

# CISADA Update: Reporting Requirements

On October 5, 2011, the US Treasury Department issued a final rule implementing the US correspondent account provision of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA").<sup>1</sup> The final rule only lightly modifies the May 2, 2011 draft proposal issued by US Treasury, and will take effect immediately upon publication in the Federal Register. Consistent with the May 2 draft, the final rule will substantially increase US Treasury's extraterritorial ability to access and respond to information regarding the Iran-related activity of non-US banks that maintain US correspondent accounts.

## CISADA Reporting Requirements

The final rule provides that US Treasury can selectively target non-US banks of interest to it, and direct US banks to request a certification ("Certification") from any such non-US bank for whom the US bank maintains a correspondent account. In response to a Certification request, the non-US bank would have to indicate whether it:

- (1) Maintains any correspondent accounts in any currency with Iranian-linked financial institutions designated by OFAC under its counter-proliferation and anti-terrorism sanctions (i.e., financial institutions designated under OFAC's Iranian Financial Sanctions Regulations or "IFSR");
- (2) Processed any funds transfers in any currency to their knowledge within the preceding 90 calendar days directly or indirectly for or on behalf of an IFSR-designated financial institution, other than through a correspondent account; or
- (3) Processed any transfers of funds in any currency to their knowledge within the preceding 90 calendar days directly or indirectly for or on behalf of a person or entity designated by OFAC as linked to Iran's Islamic Revolutionary Guard Corps ("IRGC").

If the non-US bank responds that it does maintain a correspondent account for an IFSR-designated financial institution, or has processed funds transfers for or on behalf of an IFSR-designated financial institution or IRGC-designated person or entity in the preceding 90 days, the non-US bank would also have to provide information in the response about the accounts or funds transfers, including account names and numbers, whether the account was licensed, blocked or restricted, and the approximate USD value of transactions processed within the preceding 90 calendar days. Non-US banks could also provide additional explanatory information in an effort to demonstrate that any reported activity does not warrant retaliation by OFAC under the IFSR.

US Treasury acknowledges in the preamble to the final rule that non-US banks "are not necessarily required to respond" to a Certification request, but states that they may feel compelled to do so "in order to maintain good relationships" with their US correspondent banks. The final rule indicates that OFAC may

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regard a failure to respond, even if justified by local law constraints, as a predicate for OFAC to contact the non-US bank directly for additional information.

US banks are required to submit a report to US Treasury regarding the information obtained from the non-US correspondent banks in response to the Certification request. The final rule includes a "model certification", similar in concept to a USA PATRIOT Act shell bank certification, but focused on the above-specified Iran-related information.

In addition, the US bank must report to US Treasury if it cannot determine whether the non-US bank subject to the Certification request has engaged in any of the Iran-related activities listed above and the reason for this, such as whether the non-US bank failed to respond to the Certification request or failed to appropriately certify its responses, or if the US bank has information that is inconsistent with the information provided by the non-US bank in its Certification.

Non-US banks that respond to Certification requests will also be requested to update their US correspondent banks (and indirectly US Treasury) in the event they subsequently establish any new correspondent accounts for IFSR-designated financial institutions within a year of the non-US bank's initial response.

## Implications

The implementation of these reporting requirements will provide US Treasury, through US correspondent banks, with information about entirely non-US banking and payments activity involving non-US correspondent banks and their IFSR and IRGC clients and counterparties, if any.

US Treasury has indicated it intends to send requests for information only in regard to non-US banks that it believes "may be engaged in activities that may be sanctionable" under the IFSR.

With the benefit of information provided by non-US banks in response (or refusals to respond as the case may be) OFAC will then have the option of: (1) immediately retaliating under the IFSR; (2) contacting the non-US bank directly for more information; or (3) taking no further action.

In addition, the US correspondent bank, upon reviewing the contents of a Certification, may decide to take various actions in accordance with its anti-money laundering and sanctions compliance programs, although not required to do so regardless of the response from the non-US bank. For instance, the US bank would have the option to take action "based on the bank's assessment of the facts and bank policy," including by "restricting or terminating a correspondent account relationship with a foreign bank, or filing a suspicious activity report." Moreover, any non-US bank that intentionally submits misleading or incorrect Certifications to their US correspondent banks for onward transmission to US Treasury risks liability under US criminal law.

Under the IFSR, OFAC can impose a range of retaliatory sanctions against any non-US bank that it determines knowingly engaged in one or more proscribed activities, including facilitating a significant transaction or providing significant financial services for IFSR or IRGC designated entities. These sanctions can include directing US banks to prohibit direct or indirect US correspondent banking activity by such non-US bank.

Typically, OFAC would not have access to data regarding entirely non-US transaction activity by non-US banks and therefore would not know which non-US banks to target for sanctions under the IFSR. The proposed Certification procedure would enable US Treasury and OFAC to overcome this information gap and easily identify non-US banks that have US correspondent accounts and that also engage in IFSR-proscribed conduct, even if such conduct does not involve use of the US correspondent accounts. Presumably, US Treasury intends this procedure to motivate such non-US banks to exit any remaining account relationships or payment processing activity, in any currency, for IFSR or IRGC designated entities.

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<sup>1</sup> [http://www.fincen.gov/statutes\\_regs/frn/pdf/CISADA\\_Final\\_Rule.pdf](http://www.fincen.gov/statutes_regs/frn/pdf/CISADA_Final_Rule.pdf)

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