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Update

New Executive Order 13608 Targets Foreign Sanctions Evaders

On 1 May 2012, President Obama issued Executive Order 13608 *"Prohibiting Certain Transactions with and Suspending Entry into the United States of Foreign Sanctions Evaders with respect to Iran and Syria" ("EO 13608")*. This order expands the "extraterritorial" authority of the US Treasury Department's Office of Foreign Assets Control ("OFAC") by imposing new sanctions upon foreign individuals and companies concerning transactions relating to Iran or Syria.

EO 13608 has particular significance for foreign financial institutions that conduct USD transactions, as transparency in such transactions is mandatory. According to OFAC, EO 13608 provides it with the capability "*to put the world on notice*" that foreigners who conduct such transactions with less than full transparency may be denied access to the US banking system and may be forbidden entry into the US.

Foreign persons and entities need to consider the potential reach of these new US measures, and to establish appropriate practices and procedures to avoid violations.

"Facilitation of Deceptive Transactions"

Although EO 13608 targets all "*foreign sanctions evaders*", its central feature is the ability to impose sanctions upon foreigners who have "*facilitated deceptive transactions for or on behalf of any person subject to United States sanctions concerning Iran or Syria*". Under EO 13608:

- The term "*deceptive transaction*" means "*any transaction where the identity of any person subject to United States sanctions concerning Iran or Syria is withheld or obscured from other participants in the transaction or any relevant regulatory authorities*"; and
- The term "*any person subject to United States sanctions concerning Iran or Syria*" means, generally, foreign persons and entities that are the subject of US sanctions concerning Iran and Syria ("SDNs").

Recent history suggests that USD wire transfers are the primary target of EO 13608. The largest US sanctions fines levied to date (US$ 536 million and US$ 217 million in 2009, and US$ 176 million in 2010) all involved non-US banks that allegedly intentionally manipulated wire instructions in order to process USD transfers that

US banks would have denied or blocked had the instructions not been so manipulated. In other words, the non-US banks allegedly "*facilitated deceptive transactions for or on behalf of*" persons or entities subject to US sanctions. Under EO 13608, such conduct in future may result in the non-US banks being barred wholesale from doing US business and their employees prevented from entering the US - severe penalties indeed for international financial institutions.

Current Status

OFAC has not yet issued regulations based upon EO 13608, nor has it publically identified persons or entities deemed to be in violation of it. Both can be expected in the coming weeks and months. Meanwhile, it should be noted that under EO 13608 the US Treasury Department (i.e., OFAC) now has the power to enforce these new measures.

Further information

If you would like further information on any issue raised in this update please get in touch with any of the key contacts listed on our sanctions microsite, **sanctions.clydeco.com**, or the author of this update:

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