

OFAC DINGS COMPANY FOR DELINQUENT ROSNEFT PAYMENTS IN FIRST ENFORCEMENT ACTION UNDER DIRECTIVE 2, EXECUTIVE ORDER 13662

On April 25, 2019, OFAC announced a \$75,375 settlement with US software provider Haverly Systems ("Haverly"), the agency's first public enforcement of Directive 2 under Executive Order 13662 "Blocking Property of Additional Persons Contributing to the Situation in Ukraine." Under Directive 2, US persons are prohibited from transacting or otherwise dealing "in new debt of greater than 90 days maturity" of entities identified by OFAC on the Sectoral Sanctions Identification ("SSI") List. The definition of "debt" includes payment terms resulting in an extension of credit, such as a commercial invoice. Haverly allegedly violated Directive 2 when it received payments for invoices issued to JSC Rosneft ("Rosneft") more than 90 days after the invoice dates.

The alleged violations related to two invoices issued in 2015. Although the invoices contained payment due dates of between 30 and 70 days, it took Rosneft approximately 9 months (*i.e.*, approximately 273 days) to pay the first invoice. With respect to the second invoice, OFAC stated that Rosneft attempted four times to make payments to Haverly, but the payments were rejected by financial institutions that determined the payment was prohibited by OFAC. Haverly received information from Rosneft, including SWIFT messages from banks referring to the nexus to sectoral sanctions. Instead of seeking guidance from OFAC, Haverly ultimately reissued and re-dated the second invoice bringing Rosneft's payment within the 90-day period from the new invoice date. According to OFAC, Haverly's re-issuance prevented the payment for the second invoice from being rejected by the US financial institutions thereby, resulting in the second violation.

OFAC notes that Haverly did not have a sanctions compliance program and that the apparent violations resulted in minimal actual harm to the Ukraine-related sanctions program because OFAC would have likely authorized the transaction had Haverly requested a license for the payments. OFAC highlighted that Haverly implemented a risk-based compliance program and has committed to enhancing its compliance procedures including by conducting regular risk assessments.

Finally, OFAC determined that Haverly had not voluntarily disclosed the apparent violations but that the violations were non-egregious.

OFAC's latest settlement reflects the agency's continued focus on the importance of risk-based compliance programs which should contain:

- *policies, procedures, and controls capable of identifying at-risk transactions and customers or counter-parties for review;*
- *escalating such matters to a sanctions compliance officer or point-of-contact for proper analysis;*
- *an ability to respond and react to warning signs regarding potential violations, including transactions blocked or rejected by financial institutions in accordance with OFAC's regulations; and*
- *an adequate training program.*

OFAC also cautioned against the use of "unorthodox business practices" such as amendment or alteration of trade documents or resubmission of payment information without a sanction-related term, phrase or location. Haverly's re-issuance of one invoice that gave the impression that Rosneft's second payment was within the allowable period under Directive 2 apparently constituted such an unorthodox business practice, according to OFAC.

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