



MAY 22, 2020

CIRCULAR NO. 22/20

TO MEMBERS OF THE ASSOCIATION

Dear Member:

UNITED STATES ISSUES GLOBAL ADVISORY PROVIDING GUIDANCE TO MARITIME SECTOR TO PRECLUDE ILLICIT SHIPPING AND SANCTIONS EVASION

On May 14, 2020 the US government issued a Global Maritime Advisory (the Guidance) aimed at a range of industry sectors. They include marine insurers such as P&I clubs, as well as shipowners and charterers. A copy of the Guidance can be found at:

https://www.treasury.gov/resource-center/sanctions/Programs/Documents/05142020_global_advisory_v1.pdf

The Guidance updates and expands earlier advisories concerning Syria and the DPRK (North Korea). It provides detail on the level of due diligence and other compliance-related activities expected by the US government of parties whose businesses run a risk of engaging in trades that may breach US sanctions. It applies specifically to the sanctions regimes surrounding Iran, Syria and the DPRK, and provides information relevant to both US and non-US companies.

The Guidance covers the following sectors of the maritime industry:

- Marine Insurance
- Flag Registry Managers
- Port State Control Authorities
- Shipping Industry Associations
- Commodity Traders, Suppliers and Brokers
- Financial Institutions
- Shipowners, Operators and Charterers
- Classification Societies
- Vessel Captains
- Crewing Companies

The document is highly significant because it enunciates the US government's standards by which the marine industries will be judged if they are linked to sanctions breaking.

In the past, the US has sometimes criticized the role played by the maritime industries in providing goods and services to countries which are the subject of sanctions. In several well-publicized actions, the US government has acted against companies where it considered that compliance practices had been inadequate, or where deliberate sanctions breaking had taken place. Such enforcement measures can have profound implications for a company, and in extreme circumstances can prevent it from continuing to do business.

To the extent that the Guidance explains US expectations of what it considers to be good compliance practice in the maritime industry, it provides a helpful degree of clarity for future reference. At the same time, the sectors of the maritime industry targeted by the Guidance are often subject to complex domestic and international regulations that may sometimes impose conflicting requirements on a particular party by reference to countervailing imperatives of compliance in other jurisdictions.

The resolution of such conflicts in areas such as competition law, data protection laws and international conventions such as the International Convention for Safety of Life at Sea (SOLAS) are not within the ambit of the Guidance. It may also give rise to difficulties associated with the termination of legally

binding commitments based on a suspicion of unlawful activity. And as alluded to above, a potential exists for problems where there is a conflict between requirements of the Guidance and the obligations of local law in other jurisdictions in which shipowners might be based.

Of particular note is the focus on the use – or misuse – of a vessel’s AIS equipment. All those engaged in the maritime industry can now be in no doubt as to the importance of monitoring such transmissions for abnormal or suspicious activity including switching off the equipment in circumstances not permitted by SOLAS. All clubs in the International Group now monitor the AIS transmissions of all entered vessels in high risk areas, and have recently issued a circular dedicated to AIS and vessel monitoring. In the American Club’s case, this is [Circular No. 20/20](#) of May 15, 2020.

The Guidance sets out the US government’s expectation that shipowners will be well placed to assess and make sense of the AIS history of ships operated or owned by counterparties. It suggests the continuous monitoring of ships, *“including ships leased to third parties, and ensure that the AIS is continuously operated consistent with SOLAS and not manipulated. Parties could also consider using LRIT in addition to AIS and receiving LRIT signals every 3 hours”*. Long Range Identification and Tracking (LRIT) is a closed system available to, and for use by, flag states. Data available from LRIT is generally not available to private parties but, where it is, the expectations contained in the Guidance should certainly be borne in mind, although in practice it might be problematical.

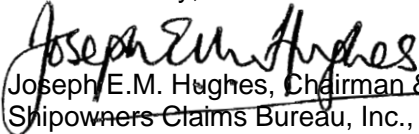
The Guidance further suggests that counterparties should assess the AIS history of all new clients and *“refuse to conduct business with vessels that have a history of AIS manipulation not consistent with SOLAS”*. Bearing in mind that AIS transmission is sometimes lost in high density areas, or where satellites fail to receive positioning data when a vessel is in transit or in port, Members are advised to obtain independent advice and/or consult a reputable AIS monitoring service provider before deciding to make new commitments, or disengaging from existing obligations, in light of the provisions of the Guidance on these points.

The Guidance also places heavy emphasis on the need to perform proper “know your customer” (KYC) and “know your customer’s customer” (KYCC) procedures. These should also be borne in mind, albeit that the practice of certain commodity trades may make compliance intrinsically difficult in some cases.

As mentioned above, the consequences of not complying with US primary and secondary sanctions legislation can be severe. The terms of the US government’s new Guidance in this area should be noted carefully and the importance of the standards for compliance it contains taken very seriously.

Your Managers remain at the disposal of Members to assist them with that compliance, and will be pleased to answer questions as might arise from this Circular, and generally, as required.

Yours faithfully,



Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

All clubs in the International Group have issued similarly-worded circulars.