

NASD NOTICE TO MEMBERS 97-4

NASD Reminds Members About Treasury's Foreign Assets Control Regulations

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☒ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☒ Operations
- ☐ Options
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☒ Trading
- ☐ Training

Executive Summary

The Department of Treasury (Treasury) recently asked the NASD to provide members with the Office of Foreign Assets Control's (OFAC) latest list of persons and entities identified as "Specially Designated Nationals and Blocked Persons." In addition to the list, the NASD has included a summary of OFAC's regulations governing the activities of financial institutions that have such persons or entities as customers. These regulations require broker/dealers to block¹ accounts and other assets of countries identified as threats to national security by the President of the United States and prohibit broker/dealers from engaging in unlicensed trade and financial transactions with such countries. OFAC is authorized to impose significant monetary fines for violations of these regulations.

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 it 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 identifies certain individuals and entities located worldwide that are acting on behalf of sanctioned governments, and these 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 also may 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 and Bosnian Serb military and civilian leaders, North Korea, and Cuba. In addition, it 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 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, also are authorized; however, certain restrictions and reporting requirements apply.

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. In addition, the information is available through several other government services provided free of charge to the general public.

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

The NASD urges its members to review the attached list of 57 blocked persons and 21 blocked entities designated by the President of the United States for their significant role in international narcotics trafficking centered in Columbia, or have been determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to have materially assisted in or provided financial or technolog-

ical support for, or goods or services in support of, the narcotics trafficking activities of other blocked persons on the list, or to be owned or controlled by, or to act for or on behalf of, other blocked persons on the list. The list also contains revised information concerning 58 individuals and one entity. In addition, one individual specially designated narcotics trafficker and three individuals previously designated as acting for or on behalf of Iraq are being removed from the list.

Questions concerning this Notice may be directed to OFAC at (202) 622-2490. For additional information, refer to *Notices to Members* 96-23 and 95-97.

Endnotes

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.

© National Association of Securities Dealers, Inc. (NASD), February 1997. All rights reserved.

■ INTRODUCTION – On October 21, 1995, President Clinton signed Executive Order 12978 entitled "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order").

The Order blocks all property subject to U.S. jurisdiction in which there is any interest of four principal figures in the Cali drug cartel who are listed in the annex to the Order. Those four individuals are named as "Principal Individuals" below. In addition, the Order blocks the property and interests in property of foreign persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, (a) to play a significant role in international narcotics trafficking centered in Colombia,

or (b) to materially assist in or provide financial or technological support for, or goods or services in support of, persons designated in or pursuant to the Order. In addition, the Order blocks all property and interests in property subject to U.S. jurisdiction of persons determined by the secretary of the treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant of the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). Listed below are additional foreign entities and individuals designated by the Office of Foreign Assets Control as SDNTs pursuant to the Order.

The Order further prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDNTs, and any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate, the prohibitions contained in the Order. This obviously impacts trade transactions (involving, for example, letters of credit) as well as accounts and other assets.

Designations of persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the *Federal Register*, or upon prior actual notice.

Corporate criminal penalties for violations of the International Emergency Economic Powers Act range up to \$500,000; individual penalties range up to \$250,000 and 10 years in jail. Civil penalties of up to \$11,000 may also be imposed administratively.