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COMMISSION GUIDANCE NOTE ON THE IMPLEMENTATION OF CERTAIN PROVISIONS OF REGULATION (EU) No 833/2014

COMMISSION GUIDANCE NOTE ON THE IMPLEMENTATION OF CERTAIN PROVISIONS OF REGULATION (EU) No 833/2014[1]

On 31 July 2014 the European Union adopted a package of restrictive measures targeting sectorial cooperation and exchanges with the Russian Federation. The package consist of measures aimed at limiting access to EU capital markets for Russian State-owned financial institutions, an embargo on trade in arms, an export ban for dual use goods for military end use and end users, and restrictions on access to certain sensitive technologies particularly in the oil sector. The package was further extended on 8 September 2014 by the adoption of the Council Regulation (EU) No 960/2014 and amended on 4 December 2014 (Council Regulation (EU) No 1290/2014) and on 7 October 2015 (Council Regulation (EU) 2015/1797).

The aim of this note is to provide guidance on the application of certain provisions in Regulation (EU) No 833/2014, as amended, for the purpose of uniform implementation by national authorities and parties concerned. This guidance note is conceived in a form of answers to certain questions that have been brought to the Commission's attention. Should further questions arise, the Commission may revise or extend the questions and answers provided.

QUESTIONS AND ANSWERS

Financial assistance (Articles 2a and 4)

1. **Q. Do the provision of payment services and issuance of letters of guarantee/credit constitute financial assistance in the sense of Articles 2a and 4, and are therefore prohibited for the goods and technology subject to a ban?**

A. In Case C-72/15 (Rosneft), the Court of Justice clarified that the notion of 'financial assistance' in Article 4 does not include the processing of a payment, as such, by a bank or other financial institution. The term encompasses measures which require the financial institution concerned to commit its own resources. However, the Court of Justice also clarified that the processing of payments linked to the sale, supply, transfer or export of prohibited items, is prohibited.
The issuance of letters of guarantees/credit involves the commitment of the issuer's own resources, and as such constitutes financial assistance and is prohibited when linked to the underlying commercial transaction subject to a ban under Article 2a.

[1] This note has been conceived as a guidance document from the Commission. In this note the Commission sheds light on its understanding of a number of provisions of the Regulation. It does not aspire to cover all provisions in an exhaustive manner, nor does it create any new legislative rules. The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of acts of the institutions of the Union. This Guidance Note is an updated and consolidated version of the Note of 16 December 2014 (C(2014)9950 final), as subsequently revised. It reflects the current understanding of the Commission of the relevant provisions of the Regulation. For ease of reference, please see the attached correlation table.

2. **Q. How are banks expected to comply with the prohibition on financial assistance within the meaning of Article 4 for the goods and technology that are subject to a ban?**

A. Banks should exercise due diligence when providing financial assistance to their customers and decline any such assistance made in breach of the Regulation.
While it is true that primary responsibility for the classification of goods and technologies lies with those responsible for sending or receiving such items, the prohibition to provide financial assistance for the goods subject to a ban is distinct from the prohibition to export such goods and is incumbent upon banks. Banks cannot rely on the sole declaration of their customer that the goods and technology concerned are not covered by restrictive measures, and need to exercise due diligence to comply with the Regulation.

3. **Q. Does financial assistance for the purpose of Article 2a and Article 4 cover insurance?**

A. Yes. The answer to question 1 above explains that financial assistance includes measures which require the financial institution concerned to use its own resources. That is the case for insurance services. Moreover, Article 2a and Article 4 explicitly refer to specific types of insurance- export credit insurance or reinsurance- as examples of the operations which are covered by the notion of financial assistance.

4. **Q. Does the provision of equity and shareholders' loans constitute financing or financial assistance in the sense of Article 4(3)(b)?**

A. Yes. Article 4(3)(b) explicitly refers to "loans". In addition, the purpose of this provision is to cover any operation by which an economic operator obtains financial resources from another, which is the case for shareholders' loans and the provision of equity.

5. **Q. What financial services should be considered to fall under the prohibition against providing "financial assistance" in Article 2a and Article 4?**

A. Financial assistance is defined non-exhaustively in Article 2a and Article 4 to include items like grants, loans and export credit insurance. It should be read as encompassing the provision of any form of financial service involving the use of the provider's own resources (including but not limited to credit or letters of guarantee, investment services, insurance etc.), all of which should be considered to be prohibited in relation to any sale, supply, transfer or export of these goods and technology.

6. **Q. Is financing and financial assistance subject to authorisation pursuant to Article 4(3)(b) when it is only partly destined to the sale, supply, transfer or export of items in Annex II?**

A. Yes. Article 4(3)(b) provides that the financing or financial assistance must be "related" to the goods listed in Annex II, when such goods are supplied to a person or entity in Russia or when they are meant to be used in Russia. It does not require that such financing should be exclusively destined for such purposes.

7. **Q. How does "financial assistance" as apprehended by Article 2a and Article 4 differ from the type of assistance covered by Article 5?**

A. In addition to putting a ban on purchasing, selling or dealing in certain financial instruments, Article 5 provides a clear and targeted prohibition against providing services ancillary to those activities. These "investment services" for, or "assistance in the issuance" of, prohibited financial instruments are different from the services related to certain goods and technology, as covered by Articles 2a and 4.

8. **Q. Does the prohibition against providing financing or financial assistance for goods and technology in Articles 2a and 4 apply only within the territory of the EU?**

A. The location ("within the territory of the Union") of the conduct in question is only one of the possible factors referred to in Article 13, which defines the scope of Regulation (EU) No 833/2014. In accordance with that article, the scope also includes (but is not limited to) action taken by any legal person, entity or body "inside or outside the territory of the Union" which is "incorporated or constituted under the laws of a Member State"; the Regulation also applies "to any legal person, entity or body in respect of any business done in whole or in part within the Union".

Restrictions on dual use goods and technology (Article 2a)

9. **Q. Is the participation in the ISO standardisation activities prohibited under Article 2a of Regulation (EU) No 833/2014?**

A. No. Participation in the ISO standard development process pursues a legitimate goal and does not imply, per se, violation of EU restrictive measures. Thus, representatives of EU entities are not prevented from continuing their standardisation activities. Considering the nature of standardisation activities, it can be presumed that the transferred technology in the framework of standard-setting activities is compatible with the provisions of Regulation (EU) No 833/2014. Nevertheless, the relevant persons should be called upon to remain vigilant about the type of technology shared in such a context. In case of doubt, the competent authority of the relevant Member State should be contacted for guidance.

Restrictions on the provision of certain services in the oil sector (Article 3a)

10. **Q. Does the term "specialised floating vessels" cover Platform Supply Vessels?**

A. For the purposes of Regulation (EU) No 833/2014, the term "specialised floating vessels" in Article 3a does not cover supply vessels such as Platform Supply Vessels, Anchor Handling Tug and Supply Vessels or Emergency Response Vessels.

Financial services measures (Article 5)

Trade Finance

11. Q. How should the exemption for the financing of non-prohibited goods under Article 5(3)(a) be interpreted?

A. The exemption for trade financing provided for under Article 5(3)(a) should be interpreted as an exception from the general rule which prohibits the providing of loans and credit under Article 5(3), and should be read in the context of the general aim of the restrictive measures. As such, it should be interpreted narrowly. It is also important to recall that the exemption is included in order to ensure that legitimate EU trade is not harmed. Thus, the exemption applies where the goods for which financing is being provided are: (a) consigned from the EU to a third country, or (b) received into the EU from a third country (i.e. the EU is the destination). The mere transit of goods through the EU would be insufficient; there must be a meaningful nexus with the EU, in order for this exemption to apply.

12. Q. Can EU persons process payments, provide insurance, issue letters of credit, extend loans, to targeted entities for non-prohibited exports or imports of goods or non-financial services to or from the Union after 12 September 2014?

A. These operations fall in any event under the exemption in Article 5(3) and are therefore not prohibited.

13. Q. If an EU person had extended a loan or credit with a maturity exceeding 30 days to a targeted entity before or on 12 September 2014 for the export or import of non-prohibited goods or non-financial services to or from the Union, can the payment schedule or drawdown or disbursement terms be modified, account receivables sold to another targeted entity or debt from that loan or credit be taken over by another targeted entity?

A. Yes, all of these operations are allowed if and when such loans and credit fall under the exception in Article 5(3)(a) as they relate to non-prohibited goods or non-financial services within the meaning of the Regulation.

14. Q. Does the trade finance exemption in Article 5(3) also apply to exports or imports of non-prohibited goods to or from the Union, when such goods also include third-country content?

A. Yes, as long as the expenditure for goods and services from a third country is necessary for the execution of the export or import contract to or from the Union.

15. Q. Does the trade finance exemption in Article 5(3) also apply to exports or imports of non-prohibited goods between the Union and any third State, when such goods transit through another third State?

A. Yes, as long as the export or import contract clearly stipulates that the imports or exports originate in or are destined to the EU.

16. **Q. Do the references to "any third State" or "another third State" in Article 5(3) also include Russia?**

A. Yes.

17. **Q. Can official Export Credit Agencies (ECAs) in the EU provide financing to targeted entities to support exports, including local costs, of non-prohibited goods from the Union?**

A. Yes, within the limits established by the OECD Arrangement on Officially Supported Export Credits which is binding in the EU by virtue of Regulation (EU) No 1233/2011.

18. **Q. Can EU persons provide financing, including extending loans, to targeted entities for the export or import of goods or services between third States after 12 September 2014?**

A. Trade between third countries, where the export does not originate in the Union and the import is not destined to the Union, does not fall under the exemption under Article 5(3). Only loans or credit with repayment terms of 30 days or less, which are outside the scope of the prohibition on new loans and credit set out in Article 5, may be provided to targeted entities for the export or import of goods or services between third countries.

19. **Q. Can EU persons confirm or advise a letter of credit that was issued after 12 September 2014 by a targeted entity for the export or import of goods or services between third States? Is discounting or post-financing of such letters of credit allowed?**

A. EU persons can confirm or advise such letters of credit and provide discounting or post-financing for them, unless the applicant of the letter of credit (the buyer or importer) is a targeted entity under Article 5 and the maturity is longer than 30 days. That would constitute extending credit to a targeted entity that is not covered by the trade finance exemption and would therefore be prohibited.

20. **Q. Can EU persons purchase bonds issued by a targeted entity after 12 September 2014, with a maturity exceeding 30 days, if those are to fund the export or import of non-prohibited goods or non-financial services to or from the Union?**

A. No, the trade finance exemption applies to Article 5(3) (loans or credit), but does not apply to paragraphs (1) and (2) of Article 5. Purchasing such bonds is prohibited by the latter provisions.

21. **Q. Are Interest Make-Up Agreements (IMU) with a targeted entity (bank) covered by the prohibitions in Article 5, if such IMU is to help finance the export or import of non-prohibited goods or non-financial services to or from the Union?**

A. IMUs are considered to be interest rate swaps and as such not covered by the prohibitions in Article 5.

Emergency funding

22. Q. How should the notion of "emergency funding" under Article 5(3) be understood?

A. Determining an emergency necessarily requires a careful case-by-case assessment of the circumstances. Regulation 833/2014 requires that this is specific and documented in order to meet solvency and liquidity criteria for legal persons established in the Union.

In situations such as those set out in Article 32(4) of Directive 2014/59/EU (Bank Recovery and Resolution Directive), the exemption for emergency funding under Article 5(3) of the Regulation may apply.

Loans (other than for trade finance or emergency funding)

23. Q. If an EU person had extended a loan or credit to a targeted entity before or on 12 September 2014, is it allowed to sell a part of or the whole claim with a maturity exceeding 30 days to another targeted entity?

A. Yes, the resale of the account receivable (i.e. factoring) to another targeted entity is allowed to the extent that it does not involve any new loans or credit to either targeted entity.

24. Q. If an EU person had extended a loan or credit with a maturity exceeding 30 days before or on 12 September 2014, is the EU person allowed to agree to a takeover whereby a targeted entity assumes the role of the borrower, of the debt arising from such loan after 12 September 2014?

A. No, as it would effectively correspond to making a new loan or credit to a targeted entity after 12 September 2014 and would therefore be prohibited by Article 5(3). An EU entity shall not agree to a takeover of existing loans or credit by a targeted entity.

25. Q. If an EU person had extended a loan or credit with a maturity exceeding 30 days before or on 12 September 2014, is the EU person allowed to cancel out (i.e. 'forgive') the debt arising from such a loan after 12 September 2014?

A. No. Article 5(3) prohibits extension of new loan or credit to targeted entities. The aim is to restrict access to capital, even in circumstances where the sums extended need to be reimbursed. The cancelling of the debt would *a fortiori* provide such access to capital, i.e. in the same way as a loan but without a duty to reimburse, and hence is also prohibited.

26. Q. Does Article 5(3) prohibit the award of grants to legal persons, entities or bodies in Annex III?

A. Yes. As explained in the answer to question 25, the aim of Article 5(3) is to restrict access to capital, even in circumstances where the sums extended need to be reimbursed. Grants amount to an increase of the recipient's capital without a duty to reimburse, and are thus, a fortiori, prohibited.

27. Q. Can EU persons place term deposits with a maturity exceeding 30 days in a targeted entity (bank) after 12 September 2014?

A. Deposit services are not as such covered by the prohibitions set out in Article 5 of the Regulation. However, where (term) deposits are to be used to circumvent the prohibition on new loans, such deposits would be prohibited under Article 12 in combination with Article 5 of the Regulation.

28. Q. Can EU persons provide payment or settlement services in regard to loans made to a targeted entity, including in the context of correspondent banking? Must all correspondent banks be expected to establish the nature of the underlying credit in order to determine whether the trade finance exemption applies?

A. For the purposes of Article 5(3), payment and settlement services, including through correspondent banking, should not be construed as 'making' or 'being part of an arrangement to make' a new loan or credit to a targeted entity.

29. Q. Can an EU credit institution owned by more than 50% by an entity listed in Annex III provide collateral (e.g. in the form of guarantees, deposits, pledges, risk participations or funded participations) for intra-group risk mitigation purposes to its non-EU subsidiary, if the latter is covered by Article 5(1)b?

A. Yes, provided it does not constitute a new loan or credit with maturity exceeding 30 days, and the collateral used is not a transferable security or money market instrument covered by paragraphs (1) and (2) of Article 5.

30. Q. If an EU person has provided a good or service to a targeted entity, would payment terms/delayed payment for such a good or service exceeding 30 days constitute a new loan or credit?

A. Payment terms/delayed payment for goods or services are not considered loans or credit for the purpose of Article 5 of the Regulation. The provision of payment terms/delayed payment may not be used, however, to circumvent the prohibition to provide new loans or credit under Article 5. Payment terms granted to the entities targeted by Article 5 which are not in line with normal business practice or which, since 12 September 2014, have been substantially extended may suggest circumvention. Such circumvention would be prohibited under Article 12 in combination with Article 5.

31. Q. How should the rollover of debt obligations by targeted entities be treated under Article 5(3)?

A. The prohibitions in Article 5 extend to the rollover of existing debt. Any rollovers must comply with the 30-day maturity limit imposed for new transactions made after 12 September 2014.

However, it is possible that a succession of rollover agreements each with a maturity of 30 days or less could amount to circumvention, as described in Article 12 of the Regulation. This should be assessed in the light of the concrete circumstances of a specific case.

32. Q. Can an EU person provide funds to a non-targeted entity, including loans or credit, which are channelled through a targeted entity, provided that the funds do not stay with the targeted entity for more than 30 days?

A. Yes, that would not constitute providing a new loan or credit with a maturity exceeding 30 days to a targeted entity and would therefore not fall within the prohibition in Article 5.

33. Q. Certain provisions in Article 5[2], including the provision of loans or credit, stipulate or imply an exclusion of EU subsidiaries of targeted entities. How should this exclusion be understood, bearing in mind that circumvention of the Regulation is prohibited under Article 12?

A. Article 5 is carefully designed to ensure that EU subsidiaries of targeted entities do not become targeted entities themselves. The obligation not to provide credit, beyond a 30 day maturity threshold, extends only in relation to targeted entities, their non-EU subsidiaries, and persons acting on their behalf, under article 5(3). Furthermore, it should be borne in mind that the EU subsidiary of a targeted entity is itself directly subject to compliance with the Regulation and should not be passing funds on to a targeted entity within the Group.

Nevertheless, abuse of this exception to enable a targeted entity to obtain funding would constitute circumvention under Article 12, which EU persons considering providing loans should take reasonable care to prevent. This should be assessed in the light of the concrete circumstances of a specific case. In particular, the potential lender is obliged to refuse granting a credit/loan when it knows or becomes aware that the funds in question would end up with a targeted entity.

34. Q. Does Regulation (EU) No 833/2014 limit the ability of EU subsidiaries of targeted entities to <u>monitor</u> risks, including the evaluation of credit risk, for banking operations across the group?

A. The purpose of Article 5 is to restrict access to capital markets and create pressure for the Russian government (as explained in the sixth recital of Regulation 960/2014). Receiving information and undertaking risk management and monitoring is thus unaffected by the Regulation. However, such risk management would not be permitted if it amounted to activity prohibited under Article 5, such as participating in the making available of loans or assisting in the issuance of transferable securities with respect to targeted entities.

Capital markets

35. Q. Are derivatives covered by the prohibitions in paragraphs (1) and (2) of Article 5?

A. Derivatives which give the right to acquire or sell a transferable security or money market instrument covered by paragraphs (1) and (2) of Article 5, such as options, futures, forwards or warrants, irrespective of how they are traded (on-exchange or over-the-counter (OTC)) are

[2] These are: Article 5(1)(b) and (2)(c), in combination with Article 5(3) first subparagraph (as the case may be), as well as point (b) of Article 5(3) second subparagraph.

covered by the prohibition set out in Article 5. Certain other derivatives, such as interest rate swaps and cross currency swaps, are not covered by the prohibitions set out in Article 5(1) and 5(2), nor credit default swaps (except where these give the right to acquire or sell a transferable security). Derivatives used for hedging purposes in the energy market are also not covered.

36. Q. Can a modification be made to a transferable security entered into prior to 1 August 2014 or 12 September 2014 respectively, or would any such modification make such a contract qualify as a 'new' (and thus prohibited) transferable security for the purposes of applying Article 5(1) and (2)?

A. The level of materiality of any changes made by the modification should be taken into account in determining whether or not a modification to an existing contract reasonably requires this to be considered a new instrument. It is prohibited to adjust a transferable security entered into prior to 1 August 2014 or 12 September 2014 respectively where the modification would actually or potentially result in additional capital being made available to a targeted entity. Other changes are permitted.

37. Q. Can EU persons issue or deal with depositary receipts issued after 1 August 2014 (in the case of entities covered by Article 5(1)) or after 12 September 2014 (in the case of entities covered by Article 5(2)) if such depositary receipts are based on equity issued by a targeted entity?

A. Depositary receipts are transferable securities as defined in Article 1. Consequently, EU persons may not issue or deal in depositary receipts issued after 1 August 2014 (in the case of entities covered by Article 5(1)) or after 12 September 2014 (in the case of entities covered by Article 5(2)) in any of the following cases:

- the depositary receipts are based on equity issued by a targeted entity after 1 August 2014 (in the case of entities covered by Article 5(1)) or after 12 September 2014 (in the case of entities covered by Article 5(2)); or,

- the depositary receipts are based on equity issued by a targeted entity before or on 1 August 2014 (in the case of entities covered by Article 5(1)) or before or on 12 September 2014 (in the case of entities covered by Article 5(2)) and are issued under a depositary agreement with that targeted entity. These depositary receipts would constitute new transferable securities issued on behalf of a targeted entity, and would therefore be prohibited by Article 5(1)(c) or Article 5(2)(d).

38. Q. Does Article 5(2) prohibit the issuance, after 12 September 2014, of Global Depositary Receipts (GDRs), pursuant to a depositary agreement concluded with one of the entities listed in Annex VI, where those GDRs represent shares issued by one of those entities before 12 September 2014?

A. Yes. The expression ‘transferable securities’ includes, in accordance with the definition in Article 1(f) of Regulation No 833/2014, depositary receipts in respect of shares. Article 5(2)(b) of the Regulation prohibits any transaction consisting in purchasing, selling, providing investment services or assistance in the issuance of certain transferable securities,

issued after 12 September 2014, and any transaction consisting in dealing in such transferable securities, carried out by the entities listed in Annex VI to the Regulation, regardless of their date of issue. The Court of Justice has upheld this interpretation in Case C-72/15 (Rosneft).

39. Q. Can EU persons deal in depositary receipts issued after 1 August 2014, where one of the targeted entities (banks) is acting as custodian bank?

A. If a targeted entity (bank) is acting as a custodian for equity issued by a non-targeted entity, EU persons may deal in such depositary receipts, as it does not constitute dealing in new equity from the targeted entity. If the targeted entity is itself the issuer of the equity, the answer to the previous question applies.

40. Q. Where the underlying of cash-settled derivatives consists of securities falling under Article 5(1) and 5(2), are transactions with such derivatives permitted under those provisions, so long as this does not involve the actual purchasing, selling, or holding of the underlying securities?

A. The prohibitions of Article 5(1) and 5(2) extend to all "transferable securities". In accordance with Article 1(f)(iii) of the Regulation, as amended, that term includes any other securities "giving the right" to acquire or sell transferable securities, as defined in Article 1(f). In such cases, the prohibitions of Article 5(1) and 5(2) apply regardless of whether or not that right is actually exercised.

41. Q. What derivatives are within scope of Article 5(1) and 5(2)?

A. All derivatives covered by Article 1(f) and 1(g) are within the scope of Article 5(1) and 5(2).

42. Q. Do promissory notes fall within the scope of Article 5(1) and 5(2)?

A. Promissory notes may have a wide variety of functions. As a form of debt instrument and according to the case, they may be transferable via the money markets or be construed as a bond, which would bring them into the scope of Article 5(1) and 5(2).

If promissory notes are used as a form of payment – for example, if a targeted entity was to issue a non-negotiable promissory note as a means to pay for non-prohibited goods with EU persons – this would not be prohibited. This is consistent with the objectives of Regulation 833/2014, which is to prohibit certain money-flows and money creation between EU persons and targeted entities under Article 5, while leaving legitimate trade unaffected.

43. Q. Are bills of lading covered by Article 5(1) and 5(2)?

A. Bills of lading document the carriage of goods and the receipt of the goods by the transporter, and they also often serve as proof of entitlement to the goods. As such, they do not fall under Article 5(1) and 5(2).

However, in negotiable form, bills of lading can be traded for financing purposes. As with any other activity, that trading is subject to Article 12 of Regulation 833/2014 which prohibits circumvention of the Regulation.

44. Q. If a European central securities depository ('CSD') holds shares in a non-targeted entity, on behalf of a client which is a targeted entity, what restrictions apply to those shares under Article 5? Specifically, if the targeted entity issues depositary receipts on those shares, is the CSD prevented from undertaking any of its functions in relation to the underlying shares in the non-targeted entity?

A. Depositary receipts fall within the definition of transferable securities in Article 1. Therefore, depositary receipts issued by a targeted entity fall within the prohibitions set out in Article 5. EU persons, including CSDs, are thus subject to Articles 5(1) and 5(2) of Regulation 833/2014 in relation to the depositary receipts issued by a targeted entity.

However, the legitimate safekeeping, custody and settlement of the underlying shares – where these shares are representing capital of a non-targeted entity – is not covered by Article 5.

45. Q. Can EU persons enter into repurchase agreements or securities lending agreements with a non-targeted entity using any transferable securities or money market instruments issued by a targeted entity as collateral?

A. If the transferable securities or money market instruments were issued between 1 August 2014 to 12 September 2014 with a maturity exceeding 90 days by entities covered by Article 5(1), or after 12 September 2014 with a maturity exceeding 30 days by entities covered by paragraphs (1) and (2) of Article 5, EU persons are prohibited from entering into repurchase agreements or securities lending agreements where such transferable securities or money market instruments are used as collateral.

The prohibition does not apply when other transferable securities or money market instruments are used as collateral.

46. Q. Can EU persons enter into repurchase agreements or securities lending agreements with a targeted entity (bank), if non-prohibited instruments are used as collateral?

A. Repurchase agreements or securities lending agreements are instruments which are normally dealt in on the money market and, therefore, money market instruments as defined in Article 1. EU persons are therefore prohibited from entering into repurchase agreements or securities lending agreements with an entity covered by Article 5(1) regarding transferable securities or money market instruments issued between 1 August 2014 to 12 September 2014 with a maturity exceeding 90 days or after 12 September 2014 with a maturity exceeding 30 days, and by an entity covered by Article 5(2) after 12 September 2014 with a maturity exceeding 30 days.

47. Q. If a targeted entity issues new transferable securities after 1 August 2014 (in the case of entities covered by Article 5(1)) or after 12 September 2014 (in the case of entities covered by Article 5(2)) that are fungible with pre-existing transferable securities, can EU persons still deal in the old securities in the event that is impossible to identify from the pool of assets what was issued before or after the cut-off dates?

A. EU persons may deal in transferable securities issued by a targeted entity before or on 1 August 2014 (in the case of entities covered by Article 5(1)) or 12 September 2014 (in the case of entities covered by Article 5(2)). Practical issues relating to the fungibility of these securities (which are outside the prohibition), with securities issued after, respectively, 1 August 2014 or 12 September 2014 (which may not be dealt with) may arise, however, and market participants bear the onus of ensuring that any trades they enter into do not involve the banned securities.

48. Q. Is the provision of financial research in relation to prohibited transferable securities allowed under the Regulation?

A. No. Article 5 states that it is prohibited to directly or "indirectly" provide investment services in relation to transferable securities. Among other things, the definition of investment services in Article 1 of Regulation 833/2014, as amended, includes "investment advice".

While the provision of research is formally different from the provision of advice, it constitutes by its nature a form of indirect advice. The analysis contained in the research document indeed helps a potential investor in taking his/her decisions. This may concern, for example, the decision as to whether to 'hold', 'buy', or 'sell' a particular security. In sum, the provision of financial research should be seen as a form of investment service and is thus prohibited under the Regulation.

CORRELATION TABLE	
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