**Private Placement Investor Association**

OFAC/U.S. Sanctions Due Diligence Questionnaire for Potential Borrowers—Second Draft—5/21/14

**DEFINITIONS:**

**CISADA:** Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195, 124 Stat. 1312, enacted July 1, 2010; CISADA) is a law passed by the U.S. Congress that applies further sanctions on the government of Iran.

**FSE List:** Foreign Sanctions Evaders List published by OFAC

**OFAC:** Office of Foreign Asset Control

**Relevant Parties:** The issuer (or issuers) and any guarantors, and the issuers’ and guarantors’ subsidiaries, affiliates, and joint ventures.

**Relevant Persons:** Officers and directors of the Relevant Parties.

**Sanctioned Activities:** Restrictions on trade and finance imposed by the U.S., U.K., and E.U., to which a Relevant Party is subject.

**Sensitive Countries:** One or more of the following countries (to be updated from time to time) which are subject to economic and trade sanctions: Iran, Syria, Cuba, Belarus, Burma (Myanmar), Cote d’Ivoire, Democratic Republic of Congo, Libya, North Korea, Somalia, Sudan or (North) Sudan, Yemen, Zimbabwe, Ukraine or Russia.

**Sensitive Industries:** Business activity associated with one or more of the following industries (to be updated from time to time): nuclear; weapons/ballistics; petroleum, petrochemicals, or refined petroleum products; natural gas; joint oil and gas development ventures outside of a Sensitive Country involving its Government; shipping, ship building or ports; automotive; exchange of U.S. bank notes or Rials, sovereign debt/Government bonds of a Sensitive Country; uranium or precious metals, graphite, or raw or semi-finished metals, such as aluminum, steel, and coal; and software for industrial purposes related to the industries described herein.

**SDN:** Specially Designated Nationals List published by OFAC

**QUESTIONS:**

**Sanctions Listings, Inquiries or Accusations:**

1) Is any of the Relevant Parties or Relevant Persons listed on the SDN list or FSE list? If yes, please detail.

2) Is any of the Relevant Parties owned or controlled by a sanctioned person/entity on the SDN or FSE lists? If yes, please detail.

3) Has any of the Relevant Parties ever been contacted by a government entity for the purpose of inclusion on a government sanctions list? If yes, please explain.

4) Has any group or organization issued public statements critical of any Relevant Party or Relevant Person for doing business in or with a Sensitive Country? If yes, please explain.

**Sensitive Countries:**

5) Is any of the Relevant Parties owned or controlled by the government of, or any governmental agency of, a Sensitive Country? If yes, please explain.

6) Is any of the Relevant Parties or Relevant Persons located in or organized under the laws of a Sensitive Country? If yes, please explain.

7) Does any of the Relevant Parties conduct business in or with, or with customers located in, any Sensitive Country? If no, please state and move to question 8. If yes:

a. State the nature of the business conducted, goods sold, assets owned, or services rendered in Sensitive Countries.

b. How long has there been a presence in these Sensitive Countries? Do the Relevant Parties plan to continue to maintain a presence in such Sensitive Countries? If in wind-down mode, how long will it be until the Relevant Parties no longer have a presence in Sensitive Countries?

c. Please state the revenue generated by such business or service in each of these countries (last 12 months revenue, as of the most recent financial reporting period). Also express this revenue as a percentage of total revenues.

d. Please state the total value of assets located in each of these countries (as of the most recent financial reporting period), and express as a percentage of total assets.

e. Is any of the business conducted in Sensitive Countries considered to be in a Sensitive Industry? If yes, please expand further, on each of questions 5a-d, breaking down the nature of the activity, annual revenues, and assets for each type of Sensitive Industry activity, within each Sensitive Country. (See example below. List figures from most recent financial reporting period.)

Activity Located in which Last 12 Mos.

Description Sensitive Country? Revenues Assets

Sensitive Activity 1

Sensitive Activity 2

Sensitive Activity 3

f. Is any U.S.-origin product sold into Sensitive Countries or used in the goods that are sold into such countries? If yes, please explain.

**Proactive Policies, Procedures & Reporting Requirements:**

8) Do each of the Relevant Parties have policies and procedures in place to ensure compliance with applicable economic and trade sanctions, and to ensure that they will not engage in activities that would render themselves subject to sanctions under CISADA or similar U.S. economic or trade sanctions laws, including U.S. “secondary” sanctions targeted at non-U.S. companies?

a. If yes, please briefly describe.

b. If no, for any such entities, please explain why no such policies are in place.

9) Do each of the Relevant Parties routinely screen their business counterparties against any list of prohibited parties, such as the OFAC SDN or FSE lists promulgated by the U.S., the Consolidated List of Financial Sanctions Targets promulgated by the U.K., and other similar lists? If yes, please name the relevant lists checked, the frequency of screenings, and the operations against which said lists are run.

10) Are the Relevant Parties subject to U.S. reporting requirements (10-Qs/Ks, 20-Fs, etc.)?

a. If yes, have such entities made disclosures under the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA s219) or Section 13(r) of the Securities Act of 1934?

b. If yes to part (a), then please provide such disclosure.

**Question for Financial Institutions Only:**

11) Will the offering proceeds be added to a general pool of funds? If yes, will the Sanctioned Activities comprise 10% or more of the financial institution’s cash flows for the most recent 12 months (for which financial information is available), using interest payments and dividend payments received, loan repayments, and investment returns?

**Use of Proceeds & General Questions:**

12) Please state the intended use of proceeds from this offering.

13) Will any of the proceeds from this transaction support business of Relevant Parties in Sensitive Countries, either directly or indirectly?

14) Do any of the Relevant Parties have unfunded commitments or plans to engage in a Sanctioned Activity/Country during the next 12 months? If yes, please explain.

15) Please disclose any other information, relevant to Sensitive Countries, Sensitive Industries, Sanctioned Activities, or sanctions-related inquiries or trade restrictions that were not otherwise disclosed above--including, but not limited to, those that may have been issued by the U.S. State Department or the U.S. Department of Commerce (BIS).

**NOTES:**

**Sanctions Listings, Inquiries or Accusations Note:** An SDN or FSE listing is a non-starter for investment. Sanctions issued by the State Department (Sanctioned Entity List) can impose restrictions on investment.

**Sensitive Countries Notes :**

1) If entities are domiciled in or owned/controlled by the governments of Cuba, Iran, North Korea, (North) Sudan, Burma or Syria, this is usually a non-starter for investment. Investment in Burma, where allowed, may be subject to reporting requirements with OFAC. If domiciled in or owned/controlled by Burma or the remaining jurisdictions, further due diligence may be required; consult your internal OFAC expert.)

2) Sanctions and U.S. Export Control regulations also extend to the incorporation of certain U.S.-origin product into other products sold abroad. The risk of a fine is higher when U.S. goods are part of the supply chain for goods sold in sanctioned countries.

3) U.S. law prohibits U.S. companies from doing business with companies whose revenues are “predominantly derived” from sanctioned countries. Unfortunately, there is no official legislation or precedent that defines what constitutes “predominantly derived,” and some in the industry have estimated that the threshold could be as low as 6%, or as high as 15%. However, many are now focusing on the 10% level as a reasonable threshold. If the entity has less than 10% of its revenues or assets in the sanctioned jurisdictions, then it is assumed that it does not predominantly derive its revenue stream from sanctioned jurisdictions. There are some exceptions, which focus on whether the transaction proceeds involve a Sensitive Industry. For example, more scrutiny exists for petroleum/energy and sectors that surround those businesses (e.g. companies that transport oil). The auto, shipbuilding, financial and military (weapons) sectors in Iran also garner attention. If your borrower has less than 10% presence in sanctioned jurisdictions, but the borrower engages in the energy/transport, auto, shipbuilding, financial or military sectors (or other sanctioned industries) in those jurisdictions, further due diligence is warranted. Consult your internal OFAC expert. Also note that various state insurance regulators penalize U.S. insurance companies for investing in designated companies with activities in Iran.

**Question for Financial Institutions Only Note:** If the offering proceeds will be added to a general pool of funds, and sanctioned activities comprise 10% or more of the financial institution’s cash flows for the most recent 12 months further due diligence may be merited. Consult your internal OFAC expert.

**Use of Proceeds & General Questions Notes:** If the answers to any of the Sensitive Countries questions are “yes,” then it’s best to ask the borrower to confirm that proceeds from this offering will not support activity in a sanctioned country—whether directly or indirectly—and to properly document that response through an affirmative representation in the NPA.

**Notes on State Restricted Lists:** The attached list of questions relates to OFAC and other U.S. sanctions rules; however, individual states have related divestment lists (primarily focused on energy companies doing business in Iran and/or Syria). Generally, investments of $20mm or greater in listed companies can impact your company’s ability to obtain state contracts. Each investor must determine which list(s) makes most sense to monitor and the appropriate course of action, should one of your investments be named on a list. As noted above, insurance companies can be further penalized for investing in such companies, as such investments may be designated as non-admitted assets. You can access these lists on the following websites:

**State of California List:** http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/IRI-2010/index.cfm#Insurers

**State of NY list:** http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

**Other State Lists:** http://www.unitedagainstnucleariran.com/our-initiatives/state-legislation

**Additional OFAC Resources:**

**OFAC Sanction Programs:** http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx

**SDN Search Tool:** http://sdnsearch.ofac.treas.gov/

**SDN Search FAQs:** http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/fuzzy\_logic.aspx