EVERSHEDS SUTHERLAND

Horizon Scanner
Financial Crime – US

April 2022

Immediate impact	Short term impact	On the horizon

Immediate impact

Legal risk	When	What's next	Supporting information
The United States has imposed extensive sanctions on Russia and Belarus in response to Russia's invasion of Ukraine In response to Russia's invasion of Ukraine in February 2022, the United States has imposed a series of new sanctions on Russia and Belarus. These measures include: – Sanctioning Russia's largest financial institutions, including Russia's Central Bank, and taking action to prevent Russia from using its foreign currency reserves to purchase Rubles; – Prohibiting imports to the United States of crude oil, petroleum, liquefied natural gas, and coal products of Russian origin, as well as Russian seafood, alcoholic beverages, and non-industrial diamonds; – Prohibiting the export, re-export, and transfer (in-country) of "luxury goods" to Russia and Belarus, as well as to designated Russian and Belarusian oligarchs and "malign actors," wherever located; – Prohibiting US persons (including those physically located outside the United States) from new investments in the Russian energy sector; and approving, financing, facilitating, or guaranteeing a transaction by a non-US person if the underlying transaction is prohibited for US persons; and – Designating high profile Russian individuals and companies (including Russian President Vladimir Putin's daughters and 328 members of the Russian State Duma) as Specially Designated Nationals (SDNs). Please see our ongoing updates on US sanctions against Russia and Belarus for additional detail.	Ongoing	The US sanctions landscape is constantly and quickly evolving, and the United States will likely announce additional sanctions as Russia continues its invasion. Companies should actively monitor developments to ensure that they remain in compliance with the requirements.	The US further strengthens sanctions and export controls against Russia after reports of atrocities in Ukraine (April 8, 2022) Russia and Belarus Sanctions Update (March 28, 2022) Russia and Belarus Sanctions Update (March 17, 2022) Russia and Belarus Sanctions Update (March 11, 2022) Russia Sanctions Update (March 4, 2022) Continued Expansion of Sanctions Against Russia (February 28, 2022) Russia Sanctions – Further Update (February 25, 2022) Expansion of Sanctions Against Russia (February 23, 2022)
The US Department of Justice launched "Task Force KleptoCapture" to enforce US	Current	The creation of the Task Force KleptoCapture signals a likely surge in enforcement of violations of the sanctions and export regulations against Russia in the short term.	Task Force Will Surge Federal Law Enforcement Resources to Hold

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sanctions and export control regulations related to Russia's invasion of Ukraine On March 2, 2022, Attorney General Merrick Garland announced the creation of Task Force KleptoCapture, which was formed to investigate and prosecute violations of sanctions and export restrictions imposed in response to Russia's invasion of Ukraine (as well as those previously imposed on Russia for its aggression and corruption). The Task Force KleptoCapture has broad authorization to prosecute any criminal offense related to its mission, including money laundering, false statements to a financial institution, tax violations, and bank fraud. The Task Force will include experts in sanctions and export control enforcement, anticorruption, asset forfeiture, anti-money laundering, tax enforcement, national security investigations, and foreign evidence collection from several agencies, including the US Department of Justice (DOJ), Federal Bureau of Investigation, US Secret Service, US Department of Homeland Security, and the IRS-Criminal Investigation. The Task Force KleptoCapture also will coordinate with the transatlantic task force (comprised of the European Commission, France, Germany, Italy, the United Kingdom, and Canada), which was formed to identify and seize the assets of sanctioned individuals and companies globally.		Companies should ensure that their compliance programs are equipped to keep pace with the rapidly changing sanctions and export restriction landscape.	Accountable Corrupt Russian Oligarchs
FinCEN warned financial institutions should be "vigilant" in identifying and reporting activities violating recent Russia sanctions On March 7, 2022, the Financial Crimes Enforcement Network (FinCEN) issued an alert calling on financial institutions to be "vigilant" in guarding against attempts to evade the expanded sanctions against Russia that were recently imposed by the Office of Foreign Assets Control (OFAC). The alert highlighted 13 red flags, some of which	Current	Financial institutions should prioritize addressing the issues described in the FinCEN alert and complying with the recently imposed sanctions, as failure to do so could result in an enforcement action and significant penalties.	FinCEN warns financial institutions to be "vigilant" for Russia sanctions violations FinCEN Advises Increased Vigilance for Potential Russian Sanctions Evasion Attempts

Immediate impact

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emphasized non-governmental illicit actors' frequent use of digital currencies, such as convertible virtual currencies, to evade sanctions and hide assets. It also stressed the need for financial institutions to immediately report any identified suspicious activity.			
The Securities and Exchange Commissions (SEC) issued a proposed rule that could reach cryptocurrency exchanges On January 26, 2022, the US Securities and Exchange Commission (SEC) proposed a rule amending an existing rule that defines certain terms used in the statutory definition of "exchange." The proposed rule sets forth several changes that would significantly broaden what constitutes an exchange for the purposes of SEC regulation. One notable change would re-define exchanges to include "communication protocol systems that make available for trading any type of security." It is likely this language was intentionally drafted to include cryptocurrency exchanges.	April 18, 2022	Companies—and particularly entities that could newly qualify as an exchange under the expanded definition—should consider submitting comments in response to the proposed rule. The comment period will end on April 18, 2022.	SEC issues proposed rule that could reach cryptocurrency exchanges Proposed Amendments Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs)
The SEC proposed an expansive array of climate-related disclosures for publicly reporting companies On March 21, 2022, the SEC proposed new climate-related disclosure requirements for publicly reporting companies, including (1) providing narrative disclosures on climate risks and their impact on the registrant's business; (2) quantifying the registrant's direct and indirect greenhouse gas emissions; and (3) disclosing information about climate-related goals. If the proposed rules are finalized, registrant organizations will likely need to expend significant time and resources to ensure compliance with the rules' broad disclosure, audit, and attestation requirements.	May 20, 2022	Comments on the proposed rules are due on May 20, 2022 (or 30 days after the proposed rule is published in the Federal Register, whichever is later). Companies may want to consider submitting comments on the proposed rules, which likely would have a significant impact on all publicly reporting companies.	SEC proposes expansive and demanding array of climate-related disclosures SEC Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors

Immediate impact

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Biden signed the Uyghur Forced Labor Prevention Act, establishing a presumption of forced labor in the production of goods produced by Xinjiang entities On December 23, 2021, President Biden signed the Uyghur Forced Labor Prevention Act (UFLPA) into law, which is intended to prevent goods made with forced labor in the Xinjiang Autonomous Uyghur Region of China (XUAR) from entering the US market. US Customs and Border Protection is required to apply a "rebuttable presumption" that forced labor was used in the production of any goods produced wholly or in part in XUAR or by an entity included on one of the forthcoming entity lists. Goods produced in XUAR or by one of the identified entities will be banned from import, unless the importer can demonstrate by "clear and convincing evidence" that the goods were not produced with forced labor. The Forced Labor Enforcement Task Force established under the U.S.-Mexico-Canada Agreement Implementation Act, is required to publish a government strategy that includes entity lists and additional guidance for importers overcoming the forced labor presumption within 180 days of UFLPA's enactment.	June 21, 2022	The Xinjiang forced labor presumption takes effect on June 21, 2022. The deadline for the Forced Labor Enforcement Task Force to provide further guidance and entity lists is also June 21, 2022. In the meantime, companies should carefully document their supply chains to ensure that forced labor is not involved at any stage.	Uyghur Forced Labor Prevention Act (23 December 2021) Xinjiang Updated Supply Chain Business Advisory Establishment of the Forced Labor Enforcement Task Force, Executive Order 13923, Fed. Reg. 30587 (15 May 2020) Xinjiang Uyghur Autonomous Region WRO Frequently Asked Questions, CBP
A US Department of Treasury study expressed concern about money laundering risks associated with non-fungible tokens On February 4, 2022, the US Department of the Treasury released a report examining the anti-money laundering/combating the financing of terrorism (AML/CFT) risks associated with the antiquities and art markets. The Report discusses the unique AML/CFT risks of the online art market, including the growing trade of digital art and non-fungible tokens (NFTs). The concerns expressed in the Report may forecast increased future regulation of digital art and, specifically, of NFTs.	Current	Companies dealing with NFTs should closely monitor developments and consider taking proactive compliance measures, as they may soon need to implement a compliance program that satisfies the Bank Secrecy Act's requirements.	Treasury study expresses concern about money laundering risks associated with NFTs Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art

Immediate impact

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Furthermore, the report suggests that platforms facilitating transactions of certain NFTs may already be subject to FinCEN regulation under the Bank Secrecy Act.			
SEC enforcement activity suggests increased scrutiny of cryptocurrency exchanges On February 14, 2022, the SEC brought an enforcement action against a major cryptocurrency exchange, finding certain of the company's products were securities requiring registration under the Securities Act. In addition to the registration failure, the SEC found that the exchange made false and misleading statements on its website concerning the risk level in its loan portfolio and lending activity. The SEC fined the exchange $50 million for its failure to comply with securities regulations. The enforcement action marks a major milestone in cryptocurrency regulation, and likely foreshadows significantly enhanced scrutiny over the industry going forward.	Current	Companies offering digital assets such as cryptocurrencies should carefully consider whether their offerings might be deemed securities following the SEC's recent jurisprudence, and consider registration pending that determination.	SEC's latest shot at the crypto industry: BlockFi sanctioned for its unregistered crypto-lending product In the Matter of BlockFi Lending LLC, AP File No. 3-20758 (Feb. 14, 2022)
The SEC proposed rules to change beneficial reporting requirements On February 10, 2022, the SEC proposed significant changes to beneficial ownership information reporting requirements. These updates would revise current reporting deadlines, expand the definition of beneficial owner, provide clarity about the formation of a group for reporting purposes, and require filers to use a structured and machine-readable data language in filings.	Current	The deadline for submitting comments in response to the proposed rules was April 11, 2022. Companies should consider whether these changes would affect their reporting requirements and, if so, consider taking action to ensure a smooth transition if the rules come into effect.	SEC Modernization of Beneficial Ownership Reporting SEC Proposes Significant Changes to Beneficial Ownership Reporting
The SEC proposed revisions to the 2020 amendments to its whistleblower program rules In September 2020, the SEC introduced two amendments to its whistleblower program rules. These amendments, which were subsequently challenged in court, involved the SEC's ability to make an award to whistleblowers related	Current	The deadline for submitting comments was April 11, 2022. Given SEC Chair Gary Gensler's comments and the Commission's current composition, the SEC is likely to adopt the proposed rules. Companies should review their compliance programs to ensure that their whistleblower reporting lines are	Statement in Connection with the SEC's Whistleblower Program Whistleblower Program Rules, Advance Notice of Proposed Rulemaking, 85

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to enforcement actions brought by other authorities and the Commission's calculation of the award amount. On February 10, 2022, the SEC introduced two new amendments to the whistleblower rules reversing the 2020 amendments for public comment. First, the proposed rules would reaffirm the Commission's ability to pay whistleblower awards for certain enforcement actions brought by other agencies. Second, the proposed rules would allow the SEC to consider the dollar amount of the potential award for the purpose of increasing, but not decreasing, the award amount. If implemented, the proposed changes will overturn the September 2020 amendments disallowing additional awards when another agency has a more direct connection to the action, and allowing the SEC to consider decreasing the total amount of an award.		functional and that they have implemented robust anti-retaliation programs.	Fed. Reg. 70,898 (5 November 2020) Proposed rule: The Commission's Whistleblower Program Rules (sec.gov)

Short term impact

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Regulators continue to increase their focus on whether and how companies' compliance programs retain personal communications and ephemeral messaging In December 2021, a financial institution agreed to pay $200 million in fines to the SEC and Commodities Futures Trading Commission (CFTC) and retain a compliance consultant for allowing employees to discuss business on their personal devices without preserving those communications. Since then, the SEC and CFTC have commenced investigations against at least four more financial institutions for similar uses of ephemeral messaging systems and "unapproved" messaging devices. The flurry of investigations signal regulators' burgeoning attention to document retention in the work from home environment.	Ongoing	Companies should review their compliance programs to ensure that they have implemented guidance and controls designed to retain and prevent the improper destruction or deletion of personal communications and ephemeral messaging.	Enforcement Appears as Messages Disappear

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The Infrastructure Investment and Jobs Act created new reporting requirements for dealing in digital assets Congress passed the Infrastructure Investment and Jobs Act in early December 2021. The legislation added two new reporting requirements for companies who deal in digital assets. First, all brokers will be required to report digital asset gains, including identifying customer names and addresses, to the IRS. Second, the reporting requirement for businesses that receive more than $10,000 in cash over a 12-month period will be expanded to cover digital assets.	January 2024	Although the reporting provisions will not come into effect until January 2024, companies and financial institutions should begin to assess the burdens and logistics of compliance now since failure to comply can result in civil and criminal penalties.	Infrastructure Investment and Jobs Act

Contacts

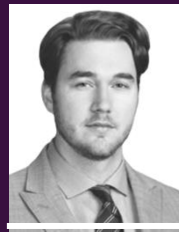
For more information, please contact:

Sarah Paul
Partner – US Head of Corporate Crime & Investigations

T: +1 (212) 301 6587
sarahpaul@
eversheds-sutherland.com

Andrea Gordon
Counsel

T: +1 (202) 383 0955
andreagordon@
eversheds-sutherland.com



Dane N. Sowers
Associate

T: +1 (713) 425 3531
danesowers@
eversheds-sutherland.com

Daniel Strickland
Associate

T: +1 (202) 383 0897
danielstrickland@
eversheds-sutherland.com

Vedia Eidelman
Associate

T: +1 (202) 383 0805
vediaeidelman@
eversheds-sutherland.com

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