

Investment Funds

FREQUENTLY ASKED QUESTIONS – AS OF 14 APRIL 2022

- 1. Where a management company as defined in point (b) of Article 2(1) of [Directive 2009/65/EC](#) or an alternative investment fund manager in the meaning of point (b) of Article 4(1) of [Directive 2011/61/EU](#), carries out business on behalf of its managed fund(s), are the restrictive measures set out in [Council Regulation \(EU\) 833/2014](#) applicable to those funds or the unit-/shareholders of those funds? Specifically, where the management company or the alternative investment fund manager purchases, sells, provides investment services for or assistance in the issuance of, or otherwise deals with transferable securities and money-market instruments, on behalf of its managed funds, or sells transferable securities denominated in the currency of a Member State issued after 12 April 2022, or units in collective investment undertakings providing exposure to such securities, do the prohibitions in Articles 5(1)–5(4), Article 5a(1) and Article 5f(1) of [Council Regulation \(EU\) 833/2014](#) apply to the funds or the unit-/shareholders of those funds?**

The prohibitions laid down in Articles 5(1)-5(4) and Article 5a(1) apply to any entity or person that are transactional parties to, or arrange or otherwise facilitate, the sale, purchase or issuance of securities of entities sanctioned under these Articles.

The prohibition in Article 5f(1) applies to any entity or person selling transferable securities denominated in the currency of a Member State, or units in collective investment undertakings providing exposure to such securities, to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, save for nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State.

Collective investment undertakings managed by management companies as defined in point (b) of Article 2(1) of [Directive 2009/65/EC](#) or alternative investment fund managers in the meaning of point (b) of Article 4(1) of [Directive 2011/61/EU](#) are covered by the prohibition laid down in Article 5f of [Council Regulation \(EU\) 833/2014](#) if their activities fall within the scope of this prohibition.

Management companies, alternative investment fund managers or investment firms are covered by the prohibitions in Articles 5(1)-5(4) and Article 5a(1) if their activities fall within the scope of these prohibitions.

2. If the manager of an investment fund has an indirect investment which falls in scope of the sanctions, to what extent may this manager purchase and/or sell in this investment fund?

The prohibition to "directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities or money market instruments" of entities sanctioned in Articles 5(1) to 5(4) of [Council Regulation \(EU\) 833/2014](#) applies to all market participants, including asset managers, fund administrators, depositaries, etc. The failure or insufficient measures to ensure compliance with the prohibition of indirect investment would amount to breaching this prohibition.

3. Are the prohibitions to provide brokering services or financing for the provision of brokering services, e.g. in Articles 2(2), 2a(2), 3b(2) and 3c(4) of [Council Regulation \(EU\) No 833/2014](#), and the prohibitions to provide brokering services in point (a) of Article 4(2) and Article 5(1) applicable to management companies, alternative investment fund managers or investment firms?

Pursuant to its Article 13, [Council Regulation \(EU\) 833/2014](#) applies (i) within the territory of the Union; (ii) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (iii) to any legal person, entity or body in respect of any business done in whole or in part within the Union. For example, if the manager of an alternative investment fund is an EU citizen working in a fund incorporated under the law of a third country, (s)he is subject to the restrictive measures enshrined in the Regulation.

4. Do the prohibitions in paragraphs Articles 5(1)–5(4) and Article 5a(1) of [Council Regulation \(EU\) No 833/2014](#), cover transferable securities and money-market instruments traded on the secondary market? Under what conditions? Could, for instance, a management company or an alternative investment manager on behalf of a fund it manages, purchase or sell such instruments on the secondary market, or provide investment services for such instruments, if the transaction or investment service neither actually nor potentially results in additional capital being made available to a targeted entity?

The respective prohibitions apply irrespective of whether the instruments are traded on secondary or primary markets. Secondary trading between EU counterparties of instruments of entities sanctioned under Articles 5(1)–5(4) and Article 5a(1) of [Council Regulation \(EU\) No 833/2014](#) shall be suspended. The only conditions to take into account concern the date of issuance of the securities. These conditions are clearly set out in Articles 5(1)–5(4) and Article 5a(1).

5. Are EU regulated UCITS (Undertakings for Collective Investment in Transferable Securities) issued by Russian companies subject to the EU Sanctions regime? If yes, should one block UCITS that were issued by targeted Russian entities?

The prohibitions laid down in Articles 5(1) to 5(4) of [Council Regulation \(EU\) 833/2014](#) do not cover Undertakings for Collective Investments in Transferable Securities (UCITS) issued by entities sanctioned under these Articles.

However, [Council Regulation \(EU\) 269/2014](#) provides for individual financial restrictive measures targeted at a number of natural or legal persons, entities or bodies. Specifically, Article 2(1) of Council Regulation (EU) 269/2014 provides that all funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I to said Regulation, shall be frozen. In addition, Article 2(2) of Council Regulation (EU) 269/2014 provides that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I of said Regulation.

The relationships that natural or legal persons, entities or bodies targeted by Article 2 of Council Regulation (EU) 269/2014 may have with UCITS shall then be duly examined. Specifically, if investors in the fund or Ultimate Beneficial Owners would turn out to be persons, entities or bodies listed in Annex I, their units or shares should be frozen and shall not give rise to any remuneration towards them. Likewise, if for instance the depository, UCITS manager, portfolio manager, advisor or delegate would be a person or entity listed in Annex I of Council Regulation (EU) 269/2014, the UCITS should be blocked, as its existence would result in the provision of funds or economic resources to persons or entities listed in Annex I, for instance via management fees.

6. Article 5f of [Council Regulation \(EU\) 833/2014](#) prohibits the sale of “transferable securities denominated in any official currency of a Member State issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia”. Are units in collective investment undertakings transferable securities within the meaning of this Article?

The notion of "collective investment undertakings" within the meaning of Article 5f of [Council Regulation \(EU\) 833/2014](#) appear to be distinct from and not covered by the term "transferable securities" as defined in Article 1(f) of Council Regulation (EU) 833/2014.

- 7. Depending on their legal nature (common funds, unit trusts, investment companies), collective investment undertakings (CIU) can alternatively issue units or shares. Could you confirm that the sale of both units and shares of a CIU providing exposure to transferable securities denominated in any official currency of a Member State issued after 12 April 2022 is prohibited?**

Investment-fund related Directives or Regulation usually refer to units or shares indistinctly. [Directive 2009/65/EC](#) sets out, in its Article 1(3)(b), that 'units' of UCITS shall also include shares of UCITS. Given the inter-changeable use of 'units' and 'shares' of CIUs, both units and shares of collective investment undertakings are within the scope of Article 5f of [Council Regulation \(EU\) 833/2014](#).

- 8. Does [Council Regulation \(EU\) 833/2014](#) prohibit the purchase of transferable securities denominated in the currency of a Member State by third-country collective investment undertakings (CIU) if their units are marketed to Russian national or entities? Are EU operators prohibited from selling transferable securities denominated in the currency of a Member State to third-country CIUs?**

If it can be established or if there are reasonable grounds to suspect that units of these third-country CIUs are indeed marketed to Russian national or entities, then the prohibition to sell transferable securities denominated in any official currency of a Member State can extend to these third country CIUs when the seller is an EU person or entity.

However, EU sanctions have no extraterritorial effect. Therefore, the prohibition cannot as such be applied to third-country CIUs as purchasers.

- 9. The prohibition in Article 5f of [Council Regulation \(EU\) 833/2014](#) refers to any “legal person, entity or body established in Russia”. Does the EU branch of a legal person, entity or body established in Russia fall within the scope of the sale prohibition? What about the EU subsidiaries of a Russian entity?**

The EU branch of a legal person, entity or body established in Russia falls within the scope of the prohibition.

As it is established in the EU, an EU subsidiary of an entity established in Russia does not fall in the scope of the prohibition. However, the subsidiary cannot be used to circumvent the prohibition and itself sell transferable securities denominated in any official currency of a Member State, or units in collective investment undertakings providing exposure to such securities, to its parent entity established in Russia.

10. Do units of collective investment undertakings (CIUs) denominated in a non-EU currency and providing exposures to transferable securities denominated in an official currency of a Member State fall within the scope of the prohibition in Article 5f of [Council Regulation \(EU\) 833/2014](#)?

If the units provide exposure to transferable securities denominated in the currency of a Member State issued after 12 April, then their sale is prohibited, irrespective of their own currency denomination.