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TO MEMBERS OF THE ASSOCIATION

Dear Member:

UNITED STATES SANCTIONS AGAINST IRAN: NEW DEVELOPMENTS

Members are asked to note recent developments in the United States with respect to sanctions against Iran.

On July 31, 2012, President Obama issued an Executive Order (EO) imposing, with immediate effect, additional sanctions on activity involving Iran. The new EO gives new sanctions powers to both the US Department of the Treasury and the US Department of State.

It authorizes the Secretary of the Treasury to impose financial sanctions on foreign financial institutions which have knowingly conducted or facilitated certain significant financial transactions with the National Iranian Oil Company (NIOC) or Naftiran Intertrade Company (NICO), or for the purchase or acquisition of petroleum or petroleum products from Iran through any channel.

In addition, the new EO empowers the US Treasury to impose sanctions on foreign institutions which have knowingly conducted or facilitated significant transactions for the purchase or acquisition of petrochemical products from Iran.

Finally, the EO provides authority for the US Treasury to block the property, and interests in property, of any person determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NIOC, NICO, or the Central Bank of Iran, or the purchase or acquisition of US bank notes or precious metals by the Government of Iran.

The three numbered sections below in bold summarize specifically the new categories of activity under the new EO which may lead to the imposition of sanctions.

- I. The EO authorizes the U.S. Treasury Department, with certain exceptions, to impose sanctions on a foreign financial institution that has knowingly conducted or facilitated any significant financial transaction:**
 - i. with the National Iranian Oil Company (NIOC) or Naftiran Intertrade Company (NICO);**
 - ii. for the purchase or acquisition of petroleum or petroleum products from Iran; or**
 - iii. for the purchase or acquisition of petrochemical products from Iran.**

For the above-mentioned sanctionable activities, the US Treasury Department may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States, of a correspondent account or a payable-through account by a foreign financial institution. Sanctions, however, shall not apply if the country with primary jurisdiction over the foreign financial institution has decreased its oil purchases and imports from Iran. Sanctions shall also not apply with respect to any

person conducting or facilitating a transaction for the sale of food, medicine, or medical devices to Iran or when the underlying transaction has been authorized by the US Treasury Department.

II. The new EO, subject to a few narrow exceptions, also authorizes the imposition of sanctions on persons (individuals and entities) that:

- i. knowingly, on or after July 31, 2012, engage in a significant transaction for the purchase or acquisition of petroleum or petroleum products from Iran;**
- ii. knowingly, on or after July 31, 2012, engage in a significant transaction for the purchase or acquisition of petrochemical products from Iran;**
- iii. is a successor entity to a person engaging in the activity mentioned above;**
- iv. owns or controls a person determined to have engaged in the activity above, and had knowledge that the person engaged in such activities; or**
- v. is owned or controlled by, or under common ownership or control with, a person determined to have engaged in the sanctionable activities above, and knowingly participated in the sanctionable activities.**

The sanctions available under the new EO for the activities described above include:

- a. denial of US Export-Import Bank approval of the issuance of any guarantee, insurance, extension of credit;
- b. a ban on the issuance of any US export licenses to the sanctioned person;
- c. with respect to a sanctioned person that is a financial institution:
 - i. the termination, or ban on the continuation, of any prior designation of the sanctioned person as a primary dealer in United States Government debt instruments; or
 - ii. a ban on the sanctioned person from serving as an agent of the United States Government or serving as a repository for United States Government funds; or
- d. a ban on U.S. Government procurement contract with the sanctioned person.

Additional sanctions may include:

- i. a prohibition on any United States financial institution from making loans or providing credits to the sanctioned person totaling more than \$10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering, and the loans or credits are provided for such activities;
- ii. a prohibition on any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;
- iii. a prohibition on any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;
- iv. the blocking of all property and interests in property that are in the United States, that come within the United States, or that are, or come within, the possession or control of any United States person, including any foreign branch of the sanctioned person; or

- v. a restriction or prohibition on the import of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person.

III. Under the new EO, sanctions may also be imposed on a person who has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NIOC, NICO, or the Central Bank of Iran, or the purchase or acquisition of US bank notes or precious metals by the Government of Iran.

The sanctions for the activity described in the paragraph above would block the property and interest in property of the sanctioned person. The new EO also cuts off donations of any kind to persons on whom sanctions are imposed pursuant to the new EO.

However, it should be noted that the new EO provides that sanctions shall not be imposed with respect to any person for conducting or facilitating a transaction involving a natural gas development and pipeline project initiated prior to the effective date of this order to bring gas from Azerbaijan to Europe and Turkey in furtherance of a production sharing agreement or license awarded by a sovereign government other than the Government of Iran before the effective date of the EO.

Definitions

Under the new EO:

- the term "petroleum" (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities;
- the term "petroleum products" includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels; and
- the term "petrochemical products" includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.

The EO is in addition to existing US sanctions laws applicable to US persons, has extraterritorial effect, and is designed to further deter non-U.S. persons from dealing with Iran. As noted above, the imposition of available sanctions may be waived with respect to certain non-US persons whose governments have reduced their imports of Iranian oil.

The impact of the new EO on maritime transportation and insurance

As Members are aware, the American Club, as a US entity, is already subject to the US sanctions against Iran, and its ability to cover vessels trading with Iran is restricted and highly regulated. Although the new EO does not explicitly provide for the imposition of sanctions against shipowners/members that are not US persons, the activities described in Section III above could be construed to cover transportation services by shipowners in support of, for example, NIOC.

The new EO also is also not clear on whether the transportation or lifting of petroleum, petroleum products or petrochemical products from Iran *per se* would constitute sanctionable activity. The US Treasury's Office of Foreign Assets Control (OFAC) has informally confirmed that the sanctions in Sections I and II above would not apply to shipowners or insurers and has also issued the following guidance which may shed some light on this issue:

These new measures further strengthen the existing comprehensive Iran sanctions framework by deterring work-around financial transactions involving NIOC or NICO that were not being captured under the sanctions previously implemented against the CBI. Iranian trade partners can continue to buy petroleum and petroleum products from Iran without risking sanctions under this EO if they have received a significant reduction exception under the NDAA. However, in jurisdictions that do not have a significant reduction exception, the purchase of petroleum or petroleum products and significant dealings with NIOC or NICO may be subject to sanctions under this EO.

Given the backdrop and the context within which the new EO was issued, and previous US government announcements that transportation of petroleum and petroleum products *per se* were not sanctionable, it is expected that the focus of the new EO is more on the activities of financial institutions and other actors rather than shipowners and vessels and their transportation of cargo from Iran.

OFAC's interpretation makes clear that Iranian trade partners can continue to buy (and ostensibly transport and insure) petroleum and petroleum products from Iran without risking sanctions if they have received waivers from sanctions (imposable on financial institutions) because they have significantly reduced their purchases from NIOC or NICO. However, OFAC has also informally indicated that transporting crude oil sold by NIOC could be viewed to fall within the activities described in section III above. Whether OFAC will formally adopt such an interpretation is not yet known.

In any event, EU sanctions against Iran, being Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran (March 23, 2012 Regulation), prohibits the transportation of crude oil from Iran. The March 23, 2012 Regulation prohibits the importation of Iranian oil or petroleum products into the EU. The March 23, 2012 Regulation, *inter alia*, also prohibits the transportation of crude oil originating in, or being exported from, Iran to any other country. Moreover, it prohibits the provision, directly or indirectly, of financing or financial assistance, including financial derivatives, as well as of insurance and re-insurance related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran.

As provided for in exceptions contained in the March 23, 2012 Regulation, the foregoing prohibitions did not apply to the execution, until July 1, 2012, of trade contracts concluded before January 23, 2012, or of ancillary contracts necessary for the execution of such contracts. This grace period has now expired and the prohibitions are now in full force. Additionally, the grace period dealing with

insurance and re-insurance (directly or indirectly, of third party liability insurance and environmental liability insurance and reinsurance) related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran also expired on July 1, 2012.

The American Club is already prohibited (prior to the new EO) from providing, and does not provide, cover for vessels lifting crude oil or other petroleum products from Iran, and it also does not provide cover for transportation that is prohibited by EU sanctions against Iran.

New sanctions targets designated

On July 31, 2012, the US Department of the Treasury announced the imposition of sanctions against two financial institutions for knowingly facilitating significant transactions or providing significant financial services for designated Iranian banks. The financial institutions sanctioned on July 31 by OFAC are Bank of Kunlun in China and Elaf Islamic Bank in Iraq.

The OFAC action against Bank of Kunlun and Elaf Islamic Bank effectively bars them from directly accessing the US financial system. As a result of the sanctions of the type imposed against Bank of Kunlun and Elaf Islamic Bank, financial institutions may not open correspondent or payable-through accounts for Bank of Kunlun or Elaf Islamic Bank in the United States and any financial institutions that currently hold such accounts must close them by August 10, 2012.

US sanctions: impending developments

On August 1, 2012, the US Congress overwhelmingly approved legislation (HR 1905) containing new sanctions targeting Iran's energy and shipping sectors. This round of sanctions, which target any person or company which works with Iran's petroleum or natural gas sector, provides insurance to the National Iranian Oil Company, engages in uranium mining with Iran, or sells oil tankers to Iran, passed the US Senate by a unanimous consent vote, and is now on its way to President Obama for his signature whereupon it will become law. Further details on this new legislation will be provided once it takes effect.

This legislation provides for, among other things, the imposition of sanctions against any person that knowingly provides a vessel, insurance or reinsurance, or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism. The Act provides for the blocking and prohibition of all transactions in all property, and interests in property, of sanctioned persons, if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

It remains to be seen whether, for example, the lifting and transportation of crude oil from Iran will be considered to constitute activity that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism, and thus be sanctionable.

Compliance and due diligence

Given the number and complexity of US laws governing US sanctions against Iran (which are cumulative and provide for comprehensive prohibitions and the imposition of sanctions against a wide



range of non-US persons trading with Iran), and the constantly evolving rules, the US Iran sanctions net is very large and fine. Thus, the risk that a transaction or activity involving Iran or an Iranian entity will implicate US prohibitions, or trigger the imposition of US sanctions, at any given time, is high. Ambiguities in the law make this risk higher.

Legal determinations as to whether a transaction is permitted or whether it constitutes sanctionable activity are very fact-sensitive. Members are therefore urged to exercise a high degree of caution and due diligence and to obtain competent legal guidance related to their activities involving Iran in order to avoid the imposition of sanctions as well as violations of the law. This will also prevent members from causing the American Club to violate the law.

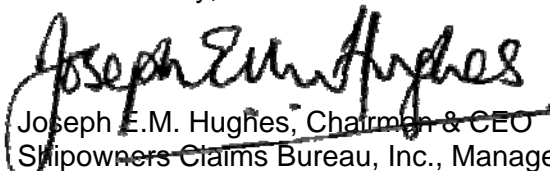
Questions and guidance

For any questions regarding any aspect of the foregoing or with respect to Iran and other sanctions in general, please contact:

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Your Managers will keep abreast of developments in regard to the proposed legislation, and other developments regarding additional US economic sanctions, and Members will continue to be informed accordingly.

Yours faithfully,


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