



US Capital Markets Sanctions

A Proposed Framework to Standardize Requirements and Mitigate US Investor Harm

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I. Executive Summary

The Securities Industry and Financial Markets Association (“SIFMA”)¹ and its member firms fully support the important U.S. national security and foreign policy goals furthered by U.S. sanctions imposed by the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury (“Treasury”). We are firmly aligned with U.S. sanctions objectives and committed to working with OFAC to increase the effectiveness of its sanctions programs.

Since 2014, OFAC’s use of sanctions affecting U.S. capital markets participants and U.S. investors has increased dramatically. Variations in different OFAC sanctions programs have resulted in a patchwork of capital markets sanctions. Although U.S. firms have implemented policies and procedures to comply with sanctions impacting capital markets activities, it has become evident to market participants that these sanctions are not tailored to address the realities of the capital markets.

In addition, and most importantly, U.S. capital markets sanctions have unintentionally harmed U.S. investors. U.S. retail and institutional investors have broad exposure to the capital markets, including, among others, individuals investing through pension plans, mutual funds, exchange-traded funds (“ETFs”), individual retirement accounts (“IRAs”) and other investment vehicles with the aim of receiving reliable, low-risk returns. Sanctions that restrict investors’ ability to divest their holdings, receive dividends or interest payments or preserve the value of investments made long before sanctions were imposed have a significant negative impact on those investors. At the same time, these types of restrictions have no effect on the capital already raised by the securities issuers before sanctions. It is thus not apparent that the U.S. investor harms that result under current approaches to U.S. capital markets sanctions are offset by commensurate impacts advancing U.S. sanctions goals.

There are more effective ways for OFAC to implement sanctions on securities issuers that would mitigate negative impacts to U.S. investors, market participants and OFAC itself, without undermining the critical goals of U.S. sanctions policy or providing meaningful benefit to targeted issuers. As we detail in this white paper, OFAC should adopt a standardized capital markets sanctions framework designed to: (i) ensure that sanctions do not negatively impact U.S. investors; (ii) enable OFAC to implement capital markets sanctions in a more institutionalized and effective manner; and (iii) help U.S. firms understand their compliance obligations in the securities context.

* This white paper has been prepared by members of SIFMA’s Anti-Money Laundering and Financial Crimes Committee and Sanctions Working Group with the assistance of Aseel Rabie and Jonathan Wong of Debevoise & Plimpton LLP. Debevoise associates Tealanie Baldwin and Ally Farley also provided assistance.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association (GFMA).

As part of developing this standardized framework, we urge OFAC to reconsider holistically its restrictions on secondary market trading and securities divestment transactions, discussed in Sections IV.A and IV.B. These restrictions have a detrimental impact on U.S. investors, and there is little indication that they meaningfully advance U.S. policy goals, which can be effectively achieved by targeting the ability of securities issuers to access global markets for new capital after sanctions are imposed. We also believe that OFAC should provide delayed effective dates for capital markets sanctions, as discussed in Section IV.C, to provide market participants adequate time and ability to unwind securities positions and to implement compliance controls.

Further, we urge OFAC to address common sanctions compliance questions and challenges faced by U.S. market participants through a standardized set of general licenses (“GLs”). As discussed in Section V, the issues that OFAC should address through standard GLs include, among others:

- Authorizing investors to maintain and receive benefits from their investments in securities issued before the imposition of sanctions, such as receiving dividends and other payments on the securities;
- Authorizing investment funds to engage in redemptions, distributions, mergers and liquidations, even if they have sanctioned investors or hold sanctioned securities, to mitigate harms to U.S. investors; and
- Authorizing U.S. persons to maintain, close out or wind down (i) depositary receipt programs, (ii) securities lending and repurchase agreements and (iii) derivatives transactions involving sanctioned securities or sanctioned persons.

Finally, firms have seen enormous increases in OFAC reporting burdens in recent years. We urge OFAC to take steps to relieve securities reporting burdens for both U.S. reporting parties and OFAC, as discussed in Section VI.

We thank OFAC for its attention to these important issues. We fully support Treasury’s goal of ensuring that sanctions are aligned with the critical objectives of U.S. sanctions policy without disruption to legitimate economic activity² and would be pleased to discuss further any of the matters addressed in this white paper in support of that goal.

² Opening Statement of Jonathan H. Burke, Assistant Secretary for Terrorist Financing, U.S. Dep’t of the Treasury, Before the U.S. House of Representatives Committee on Financial Services Subcommittee on National Security, Illicit Finance, and International Financial Institutions (Apr. 22, 2026), <https://docs.house.gov/meetings/BA/BA10/20260422/119206/HHRG-119-BA10-Wstate-BurkeJ-20260422.pdf>.

II. US Capital Markets Sanctions Landscape

Sanctions have become a critical tool to advance U.S. foreign policy and national security aims. The increased use of sanctions has resulted in a constantly evolving sanctions landscape, with a variety of restrictions under different sanctions programs.³

In 2014, following Russia's annexation of Crimea, the United States imposed a series of escalating economic sanctions against Russia. In taking these actions, the United States not only used more traditional blocking sanctions against Russian persons but also imposed for the first time targeted sectoral sanctions against certain Russian financial institutions and other firms, restricting only transactions in certain new debt or equity of the targeted entities (among other restrictions).

Since the imposition of these sectoral sanctions, the U.S. government's use of securities-related sanctions has evolved to include additional types of restrictions on capital markets activities. These include more tailored prohibitions on trading in the sovereign debt of certain governments or investing in publicly traded securities of specified companies as well as broad bans on new investment in certain jurisdictions. Traditional blocking sanctions also restrict securities activity by prohibiting dealings with securities of blocked issuers, and these measures have increased in significance as OFAC has imposed blocking sanctions on entities whose securities are widely held by U.S. investors.

U.S. sanctions targeting capital markets activities have detrimentally impacted both U.S. investors and securities market participants. U.S. investors have seen their investments become worthless, are unable to receive income on long-held securities pre-dating the imposition of sanctions and are unable to divest their sanctioned securities.

Further, OFAC's capital markets sanctions have come to reflect inconsistent standards and approaches. Although OFAC's sanctions programs may be motivated by differing policy objectives, these differences do not warrant such inconsistencies or the resulting compliance costs and challenges. Despite the increasing complexity of U.S. sanctions targeting capital markets activities, OFAC's guidance on key compliance issues raised by the securities industry has been limited. To date, OFAC's guidance has come by way of ad hoc Frequently Asked Questions ("FAQs") or non-public guidance provided to specific parties, often in response to urgent concerns raised by affected industry members in response to new sanctions. Even when OFAC has offered public guidance on certain issues, the application of that guidance to different types of market participants or to different sanctions programs has not always been clear. In addition, firms have struggled to obtain specific licenses from OFAC for securities transactions, with many firms reporting that they have had OFAC license requests remain outstanding for three years or longer.

³ Please see Appendix A for a summary of U.S. capital markets sanctions implemented by OFAC since 2014.

SIFMA strongly affirms our support for U.S. sanctions policy aims and believes that effective sanctions are a critical component of U.S. foreign and national security policy. To this end, we believe it is imperative that OFAC recalibrate its use of capital markets sanctions across OFAC's sanctions programs to sharpen their focus on the ability of issuers to raise capital in global markets after sanctions are imposed while mitigating compliance burdens and negative impacts on investors. Left unaddressed, the patchwork U.S. capital markets sanctions framework will only become more fragmented. For example, the Fiscal Year 2026 National Defense Authorization Act signed into law in December 2025 authorizes the President to impose sanctions prohibiting U.S. persons from investing in or purchasing "significant amounts" of equity or debt instruments of certain covered foreign persons.⁴ It is unclear how OFAC will interpret or implement this novel "significant amount" standard and whether OFAC will introduce yet another new sanctions restriction affecting U.S. investors and securities firms.

As outlined in this white paper, OFAC should develop a standardized capital markets sanctions framework to implement sanctions more effectively. When OFAC imposes new sanctions affecting securities that are issued by blocked issuers or otherwise the target of sanctions restrictions ("Sanctioned Securities"), OFAC should apply this standardized framework by default, with any deviations made on a case-by-case basis. By doing so, OFAC would reduce negative impacts to U.S. investors, enable securities industry members to better understand and operationalize their compliance obligations under U.S. sanctions and enhance OFAC's efforts to implement a U.S. capital markets sanctions framework fit for purpose and suitably tailored to achieve U.S. sanctions objectives.

⁴ National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60 (Dec. 18, 2025), § 8511.

III. Overview of Capital Markets and US Sanctions Implications

In this section, we describe the extent of U.S. investor participation in the capital markets (Section III.A) and provide a brief overview of primary and secondary capital markets and equity and debt securities (Section III.B).⁵ We then describe certain negative impacts to U.S. investors resulting from U.S. sanctions (Section III.C) and challenges presented by the application of more traditional sanctions concepts to capital markets activities (Section III.D).

A. US Investor Participation in Capital Markets

A variety of U.S. investors participate, directly or indirectly, in global capital markets. These U.S. investors include both (i) retail investors (e.g., individuals with brokerage or retirement accounts through which they buy and sell stocks) and (ii) institutional investors (e.g., major pension plans that invest on behalf of millions of police officers, firefighters, teachers, uniformed services members and other U.S. federal, state and local employees⁶ and insurance companies that invest annuity reserves underlying annuity investments by retail investors).

U.S. investors have significant financial exposure to the capital markets. Approximately 76 million U.S. households (or around 58% of U.S. households) own equity securities directly or indirectly, including through mutual funds, ETFs and retirement accounts.⁷ Indirect holdings by U.S. retail investors via investment funds and retirement plans typically account for the majority of such investors' exposures to the capital markets. In 2024, the total value of U.S. retirement assets, typically held by U.S. investors through pension plans and IRAs, increased to \$49.6 trillion.⁸ U.S. investors holding retirement assets typically expect that their investments will provide reliable, low-risk returns for many years.

Institutional investors, including pension plans and insurance companies, and investment funds, such as mutual funds and ETFs, hold and trade a substantial portion of securities. However, the underlying beneficial owners for such investments include hundreds of millions of underlying retail investors. This underscores the central role of securities industry

⁵ Please see Appendix B for a non-exhaustive glossary of securities products and services and industry participants that may be impacted by U.S. sanctions.

⁶ For example, according to data from the U.S. Department of Labor, over 155.5 million individuals participated in private pension plans in 2023, including defined benefit plans and 401(k) and other defined contribution plans. See U.S. Dep't of Labor, *Employee Benefits Security Administration, Private Pension Plan Bulletin Abstract of 2023 Form 5500 Annual Reports* (Sept. 2025), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf>. Further, the U.S. Census Bureau estimates that, in 2024, over 36 million people participated in U.S. state and local government retirement plans, and the Thrift Savings Plan, the retirement plan for U.S. federal government employees and uniformed services members administered by the Federal Retirement Thrift Investment Board, had approximately 7.2 million participants as of December 31, 2024. See U.S. Census Bureau, *Census Bureau Releases 2024 Annual Survey of Public Pensions* (May 29, 2025), <https://www.census.gov/newsroom/press-releases/2025/2024-annual-survey-public-pensions.html>; Sikich, *Thrift Savings Fund Financial Statements and Independent Auditor's Report for the Years Ended December 31, 2024 and 2023* 6 (June 26, 2025), <https://www.frtib.gov/pdf/reading-room/FinStmnts/TSP-FS-Dec2024.pdf.pdf>.

⁷ See 2025 SIFMA *Capital Markets Fact Book* 9 (July 2025), <https://www.sifma.org/wp-content/uploads/2024/07/2025-SIFMA-Capital-Markets-Factbook.pdf>.

⁸ *Id.*

participants, such as investment advisers managing investment funds, plan sponsors and broker-dealers, as intermediaries facilitating investment activity that ultimately benefits underlying U.S. retail investors.

B. Capital Markets Overview

1. Primary Markets

In the primary market, an issuer raises new capital by issuing securities for the first time via a primary offering. Primary offerings may be conducted through offerings to the public or through private placements to a more limited investor base. These primary market transactions are facilitated by various financial institution intermediaries.

The proceeds from investors' purchases of an issuer's newly issued securities flow to the issuer. In this way, primary capital markets transactions allow capital to move from investors seeking return on their invested funds to issuers that require funding for various purposes, such as operating or growing their businesses.

2. Secondary Markets

After securities are issued by an issuer, such securities may enter secondary markets for trading. Secondary markets are where securities may trade among investors without any involvement of the issuers. Secondary market trading may occur between investors on organized trading venues, such as stock exchanges, or "over the counter."

In the secondary market, sellers are existing holders of the securities and buyers are other investors seeking to purchase those securities. Issuers are not involved in typical secondary market transactions. Accordingly, secondary market trades do not transfer any new capital to issuers. (Activities such as a stock buyback or share repurchase may involve the issuer, but, in such cases, the issuer would be purchasing securities from, rather than receiving capital from, investors in the securities.)

3. Equity

In a primary equity offering, an issuer sells shares, such as common or preferred stock, that represent an ownership interest in the issuer.

In the secondary market, investors trade existing equity securities with other investors without the involvement of the equity issuer in such transactions.

Investors holding equity of an issuer generally benefit from uncapped upside potential if the issuer's value increases but also may lose the value of their investments if an issuer's share price depreciates. Equity holders have a residual claim in an issuer's assets and profits and may have voting, dividend and other shareholder rights.

4. Debt

In a primary debt offering, an issuer obtains capital from investors by issuing debt instruments, such as bonds, to investors and undertaking a contractual obligation to repay principal and interest in accordance with the terms of the issued instrument.

Investors act as *lenders* to the issuers of debt securities and, unlike equity holders, do not obtain an ownership interest in the issuer; rather, they hold a contractual right to payments from the issuer. Certain debt issuances, such as sovereign bonds, may have very long maturities.

In the secondary market, investors buy outstanding debt instruments from other investors and sell such instruments to other investors without the involvement of the issuer.

C. Harms to US Investors from US Capital Markets Sanctions

U.S. sanctions on securities greatly impact the millions of U.S. investors who participate in global capital markets. U.S. sanctions targeting issuers can cause U.S. investors to lose substantial value in their investments, even when those investors have no connection to a sanctioned issuer beyond investment exposure to the issuer's securities. Sanctions also constrain U.S. investors' ability to take actions on their investments made well before sanctions were imposed, including to receive payments on or divest from such investments.

In many cases, U.S. investment funds and investors may have acquired Sanctioned Securities prior to the imposition of sanctions merely because the relevant issuers were included in benchmarks or indexes. For example, Russian sovereign debt instruments were included in benchmarks tracked by investment funds before U.S. sanctions restricted investments in those instruments, and Russian sovereign debt was generally considered investment grade credit prior to Russia's February 2022 invasion of Ukraine and the sanctions that followed. Thus, many U.S. investors seeking steady, low-risk investment returns through investments tracking diversified benchmarks multiple years ago now have exposure to securities that have become sanctioned.

U.S. sanctions on Russia demonstrate how sanctions significantly diminish the value of U.S. investors' holdings. For example, as a result of U.S. sanctions imposed on Russian issuers in early 2022, securities industry members estimate that approximately 737 ETFs with exposure to international securities experienced declines in net asset value of approximately \$2.4 billion. Mutual funds providing similar exposures experienced comparable declines in value. In many cases, blocked Russian positions are currently valued at zero.

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Further, SIFMA member firms report that, as a result of U.S. sanctions on Russia, many U.S. investor clients have been unable to receive billions of dollars in income on their impacted securities acquired before sanctions were imposed.⁹ A single SIFMA member firm estimates that it has blocked distributions currently valued at approximately \$3.8 billion paid by Russian and other issuers to the firm's customers. Another SIFMA member firm, a U.S. asset manager, estimates that \$1.4 billion in blocked cash dividends from Russian issuers is held for funds and accounts it advises. The relevant Russian issuers have already distributed these dividends, but the funds cannot be accessed by U.S. and other investors due to sanctions. Requiring such distributions to be blocked harms the U.S. and other investors unable to receive any benefit from their investments and, if OFAC authorized release of those funds, the benefits of OFAC's action would flow directly to such investors and not the issuers.

D. Unique Challenges of Capital Markets Sanctions

OFAC's sanctions programs are generally built around restrictions on "property" and interests in property. There are well-established procedures for applying U.S. sanctions to the assets of a sanctions target held in deposit or similar accounts or to custodians or other institutions that hold or process transactions in such assets.

However, this traditional sanctions construct is difficult to apply to the securities markets, which involve indirect holding systems and intermediated custody and transactional chains. In practice, securities are held, traded and dealt in through complex chains of central securities depositories, global and local custodians, broker-dealers and other intermediaries. These mechanisms differ significantly from the custody of, and transactions in, cash and similar assets. Consequently, sanctions on an issuer or specific security have much broader implications, impacting not only the intended sanctions target but also the ultimate beneficial owner of the security and the various other parties involved in the custody chain.

Further, U.S. capital markets sanctions have been implemented under multiple sanctions programs through diverse prohibitions that vary in important ways. These differences make it challenging for securities industry participants to quickly understand new sanctions and implement appropriate controls. Additionally, OFAC has taken inconsistent approaches to authorizing wind-down or divestment transactions, which causes unpredictability for firms and U.S. investors seeking to unwind and divest positions in Sanctioned Securities, with ultimate harm to the underlying U.S. investors.

OFAC's lack of a standardized capital markets sanctions approach means that each new imposition of sanctions creates uncertainty for market participants. Securities industry members have repeatedly sought guidance from OFAC on similar sanctions compliance questions, such as those addressed in Section V, under different sanctions programs. These efforts

⁹ In the context of sanctions on Russia, investors also may have limited access to distributions from Russian issuers as a result of UK or EU sanctions on Russia or Russian counter-sanctions measures.

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have required private industry to expend significant compliance resources and to engage extensively with OFAC to resolve fundamental issues about the scope of sanctions compliance obligations.

Finally, there are key differences between U.S. capital markets sanctions and those imposed by other jurisdictions, including the European Union and the United Kingdom. Given the interconnected nature of global capital markets, U.S. capital markets transactions regularly implicate those jurisdictions, and the divergence in sanctions approaches creates compliance complexity and uncertainty for U.S. investors and securities industry participants.

OFAC's capital markets sanctions framework should account for the realities of how the securities industry operates, avoid undue harm to U.S. investors and enable industry members to understand their compliance obligations. A default standardized framework would both avoid ad hoc or inconsistent approaches that harm U.S. investors and firms and benefit OFAC, which could implement U.S. sanctions more effectively without having to address the same sanctions compliance issues or field repeated requests for guidance from industry.

IV. Recommendations for a Standardized Capital Markets Sanctions Framework

We urge OFAC to implement a standardized capital markets sanctions framework across OFAC's sanctions programs, which should be codified in OFAC's regulations and/or authorized via standard GL language whenever OFAC imposes sanctions that may affect capital markets activities. This standardized approach should be the baseline for OFAC's implementation of sanctions programs, with any variations documented and clearly articulated on a program-by-program basis.

In this Section IV, we describe key elements that should be central to OFAC's standardized capital markets sanctions framework, including: (i) authorizations for secondary market trading activity; (ii) divestment authorizations; and (iii) delayed effective dates for sanctions affecting securities. In Section V, we provide our related recommendations for standardized capital markets GLs. In Section VI, we suggest certain improvements to OFAC Sanctioned Securities reporting to relieve burdens on both reporting parties and OFAC.

A. Secondary Market Trading in Sanctioned Securities

We urge OFAC to authorize U.S. persons to engage in secondary market trading of Sanctioned Securities that were issued before the imposition of sanctions against the issuers of those securities ("Pre-existing Securities").

As described in Section III.B.2, sanctioned issuers do not receive any new capital from secondary market trading, as the exchange of capital generally occurs between investors buying and selling the securities and not with the issuers of those securities. Thus, although secondary market trading restrictions on Pre-existing Securities detrimentally impact U.S. investors, such restrictions impose little or no cost on sanctioned issuers and, therefore, result in minimal or no U.S. policy benefit.

1. Blocked Issuer Example

To illustrate the minimal sanctions policy benefit and asymmetric U.S. investor cost of secondary market trading restrictions, consider the example of a foreign issuer that has been designated on OFAC's list of Specially Designated Nationals and Blocked Persons ("SDNs"). Below, we set out the implications of the issuer's SDN designation for (i) a U.S. investor, (ii) a non-U.S. investor and (iii) a U.S. intermediary financial institution in the custody chain for the issuer's securities.

- **U.S. investor.** OFAC takes the view that all securities issued by an SDN must be blocked by a U.S. person holding such securities.¹⁰ Accordingly, any U.S. person in possession or control of an SDN issuer's Pre-existing Securities must block those securities and may not make or effect any payment, transfer or other dealing involving those securities, including secondary market trading in or divestment of such securities, absent

¹⁰ See, e.g., OFAC FAQ 982.

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authorization from OFAC. Further, the U.S. investor may not receive dividends or other payments on the Pre-existing Securities, may not exercise voting rights or other shareholder rights and may not move or transfer the Pre-existing Securities. Essentially, the U.S. investor can do nothing with respect to these Pre-existing Securities, even to maintain or protect the value of the investor's investment or to divest from the securities.

If OFAC were to authorize secondary market trading in the SDN issuer's Pre-existing Securities, the U.S. investor could sell or buy such securities and realize benefits (such as receipt of dividends or other payments) from the investor's investment in such securities. If OFAC were to limit its secondary market trading authorization to divestment of the SDN issuer's Pre-existing Securities to non-U.S. persons, the U.S. investor would be able to sell such securities to realize any benefits from increase in the value of the investment or manage the risk of loss to capital. As discussed in Sections IV.A.2 and IV.B.1, authorizing secondary trading or divestment activity would provide negligible, if any, benefit to the SDN issuer.

- **Non-U.S. person investor.** Non-U.S. persons generally do not face U.S. sanctions compliance obligations. Thus, a non-U.S. person investor would not face U.S. sanctions restrictions on trading or otherwise dealing in securities issued by the SDN issuer.
- **U.S. intermediary financial institution.** As in the case of U.S. investors, U.S. securities firms, such as broker-dealers and asset managers, also may not engage in any dealings with the SDN issuer's Pre-existing Securities, and U.S. custodians or other persons in possession or control of the SDN issuer's securities must block and report the securities to OFAC. This means that even securities held by a U.S. custodian or sub-custodian for non-U.S. persons must be blocked if the securities' issuer is designated as an SDN. Further, U.S. financial institutions would not be able to facilitate divestments or other trades by non-U.S. clients in the SDN issuer's Pre-existing Securities, as such trades would be prohibited for a U.S. person. If OFAC were to authorize secondary marketing trading in or divestment of the SDN issuer's Pre-existing Securities, U.S. securities firms and intermediaries could facilitate such authorized transactions for clients or engage in proprietary transactions.
- **SDN issuer.** The SDN issuer would be prohibited from raising capital in a primary issuance from U.S. investors or using U.S. intermediaries. However, the capital raised by the issuer from its Pre-existing Securities would remain unaffected, regardless of whether U.S. investors are prohibited from or authorized to engage in secondary market trading in or divestment of such securities. Further, non-U.S. investors may continue to trade in an issuer's Pre-existing Securities, meaning that a prohibition on U.S. investor secondary market trading may have minimal impact in the longer term on the issuer.

This example elucidates several important points with respect to secondary market trading restrictions, each discussed below.

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2. Secondary Market Trading Restrictions Do Not Meaningfully Harm Issuers

Treasury itself has acknowledged that secondary market trading by U.S. persons in the Pre-existing Securities of a sanctioned issuer provides negligible benefit to the issuer. Conversely, prohibiting U.S. persons from secondary market trading does not appear to inflict meaningful harm on issuers targeted by U.S. sanctions whose securities continue to trade among non-U.S. investors in non-U.S. markets. Consequently, permitting such trading by U.S. persons should not detract from OFAC's efforts to impose sanctions impacts on the issuer but would mitigate harms to U.S. investors.

Following the imposition of blocking sanctions on *Petróleos de Venezuela, S.A. ("PdVSA")* in early 2019, OFAC issued a GL to authorize U.S. persons to divest certain PdVSA Pre-existing Securities to non-U.S. persons, but OFAC did not generally authorize secondary market transactions in such securities. OFAC took a similar approach to Pre-existing Securities issued by the Government of Venezuela, which was blocked by OFAC in August 2019. However, in October 2023, Treasury changed its position and allowed U.S. persons to participate in the secondary market for such instruments.¹¹ Importantly, when doing so, Treasury noted that allowing secondary trading in such Pre-existing Securities "would have the positive effect of displacing nefarious players in this market, *and with negligible financial benefit to the Venezuelan regime.*"¹² Thus, Treasury itself has recognized that secondary trading in Pre-existing Securities of blocked issuers provides negligible benefit to the relevant issuers.

The same rationale should apply generally to secondary market activity in Pre-existing Securities. Even if U.S. investors are permitted to trade in such securities, the issuer would not receive capital or meaningfully benefit from such activities.

Further, OFAC's restrictions on secondary trading appear not to result in meaningful harms imposed on targeted issuers. For example, SIFMA member data on the impact of OFAC's Chinese Military-Industrial Complex ("CMIC") sanctions shows that short-term decreases in the share prices of CMIC issuers after their targeting were followed by recovery and outperformance (up to 200%) against the Hang Seng China Enterprises Index,¹³ meaning CMIC sanctions trading restrictions had no apparent long-term impact on the issuers' share prices or, by extension, their ability to raise new capital from non-U.S. investors.

In fact, as alluded to in Treasury's explanation for relaxing the Venezuela secondary trading ban, restricting U.S. investors from secondary market trading in Pre-existing Securities could work against U.S. sanctions goals in some cases by enabling other investors to dominate the market for such securities and to acquire them at a discount, to the financial

¹¹ See Venezuela GLs 3I, 9H; OFAC FAQ 1136.

¹² U.S. Dep't of the Treasury, *In Response to Electoral Roadmap, Treasury Issues New Venezuela General Licenses* (Oct. 18, 2023) (emphasis added), <https://home.treasury.gov/news/press-releases/jy1822>.

¹³ Based on analysis of stock performance of China Mobile Ltd, China Unicom Hong Kong Ltd, China Telecom Corp Ltd, China Communications Construction Company Ltd, China Railway Construction Corporation, CSSC Offshore & Marine Engineering (Group) Company Limited, Nanjing Panda Electronics Company Limited, CNOOC Ltd and Semiconductor Manufacturer International Corporation relative to the Hang Seng China Enterprises Index for the period from the date of designation by OFAC (Nov. 12, 2020, or Dec. 3, 2020, as applicable) to present.

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detriment of U.S. sellers and contrary to U.S. sanctions aims. Conversely, allowing U.S. persons to participate in secondary trading may further U.S. sanctions aims by limiting the ability of opaque non-U.S. parties to buy Sanctioned Securities at low prices and causing more trading volume to flow through regulated U.S. securities participants with U.S. sanctions compliance obligations.

3. Secondary Market Trading Restrictions Primarily Harm U.S. Investors

The impact of secondary market trading restrictions on Pre-existing Securities appears to fall largely and disproportionately on U.S. investors, which we do not believe to be the intent or goal of U.S. sanctions policy.

If U.S. investors are unable to unwind their positions in Pre-existing Securities, they are forced to hold stranded, illiquid positions for an unknown, and typically indefinite, period of time. When U.S. investors cannot take actions to protect their investments or receive dividends or other payments from a sanctioned issuer, sanctions directly harm U.S. investors and diminish the returns on their investments. As discussed above, U.S. investors hurt by sanctions include individual investors who may rely on their investments for steady, low volatility returns.

U.S. investor harms resulting from secondary market trading restrictions on Pre-existing Securities do not appear to be outweighed by any negative impacts on a sanctioned issuer that could result from such restrictions. The imposition of blocking sanctions on an issuer denies the issuer the ability to raise new capital from U.S. investors or through U.S. intermediaries from and after the imposition of sanctions, which is presumably the intended U.S. sanctions impact. Secondary trading bans on Pre-existing Securities do not further this goal but do demonstrably harm U.S. investors. OFAC's standardized capital markets sanctions approach should not cause U.S. investors to shoulder the cost of U.S. sanctions or put them in a worse position than non-U.S. investors.¹⁴

4. Secondary Market Trading Restrictions Diverge from Key U.S. Allies' Approaches

OFAC's approach to secondary market trading restrictions differs from the approach taken by key U.S. allies with respect to securities of asset frozen issuers, thus disadvantaging and burdening U.S. securities firms and investors.

In particular, UK and EU asset freezes, which are comparable to U.S. blocking sanctions, do not prohibit secondary market trading in securities of targeted issuers when a transaction takes place between non-sanctioned parties without any benefit to the issuer. UK and EU sanctions authorities do not consider securities traded on a secondary market as belonging to or owned, held or controlled by the issuer and do not consider the purchase or sale of such securities as making funds or economic resources available to the issuer. Instead, UK and EU asset freeze sanctions target participation in primary issuances, which, as noted in Section III.B, are the transactions in which an issuer raises capital

¹⁴ U.S. financial institutions also are harmed, in terms of both compliance costs and ongoing opportunity costs due to lost investment and other financial opportunities. One SIFMA member firm estimates \$25 million per year in opportunity costs related to the nine CMIC issuers identified in footnote 13 alone in terms of index arbitrage and other trades it would otherwise be able to engage in.

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from investors. Where UK and EU sanctions authorities have determined to target secondary market transactions, they have done so in limited circumstances by implementing specifically tailored, non-asset freeze measures on, for example, dealings in securities of targeted issuers that were issued after certain dates.

This divergence further reveals the disproportionate harms to U.S. investors and firms that have resulted from OFAC's secondary market trading restrictions. The differing U.S. and UK/EU positions create compliance complexity and uncertainty for U.S. firms and investors that operate across multiple jurisdictions. If OFAC were to authorize secondary market trading in Pre-existing Securities, such a position would align more closely to the UK/EU approach, as U.S. investors and U.S. financial intermediaries still would be prohibited from participating in a primary issuance by an SDN issuer or trading in securities issued by the issuer after its SDN designation.

5. Request to OFAC

Secondary market trading restrictions on Pre-existing Securities of targeted issuers do little to advance U.S. sanctions goals but impose significant, disproportionate burdens on U.S. investors and securities industry participants. To more appropriately balance the harms to U.S. investors and impacts to sanctions targets, OFAC's standardized capital markets sanctions framework should generally authorize U.S. persons to engage in secondary trading of Pre-existing Securities, to the extent such secondary market trades do not involve sanctioned persons.

If OFAC were to determine that secondary trading of a sanctioned issuer's securities presents particular concerns for U.S. sanctions policy, OFAC still could impose more tailored secondary market trading restrictions on that issuer's securities and articulate its relevant concerns.

B. Divestment of Sanctioned Securities

If OFAC does not generally authorize secondary marketing trading in Pre-existing Securities as described in Section IV.A, we urge OFAC to authorize U.S. persons' divestment of such securities to non-U.S. persons without any time-period restriction.

1. Divestment Provides No Meaningful Benefit to Issuers

For the same reasons discussed above in the context of secondary trading in Pre-existing Securities, allowing U.S. persons to divest such securities to non-U.S. persons would have no effect on the capital previously raised by the issuer through primary sales of those securities before the issuer's sanctions designation. Thus, divestments of Pre-existing Securities to third parties would provide a sanctioned issuer no meaningful benefit.

In support of this view, securities industry members uniformly report that, in the context of U.S. sanctions on Russia imposed after February 2022, they are not aware of any benefit that has accrued to designated Russian issuers as a result of U.S. investors' permitted divestments.

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2. Restricting Divestment Harms U.S. Investors

Divestment restrictions effectively force U.S. investors to hold Sanctioned Securities, which negatively impacts U.S. investors and their ability to benefit from their investments for the same reasons as described above in the context of secondary market trading restrictions. If OFAC does not generally authorize secondary trading in Pre-existing Securities, it is even more critical that OFAC permit U.S. investors to divest Pre-existing Securities so they may wind down their securities positions in an orderly manner, benefit from any increase in the value of their investments and manage the risk of future loss to capital.

Importantly, for a divestment authorization to be meaningful for U.S. investors, it should not be limited to a narrow time period. It can take extended periods of time to unwind and settle positions, even if market intermediaries have not restricted transactions in response to sanctions. Limited divestment time periods impede U.S. investors' ability to find acceptable buyers or divest their securities at reasonable prices.

As evidence of the importance of not limiting divestment time periods, under U.S. sanctions imposed on Russia after February 2022, securities industry members report that U.S. investors' divestment activity has been minimal despite the divestment authorizations provided by OFAC. The reasons for limited divestment activity under divestment authorizations include, among others: (i) divestment requires significant coordination between numerous parties and, therefore, time to complete beyond that often afforded under divestment GLs; (ii) trades can be stuck in-flight at various points when sanctions are implicated, requiring case-specific analysis to support a divestment and sufficient time to conduct such analysis; and (iii) there are limited markets available for divestments to non-U.S. persons and U.S. investors or intermediaries may have limited access to foreign markets, which means it takes significant time to find appropriate buyers. In general, firms will not initiate a trade that may not settle within the relevant authorization's divestment period; thus, a firm may not even attempt a divestment if it is uncertain whether a trade can settle within a narrow divestment period.

Accordingly, to mitigate harms to U.S. investors, OFAC should not require investors seeking to divest Pre-existing Securities to do so within a narrow time period. Limited divestment periods merely make it challenging, if not impracticable, for U.S. investors and firms to complete transactions that OFAC has already determined to authorize.

For purposes of the new investment prohibition in the Russia sanctions context, OFAC issued guidance stating that U.S. persons could divest securities of Russian issuers to non-U.S., non-sanctioned persons without any time limitation.¹⁵ This open-ended divestment approach should be OFAC's standard practice. Because U.S. investors generally are not restricted from continuing to hold Pre-existing Securities, a divestment deadline only hurts U.S. investors trying to divest

¹⁵ OFAC FAQ 1054. However, sanctions subsequently imposed on Russia's financial infrastructure, including numerous Russian securities registrars, now preclude such divestments with respect to securities held through such Russian firms.

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their holdings, which activity does not appear to provide any benefit to sanctioned issuers or present other sanctions concerns.

3. Request to OFAC

If OFAC does not generally authorize secondary market trading in Pre-existing Securities as requested above, we urge OFAC to authorize U.S. persons to divest such securities to non-U.S., non-sanctioned persons without any time-period restriction. Permitting U.S. investors to engage in divestment transactions is critical to enable orderly wind downs of securities positions for which secondary trading is otherwise prohibited.

OFAC's standardized sanctions framework also should include authorization, without time limitation, for transactions that OFAC has regularly authorized as ordinarily incident and necessary to divestment, including (i) purchases of securities by U.S. persons that are necessary to close out positions or financial instruments for the purpose of divesting, unwinding or closing out those positions or financial instruments and (ii) facilitating transactions ordinarily incident and necessary to divestments, including clearing and settling transactions.

Such authorizations would give U.S. investors and market participants the needed clarity and authority to complete divestment transactions, which would further U.S. sanctions policy goals if the objective is to limit U.S. persons' investments in Sanctioned Securities.

C. Delayed Effective Dates

In addition to providing divestment authorizations, OFAC's standardized framework should provide delayed effective dates for capital markets sanctions as a matter of course.

Such an approach would afford U.S. investors and firms sufficient time and clear authorization to complete in-flight transactions, including purchases to close out positions or financial instruments, and to prepare to comply with sanctions. OFAC takes such an approach under its CMIC sanctions program, providing a delayed implementation period before the applicable sanctions restrictions on a targeted issuer become effective.¹⁶

Delayed effective dates are necessary because, in practice, firms have found that some market participants may be unwilling to engage in authorized divestment activity or may take differing views on the scope of a particular license. Given the multiple parties involved in a securities transaction (e.g., securities broker-dealers, asset managers, custodians, sub-custodians, central securities depositories, transfer agents, buyers, sellers, etc.), divestment may be impeded if even one participant is unable or unwilling to engage in the transaction.

¹⁶ See E.O. 13959 (as amended by E.O. 14032), § 1(b).

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Further, implementing appropriate trading controls is not a simple task that market participants can complete quickly, particularly given the variance in sanctions restrictions affecting capital markets activities. A delayed effective date would allow firms more time to ensure their compliance controls are appropriately implemented without risking potential sanctions violations.

For the avoidance of doubt, in the event blocking sanctions are imposed on an issuer, we urge a delayed effective date for sanctions restrictions on dealings in the blocked issuer's Pre-existing Securities but note that other dealings with the issuer would not be subject to a delayed effective date (subject to any wind-down licenses OFAC issues). As a result, the delayed effective date proposed here would not afford a sanctions target an opportunity to move its assets to evade sanctions.

For the foregoing reasons, we urge OFAC to provide delayed effective dates for sanctions that impact securities as a default when such sanctions are imposed.

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In this section, we describe sanctions compliance issues and challenges faced by U.S. investors and securities industry participants that would be best addressed by a standardized set of GLs under OFAC's capital markets sanctions framework. These standardized GLs would provide certainty to U.S. persons and facilitate sanctions compliance when new sanctions are imposed. OFAC would be able to address and explain any variations from the standard approach on a program-by-program basis. OFAC also would face less administrative burden by reducing the need for requests for guidance or specific license requests pertaining to the issues addressed by these GLs.

If OFAC were to authorize secondary market trading in or divestments without time limitation of Pre-existing Securities, as discussed in Section IV, some issues addressed in this section may be partially or fully addressed. In such a scenario, we would be pleased to update our recommendations and work with OFAC on the remaining issues to be addressed by the standardized GLs described in this section.

In either case, as the securities activities described in this section are technical in nature, we would be pleased to work with OFAC on the language of proposed GLs to ensure that the GLs achieve OFAC's objectives and address the concerns we identify below.

A. Maintaining and Receiving Benefits from Pre-existing Securities

OFAC should issue a GL authorizing investors to undertake activities associated with (i) maintaining their Pre-existing Securities investments and (ii) receiving benefits associated with those investments that do not involve approval or facilitation of a sanctioned issuer's underlying business activities or operations.

When U.S. investors are unable to take necessary actions to maintain or receive the benefits of their Pre-existing Securities investments following the imposition of sanctions, U.S. investors are directly harmed by the loss or diminished value of their investments. They incur this harm despite the fact that, in many cases, those U.S. investors have no connection to or other dealings with the sanctioned issuer or the issuer's problematic conduct beyond the investor's investment exposure.

We describe below U.S. investors' activities that should be authorized by a GL.

- **Income on Pre-existing Securities.** U.S. investors should be authorized to receive dividend, interest, maturity and other payments from sanctioned issuers on Pre-existing Securities. Such payment flows come from sanctioned issuers to non-sanctioned U.S. investors, and no benefit would accrue to the issuer were OFAC to allow these payments to be processed. For example, sanctioned issuers have not to date faced defaults on debt instruments because they have made the necessary principal and/or interest payments,

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while the relevant paying agents or other intermediaries have blocked those payments from further distribution. Restricting such payment flows harms only U.S. investors.

- **Maintenance fees.** U.S. investors should be authorized to pay custodian fees or other costs related to the maintenance or administration of their Pre-existing Securities to parties other than sanctioned persons. This would include fees for maintaining and administering depositary receipt programs paid to depositary banks and other service providers, as well as management of collateral and payment of fees under derivatives contracts and securities loans. Such payments would not provide any benefit to a sanctioned issuer, and prohibiting U.S. intermediaries and investors from making such payments only harms such U.S. persons by restricting their ability to maintain pre-existing investments and, in some cases, fulfill contractual obligations.
- **Certain corporate actions.** U.S. investors should be authorized to participate in certain corporate actions with respect to their Pre-existing Securities investments, including, among others:
 - *Tender offers.* U.S. investors should be authorized to participate in a tender offer for Pre-existing Securities made by a non-sanctioned third party. Such a tender offer would allow a U.S. investor to divest Pre-existing Securities to such non-sanctioned third-party offeror at a specified price and within a specified period of time. As the tender offer would not involve the sanctioned issuer, the U.S. investor would not provide an economic benefit to the sanctioned issuer but would be able to benefit or recoup value from the investor's investment.
 - *Stock splits.* U.S. investors should be authorized to participate in stock splits on Pre-existing Securities. Stock splits automatically convert an investor's current number of shares to a new split amount (i.e., in a 2-for-1 split, an investor holding 50 shares would be left with 100 shares), but the total value of the investor's shares remains the same and no economic benefit would be provided by the investor to the sanctioned issuer in connection with the stock split. A stock split declared by an issuer is a mandatory corporate action, and U.S. investors cannot opt out. To eliminate any ambiguity, including with respect to sanctions risks of reflecting a corporate action declared by an issuer, OFAC should authorize U.S. investors to participate in stock splits and make clear that U.S. financial institutions may facilitate (including reflecting in their books and records) such transactions for U.S. investors.
 - *Proxy voting.* U.S. investors should be authorized to participate in proxy voting on matters necessary to protect their existing interests in a sanctioned issuer (e.g., votes on matters related to share ownership or on administrative or technical matters, such as voting and recordkeeping mechanics). Participation in these matters by U.S. investors would enable the investors to take actions to maintain and avoid loss of value of their Pre-existing Securities investments and would not entail any investor

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conferring a material benefit on the issuer. For the avoidance of doubt, we recognize OFAC may not wish to authorize voting by U.S. persons that would approve or facilitate a blocked issuer's business activities or operations (e.g., votes to approve a blocked issuer's additional capital raising or expanded business activities), as such matters may arguably confer a benefit on the blocked issuer.

- **Estate planning, estate administration and self-to-self transfers.** A U.S. investor holding Pre-existing Securities issued by an SDN issuer is currently unable to transfer them absent an OFAC specific license, even if the transfer is intended merely for estate planning purposes or because the investor has died or if the investor seeks to move accounts to another securities firm. This means, for example, that a U.S. investor holding blocked securities and seeking to move accounts to another financial institution is forced to leave behind the blocked securities, maintain accounts at both institutions and manage and monitor the blocked status of the blocked securities, an outcome that saddles the U.S. investor with needless administrative and financial costs. Financial institutions also must decline requests to, for example, move blocked securities from a 401(k) plan to an IRA or from an individual's account to an account titled in the name of a trust created by the individual for estate planning purposes.

In the Russia sanctions context, OFAC issued guidance permitting transfers of securities issued by non-blocked Russian issuers as part of the administration of a decedent's estate but prohibiting such transfers of blocked securities without a specific license.¹⁷ However, transfers from a blocked account at one U.S. financial institution to a blocked account at another U.S. financial institution provide no benefit to the sanctioned issuer and should be generally authorized by OFAC. Accordingly, OFAC should issue a GL authorizing transfers of Sanctioned Securities (i) for estate planning purposes, (ii) in connection with the administration of decedents' accounts or (iii) in cases where there is no change in beneficial ownership of the transferred assets,¹⁸ provided that any blocked property remains blocked by a U.S. person. Such a GL would relieve OFAC of the burden of addressing specific license requests for such transfers and would facilitate estate planning and other activities by U.S. investors that provide no benefit to sanctions targets.

In summary, OFAC's standardized capital markets sanctions framework should authorize U.S. investors to take actions ordinarily incident and necessary to maintain or receive benefits associated with their Pre-existing Securities investments, provided that no payments are made to a blocked person and any blocked property remains blocked by a U.S. person. Further, we urge OFAC to make clear that U.S. persons may facilitate any such authorized activities.

¹⁷ OFAC FAQ 1113.

¹⁸ In Section V.B.2, we discuss separately certain considerations relevant to an investment fund's ability to engage in organic actions (e.g., redemptions, distributions, liquidations and mergers) if the fund has a sanctioned investor or holds Sanctioned Securities.

B. Investment Fund Exposure Thresholds and Organic Activities

OFAC's standardized capital markets sanctions approach should include a consistent threshold and method for calculating an investment fund's exposure to Sanctioned Securities that will cause the fund also to be treated as sanctioned. In addition, OFAC should provide a GL authorizing investment funds to engage in organic fund actions in the ordinary course of the fund lifecycle, such as redemptions, distributions, mergers and liquidations, even if a fund has a sanctioned investor or holds Sanctioned Securities.

1. Fund Exposure Threshold and Valuation Issues

OFAC has not taken a consistent position regarding how a fund's exposure to Sanctioned Securities or sanctioned persons affects that entity's status under U.S. sanctions. We describe examples of the varying standards below:

- For purposes of restrictions on "new investment" in Russia under E.O. 14071, OFAC applied a 50% threshold to determine if a fund's exposure to targeted securities would cause the fund itself to become subject to such new investment restrictions. Specifically, a U.S. person's purchase of shares in a U.S. fund that has exposure to securities issued by entities in Russia would not be considered a prohibited "new investment" in Russia unless the fund's holdings of such securities represent a 50% or more share by value of the fund.¹⁹ This replaced the "predominant" standard OFAC originally used for funds in the Russia context and that is still used in guidance issued in relation to synthetic ETFs in the context of Venezuela sanctions, as noted below.
- For U.S. sanctions on Venezuela, OFAC states in FAQ 652 that a U.S. fund must block its holdings of securities issued by blocked persons but "generally is not itself considered a blocked entity." This FAQ does not indicate whether OFAC's view applies regardless of the value of the fund's blocked holdings. However, OFAC separately provided in the Venezuela sanctions context that synthetic ETFs will not be considered blocked entities if the "underlying basket being tracked includes less than a predominant share by value of debt, equity, or other holdings in blocked persons."²⁰ OFAC does not define what would constitute a "predominant share by value" for this purpose and does not explain why the value of blocked holdings is relevant to a synthetic ETF but not to a fund directly holding blocked securities.

¹⁹ OFAC FAQ 1054. Similarly, a U.S. fund holding securities of blocked Russian financial institutions is not itself considered blocked unless such blocked holdings represent a 50% or greater share by value of the fund. OFAC FAQ 982. Further, a U.S. person's purchase of a debt or equity interest in an entity located outside of Russia generally would not be considered "new investment" in Russia unless such entity derives 50% or more of its revenues from its investments (e.g., ownership of a subsidiary or physical operation) located in Russia or the entity's debt is specifically intended for new projects or operations in Russia. OFAC FAQ 1055.

²⁰ OFAC FAQ 653. Synthetic ETFs track a basket of securities to provide a return approximating the returns on that basket but do not actually hold the underlying securities contained in the basket.

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- Under its CMIC sanctions, OFAC has stated that no *de minimis* rules apply to publicly traded funds with exposure to targeted securities.²¹ In other words, U.S. persons may not invest in a publicly traded fund with any exposure to CMIC securities, even if that exposure is *de minimis*. OFAC has not explained why even one share of a CMIC security in a fund will “taint” the entire fund for purposes of CMIC sanctions, whereas OFAC applies a 50% fund exposure threshold or other standard in other sanctions contexts.

The lack of consistency and clarity around how U.S. sanctions restrictions apply to funds with exposure to targeted securities or issuers presents compliance challenges for securities firms. These challenges are compounded by securities firms’ limited insight into funds’ holdings, as funds may not disclose all of their holdings, fund holdings may change over time and U.S. persons may not be able to obtain holding information on a real-time basis.

Moreover, it is unclear how firms are expected to calculate exposure to Sanctioned Securities by value given the potential for market volatility, particularly once issuers are sanctioned. As a result, firms may take different approaches to determining whether a fund is subject to sanctions prohibitions, which may negatively impact U.S. investors seeking to maintain, receive benefits from or divest holdings in such funds.

We urge OFAC to issue standardized guidance or authorizations providing that the following activities related to investment funds are permitted under U.S. sanctions.

- A U.S.-domiciled fund or a non-U.S.-domiciled fund operated by a U.S. asset manager or other U.S. person should not be treated as itself subject to sanctions prohibitions solely based on its holdings of Sanctioned Securities. A U.S. fund and a U.S. person manager must comply with U.S. sanctions, including blocking or avoiding prohibited transactions in Sanctioned Securities, and there is no reason to require U.S. persons to treat a U.S.-domiciled fund or non-U.S. fund operated by a U.S. person as sanctioned due to the fund’s Sanctioned Securities holdings.
- A U.S.-domiciled fund or non-U.S.-domiciled fund operated by a U.S. person should be authorized to divest Sanctioned Securities, and U.S. persons should be authorized to engage in or facilitate such divestment transactions. As described in Section IV.B, prohibiting divestments of Sanctioned Securities forces U.S. and other investors, including fund investors in the case of an investment fund holding Sanctioned Securities, to bear the harms of the sanctions imposed on secondary securities holdings.
- A non-U.S.-domiciled fund operated by a non-U.S. person should be subject to restrictions on new investment by U.S. persons if its Sanctioned Securities holdings represent, in the aggregate, a 50% or greater share by value of

²¹ Under CMIC sanctions, U.S. persons are prohibited from investing in U.S. or foreign publicly traded funds, including ETFs or other mutual funds, which are designed to provide investment exposure to targeted securities, “regardless of such securities’ share of the underlying [fund].” OFAC FAQ 861.

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the fund. To calculate the value of a fund's holdings, OFAC should make clear that U.S. persons may rely on the information available to them in the ordinary course, including information regarding the fund's own valuation of its assets. In particular, OFAC should make clear that (i) the assessment of potential sanctions restrictions on investments in such a fund may take into account the fund's own valuation of its Sanctioned Securities holdings, including write-downs to the securities' value determined by the fund in accordance with its valuation policies and applicable accounting or regulatory requirements, and (ii) any cash held by the fund (whether in a cash sleeve or otherwise) may also be taken into account when calculating the value of the fund's holdings. These clarifications would address confusion among industry participants and recognize funds' ordinary course valuation and other practices.

2. Organic Fund Actions

If an investment fund has even one sanctioned investor or holds Sanctioned Securities, it may be restricted by U.S. sanctions from engaging in typical organic activities to the extent such activities involve U.S. persons, even if the fund is not a U.S. person. Such restrictions on the fund's operations may negatively impact U.S. fund investors and U.S. service providers to the fund.

To illustrate the impacts of blocking sanctions on an investment fund's organic activities, we consider the example of a Luxembourg fund that has one investor who becomes designated pursuant to U.S. blocking sanctions (the "SDN Investor"), as well as U.S. investors and U.S. service providers. Below, we set out the implications of such sanctions on (i) the non-U.S. fund, (ii) the fund's U.S. investors and (iii) the fund's U.S. service providers.

- **Luxembourg fund.** The fund, as a non-U.S. person, generally does not face U.S. sanctions compliance obligations. However, the fund has U.S. service providers, such as a U.S. management company, investment adviser, transfer agent or custodian, or U.S. person personnel responsible for approving or executing fund activities. Accordingly, the fund's activities may implicate such U.S. persons' sanctions compliance obligations. U.S. persons generally would be prohibited from engaging in dealings with the SDN Investor or the SDN Investor's property or interests in property, which include the SDN Investor's fund shares, and also would be prohibited from facilitating such dealings by the non-U.S. fund.

These restrictions may impinge significantly on the fund's ability to engage in organic operations, as described below. However, so long as steps are taken so that no benefit is provided to the fund's SDN Investor as a result of such actions, it is not apparent how any of these harms to the fund, and its U.S. investors or service providers, further U.S. sanctions goals.

- *Redemptions and Distributions.* The fund would be unable to redeem the SDN Investor's fund shares or make a distribution with respect to the SDN Investor's fund shares if such transaction involves the fund's

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U.S. service providers or U.S. personnel. Doing so would run afoul of the restrictions for U.S. persons on dealing with the SDN Investor or its shares. Thus, the fund would be unable to remove the SDN Investor and avoid the further negative impacts to the fund's operations described below.

- *Mergers.* A fund merger involving any change or dealing in the SDN Investor's fund shares would run afoul of the above restrictions if it involves the fund's U.S. service providers or U.S. personnel. Accordingly, the fund would be unable to merge because of the SDN Investor, even if the fund determines that doing so may otherwise be in the best interest of its investors, including the U.S. investors, pursuant to its other obligations under local legal requirements and duties applicable to it.
- *Liquidations.* Liquidating the fund would require dealing in the SDN Investor's fund shares and making a final distribution to the SDN Investor. Such activities similarly would run afoul of U.S. sanctions restrictions if they involve the fund's U.S. service providers or U.S. personnel. Consequently, even if the fund has reached the end of its lifecycle, has wound up all investments and has determined that liquidation may otherwise be in the best interest of its investors, the fund would be unable to liquidate without removing any U.S. persons from involvement in the liquidation, simply because the fund has one sanctioned investor.

This would prevent the fund's orderly wind down and require the fund to continue to incur administrative fees, to the detriment of its U.S. and other investors. Furthermore, if the fund redeems non-sanctioned investors, the fund could itself become blocked pursuant to OFAC's so-called "50% Rule" if it becomes 50% or more owned by the SDN Investor. In this case, the fund would be cut off from all dealings with its U.S. service providers and personnel and become subject to blocking.

- **U.S. investors.** As noted above, because of the SDN Investor's interest, the fund may be unable to take actions, such as merging, that may otherwise be in the best interest of its investors, including the U.S. investors. Further, the fund would be prevented from an orderly wind-down and liquidation, which would result in the U.S. and other investors bearing ongoing unnecessary costs to keep the fund operational.
- **U.S. service providers.** U.S. service providers to the fund must block the SDN Investor's property or interests in property that come into their possession or control, including the SDN Investor's fund shares and any distributions to the investor, and may not engage in dealings with, including making funds or services available to, the SDN Investor. If the fund is unable to liquidate, the U.S. service providers would bear the ongoing administrative burden of operating the fund.

This example shows the consequential harms that flow to investment funds with even one blocked investor, which harms ultimately impact the U.S. investors in or U.S. service providers to those funds.

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However, there is no reason OFAC should not permit a fund to engage in organic activities despite a blocked investor's interest in the fund, so long as appropriate measures are taken so that the blocked investor's interest is frozen and no benefits flow to the investor. Such ability would relieve harms to a fund, the fund's U.S. investors and the fund's U.S. service providers, which harms do not appear to further any U.S. sanctions goals.

EU sanctions provide an example of how such an outcome may be achieved. Specifically, European Commission guidance permits an investment fund to liquidate frozen shares in the fund held on behalf of an asset frozen person, provided that such liquidation is followed by the immediate freezing of proceeds attributable to the asset frozen person.²²

We urge OFAC to implement a similar approach. Specifically, OFAC should authorize an investment fund and associated U.S. investors, service providers and personnel to undertake organic activities throughout the fund's lifecycle even if a fund investor becomes sanctioned, provided that appropriate blocking or freezing measures are maintained to prevent any distributions to the sanctioned investor. For example, such authorization would enable a U.S. person to facilitate or process distribution or liquidation payments on behalf of an investment fund, even if such payments include a distribution with respect to a blocked investor's fund interest, provided that the U.S. person will block the distribution or knows that the distribution allocable to the blocked investor will be blocked at another financial institution in the chain. In this way, OFAC can achieve the goal of ensuring that a sanctioned fund investor receives no benefit, while also relieving the harms that fall on investment funds and their U.S. investors and service providers.

Funds holding Sanctioned Securities may face similar restrictions on their ability to undertake organic fund actions that would require U.S. persons to deal in such securities, with consequential harms flowing to such funds' U.S. investors and/or U.S. service providers. Accordingly, as discussed in Section V.B.1, OFAC should authorize funds to divest Sanctioned Securities, and U.S. persons should be authorized to engage in or facilitate such divestment transactions.

C. Securities Infrastructure Sanctions

The United States has sanctioned key parts of the Russian securities infrastructure, including the National Settlement Depository ("NSD"), which is Russia's central securities depository, and the Moscow Exchange ("MOEX"). In addition, the United States has imposed blocking sanctions on almost all Russian securities registrars. OFAC has taken the view that any securities in the possession or control of U.S. persons that are held through NSD or an SDN registrar should be treated as blocked and reported and that dividends or other income received via such entities also should be treated as blocked and reported.²³ As a result, U.S. persons generally may not engage in any transactions involving securities held through a custody chain involving NSD or an SDN registrar.

²² European Commission, *Commission Opinion of 27.5.2021 on changes to the features of frozen funds* (May 27, 2021), https://finance.ec.europa.eu/system/files/2021-05/210527-frozen-funds-features-opinion_en.pdf.

²³ OFAC FAQ 1197.

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As a general matter, we urge OFAC not to implement capital markets restrictions via sanctions on securities infrastructure participants. Such sanctions present enormously complicated compliance challenges for the securities industry, and the trading restrictions imposed by such sanctions cause widespread harm to U.S. investors.

OFAC's designations of Russian securities infrastructure participants exemplify the significant compliance and other challenges for the securities industry and U.S. persons caused by sanctions targeting securities infrastructure, and fundamental questions as to how sanctions compliance obligations apply in relation to OFAC's designations of NSD and MOEX remain unclear.

For example, firms do not always have visibility into whether a custody chain involves NSD or an SDN registrar, which makes it difficult to assess whether a transaction is prohibited merely because the relevant security has a nexus to sanctioned Russian securities infrastructure participants. Moreover, U.S. sanctions against NSD have prevented U.S. capital from leaving Russia, which has left U.S. investors' assets vulnerable to attachment and other legal process initiated in Russia. Further, OFAC's prohibition on transactions involving securities held through a custody chain involving NSD or an SDN registrar diverges from the position under EU and UK asset freeze sanctions. EU and UK sanctions allow a transfer of rights to securities that takes place one or more custody levels away from an asset frozen entity (e.g., an intra-custodian transfer at an EU custodian of securities ultimately held through a custody chain involving the NSD), provided that no funds would be made available to, and no specific instruction or information would be sent to, the asset frozen entity.²⁴ This divergence between U.S. and EU/UK sanctions puts U.S. firms and investors at a disadvantage and subjects them to greater restrictions than EU/UK firms.

With respect to MOEX, in certain cases a single security may be listed both on MOEX and on an exchange outside of Russia. These cases have caused uncertainty as to whether or in what circumstances dealings with such a security are restricted. In particular, OFAC has not issued guidance to clarify whether it views the mere fact that a security is listed on MOEX to mean that the security must be blocked, even if the security has no other connections to sanctioned parties, and that all trades of that security are prohibited even if the trades do not otherwise involve MOEX. We believe such a position would not make sense. For example, it is possible that an issuer's securities could be listed on the New York Stock Exchange ("NYSE") but that the issuer's securities also could be listed on MOEX without the issuer's involvement, to enable trading in its securities by Russian holders. The MOEX listing would not impact trading on the NYSE and, conversely, trading on the NYSE would have no nexus to MOEX. The mere fact of the listing on MOEX should not prohibit trading in the issuer's securities on the NYSE. However, we understand some firms have taken a different view on this issue.

²⁴ European Commission, *Frequently Asked Questions on Central Securities Depositories Concerning Sanctions Adopted Following Russia's Military Aggression Against Ukraine and Belarus' Involvement in It* (last updated July 24, 2024), https://finance.ec.europa.eu/system/files/2023-06/faqs-sanctions-russia-central-securities-depositories_en.pdf.

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If OFAC does sanction parts of the securities infrastructure, OFAC's standard capital markets sanctions framework should include a GL authorizing (i) intra-custodian transfers of securities at non-sanctioned custodians, provided such transactions do not involve a payment or instruction to a sanctioned person, consistent with the EU/UK sanctions approach, and (ii) other transfers of securities that do not involve any dealing directly with the sanctioned elements of the securities infrastructure. Such transfers would not implicate any transactions with, or offer any support, assistance or benefit to, the sanctions targets. Further, OFAC should clarify that securities listed on a sanctioned securities exchange (e.g., MOEX) are not subject to sanctions restrictions in trades not otherwise known in the ordinary course to involve that exchange.

D. Facilitation of Non-US Persons' Activities

OFAC's standardized capital markets sanctions framework should include a GL authorizing U.S. persons to facilitate non-U.S. persons' activity in Sanctioned Securities that is not prohibited for such non-U.S. persons, provided that such transactions do not involve any dealings for, on behalf of or with a blocked issuer.

U.S. firms' sanctions compliance efforts have resulted in negative impacts to non-U.S. investor clients, which create potential legal and regulatory exposure for the U.S. firms. For example, U.S. firms have blocked securities held by non-U.S. investor clients following the imposition of blocking sanctions on the issuers of those securities, resulting in significant impacts to non-U.S. investors that may have no connection to a sanctioned issuer or its problematic conduct other than holding its securities. One SIFMA member firm estimates that, as of June 2025, the value of non-U.S. investor holdings it has blocked pursuant to U.S. sanctions on Russia exceeds \$500 million. In some cases, non-U.S. investors faced with such impacts have brought legal action or filed regulatory complaints in non-U.S. jurisdictions against the U.S. firms blocking their securities holdings to comply with U.S. sanctions.

OFAC previously has permitted U.S. market participants to facilitate certain securities activity that would otherwise be prohibited for a U.S. person to engage in directly, including activity in blocked holdings.

- Under U.S. sanctions on Venezuela, OFAC has authorized U.S. persons to transact in holdings of certain Venezuelan government and PdVSA securities and permits any facilitation by a U.S. person of such transactions.²⁵ Notably, these authorizations apply notwithstanding blocking sanctions imposed on the relevant Venezuelan issuers.
- Despite U.S. investment restrictions on Russia, OFAC FAQ 1054 permits U.S. financial institutions to clear and settle, or otherwise serve as market intermediaries in, transactions for sale or divestment of debt or equity

²⁵ Venezuela GLs 3I, 9H.

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securities issued by Russian entities to a non-U.S. person in the secondary market—including transactions between non-U.S. persons.

- For purposes of CMIC sanctions, OFAC FAQ 863 permits U.S. persons to facilitate a wide range of activity by non-U.S. persons in the targeted securities, including “clearing, execution, settlement, custody, transfer agency, back-end services, as well as other such support services.” Further, OFAC guidance permits U.S. market intermediaries—including market makers, securities exchanges and other participants—to engage in “ancillary or intermediary activities . . . that are not otherwise prohibited” under CMIC sanctions.²⁶

A standard GL authorizing such activities across sanctions programs would mitigate significant harm to securities firms, including potential legal or regulatory risk arising from sanctions harms imposed on their non-U.S. investor clients. Such a GL would be especially important and helpful for global financial institutions in which U.S. and non-U.S. entities and personnel provide market services together.

We also urge OFAC to provide a dedicated avenue for U.S. firms to more efficiently seek assistance from OFAC in resolving conflict of laws issues that may arise due to sanctions.

E. Depository Receipt Programs²⁷

OFAC’s standardized capital markets sanctions framework should include a GL authorizing U.S. persons involved in depository receipt programs to engage in (i) routine fee and other payment activity, (ii) conversion of depository receipts and (iii) orderly wind-downs of depository receipt programs.

First, depository receipt programs involve multi-tiered relationships among depository banks, custodians, transfer agents, broker-dealers and investors, and it is not entirely clear how OFAC views sanctions compliance obligations and restrictions to apply to the various parties involved in such programs. The lack of clarity has caused many U.S. persons to take conservative approaches and generally refuse to engage in activity in connection with depository receipt programs with potential touchpoints to sanctioned issuers in the absence of authorization from OFAC. For example, although a sanctioned issuer would have no interest in fees or other payments related to the maintenance or administration of depository receipt programs, some firms have avoided participating in any transactions involving such fees.

Second, conversion of depository receipts into the underlying security may enable a U.S. investor to protect the investor’s investment (for example, in the event a depository bank seeks to terminate or suspend the depository receipt program) or may be mandated by the issuer or local law, with no ability of the U.S. depository or U.S. investors to opt out. OFAC has permitted certain depository receipt conversion activity, including by providing that such conversions to underlying shares

²⁶ OFAC FAQs 865, 871.

²⁷ See Appendix B for a definition of “depository receipts.”

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of a non-sanctioned Russian issuer would not constitute prohibited “new investment” in Russia and, in the CMIC sanctions context, clarifying that the divestment authorization includes conversions of depositary receipts into the underlying securities of a CMIC,²⁸ but has not issued comprehensive guidance regarding depositary receipt conversions.

Further, depositaries seeking to terminate their relationships with sanctioned issuers have been required to obtain specific licenses from OFAC to do so, which has created challenges to the programs’ orderly and timely wind-down. A depositary’s inability to wind down a depositary receipt program in an orderly fashion ultimately harms the U.S. investors participating in the program by stranding and diminishing the value of their investments.

OFAC should provide clear authorization for routine depositary receipt program fee and other payments, conversions of depositary receipts and wind-downs of depositary receipt programs, thereby reducing the need for firms to seek guidance from OFAC and permitting firms to take appropriate actions that ultimately benefit U.S. investors.

F. Securities Lending and Repurchase Agreements²⁹

OFAC’s standardized capital markets sanctions framework should include a GL authorizing U.S. persons to undertake all transactions ordinarily incident and necessary to maintain, close out or wind down securities lending and repurchase agreements that involve Sanctioned Securities or sanctioned persons, so long as appropriate measures are taken, as with the organic fund activities discussed in Section V.B.2, so that no benefits flow to a sanctioned person.

Greater clarity as to the applicability of sanctions to securities lending and repurchase agreements is critical for market participants, given the multiple parties involved in these transactions. For example, unwinding a loan implicates not only the direct transaction parties but also the borrower’s ability to source the borrowed security, which often will involve a cross-border transaction if the security is issued by a non-U.S. company. All of these parties need clarity as to the scope of the activities permitted under U.S. sanctions so that one party does not impede the entire transaction.

Securities lending and repurchase agreements have been addressed by OFAC only in very limited cases and indirectly in OFAC guidance regarding certain GLs.

- For example, the now-expired Russia-related GL 45 authorized the “wind down of financial contracts or other agreements that . . . involve, or are linked to, debt or equity securities issued by an entity in the Russian Federation.” OFAC FAQ guidance indicates this GL authorized U.S. persons to purchase securities issued by Russian entities to cover or close out a short position per a securities lending agreement.³⁰

²⁸ OFAC FAQs 1054, 904.

²⁹ See Appendix B for a definition of “securities lending” and “securities repurchase agreements.”

³⁰ OFAC FAQ 1071.

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- Similarly, Venezuela GL 3B and subsequent iterations through GL 3I, and Venezuela GL 9A and subsequent iterations through GL 9H, authorized the wind down of “financial contracts or other agreements.” Prior versions of OFAC FAQs 661 and 662 explained that this authorization included resolving the purchase and sale of securities, securities lending, repurchase agreements and swaps and derivative contracts in securities.

Consistent with these authorizations, OFAC should permit U.S. persons to engage in or facilitate transactions in Sanctioned Securities or involving sanctioned persons to (i) close out a securities lending or repurchase agreement, which may entail purchasing securities, (ii) maintain an existing agreement, which may involve payment flows under the agreement, or (iii) terminate the agreement, which may involve getting the underlying security back from the borrower or counterparty, in each case provided that any payment to or security held by a blocked person would be blocked as required in connection with the authorized activity. Restricting such activities causes disproportionate harm to U.S. persons (including U.S. pension plans and investment funds lending out securities) that are unable to retrieve their securities, collect payments due or wind down the arrangements.

G. Derivatives³¹

OFAC’s standard capital markets sanctions framework should include a GL that clarifies the derivatives transactions concerning a Sanctioned Security or involving a sanctioned person in which U.S. persons are authorized to participate.

OFAC’s guidance regarding derivatives has been limited, addressed only under a few sanctions programs and formulated inconsistently. As a result, market participants cannot predict when OFAC will authorize certain transactions or wind-downs involving derivatives or understand clearly the scope of sanctions restrictions on derivatives in other contexts.

- In the CMIC sanctions context, the applicable sanctions restrictions expressly apply to publicly traded securities that are derivative of the publicly traded securities of a targeted issuer. OFAC has clarified that such “derivative” publicly traded securities may include futures, options and swaps.³²
- Under the Venezuela sanctions program, OFAC’s guidance indicates that “[b]uying, selling, or otherwise dealing in a derivative that references [an underlying bond] is a transaction related to the bond itself” and, thus, would be prohibited if dealings in the bond itself are prohibited.³³

³¹ See Appendix B for a definition of “derivatives.”

³² OFAC FAQ 860.

³³ OFAC FAQ 524.

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- In the Belarus sanctions context, OFAC guidance has provided that transactions by U.S. persons “involving derivative products whose value is linked to an underlying asset that constitutes prohibited debt issued by a person subject to Directive 1 under E.O. 14038 are prohibited, unless otherwise authorized” by OFAC.³⁴
- In contrast to the foregoing, under the Ukraine-/Russia-related Sanctions Regulations, OFAC authorizes U.S. persons to enter into derivatives contracts linked to new debt or new equity issued by the Russian entities subject to sectoral sanctions restricting dealings in such debt and equity.³⁵

OFAC has not explained why it has taken such varying approaches under different sanctions programs. OFAC also has not issued standardized guidance applicable across U.S. sanctions programs as to the treatment of derivatives linked to Sanctioned Securities.

Importantly, derivatives may be structured in many different ways and may include, for example, futures, options, forwards or swaps. It is not evident what types of securities products OFAC would regard as a “derivative” for U.S. sanctions purposes, what level of exposure to an underlying Sanctioned Security would be needed for a “derivative” to become subject to U.S. sanctions restrictions or what interest OFAC may consider a sanctioned issuer to have in various derivative arrangements. Given the lack of clarity around derivatives, securities industry participants are reluctant to engage in transactions that may expose them to sanctions risk and, therefore, U.S. investors may be prevented from undertaking or closing out permitted derivatives transactions, to the detriment of such investors.

To provide clarity to market participants, OFAC’s standardized framework should set forth a consistent definition and treatment of derivatives linked to Sanctioned Securities. For example, OFAC should issue a GL authorizing transactions in connection with cash-settled derivatives. Such derivatives require the parties to conduct a cash settlement payment based on the price movements of an underlying asset but, importantly, do not require either party to own or deliver the underlying asset (i.e., the Sanctioned Security) itself. Consequently, cash-settled derivatives do not involve the underlying security changing hands, involve the issuer of the underlying security or otherwise benefit the issuer. OFAC should make clear that cash-settled derivatives are not implicated by sanctions that may target the issuer of an underlying security.

Further, when a derivative position entails dealing in an underlying security, such transaction should be subject to the authorizations generally applicable to secondary market trading, divestment or maintenance of, or otherwise dealing in, the underlying security under OFAC’s standardized framework for Sanctioned Securities. OFAC should permit U.S. persons to undertake and to facilitate transactions in derivatives involving Sanctioned Securities or a sanctioned person to (i) close out or terminate a derivative position, including purchasing securities as necessary, and (ii) maintain an existing derivative position, which may entail engaging in various payments under the relevant derivative contract, including

³⁴ This guidance was provided in former OFAC FAQ 948. OFAC rescinded Directive 1 under E.O. 14038 on March 26, 2026, and FAQ 948 has been removed from OFAC’s website.

³⁵ 31 CFR 589.512.

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margin payments, in each case provided that any payment to or security held by a blocked person would be blocked as required in connection with the authorized activity. Restrictions on such transactions hurt only U.S. persons that are unable to maintain or wind down their derivative positions.

VI. OFAC Reporting Obligations and Reporting of Blocked Securities

In recent years, securities industry members have seen enormous increases in their blocked property reporting burdens. For example, one SIFMA member firm reports a 397,642% increase in the number of blocked property reports it filed from 2021 to 2025. Another SIFMA member firm has experienced an increase of 9,515% since 2022 in the number of its blocked property reports. Other SIFMA members similarly report double- and triple-digit increases in blocked property reports filed since 2022.

To the extent that OFAC continues to require blocking and reporting of certain securities, including Sanctioned Securities and securities held by blocked persons, OFAC's standardized capital markets sanctions framework should clarify and streamline reporting requirements with respect to such securities. Doing so would avoid duplicative reporting that provides no additional value to OFAC and would relieve significant administrative burdens on both reporting parties and OFAC itself. We summarize certain reporting issues below.

- **Reporting party.** Securities custody chains are complex and multi-tiered and involve various parties. As a result, multiple parties in a custody chain for securities subject to blocking may (and typically do) file blocked property reports for the same securities. Although OFAC does not require multiple parties to report on the same property, parties typically may lack the "actual knowledge" of another party's report required under OFAC's regulations to relieve them of reporting.³⁶ It is impracticable for parties to coordinate with all other parties in a custody chain regarding blocked property reports, particularly within the 10-business-day reporting window. Moreover, some parties are reluctant to confirm whether they have filed a blocked property report out of concern that doing so may expose them to liability or risk.

This results in needlessly duplicative reporting to OFAC. For example, the Depository Trust Company, the U.S. central securities depository, might file a blocked property report for blocked securities held through it, while U.S. custodians and individual broker-dealers with downstream custody or control of the same blocked securities might independently file blocked property reports for the same securities because they lack "actual knowledge" of filings by other parties in the custody chain. This results in duplicate or triplicate reporting with OFAC, with no apparent benefit to, but likely greater record-keeping and administrative burden on, OFAC.

OFAC should clarify that the reporting obligation for holdings of blocked securities rests with the primary U.S. person custodian with the authority and operational capability to block or otherwise prevent any transfer or disposition of the securities. Conversely, the OFAC reporting obligation would not rest with downstream

³⁶ See 31 CFR 501.603(a)(2). Under OFAC's Reporting, Procedures and Penalties Regulations, 31 CFR part 501, it is not clear what would constitute a person's "actual knowledge" of another person's blocked property report sufficient to relieve the first person of an obligation to file a blocked property report with regard to the same property or whether such "actual knowledge" would need to be established for both the initial blocked property report and each annual report of blocked property thereafter.

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entities, including entities that do not maintain custody of, and lack the ability to prevent transfer of, such securities. For example, when an investor's blocked securities are custodied with a U.S. institution, the reporting obligation should fall on the U.S. custodian only, and not on a broker-dealer holding a brokerage account for an investor, an asset manager advising the investor or the investor invested in the security.

- **Asset managers.** OFAC's expectations are unclear with respect to asset managers' reporting obligations for assets they are authorized to manage for third-party clients but which are custodied at other financial institutions (e.g., separately managed accounts). Asset managers have received from OFAC differing guidance as to their blocking obligations for blocked securities in such separately managed accounts, which has resulted in confusion and varying approaches among asset managers.

In practice, an asset manager lacks possession or control over securities in a separately managed account, which is owned by the client and custodied at bank or broker-dealer. For example, while a U.S. asset manager may place a trading restriction on a particular security of a blocked issuer, a client could change asset managers or move the underlying security to a different custodial account and the U.S. asset manager would not be able to stop activity in the security because the asset manager does not possess or control the account or the relevant security. Additionally, if another entity has legal authority to conduct transactions in a client's custodial account involving a blocked security, a U.S. asset manager may be unable to prevent such transactions. The relevant custodian, not the U.S. asset manager, would be the party able to physically block or restrict transactions in such securities.

OFAC should confirm that a U.S. asset manager that manages assets of a client custodied at another financial institution has no obligation to file a blocked property report with OFAC with respect to such assets (although the asset manager should, of course, implement restrictions to restrict its own prohibited transactions or dealings in relevant blocked securities).

- **Dividends.** Many firms file an initial blocking report for each dividend amount paid to an underlying customer on blocked securities, often resulting in hundreds of reports (or more) being filed for a single dividend event. This has a significant operational impact on firms, particularly in recent years as Russian issuers have made dividend payments triggering thousands of simultaneous events subject to blocking and reporting at the same time. For example, in 2025, some firms saw an approximately 2,500% increase in Russia-related dividends requiring blocking and reporting. However, firms have received differing guidance from OFAC regarding how to report such dividends.

OFAC should issue clear guidance regarding whether, how and in what circumstances it expects firms to report dividends or other distributions from corporate action events concerning blocked securities. If OFAC expects firms to continue blocking dividends and other distributions from corporate action events in relation to

VI. OFAC Reporting Obligations and Reporting of Blocked Securities

blocked securities, OFAC should provide that the value of such distributions—when paid in relation to a blocked asset that has already been reported to OFAC—is required only to be reflected on an annual aggregate basis in a firm’s Annual Report of Blocked Property (“ARBP”), rather than requiring initial blocking reports to be filed for each individual distribution payment in relation to a blocked securities position.

- **Blocked property report.** The current ARBP is geared toward reporting assets held in demand deposit accounts, which does not map well to the manner in which securities are held. OFAC should design additional ARBP fields or columns specifically for reporting blocked securities, which could allow for better collection of information for use by the government and ease reporting burdens for securities firms. This may include securities-specific information requirements (e.g., number of shares, name of security, CUSIP/ISIN, etc.) that are not input easily into the existing ARBP. OFAC should ensure that securities-focused changes to the ARBP fields are appropriate for reporting both securities of SDN issuers and securities held for the account of SDNs.

VII. Conclusion

We reiterate our full support for the important goals of U.S. sanctions policy and OFAC's efforts in furtherance of these aims, and we affirm our commitment to working with OFAC to advance U.S. sanctions objectives. To more effectively achieve sanctions policy goals while minimizing the negative impacts on U.S. persons, we believe a fundamental recalibration of OFAC's approach to capital markets sanctions is appropriate and necessary.

U.S. capital markets sanctions as currently implemented have a significant detrimental impact on U.S. investors, including individuals investing in the capital markets directly and/or through pension plans and other investment vehicles. In addition, OFAC's lack of a standardized capital markets sanctions approach significantly burdens U.S. securities market participants, which must comply with varying requirements under different sanctions programs and face an ongoing lack of clarity around fundamental sanctions compliance issues.

This white paper proposes key ways for OFAC to relieve the burdens on U.S. investors and firms without detracting from U.S. sanctions objectives, including by reconsidering holistically its secondary market trading and divestment restrictions. The repercussions to U.S. investors and market participants from these restrictions do not appear to be offset by commensurate impacts advancing U.S. sanctions aims, as the issuer of sanctioned securities receives no capital from secondary trades in those securities and suffers no detriment when payments it has already made on those securities are blocked from further distribution to investors.

A more effective capital markets sanctions framework as proposed in this white paper ultimately would benefit not only U.S. investors and U.S. securities firms but also OFAC itself. Among other benefits, the framework we propose should enable OFAC to free up resources to respond to requests for guidance or specific licenses and to review duplicative blocked property reports, so that OFAC may more effectively implement and administer sanctions going forward.

We thank OFAC for its attention to these important matters and ongoing engagement with U.S. securities industry participants.

Appendix A

Summary of Capital Markets Sanctions

Sanctions Program	Targeted Securities / Transactions / Issuers	Applicable Restrictions	Relevant Authority	Date Issued
Ukraine-/Russia-Related Sanctions	Russian state-owned banks	Prohibits U.S. persons from dealing in new debt with a maturity of greater than 14 days or new equity of designated Russian entities.	EO 13662 Directive 1	July 16, 2014 (last amended September 29, 2017)
	Russian energy firms	Prohibits U.S. persons from dealing in new debt with a maturity of greater than 60 days of designated Russian entities.	EO 13662 Directive 2	July 16, 2014 (last amended September 29, 2017)
	Russian defense companies	Prohibits U.S. persons from dealing in new debt with a maturity of greater than 30 days of designated Russian entities.	EO 13662 Directive 3	September 12, 2014
Russian Harmful Foreign Activities Sanctions	Russian sovereign debt (non-ruble denominated)	U.S. banks (as defined to include securities broker-dealers, securities exchanges, investment companies and clearing corporations) prohibited from (i) participating in the primary market for non-ruble denominated bonds issued by or (ii) lending non-ruble denominated funds to any ministry, agency or sovereign fund of the Russian Federation, including the Central Bank, the National Wealth Fund and the Ministry of Finance of the Russian Federation.	EO 13883 CBW Act Directive	August 2, 2019
	Russian sovereign debt (ruble and non-ruble denominated)	U.S. financial institutions (as defined to include securities broker-dealers, securities exchanges, investment companies and clearing corporations) prohibited from (i) participation in the primary market for ruble or non-ruble denominated bonds issued after June 14, 2021, by, (ii) participation in the secondary market for ruble or non-ruble denominated bonds issued after March 1, 2022, by or (iii) lending ruble or non-ruble denominated funds to the Central Bank, the National Wealth Fund or the Ministry of Finance of the Russian Federation.	EO 14024 Directive 1A	February 22, 2022 (superseding Directive 1 of April 15, 2021)

	Russian state-owned entities and financial institutions	U.S. persons prohibited from transacting in new debt with a maturity of greater than 14 days and new equity of designated Russian entities.	EO 14024 Directive 3	February 24, 2022
	Russian Ministry of Finance, Central Bank and National Wealth Fund	U.S. persons prohibited from any transactions involving the Ministry of Finance, Central Bank and National Wealth Fund of the Russian Federation.	EO 14024 Directive 4	February 28, 2022 (as amended May 19, 2023)
	Russian energy sector	U.S. persons prohibited from new investment in the Russian energy sector.	EO 14066	March 8, 2022
	Any Russian economy sector determined by the Secretary of the Treasury	U.S. persons prohibited from new investment in any sector of the Russian economy as determined by the Secretary of the Treasury.	EO 14068	March 11, 2022
	All sectors of Russian economy	U.S. persons prohibited from all new investment in Russia.	EO 14071	April 6, 2022
Venezuela-Related Sanctions	New equity and new debt of Government of Venezuela and PdVSA	U.S. persons prohibited from (i) transactions related to, providing financing for or otherwise dealing in debt issued on or after August 25, 2017, with a maturity of longer than 90 days and issued by, on behalf of, or for the benefit of PdVSA; (ii) transactions related to, providing financing for or otherwise dealing in debt issued on or after August 25, 2017, with a maturity of longer than 30 days and issued by, on behalf of, or for the benefit of the Government of Venezuela (including PdVSA); (iii) transactions related to, providing financing for or otherwise dealing in bonds issued by the Government of Venezuela prior to August 25, 2017; (iv) transactions related to, providing financing for or otherwise dealing in dividend payments or other distributions of profits to the Government of Venezuela by any entity owned or controlled, directly or indirectly, by the Government of Venezuela; and (v) purchasing any securities from the Government of Venezuela other than securities issued on or after August 25, 2017, with a maturity of less than or equal to 90 days (for PdVSA) or 30 days (for the rest of the Government of Venezuela).	EO 13808	August 24, 2017 (as amended January 25, 2019)

	Debt owed to the Government of Venezuela and equity interests of any entity in which the Government of Venezuela has a 50 percent or greater ownership interest	Prohibits all transactions related to, provision of financing for and other dealings in (i) the purchase of any debt owed to the Government of Venezuela, including accounts receivable, and (ii) any debt owed to the Government of Venezuela that is pledged as collateral after May 21, 2018, including accounts receivable. Prohibits any sale, transfer, assignment or pledging as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50 percent or greater ownership interest; and any dealing in, including provision of services in support of, such transactions.	EO 13835	May 21, 2018
	Government of Venezuela and entities owned or controlled by the Government of Venezuela, including the Central Bank of Venezuela and PdVSA	Prohibits all transactions, including capital markets, with designated Venezuelan entities.	EO 13884	August 5, 2019
Chinese Military-Industrial Complex Sanctions	Publicly traded securities of companies identified as supporting the Chinese military-industrial complex	Prohibits U.S. persons from the purchase or sale of any publicly traded securities, or any publicly traded securities that are derivative of or designed to provide investment exposure to such securities, of designated entities related to the Chinese military-industrial complex.	EO 13959	November 12, 2020 (as amended by EO 14032 on June 3, 2021)

Appendix B

Glossary

In this Appendix B, we provide a glossary of certain securities products and services and securities industry participants that may be impacted by sanctions.

- **Central securities depository (“CSD”):** An institution that holds securities in electronic book-entry form and provides the securities infrastructure for clearing, settlement and record-keeping. Generally, investors do not hold securities directly but hold them through accounts with brokers or banks, which in turn hold them through a CSD.
 - Many CSDs are nationally organized and hold primarily domestic securities. International CSDs operate across borders, enabling trading between countries. International CSDs include Euroclear and Clearstream.
 - In the United States, the CSD is the Depository Trust Company (“DTC”), which holds in book-entry form for U.S. market participants equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, collateralized mortgage obligations, equity and debt derivatives, variable-rate demand obligations, money market instruments (e.g., commercial paper, bankers’ acceptances, institutional certificates of deposit, short-term bank notes, discount notes and certain medium-term notes), depository receipts, shares of closed-end funds, retail certificates of deposit, unit investment trust certificates, ETF shares and insured custodial receipts. DTC and its affiliates also clear and settle transactions in various instruments between their financial institution participants.
- **Custodian:** An institution that safekeeps and administers clients’ securities without taking economic ownership of those securities. Custodians have accounts with CSDs to hold securities and process and clear transactions in securities.
- **Debt:** Financial instruments evidencing indebtedness, such as bonds, debentures, notes, commercial paper or other similar instruments.
- **Depository receipts:** Negotiable certificates representing underlying shares in a foreign company traded on a local stock exchange or sold directly to investors.
- **Derivatives:** Financial instruments that are linked to a specific underlying financial instrument or instruments, index, indicator or commodity. A derivative derives its value from or based on the underlying asset (e.g., shares in a specific company), but ownership of a derivative does not represent ownership of the underlying asset.

Examples of derivatives include (i) **futures**, which are agreements to buy or sell an asset at an agreed upon price at the end of the set contract date (contract may be satisfied by delivery of the specified asset or offset in cash); (ii) **options**, which are agreements granting the right, but not the obligation, to buy or sell an asset at a predetermined price on or before a specified future date; (iii) **forwards**, which are agreements to deliver an asset at a specified future date and set price (agreed upon in advance or agreed upon at a time of delivery); and (iv) **swaps**, which are exchanges of one asset or liability for a similar asset or liability for the purpose of lengthening or shortening maturities or otherwise shifting risks.

- **Equity:** Stocks, share issuances, depositary receipts and any other evidences of title or ownership.
- **Funds:** Exchange-traded funds, mutual funds, private equity funds, funds of funds and other similar pooled investment vehicles.
- **Publicly traded securities:** As defined pursuant to E.O. 13959, as amended by E.O. 14032, "securities," as defined in section 3(a)(10) of the Securities Exchange Act of 1934 (codified as amended at 15 U.S.C. 78c(a)(10)), denominated in any currency that trade on a securities exchange or through the method of trading that is commonly referred to as "over-the-counter," in any jurisdiction.
- **Securities lending:** The temporary transfer of securities, like stocks or bonds, from an owner (the lender) to a borrower for a fee. The borrower provides collateral, such as cash or other securities, to protect the lender, with the amount of collateral required subject to fluctuation over time. The lender continues to receive dividends and other payments on the security loaned to the borrower during the loan period.
- **Securities repurchase agreements:** Transactions in which one party (the seller) agrees to transfer to the other party (the buyer) securities against the transfer of funds by the buyer, with a simultaneous agreement by the buyer to transfer back to the seller such securities at a date certain or on demand, against the transfer of funds by the seller.

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