

ISDA SANCTIONS FAQs

These FAQs are intended to provide high-level guidance on certain issues that derivatives market participants may face in light of recent Russian sanctions and related market disruptions, and the various ways in which ISDA has been involved in helping address these issues. They are not intended to be exhaustive. **Last updated:** March 29, 2022

These FAQs do not contain legal advice and are merely intended as an information resource to assist market participants in addressing issues that may arise from sanctions. Market participants should take independent legal advice on the points raised in these FAQs. These FAQs are updated to the position as at the last update specified above and therefore do not reflect any developments after that date.

It is important to understand that sanctions measures and sanctions targets in many major jurisdictions have been expanded frequently since February 2022 and may be further expanded. Market participants should therefore continue to assess their trading relationships and the issues listed below on an ongoing basis to ensure that they are aware of the latest measures and can take any compliance action promptly.

GENERAL

1. *What sanctions have been implemented in response to the Russian military invasion of Ukraine?*

Since the commencement of the Russian military invasion of Ukraine on 24 February 2022, sanctions authorities in the United States, the European Union, the United Kingdom and several other countries have announced and implemented wide-ranging economic sanctions measures targeting the Russian government and entities and individuals associated with Russia, including many major Russian banking groups (see [Section 1A of the InfoHub](#)).

2. *What requirements do these sanctions impose?*

The sanctions measures have included: full blocking sanctions and asset freezes; restrictions on opening and maintaining accounts and processing transactions; prohibitions on providing financing for (and dealing in) new debt or new equity; prohibitions on secondary trading of new Russian bonds; and prohibitions on transactions (such as asset transfers and foreign exchange transactions) involving the Central Bank of Russia, the National Wealth Fund and the Ministry of Finance.

The scope of the measures and the number of sanctions targets have been rapidly extended in response to the continuation and escalation of the conflict. Different sanctions targets are subject to different measures and the timing, scope and effect of the measures varies across sanctions regimes. In addition, some sanctions targets have been the subject of general licenses or similar relief which provide for certain limited activity to continue, in some cases only during specified wind-down periods (see [Section 1B of the InfoHub](#)).

3. *How do these sanctions requirements impact derivatives markets?*

These sanctions measures have had (and continue to have) significant and far-reaching implications in derivatives markets. The most significant potential effects currently identified by ISDA broadly are in the following three areas:

- where counterparties to ISDA Master Agreements have become sanctions targets
- where derivatives transactions between non-sanctioned entities reference an entity (or obligations or instruments) of an entity that becomes a sanctions target
- where the sanctions give rise to market closures, trading disruptions, market volatility or other extraordinary events affecting the trading or settlement of derivatives transactions between non-sanctioned entities

DERIVATIVES TRADING RELATIONSHIPS UNDER ISDA MASTER AGREEMENTS

4. *How can a market participant determine whether sanctions measures may affect its trading relationship with a counterparty?*

In order to determine whether a trading relationship with any of its counterparties may be affected by recent sanctions measures, a market participant must first identify which of its counterparties have connections to Russia or certain Russian-controlled regions of Ukraine. This may include entities incorporated in Russia and any foreign branches or subsidiaries of such entities, as well as entities owned or controlled by Russian individuals.

A market participant must then establish: (a) which sanctions regimes may be applicable to its trading relationship; (b) whether the counterparty (including any individual associated with the counterparty) is a sanctions target under any such regime; (c) which sanctions measures apply to the counterparty in each relevant regime; (d) what effect the relevant sanctions measures have on its derivatives trading relationship; and (e) what steps the market participant may be permitted to take to comply with the requirements of the sanctions. Each of these steps is addressed further in the subsequent FAQs below.

5. *How can a market participant determine which sanctions regimes may affect its trading relationship with a counterparty?*

Generally, sanctions authorities take measures that are directly enforceable against individuals and entities that are subject to that sanctions authority's jurisdiction. For example, in the United States OFAC regulations generally apply to all US citizens and permanent resident aliens, all persons and entities within the US, all US incorporated entities and their foreign branches and may also extend to foreign subsidiaries controlled by U.S. companies. However, certain sanctions measures may only apply to a specific type of person. For example the US prohibition on secondary trading of certain Russian government bonds in Directive 1A under E.O. 14024 applies to 'US financial institutions' (as defined in the Directive). Therefore market participants should determine whether they are in scope by reference to the specific sanctions measures themselves, noting that an entity may be subject to multiple regimes.

In addition to making a determination as to which sanctions regimes may apply directly, a market participant should also consider whether any of its derivatives transactions have a relevant nexus with another jurisdiction. For example, US sanctions generally prevent US persons from 'facilitating' transactions by non-US persons if those transactions would be prohibited by US sanctions. A non-US person that causes a US person to commit facilitation can be liable for violating the sanctions. Therefore US sanctions will impact derivatives transactions that involve US

dollar payments to or from a US sanctions target that are cleared through US banks if those banks are prohibited from facilitating those payments by relevant US sanctions.

Even where a trading relationship has no direct or indirect connection with a jurisdiction that has imposed sanctions, a market participant that continues to engage in activity that would be prohibited may face trading restrictions or reputational risk in that jurisdiction. In particular, non-US persons can face exclusion from US markets or infrastructure by means of so-called 'secondary sanctions' measures.

Finally, the Russian government has taken certain measures in response to recently imposed sanctions that, among other things, may affect Russian entity's ability to make payments in foreign currencies to certain foreign entities (see Russian Decrees and Regulations in [Section 1D of the InfoHub](#)). Such measures may impact a Russian counterparty's ability to perform its obligations under a derivatives trading relationship, which could trigger termination rights under the terms of the ISDA Master Agreement or consequences under the terms of specific transactions.

6. *How can a market participant determine whether its counterparty (or an individual or entity associated with its counterparty) is a sanctions target?*

The identity of a specific sanctions target is generally published on a list maintained by the relevant sanctions authority. However, the approach varies across sanctions authorities. In some cases sanctions measures only apply to specific named entities or individuals, whereas other sanctions authorities extend the scope of the sanctions targets to include entities that are owned or controlled by named sanctions targets. In such cases, a market participant will need to establish the current ownership structure of its counterparty and try to determine if any particular entities or individuals exert the requisite level of control over the counterparty. It may not be clear in all cases whether certain entities meet any relevant test of ownership or control, in which case, where possible, guidance should be sought from the applicable sanctions authorities. Even in situations where the ownership or control test is not satisfied (or does not apply), market participants should verify whether any individuals or affiliated entities that are involved in dealings with the counterparty (such as directors, employees or agents) are sanctions targets.

It is not uncommon for Russian entities or individuals to operate under different names or designations. For this reason, sanctions lists may include multiple different names or designations for the same entity or individual and these lists are often updated to reflect new information. The relevant counterparty should be checked against all such names and designations on an ongoing basis. If there is any uncertainty as to whether the identity of a counterparty is the same as that listed by the relevant sanctions authority, guidance should, where possible, be sought from that sanctions authority.

7. *How can a market participant determine which sanctions measures are applicable to its counterparty and whether such measures affect its trading relationship?*

As explained above, a range of different sanctions measures have been introduced in response to the Russian invasion of Ukraine. Any sanctions measures may have implications for a trading relationship depending on the facts and circumstances of that relationship. It is important that this be determined on a case-by-case basis with the benefit of appropriate legal advice. Details of the particular sanctions measures applicable to an entity can generally be found via the website of

the relevant sanctions authority (sometimes via a specific search function, e.g. OFAC's Sanctions List Search in respect of US sanctions). Further details can be found on the designated webpages of the sanctions authorities listed in [Section 1A of the InfoHub](#).

In general, in circumstances where the counterparty has become a target of 'blocking' or 'asset freeze' type sanctions measures, derivatives trading with that counterparty is likely to be prohibited absent a specific licence or other permission from the relevant sanctions authority. However, previous guidance from certain sanctions regulators (see OFAC [General License 1B](#) and OFAC [FAQ 372](#) and [FAQ 393](#) of the pre-2022 Ukraine- / Russia- related sanctions) has indicated that more limited sanctions measures that solely prohibit financing for and/or dealing in new debt or new equity (or specific debt instruments) may permit derivatives transactions in the ordinary course that do not involve (and are not ancillary to or in support of) the issuance or trading of new debt or equity. The scope of these non-blocking (or 'menu-based') sanctions measures differs across sanctions targets and sanctions regimes and legal advice should be taken in respect of any circumstance in which a counterparty becomes subject to such measures, including the extent to which such measures may impact derivatives trading relationships.

8. *Can a market participant continue to enter into transactions with a counterparty that is a sanctions target?*

Sanctions measures, in particular 'blocking' or 'asset freeze' type sanctions measures, may prohibit a non-sanctioned entity from entering into new transactions (or modifying existing transactions) with a counterparty that is a sanctions target in the absence of a specific licence or other permission from the relevant sanctions authority. Legal advice should be taken in respect of any circumstance in which a counterparty becomes subject to such measures.

9. *Can a market participant continue to make and receive payments and deliveries (including transfers of margin) in respect of transactions with a counterparty that is a sanctions target?*

Sanctions measures, in particular 'blocking' or 'asset freeze' type sanctions measures, may prohibit a non-sanctioned entity from making and receiving payments and deliveries (including margin) in respect of transactions with a counterparty that is a sanctions target in the absence of a specific licence or other permission from the relevant sanctions authority. Legal advice should be taken in respect of any circumstance in which a counterparty becomes subject to such measures.

10. *If continued trading and/or performance under existing transactions with a counterparty is prohibited, can a market participant unwind its transactions?*

If a counterparty becomes the target of sanctions measures which prohibit the non-sanctioned party from trading with that counterparty or making and receiving payments and deliveries under existing transactions, the termination (or novation or transfer) of those existing transactions may also be prohibited by the sanctions measures. Again, legal advice should be taken before taking any such action.

In this regard, OFAC in the US and OFSI in the UK have issued limited general licenses specifically permitting the wind down of transactions and the closing out of positions with certain entities within a specified limited timeframe (see [Section 1B of the InfoHub](#)). Termination of derivatives transactions with a specified sanctions target may be permitted if that target is covered by a

general license and such action is taken in accordance with the terms (including within the contemplated timeframe) of the general license.

11. *If a market participant is permitted to unwind its transactions, what steps can it take to do so?*

If a market participant determines that it is permitted to unwind transactions with a sanctions target, whether pursuant to a general license or otherwise, then such unwind may be achieved either by a voluntary agreement between the parties or pursuant to contractual termination rights that are provided for under the relevant ISDA Master Agreement.

The relevant contractual termination rights that may be triggered and the procedure for exercising those rights and settling the transactions will depend on the facts and circumstances, as well as which version of the ISDA Master Agreement is being used and any bespoke negotiated provisions in the agreement. In particular, the standard failure to pay event of default and the illegality termination event may be of relevance, as well as any specific additional termination events that the parties have included.

If a market participant (or its sanctions target counterparty) seeks to rely on these (or other standard or bespoke) termination rights, it is important to consider carefully the consequences of doing so under the contract, including which of the parties may exercise the termination right, any preconditions or procedural steps that are required to exercise that right, which party is responsible for calculating any termination payment and the methodology that is to be used. In determining whether to take such action, a market participant should be cognisant that the existence of the relevant sanctions measures, as well as the broader impact on derivatives markets of the Russian invasion of Ukraine, may affect the outcome. Further general information about the impact of sanctions on rights under ISDA Master Agreements can be found in the ISDA White Paper and Guidance Note referred to in [Section 1C of the InfoHub](#).

12. *If a market participant has terminated its transactions with a sanctions target, can the market participant make or receive a termination payment and/or exercise any set-off rights?*

If a market participant has terminated its outstanding transactions with a sanctions target, whether voluntarily or pursuant to contractual termination rights, and a net termination payment is calculated as being owed from one party to the other, the settlement of that amount (including the ability to exercise contractual or voluntary set-off arrangements) may be prohibited by the relevant sanctions measures, particularly if those measures are 'blocking' or 'asset freeze' type sanctions measures. Legal advice should be taken before making or receiving any such payment (or exercising any such set-off).

If the sanctions measures do not permit a non-sanctioned entity to make or receive a payment then that entity may seek a specific license from the relevant sanctions authority (if that authority issues such licenses). Absent a specific licence or other permission from the relevant sanctions authority, any payments should be made into blocked accounts in accordance with the relevant sanctions measures.