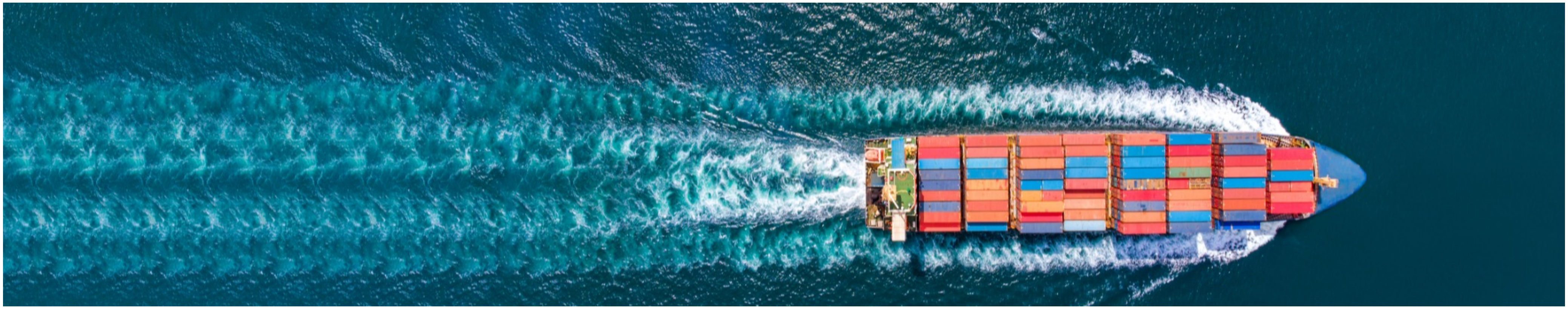

15th Annual Marine Money London Ship Finance Forum 2024

The U.S. Government Zeroes in on Shipping

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What We Will Cover

- Sanctions in the Shipping Industry
- The Oil Price Cap Policy
- The Intensifying Enforcement Environment
- Compliance and Enforcement Guidance

US Sanctions Framework

US sanctions programs vary widely and range from targeted actions that designate a handful of bad actors (selective) to near-total trade embargoes (comprehensive)

- Primary Sanctions
  - Specially Designated Nationals (SDNs)
- Secondary Sanctions
  - Non-US Person Exposure
- Sectoral Sanctions
  - Policy considerations

US: Jurisdiction – Who Must Comply?

1. “US Persons”

- Definition
  - “The term *United States person* or *U.S. person* means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.”

2. Non-US Persons Owned or Controlled by US Persons
  - Iran / Cuba Programs
    - OFAC has a broad view of its own jurisdiction, including over any activities and transactions that transit the U.S. financial system, including USD or other financial transactions.

3. Designation Risk and “Causing” Liability
  - Extraterritorial Jurisdiction, “Significant Transactions” and “Material Support”

Licensing

General and Specific Licenses

- A general license authorizes a particular type of transaction for a class of persons without the need to apply for a license.
  - Permissions for certain transactions that do not conflict with sanctions objectives
  - Winding down periods to permit, e.g., divestment
- A specific license is a written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license application.
  - Obtaining a specific license results in OFAC granting permission to certain transactions, subject to applicable conditions and limitations and on a case-by-case basis.

Russia: Recent History

- Sanctions are a continued focus of US foreign policy opposing the war in Ukraine.

- By February 2023, one year following Russia's invasion:
  - OFAC had added over 2,500 Russia-related targets to the SDN list since February 2022
  - 2400 individuals and entities, 115 vessels and 19 aircraft
  - Over 80% of Russia's banking sector by assets under US sanctions, including the top 10 Russian-owned banks
  - Imposed sectoral sanctions on nearly a dozen sectors of the Russian economy

Source: *FACT SHEET: Disrupting and Degrading – One Year of U.S. Sanctions on Russia and Its Enablers* (https://home.treasury.gov/news/press-releases/jy1298)

Russia: The Oil Price Cap Policy

- “Twin” goals: Keep the oil market well supplied, but reduce Russia’s revenue per barrel.
- Structured as a Prohibition on **Covered Services** (E.O. 14071):
    - Trading/commodities brokering; Financing; Shipping; Insurance, including reinsurance and P&I; Flagging; Customs Brokering
- U.S. Persons are only authorized to provide covered services if Russian oil or petroleum products are purchased at or below the relevant price cap.
- Safe Harbor: Recordkeeping and Attestation Process
- Tier 1, Tier 2, and Tier 3 Actors

Russia: Rise of the Dark Fleet

- Recent estimates of the number of vessels in the “grey fleet” or the “dark fleet” vary from approximately 800-1600 vessels
- Common Features
  - AIS spoofing and manipulation
  - STS Transfers
  - Opaque Management
  - Aging Fleet
  - Insurance Issues
- Possible STS Locations (Kozmino, Ceuta, Kalamata, others…)
- Recent News: Hennesea Holdings Limited

Russia: Intensifying Price Cap Enforcement

- **April 2023:** OFAC Alert on Possible Evasion of the Russian Oil Price Cap
- **October 12, 2023:** Price Cap Coalition Advisory for the Maritime Oil Industry and Related Sectors
- **October 12, 2023:** Sanctions imposed on two vessels and their registered owners carrying Russian crude oil above the Coalition-agreed price cap. (Vessels: *SCF Primorye* and *YasaGolden Bosphorus*)
- **November 16, 2023:** Treasury sanctions three additional vessels and their registered owners using U.S.-person services while transporting Russian-origin crude oil above the cap. (Vessels: *Kazan*, *Ligovsky Prospect*, and *NS Century*)
- **December 1, 2023:** Treasury sanctions three additional vessels and their registered owners. (Vessels: *NS Champion*, *Viktor Bakaev*, and *HS Atlantica*)
- **December 20, 2023:** OFAC issues revised price cap guidance, tightening compliance obligations to obtain safe harbor.
- **January 18, 2024:** OFAC sanctions Hennesea Holdings Limited and its fleet of eighteen vessels.

Russia: December 2023 Price Cap Guidance – Headline Takeaways

- **Itemized Ancillary Cost Information:** To be afforded the safe harbor, actors with direct access to price information must maintain and retain evidence of compliance with the price cap, "including itemized ancillary cost information as relevant for a given contract or transaction."
- **Per-Voyage Attestations:** For service providers who do not receive direct evidence of price information, attestations required "each time a vessel lifts or loads Russian oil or Russian petroleum products."
  - *Shipowners/Carriers:* To be received "prior to each loading or lifting of Russian oil or Russian petroleum products."
  - *Other Tier 2 / Tier 3 Actors:* To be obtained "within 30 days of each lifting or loading of Russian oil or Russian petroleum products."
- **Information Requests:** Certain Tier 3 actors (including shipowners/carriers, insurers, P&I clubs, and flagging registries) may be required to request additional information to fall within the safe harbor – such as if a Tier 3 actor "becomes suspicious" or "receives information about a suspected violation."

Russia: Hennesea Holdings Limited

- On January 18, 2024, OFAC announced sanctions against a United Arab Emirates-based shipping company, Hennesea Holdings Limited and its fleet of 18 vessels for violations of the Oil Price Cap policy.

- OFAC determined that shortly before the price cap went into effect, Hennesea acquired older tankers that ship Russian crude oil and petroleum products. These tankers have repeatedly conducted port calls in Russian Federation ports.

- Hennesea and each of its vessels were designated as “blocked persons” – barring U.S. persons from engaging in any transactions or dealings with them whatsoever.

- U.S. persons in possession or control of any property or interests in property of Hennesea are required to block (freeze) that property and file a report with OFAC. Financial institutions are also required to reject any transactions to or from blocked persons.

Recent Enforcement Actions: Suez Rajan

- Criminal and Civil Enforcement Actions
  - **September 2023:** First-ever criminal resolution against bareboat charterer of a crude oil tanker carrying contraband Iranian oil and a deferred prosecution agreement with the vessel's manager (*Suez Rajan*, Empire Navigation)
  - The vessel's manager (Empire) entered into a written Deferred Prosecution Agreement, Statement of Offense, and Framework Agreement
    - Empire pleaded guilty to a criminal charge of conspiracy to violate the International Emergency Economic Powers Act (IEEPA) and obtained a deferred prosecution agreement
  - The registered owner of the *Suez Rajan*, Suez Rajan Limited, signed a plea agreement pleading guilty to this charge on the same date
  - Empire and Suez Rajan were assessed a fine of some $2.45 million
- Security Risks / Iranian retaliation
  - **January 11, 2024**: St. Nikolas (f/k/a *Suez Rajan*) hijacked by Iranian Navy

Compliance for the Shipping Industry

- **Global Sanctions Advisory for the Maritime Industry, Energy and Metals Sectors, and Related Communities (May 14, 2020)**
  - Focus on Red Flags
    - AIS Manipulation
    - Alteration of Vessel Identification
    - Falsified Cargo or Vessel Documents
    - STS Transfers
    - Voyage Irregularities
    - Flag Hopping
    - Complex Ownership or Management
  - Enhanced Due Diligence for High-Risk Trade
  - Sanctions Compliance Program Implementation and Other Best Practices

"Quint-Seal" Compliance Note (Dec. 2023)

- Issued by Commerce, State, Justice, Treasury and Homeland Security

- **Reiterates Red Flags:** The new guidance echoes the May 2020 Guidance and the October 2023 Coalition Advisory and reiterates red flags for sanctions evasion.

- **Recommended Compliance Practices** ("Know Your Cargo")**:**
  - Institutionalize sanctions and export control compliance programs;
  - Establish location monitoring best practices and contractual requirements;
  - "Know your customer" due diligence;
  - Supply chain due diligence; and
  - Industry information sharing.

OFAC Enforcement Guidelines

Enforcement Options

- No Action
- Cautionary Letter
- Finding of Violation
- Civil Penalty
- Criminal Referral

General Factors for Enforcement Response

- Voluntary Self Disclosure
- Willful or Reckless Violation of Law
- Awareness of Conduct at Issue
- Harm to Sanctions Program Objectives
- Individual Characteristics of Violator
- Compliance Program of Violator
- Remedial Response
- Cooperation with OFAC
- Timing of Apparent Violation
- Other Enforcement Action
- Future Compliance/Deterrence Effect
- Other Relevant Factors

Practical Steps for Compliance

OFAC Framework for Compliance Commitments

- Sanctions Compliance Program Framework:
  - Management Commitment
  - Risk Assessment
  - Internal Controls
  - Testing and Auditing
  - Training
- Remediation and Root Cause Analyses
- Voluntary Self-Disclosure

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Education

Tulane University School of Law

- J.D., 1985
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Columbia University

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Bar Admissions

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Summary

Bruce G. Paulsen is co-chair of Seward & Kissel's Litigation Group, chair of the Sanctions Practice Group and has been a partner since 2002. He was named as a member of Legal 500's "Hall of Fame" in 2022 and as one of the global Top 10 Maritime Lawyers by Lloyd's List, in December 2020. Legal 500 2022 reported that Bruce "is an industry veteran, and first class in his knowledge and performance."

Bruce specializes in handling complex commercial and maritime disputes. Bruce handles finance and securities-related disputes in the shipping industry as well as traditional maritime disputes, lien claims and environmental matters. He also has substantial expertise in the area of international trade sanctions; has been deeply involved in handling piracy issues before U.S. government agencies and is highly experienced in the recognition and enforcement of arbitration awards.

Further, Chambers USA 2022 reported that Bruce "has particular expertise in finance and securities litigation in the shipping industry and acts for a wide variety of clients including bondholders, secured lenders, shipowners and charterers." Legal 500 USA 2022 described Bruce as "at the very top of his field."

Bruce has written and lectured frequently on litigation, arbitration, bankruptcy, piracy and sanctions issues, and is highly engaged, on a pro bono basis, in non-profit governance. He is also a contributor to Seward & Kissel's Maritime Blog.

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Boston College Law School

- J.D., 2005
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Bar Admissions

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Summary

Brian Maloney is a partner in the Litigation Group. Brian is a commercial litigator with significant experience across a wide range of sectors, including banking, maritime, and securities. He also represents clients in matters involving civil and criminal enforcement inquiries and regulatory investigations. He frequently acts in complex commercial disputes or regulatory investigations involving parallel proceedings and issues of foreign law, and his recent representative experience includes matters touching on Greece, Malaysia, Singapore, South Korea, Hong Kong, the Republic of the Marshall Islands and China. He has written and spoken extensively in connection with his shipping litigation work, which includes, among other matters, the ongoing coordination of U.S. actions arising out of the collapse of O.W. Bunker & Trading A/S and its affiliates around the world on behalf of the secured lender to those entities. He regularly advises clients on matters relating to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). Brian is also a contributor to Seward & Kissel's Maritime Blog, as well as the Marshall Islands Law Blog. He was named a "2021 Litigation Trailblazer" by the National Law Journal, one of only 25 attorneys recognized nationally. The Legal 500 U.S. has also designated Brian as a "Rising Star" for his work in Transport: Shipping – Litigation and Regulation. In 2022 he was elected a Fellow of the American Bar Foundation.

Brian received an A.B. degree (*cum laude*) from Dartmouth College and a J.D. degree (*cum laude*) from Boston College Law School. He is a member of the Maritime Law Association of the United States, as well as the ABA, the NYC Bar Association, New York County Lawyers' Association and the Dartmouth Lawyers' Association.