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Regulatory Alert: Escalating Venezuela Sanctions, with the Russia Sanctions Playbook

President Trump signed Executive Order 13808 on Friday, August 24th escalating economic sanctions against Venezuela. This is the second escalation in less than a month, coming only weeks after the Trump Administration froze the assets of Venezuelan President Nicolas Maduro and prohibited U.S. persons from dealing with him, because of his role in undermining democracy in Venezuela. The new executive order follows a model for limited sanctions pioneered a few years ago against Russia, a model focused on preventing key targets from obtaining international capital. The sanctions do not expressly prohibit trade with Venezuela, including oil imports, leaving ample room for further escalation should President Trump so wish. At the same time, it would be a mistake for businesses to believe the new sanctions have no effect on trade – in fact, as in the case of Russia, businesses selling to Venezuela should be very careful that their payment terms do not cross the line into prohibited financing.

Previous Sanctions against Venezuela

In March 2015, President Obama imposed sanctions against Venezuela, citing concerns about rising corruption and the erosion of democracy and human rights. President Obama named seven individuals to be sanctioned immediately and empowered the Treasury Department to designate any of the following persons:

- Persons who cause or participate in acts or policies that undermine democracy in Venezuela or constitute serious human rights abuses of Venezuelans (especially against antigovernment protestors),
- Senior Venezuelan officials who engage in public corruption,
- Government officials (present or past),
- Leaders (present or past) of entities that have engaged in sanctionable conduct,
- Persons who materially assist (including providing financing, goods, or services to) sanctioned persons or sanctionable activities, and
- Any person owned or controlled by, or acting on behalf of, sanctioned persons.

These criteria are notably broad – Treasury could designate, for example, all officials of the Venezuelan government and state-owned businesses, notably including the state-owned oil company Petroleos de Venezuela, SA (PDVSA). President Maduro plainly could have been designated at any time since 2015, indicating that his designation last month reflected a political decision to escalate the sanctions.

With limited exceptions, U.S. persons cannot deal with the sanctioned persons (including entities 50% or more owned by such persons). U.S. persons may even be prohibited from entering contracts with Venezuelan entities that are not subject to sanctions if a sanctioned individual signs the contract on behalf of the Venezuelan party. All property in which

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sanctioned persons have an interest must be frozen. Sanctioned individuals are also generally banned from travel to the United States.

New Sanctions against Venezuela

The new sanctions prohibit U.S. persons from:

- All transactions involving new debt of PDVSA with maturity of more than 90 days,
- All transactions involving new debt of other Venezuelan government entities with maturity of more than 30 days,
- All transactions involving new equity of Venezuelan government entities,
- All transactions involving pre-existing bonds issued by Venezuelan government entities,
- All transactions involving dividend payments (or other distributions of profits) from any entity owned or controlled by the Venezuelan government, and
- Purchasing, directly or indirectly, any securities from Venezuelan government entities (other than short-term new debt described above).

In addition, it is illegal for any person – U.S. or non-U.S. – either to engage in any transaction that evades, avoids, causes a violation of, or attempts to violate any of the prohibitions above or to conspire to violate any of the prohibitions above.

These prohibitions are similar to the prohibitions against dealing in debt and equity issued by the Russian energy sector. As with the Russia sanctions, the debt restrictions limit the payment terms available to companies selling to PDVSA or other Venezuelan government entities, to 90 days or 30 days, respectively.

There are four exceptions to these rules so far. Most importantly, several of the prohibitions are waived to allow dealings in CITGO debt, equity, and other securities. Second, new debt is permitted if it relates to the export from the United States to Venezuela of agricultural commodities, medicine, and medical devices (including replacement parts and components). Also, U.S. persons have 30 days to wind down pre-existing contracts and may engage in certain transactions with a list of pre-existing Venezuelan bonds. Treasury may publish additional exceptions.