

NASD NOTICE TO MEMBERS 98-8

Treasury Requires Reporting Of Claims Against Government Of North Korea

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
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- ☐ Institutional
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- ☐ Municipal
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- ☒ Operations
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- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☒ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

As requested by the Department of Treasury (Treasury), the National Association of Securities Dealers, Inc. (NASD[®]) provides members with information from the Office of Foreign Assets Control (OFAC) about persons and entities identified as "Specially Designated Nationals and Blocked¹ Persons" and about other OFAC regulations. On December 9, 1997, OFAC amended its regulations to require a mandatory, one-time reporting of all outstanding claims held by U.S. nationals against the Government of North Korea or any North Korean government entity. The reports must be submitted by March 9, 1998.

Background

The U.S. government mandates that all financial institutions located in the United States, overseas branches of these institutions and, in certain instances, overseas subsidiaries of the institutions comply with OFAC regulations governing economic sanctions and embargo programs regarding the accounts and other assets of countries identified as threats to national security by the President of the United States. This always involves accounts and assets of the sanctioned countries' governments, and may also involve the accounts and assets of individual nationals of the sanctioned countries. Also, these regulations prohibit unlicensed trade and financial transactions with such countries.

Under these regulations, financial institutions must block identified assets and accounts when such property is located in the United States, is held by U.S. individuals or entities, or comes into the possession or control of U.S. individuals or entities. The definition of assets and property is very broad and covers direct, indirect, present, future, and contingent interests. In addition, Treasury identi-

fies certain individuals and entities located worldwide that are acting on behalf of sanctioned governments, and that must be treated as if they are part of the sanctioned governments.

OFAC may impose criminal or civil penalties for violations of these regulations. Criminal violations may result in corporate fines of up to \$500,000 and personal fines of up to \$250,000 and 10 years in jail; civil penalties of up to \$11,000 per violation may also be imposed. To ensure compliance, OFAC enlists the cooperation of various regulatory organizations and recently asked the NASD to remind its members about these regulations.

Foreign Assets Control Regulations

OFAC currently administers sanctions and embargo programs against Libya, Iran, Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro), Serb-controlled areas of Bosnia and Herzegovina, Bosnian Serb military and civilian leaders, North Korea, and Cuba. In addition, OFAC prohibits certain exports to the UNITA faction in Angola and prohibits transactions with terrorists threatening to disrupt the Middle East peace process.

Broker/dealers cannot deal in securities issued from these target countries and governments and must block or freeze accounts, assets, and obligations of blocked entities and individuals when this property is in their possession or control.

According to OFAC, broker/dealers need to establish internal compliance programs to monitor these regulations. OFAC urges broker/dealers to review their existing customer accounts and the securities in their custody to ensure that any accounts or securities blocked by existing sanctions are being treated properly.

Broker/dealers also should review any other securities that may represent obligations of, or ownership interests in, entities owned or controlled by blocked commercial or government entities identified by OFAC.

Broker/dealers must report blockings within 10 days by fax to OFAC's Compliance Division at (202) 622-1657. Firms are prohibited from making debits to blocked customer accounts, although credits are authorized. Blocked securities may not be paid, withdrawn, transferred (even by book transfer), endorsed, guaranteed, or otherwise dealt in.

OFAC has issued general licenses authorizing continued trading on the national securities exchanges on behalf of blocked Cuban and North Korean customer accounts under conditions preserving the blocking of resulting assets and proceeds. Secondary market trading with respect to certain Yugoslav debt securities issued pursuant to the "New Financing Agreement" of September 20, 1988, is also authorized; however, certain restrictions and reporting requirements apply.

North Korean Claims

On December 9, 1997, OFAC amended its regulations to require all U.S. nationals that have outstanding claims against the Government of North Korea or any North Korean government entity to report the

claims by letter by March 9, 1998. OFAC stressed that it is extremely important for firms to observe the filing deadline.

The claim letters must be submitted to the Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Firms are required to maintain a copy of all submissions. Detailed information about who must report, how the report must be certified, and what information the report must contain is described in OFAC's release in the December 9, 1997, *Federal Register*, which is attached to this Notice.

Availability Of OFAC Regulations And List Of Sanctioned Governments And Individuals

Whenever there is an update to its regulations, an addition or removal of a specifically designated national, or any other pertinent announcement, OFAC makes the information available electronically on the U.S. Council on International Banking's INTERCOM Bulletin Board in New York and the International Banking Operations Association's Bulletin Board in Miami. The information also is immediately uploaded onto Treasury's Electronic Library (TEL) on the FedWorld Bulletin Board network and is available through several other government services provided free of charge to the general public.

In addition, members can use the NASD Regulation, Inc., Web Site (www.nasdr.com) to link to OFAC's list of individuals and companies subject to economic or trade sanctions. OFAC's Web Site contains additional information that may be helpful to members and may be accessed directly (www.ustreas.gov/treasury/services/fac/fac.html). Members also may refer to *NASD Notices to Members* 97-87, 97-35, 97-4, 96-23, and 95-97.

NASD members are urged to review their procedures to ensure compliance with OFAC regulations.

Questions concerning this Notice may be directed to OFAC, at (202) 622-2490.

Endnote

¹ Blocking, which also may be called freezing, is a form of controlling assets under U.S. jurisdiction. While title to blocked property remains with the designated country or national, the exercise of the powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Blocking immediately imposes an across-the-board prohibition against transfers or transactions of any kind with respect to the property.

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