



Commodity Markets Council - Guidelines on the application of the US Guidance to Address Illicit Shipping and Sanctions Evasion Practices

This document contains Commodity Markets Council (CMC) general guidelines for addressing the requirements in relation to Automatic Identification System (AIS) on vessels and Know Your Customer (KYC) due diligence contained in the [Guidance](#) issued by the U.S. Department of State, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and the U.S. Coast Guard in May 2020 to address illicit shipping and sanctions evasion practices. It also contains some considerations regarding Operations due diligence.

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1. CMC Guidelines for Addressing AIS Requirements in the Advisory

On occasion, there are legitimate reasons why a vessel may turn off its AIS (e.g. to escape notice of pirates), or AIS may malfunction or the vessel may enter an area with weak signal --- it is not the intention to prohibit vessels when this is the case. Instead, companies may take a **risk-based approach to flag for further review vessels where there is no verifiable reason for the AIS gap** and thus it appears possible that the vessel is turning off AIS so that illicit activity escapes notice. The location, duration and frequency of AIS gaps will impact the compliance function's analysis. The creation of a Transponder Gap Alert will cover 2 risks 1) risk of actual facilitation of a sanctioned transaction and 2) risk of chartering or nominating a vessel that becomes sanctioned after it is chartered or nominated, thus impacting the completion of the underlying transaction and payment therefor.

Steps to be taken:

1. Incorporation of AIS tracking data from a source such as vessel tracker into the company's vessel screening system. Generally participants will screen vessels for any concerns occurring in the preceding 6 month period but the system should be capable of providing data and transponder gaps for the preceding 2-year period in specific situations where a concern or suspicion has been raised that requires a more detailed review of historic activity.
2. It should be possible to set the vessel screening system to flag vessels that have transponder gaps for pre-defined periods. This relevant period that triggers an alert will depend on on both the company's risk tolerance and also the prevalence of sanctions-busting activity specific commercial sectors and geographical locations.
3. Persons screening the vessel should, upon receiving the notification that the vessel is flagged, be required to contact the compliance function for immediate assistance. They should be required to provide the context regarding which the vessel will be utilized, or services provided thereto (chartering, nomination, provision of services at a company port, provision of bunkers, etc.) If it involves chartering activity, it should be specified whether the charting will be voyage charter, trip time charter, or period charter, as this will affect the compliance team's assessment of risk.
4. If the proposed activity relates to provision of services at a company port, provision of bunkers, or similar activity where the main concern is that the vessel is coming from/going to a sanctioned country, the compliance team shall concentrate their efforts on determining whether the transponder gaps occurred during the vessel's current voyage or in the immediate 6 months preceding the voyage. The compliance team should first determine whether the gaps occurred in the vicinity of sanctioned countries or were long enough that the vessel could have traveled to sanctioned countries. If yes, the compliance team may elect to a) have the business ask the vessel owner for an explanation of these gaps, b) ask the vessel owner for a list of port calls for the last 6 months, c) conduct additional due diligence on the vessel owner to determine if there are any indications or adverse media regarding potential sanctions-busting/business with sanctioned countries/other red flags, or all three of these methods. If compliance does not receive or



determine satisfactory explanations for transponder gaps in the last 6 months, transponder gaps over the longer period of 2 years may also become relevant/buttruss compliance's decision not to provide the requested services.

5. If the proposed activity relates to chartering, likewise the compliance team should first determine whether the gaps occurred in the vicinity of sanctioned countries or were long enough that the vessel could have traveled to sanctioned countries. If yes, the compliance team may elect to a) have the business ask the vessel owner for an explanation of these gaps, b) ask the vessel owner for a list of port calls for the last 6 months, c) conduct additional due diligence on the vessel owner to determine if there are any indications or adverse media regarding potential sanctions-busting/business with sanctioned countries/other red flags, or all three of these methods. If compliance does not receive or determine satisfactory explanations for transponder gaps in the last 6 months, transponder gaps over the longer period of 2 years may also become relevant/buttruss compliance's decision not to provide the requested services.

However for period charters which are long term and thus pose greater risk of the vessel ultimately being sanctioned during the course of the charterparty, compliance should take a stricter approach on the information required than for voyage charters or trip time charters which will be completed in the near rather than more distant future, and it may also be wise to scrutinize the entire 2 year period of gaps and ensure there are reasonable verifiable explanations for all.

6. Where the vessel owner explains and provide evidence that the vessel traveled to sanctioned countries during the period of the gaps to deliver humanitarian goods (food, agricultural commodities, medicine or medical devices), this is unlikely to be a reason to prohibit use of the vessel, unless the company has specific reasons for deciding so (for example, if they are dealing with a bank that requires no sanctioned country port calls in the last 6 months).
7. If compliance is satisfied that the vessel's transponder gaps have been satisfactorily explained with no indication of sanctions-busting, they can approve the vessel in the vessel screening system and advise the business to proceed.
8. Where a participant interacts with a vessel but they are not contracting directly with the vessel or its owner's, a participant should speak to its counterparty to try to understand the rational for any transponder gaps related to the vessel. Any resultant actions including the potential rejection of the vessel will vary depending on the nature of transponder gaps, any explanation provided and any applicable contractual terms.



2. CMC guidelines on KYC minimum standards

Each participant will have its own standards of required KYC information, which will also be impacted by their interaction with the vessel in questions for example if they are chartering the vessel in question or whether they are purely supplying bunkers etc, but the following is deemed a general guide to appropriate KYC standards:

- (i) Participants as a minimum should be able to **search available ship registry information records** to find the company name and registration, domicile and control country of the: (a) technical manager, (b) ship manager, (c) group beneficial owner, (d) operator, and (e) registered owner;
- (ii) Using the available data from (i) **global sanctions lists** searches can be undertaken to ensure compliance with relevant international laws and regulations;
- (iii) **Where data is not available/obtainable by the measures above then a risk-based approach to proceeding or not** should be taken noting there may be a difference in this approach to spot versus time charters;
- (iv) **Where compliance concerns are identified** i.e. potential AIS manipulation, previous sanctioned port calls, sanction enforcement actions against the vessel or its associates etc enhanced due diligence should be completed. This will likely involve the requesting of further information regarding the hit, as well as ascertaining Ultimate Beneficial Ownership (UBO) information (exceptions may be provided where participant is comfortable the vessel was undertaking a voyage in a sanctioned country for humanitarian purposes): UBO information should be requested on the registered owner as they are ultimately deemed responsible for vessel and its business. Disponent owner UBO information should also be ascertained where current disponent owner was also disponent owner when vessel completed any voyage in relation to which a flag has been raised.



3. Considerations on Operations due diligence

- **Cargo Origin:** The **Certificate of Cargo Origin** is the standard document that demonstrates the cargo origin. However, there are some jurisdictions where a low percentage of national product blended with a product from a different jurisdiction would be sufficient to issue a new COO as if origin of product is 100% from the country where product was blended (this is the case of Malaysia). There are also locations that have blending terminals and are not producers that may issue a COO with country of origin as the blending location. These jurisdictions present a higher risk to blend sanctioned product. Consequently extra care is required when purchasing material where such locations are shown as the products origin.
- **Ultimate destination of vessel's cargo:** This is extremely difficult to know given the long chains in commodity transactions and the ability to break a cargo, blend some or all of a cargo, refine some or all of a cargo etc. **A sensible way of addressing this point is for each sales contract in the chain to include language that requires the buyer to provide its intention for the cargo as at the point the contract is executed.** This way a regulator should be able to follow a chain of sales for a particular cargo although individual counterparties will not have sight beyond their immediate on sale.