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NAVIGATING SECURITIES PROHIBITIONS IN U.S. SANCTIONS

In this article, the authors explore the complexities of navigating the U.S. sanctions and securities paradigm. They specifically examine three distinct U.S. sanctions programs: the Russian Harmful Foreign Activities Sanctions Regulations, Venezuela Sanctions Regulations, and Chinese-Military Industrial Complex Sanctions Regulations, and the varying securities-related prohibitions associated with each. The authors highlight best practices for market participants to consider incorporating into their corporate compliance programs to ensure adherence to these sanctions regulations.

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American market participants are accustomed to navigating complicated regulatory frameworks as they must adhere to substantial disclosure requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934. Most are familiar with laws on insider trading, transaction exemptions, and pay compensation — including safe harbors. However, other regulations may be less familiar to hedge fund managers and private equity analysts — such as those related to U.S. sanctions — despite being just as complex. In recent years, U.S. sanctions regulations have increasingly affected global trading and securities transactions, as such sanctions have often included prohibitions on the trading of certain sovereign debt, currency-use restrictions, bans on trading of stock in specific companies, and in the case of some securities, bans on secondary trading.

This article describes securities-related measures enacted in three distinct U.S. sanctions programs: the Russian Harmful Foreign Activities Sanctions

Regulations (“RuHSR”);¹ the Venezuela Sanctions Regulations (“VSR”);² and the Chinese-Military Industrial Complex Sanctions Regulations (“CMIC”).³ These regulations are issued by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), which is the agency in the United States that administers and enforces sanctions. As each set of regulations varies in scope, in terms of securities-related prohibitions, it is necessary for an institution’s compliance program to consider varying limitations with right-sized controls and personnel who are well versed in OFAC guidance. Such guidance is not always tailored for the securities industry, as OFAC’s expertise is more commonly centered on foreign policy and national security measures rather than on swaps, derivatives, and other complex financial products. However, with the rise of sanctions prohibitions affecting global and

¹ 31 C.F.R. pt. 587.

² 31 C.F.R. pt. 591.

³ 31 C.F.R. pt. 586.

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