that non-Iranian vessel in a country other than Iran — and related payments for these bunkering services — will not be subject to sanctions, only if (1) the transaction either does not involve U.S. persons (including U.S. financial institutions) or U.S.-owned or -controlled foreign entities, or the transaction is exempt from OFAC regulation or authorized by OFAC if it does involve U.S. persons ... or U.S.-owned or -controlled foreign entities, and (2) the transaction does not involve persons on [the SDN list] that have been designated in connection with Iran's support for international terrorism or proliferation of weapons of mass destruction, including designated Iranian financial institutions or the Islamic Revolutionary Guard Corps (IRGC), or activity that is subject to other sanctions authorities.

**691. Will the provision of bunkering services to a non-Iranian vessel carrying sanctionable goods to or from Iran be subject to sanctions?**

If a non-Iranian vessel is transporting sanctionable goods to or from Iran ..., bunkering of that non-Iranian vessel in a country other than Iran — and related payments for these bunkering services — risk being subject to sanctions unless an applicable waiver or exception applies. For example, persons providing bunkering services to a non-Iranian vessel transporting petroleum or petroleum products from Iran could be designated under subsection 1(a)(ii) of E.O. 13846 if such activities involve the provision of material support for, or goods or services to or in support of, NIOC or NICO. Persons that knowingly provide bunkering services to a non-Iranian vessel carrying only petroleum or petroleum products from Iran could likewise be sanctioned under section 3(a)(ii) of E.O. 13846 if that transaction is determined to be a significant transaction for the purchase, acquisition, sale, transport, or marketing of those items.

**692. Will the provision of bunkering services for an Iranian vessel be subject to sanctions?**

Section 1244(d)(1) of IFCA makes sanctionable knowingly selling, supplying, or transferring to or from Iran significant goods or services used in connection with Iran's energy, shipping, or shipbuilding sectors. ... The provision of bunkering services to a vessel flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by, for, or on behalf of the Government of Iran (GOI) or an Iranian person, could be sanctionable under this authority, regardless of whether the transaction involves persons that have been determined to be part of Iran's energy, shipping, or shipbuilding sectors pursuant to Section 1244(c) of IFCA.

Likewise, pursuant to section 1244(d)(2) of IFCA, a foreign financial institution could be exposed to sanctions if it knowingly conducts or facilitates a significant financial transaction for the sale, supply, or transfer to or from Iran of goods or services used in connection with Iran's energy, shipping, or shipbuilding sectors. Payments for the provision of bunkering services to a vessel flying the flag of the Islamic Republic of Iran or owned, controlled, chartered, or operated directly or indirectly by, for, or on behalf of the GOI or an Iranian person could be sanctionable under this authority, regardless of whether the transaction involves persons that have been determined to be part of Iran's energy, shipping, or shipbuilding sectors pursuant to Section 1244(c) of IFCA.

In addition, the bunkering by non-U.S. persons of an Iranian vessel that has been identified as blocked property of an Iranian person on OFAC's List of Specially Designated Nationals and Blocked Persons — and the making of related payments for these bunkering services — risk being designated themselves.

However, the provision of bunkering services for an Iranian vessel transporting goods subject to an exception, such as agricultural commodities, food, medicine, or medical devices, to Iran, or subject to an applicable waiver — and the making of related payments for these bunkering services — will not be exposed to sanctions, unless the transactions involve persons on the SDN List that have been designated under E.O. 13224 or E.O. 13382 in connection with Iran's support for international terrorism or

proliferation of weapons of mass destruction ...or activity that is subject to other sanctions authorities.

These FAQs provide clear warning to those operating in the bunkering sector – do not provide fuel to blacklisted Iranian vessels or to those which may be participating in sanctionable conduct. The FAQs also provide guidance to shipowners, who are engaged in non-sanctionable conduct with respect to Iran, on their bunkering activities. If a shipowner engages in non-sanctionable trade to or from Iran, care should be exercised in regards to bunkering to ensure the guidance described in the FAQs is followed.

## **Conclusion**

The consequences for being found to have violated U.S. sanctions or engaged in sanctionable conduct can be significant and may include the naming of a non-U.S. person to the SDN list or other sanctions. It is thus imperative that those operating in the shipping industry remain diligent. Caution and effective risk assessment should continue to be exercised in dealings involving Iran or petroleum or petroleum products that might be of Iranian origin.

We continue to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions against Iran, please feel free to contact the authors, Bill Juska at [juska@freehill.com](mailto:juska@freehill.com) or Gina Venezia at [venezia@freehill.com](mailto:venezia@freehill.com).

This Client Alert is only a general summary for informational purposes. It and its content are not intended to be and should not be used or construed as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

*FREEHILL HOGAN & MAHAR LLP*  
*80 Pine Street, 25<sup>th</sup> Floor*  
*New York, NY 10005*  
*212-425-1900*  
[www.freehill.com](http://www.freehill.com)

*William L. Juska, Jr.*  
[juska@freehill.com](mailto:juska@freehill.com)

*Gina M. Venezia*  
[venezia@freehill.com](mailto:venezia@freehill.com)