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PODCAST TRANSCRIPT

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I'm Alex Rene, partner in Ropes & Gray's Government Enforcement group in Washington, D.C. Today I'm joined by Government Enforcement counsel Mike Casey. Today's podcast is part of a series of Capital Insights podcasts we're hosting to examine the issues and potential regulatory and enforcement changes emanating from Washington D.C. as we transition to a new political administration.

In this podcast we're going to discuss the sanctions environment. Our conversation will be informed by publicly available statements, past behavior and general trends we've observed in the international risk and sanctions space.

With any administration change there is some level of uncertainty and no way to perfectly predict the future. Today we will make our best predictions with currently available information. We'll begin this podcast by discussing economic sanctions.

The U.S. and EU lifted a number of sanctions against Iran as part of its obligations under the Joint Comprehensive Plan of Action, also known as the JCPOA. Mike, how do you expect the situation with Iran will look under a Trump Administration?

Mike: During the campaign, Mr. Trump was very critical of both President Obama's approach towards Iran and also the JCPOA. Once Mr. Trump becomes president in January he will have the authority to unilaterally end the United States' participation in the JCPOA because the JCPOA is a framework agreement and not a treaty. While Mr. Trump will have the power to do so, I think it's unlikely that he will choose to go down that route. The United States has negotiated the JCPOA with five other countries, all of which seem to want the JCPOA to continue. In order to end the U.S.'s involvement in the JCPOA, Mr. Trump would need to burn a lot of diplomatic capital and upset some key U.S. allies, which I don't think he's going to be willing to do.

In my mind, a more likely outcome would be for Mr. Trump to undo certain aspects of the sanctions relief that the U.S. provided to Iran as part of the JCPOA. So, for example, the Trump Administration could revoke General License H, which is a general license issued by OFAC that allows foreign entities owned or controlled by U.S. businesses to engage in certain types of business with Iran. This act would have symbolic value and it also could have some very significant, real-world consequences for foreign subsidiaries of U.S. companies and foreign portfolio companies owned by U.S. private equity sponsors. Because many of these types of foreign entities have spent significant time and money during the course of the last year developing relationships in Iran, have established policies and procedures so that their dealings with Iran comply with General License H, and some of them have even made capital investments in Iran.

Alex: But Mike, Trump could also accuse Iran of violating its obligations under the deal. In August of 2015 the President Elect promised to "police that contract so tough that they don't have a chance."

Violations by Iran of its obligation under the JCPOA could result in the so-called "snap-back" of U.S. sanctions that were in place prior to January 2015. Isn't that correct?

Mike: That is correct. The conventional wisdom is that the Obama Administration has not taken a particularly hard line in monitoring Iran's conduct during the last year or so. So, for example, when IAEA monitors discovered that Iran held more heavy water than it was supposed to under the terms of the JCPOA, the Obama Administration agreed to buy some of it so that Iran's stockpile fell below the amount specified in the JCPOA.

Similarly, the Obama Administration took the position that Iran did not violate its obligations under the JCPOA when it engaged in ballistic missile testing. If President Trump's actions end up being consistent with candidate Trump's statements, I think we can expect the United States to be less generous in assessing Iran's compliance with the JCPOA in the future, which could result in the "snap-back" of various U.S. sanctions.

Alex: Let's turn to Russia. After Russia invaded the Ukraine in March of 2014, the U.S. and the EU imposed new sanctions on certain individuals in Putin's inner circle as well as sectoral sanctions on Russian financial institutions, defense companies, and oil and gas companies. What do you think will happen with these sanctions and do you think these policies regarding Russia will change under the Trump Administration.

Mike: I believe the United States will terminate its sectoral sanctions targeting Russia for at least a couple of different reasons. First, the European Union has maintained its own sectoral sanctions targeting Russia, and those sanctions are scheduled to expire in January. In order for those sectoral sanctions to continue after January, all 28 member states of the EU would need to vote in favor of renewing them, which seems unlikely at this point. Over the course of the last two years, the U.S. and EU have moved in lockstep with respect to Russian sanctions. If the EU ends their sectoral sanctions program, then I think it's more likely the United States will as well.

In addition, Mr. Trump has expressed a desire to "reset" relations between the United States and Russia. During the campaign, he made several flattering statements about Mr. Putin and Mr. Putin seems to have admiration for Mr. Trump as well. If Mr. Trump were to lift the sectoral sanctions, that would be a clear signal from the Trump Administration to Russia that the United States is going to take a different approach towards Russia on a going-forward basis.

Alex: Let's talk a little bit about Cuba. The Obama Administration has reversed a policy that was in place for the last fifty years and has taken steps to relax the Cuban embargo. What might we see from the Trump Administration with regards to Cuba?

Mike: During the presidential campaign, Mr. Trump made a series of statements regarding Cuba. In one of those statements, he pledged to "reverse" President Obama's executive orders that relaxed U.S. sanctions targeting Cuba. If Mr. Trump were to follow through with this promise once he becomes President, the change in policy would create difficulties for U.S. citizens, many of whom have taken advantage of the change in policy to travel to Cuba. And it would also create some problems for U.S. companies—in particular companies operating in the aviation and hospitality sectors—that have already started doing business in Cuba.

Again, it is hard to know exactly how this is going to play out because we're not sure how strictly Mr. Trump plans to follow through with his promises with respect to Cuba once he takes over in January.

Alex: That's true. We do not know how he's going to follow through but a hallmark of Trump's presidential campaign was his criticism of foreign governments and foreign companies' involvement in the U.S. economy. Now that he has been elected, do you foresee him trying to address those issues from a regulatory perspective?

Mike: It's a good question. As a general matter the U.S. government has increasingly scrutinized foreign investment in the United States during the last decade, most notably through the CFIUS review process. CFIUS is an inter-agency government committee that has the authority to review any transactions that could result in a foreign person obtaining control of a U.S. business. Most people expect that CFIUS will become even more aggressive in reviewing so-called "covered transactions" in the future for a couple different reasons. First, during the last few months, some members of Congress have sought to increase the scope of CFIUS' power. They feel that CFIUS currently doesn't have the authority it needs to review all transactions involving foreign investment that could have potentially damaging implications on U.S. national security.

In addition, as you alluded to Alex, Mr. Trump frequently criticized foreign investment and the effect of foreign investment on the U.S. economy during the presidential campaign. One way in which his administration could make it harder for foreign parties to invest in the United States would be to either increase the power of CFIUS or mandate more aggressive reviews of covered transactions.

As I mentioned, CFIUS has gotten most of the attention in this area but they are not the only government agency involved in either monitoring or requiring disclosure of foreign investment in the United States. For example, both DSS within the Department of Defense and BEA within the Department of Commerce could too adopt a more aggressive approach to reviewing and requiring disclosure of foreign investment in the United States.

Alex: Thank you, Mike, for you insights. And thank you all for listening. Please visit our newly-launched "Capital Insights" page for additional news and analysis about noteworthy enforcement and regulatory issues.