



**JULY 15, 2010**

**CIRCULAR NO. 20/10**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

**THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010 (CISADA): RULE CHANGES TO TAKE EFFECT FROM JULY 30, 2010**

### **Introduction**

Reference is made to Circular No. 06/10 of February 11, 2010 which alerted Members to impending economic sanctions legislation against Iran in the United States and elsewhere.

That Circular also contained the terms of an “enabling” Rule to take account of such sanctions, and similar government and regulatory prohibitions. This was incorporated as a new Sub-section 53 to Class I, Rule 1, Section 4 – General Insurance Provisions – in the Club’s Rules for 2010. The relevant wording is set out on page 39 of the current Rule Book.

Since that time, and as Members may be aware through press and other reports, there have been several important developments along the lines anticipated by the Circular referred to above. These developments have made necessary the Rule changes of which the present Circular gives notice to Members, and in respect of which further details are provided below.

### **Background – recent legislative developments**

As alluded to above, several legislative and regulatory events have recently taken place. These include the United Nations Security Council Resolution (UNSCR) 1929 on Iran, and the expected implementation thereof by the United Kingdom, other European Union member states and other countries elsewhere in the world.

In addition, and in amplification of the Iranian Transactions Regulations (ITR) which govern present US economic sanctions against Iran, President Obama recently signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), formerly known as the Iran Refined Petroleum Sanctions Act (IRPSA) to which reference was made in Circular No. 06/10 mentioned above.

This new legislation has serious implications for American Club Members who are not United States persons within the meaning of ITR or CISADA. It is in response to these particular circumstances that the Rule changes notified in this Circular have been enacted by your Board under the enabling provision described above.

### **New Club Rules in response to these developments**

Accordingly, pursuant to that enabling provision in the Club’s Rules, setting forth and articulating as it does the American Club’s policy in regard to the management and mitigation of economic sanctions and attendant risk, and in light of the Club’s US economic sanctions compliance

policy, your Board has determined to implement the following provision to take the form of a new Sub-section 4 to Class I, Rule 3, Section 1 – Risks Excluded – as follows:

***“Preclusion of/exclusion from cover of certain voyages involving Iran***

**4** ***Notwithstanding anything to the contrary contained in these Rules or in the Association’s Charter or By-Laws or in a Member’s Certificate of Entry into the Association, and until and unless authorized by the Directors through any subsequent amendment of the Association’s Rules, or as may be authorized in writing specifically by the Managers on a case-by-case basis, coverage hereunder, with effect from Noon GMT, July 30, 2010, shall not include or, as the case may be, shall terminate and cease to include, any voyage or service to or within Iran, including in Iranian territorial waters, of any vessel otherwise insured hereunder if such voyage and/or service is for or relates to the sale, exportation, provision, transportation or delivery to Iran\*, directly or indirectly, of :***

- a. refined petroleum products (RPP)\*\*;***
- b. goods, services, technology, information or support:***
  - i. which could be used to enhance Iran’s ability to import RPP; or***
  - ii. intended for, or which could be used to facilitate, the maintenance or expansion of Iran’s domestic production of refined petroleum products, including any item for use in, or which could be used in the construction, modernization, upgrade, or repair of petroleum refineries in Iran.***

***Any determination and decisions by the Managers with respect to the foregoing shall be conclusive and final.***

***\* Iran means the territory of Iran, including its territorial waters; the Government of Iran; any entity (irrespective of where located) owned or controlled by the Government of Iran or from the territory of Iran (e.g., Iranian state enterprises such as IRISL); any agency or instrumentality of the Government of Iran; or any person (individual or entity) acting for or on behalf of any of the foregoing.***

***\*\* Refined petroleum products mean diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel), and aviation gasoline.”***

In addition to the foregoing, a new Sub-section 54 will be added to Class I, Rule 1, Section 4 – General Insurance Provisions – to reiterate and restate the impact of the existing provisions of the Rules, as follows:

**“54** ***Whenever coverage extended by the Association would be in violation of any law applicable to the Association, including, but not limited to, the prohibitions and requirements of any economic, financial, or trade***

***sanctions administered by any State or International or Supranational Organization, such coverage shall be null, void and of no effect. Any coverage hereunder provided by the Association shall not include or, as the case may be, shall by operation of law or pursuant to this sub-section, cease or shall have ceased to include, coverage for, or with respect to, any prohibited or unlawful entity, subject matter, vessel, or activity.”***

The current Sub-section 54 will be renumbered as Sub-section 55. In addition, the provisions of these changes are incorporated into the terms and conditions of Classes II and III as the case and context might demand.

### **The rationale behind the changes**

Members should note that the new provisions under US law, and those of a similar kind as may be enacted by other states in pursuance of UNSCR 1929 or otherwise, expose the American Club, absent the Rule changes specified above, to legal, compliance and other economic sanctions risk of a type, nature and magnitude which make necessary the changes and the concomitant exclusion of cover.

In this context, Members who are not United States persons are also asked to note that engaging in CISADA-offending voyages and trade, which are covered by the exclusion above, could also expose them to legal, compliance and economic sanctions risk directly **as of July 1, 2010**. Members, other insured parties, vessel managers and all other persons having an interest in vessels and/or voyages exposed to sanctions by the new US, and potentially other, legislation are advised to seek appropriate legal advice in regard to, and prior to, entering into contracts for and/or commencing, such voyages and/or trades.

The exclusion contained in the new Sub-section 4 to Class I, Rule 3, Section 1 – Risks Excluded – as set out above is purposefully slightly broader than what CISADA seeks to deter because what constitutes CISADA-offending activity in any given case is fact-sensitive, subject to certain quantitative factors (e.g. the dollar thresholds of relevant transactions), and to US government interpretations of CISADA which, due to its recent enactment, are not yet available. The provisions contained in the new Sub-section also take into account legislation similar to CISADA which is expected to be enacted by countries other than the United States. As the application and interpretation of the new laws develop over time, so, it is expected, will the Managers’ ability to provide Members with further guidance, and where warranted and permissible, authorize, on a case-by-case basis, otherwise excluded coverage.

### **Further consequences of both existing circumstances and recent developments**

As to voyages begun under coverage which was in place prior to the effective date of these Rule changes, payments, other transactions and other services provided by the Club under pre-existing cover may be available, but only on a case-by-case basis and subject to prior written authorization/approval by the Club.

Members are also asked to note that, in a manner consistent with the foregoing and to the extent not already terminated or precluded by operation of law, effective on or after July 30, 2010, the American Club shall not or, as the case may be, shall cease to, underwrite or extend cover to any entity, or with respect to any vessel that has been designated as a sanctions target



pursuant to economic sanctions against Iran (and entities designated as Iranian nuclear proliferators) and whose name (or names and/or aliases) appear on relevant lists published by the United States (US Treasury Department's Office of Foreign Assets Control – OFAC), or the European Union or the United Kingdom (Iran sanctions targets).

The foregoing preclusion or cesser of cover shall also apply to any vessel entered, or which may be entered, in the American Club which:

- is on charter to an Iran sanctions target; or
- is chartered from an Iran sanctions target; or
- is owned, controlled, managed, operated by, or otherwise connected with an Iran sanctions target, or with individuals or entities in Iran; or
- flies the Iranian flag or is registered in Iran.


Notwithstanding the generality of the foregoing, the American Club, in its sole and absolute discretion, may make exceptions to, or amend, the foregoing provisions on a case-by-case basis, to the extent that doing so would be permissible under applicable laws and regulations, and also consistent with the Club's economic sanctions risk mitigation and compliance policy, and related Club Rules.

#### **Further details and inquiries**

If there are any inquiries, questions, concerns or requests for guidance regarding the foregoing Rule changes – or any requests for authorization regarding the preclusion and/or exclusion of cover for certain voyages and services by vessels to, from, with or otherwise involving Iran – they can be directed to Charles J. Cuccia, at +1 212 847 4539 or by email at [charles.cuccia@american-club.com](mailto:charles.cuccia@american-club.com).

Your Managers apologize for the length and complexity of this Circular, but as Members will no doubt understand, events have been moving at speed and, given the extent and magnitude of the development of sanctions against Iran in recent weeks, the fullest protection of the Club and its Members is now required.

Yours faithfully,



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