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## OFAC Makes Important Update to Ownership/Control Guidance

By Stephan E. Becker, Nancy A. Fischer, Aaron R. Hutman and Stephanie J. Rohrer

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*On August 13, 2014, the Office of Foreign Assets Control (OFAC) issued new guidance on ownership/control for determining blocked parties. This represented the first significant update on this topic since February 14, 2008, and may have important practical implications for how companies conduct due diligence, assess whether potential business associates or customers are blocked under U.S. law, and determine when it is safe to deal in or transfer the property of such persons.*

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OFAC previously has implemented guidance that an entity that is owned 50 percent or greater by a blocked party would itself be considered blocked, even if the entity was not expressly identified on the List of Specially Designated Nationals (SDNs). Until the latest guidance, OFAC's policy was not to combine ownership shares of different entities in applying the 50 percent test.

On August 13, OFAC stated that it will now "aggregate" the ownership shares of all SDNs that may own part of an entity. Any entity owned 50 percent or greater by SDNs is now considered blocked by operation of law.

The new guidance also clarifies that ownership of less than 50 percent or control by other means does not automatically lead to blocking. However, OFAC may determine to specifically designate an entity that has a significant minority ownership interest or is controlled by an SDN.

For entities that have had over 50 percent ownership by SDNs, divestment by those SDNs of their ownership would eliminate the automatic blocking. However, such divestment must take place outside of the United States or otherwise be authorized by the U.S. government. There also are certain limitations—for example, blocked property in the possession of U.S. persons remains blocked even if there is subsequent divestment outside of the United States.

The guidance applies for purposes of application of the Sectoral Sanctions Identification List ("SSI List"). Thus, ownership interests of entities on the SSI List should be aggregated to determine if additional entities are subject to the SSI List restrictions. Importantly, ownership interests of SDNs and SSI list entities are *not* combined when determining an entity's ownership. OFAC only will aggregate within the distinct programs.

This technical change in OFAC's "counting" for ownership may have an impact on due diligence evaluations. It may be necessary to review past due diligence on key business partners, vendors and customers, particularly where there was any indication of minority SDN ownership. Looking ahead, it will be important for companies to update their internal compliance and due diligence policies to reflect the ownership and control guidance.

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If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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