

## E-ALERT | International Trade Controls

May 7, 2012

### NEW U.S. EXECUTIVE ORDER TARGETS FOREIGN “EVADERS” OF IRAN AND SYRIA SANCTIONS

President Obama last week issued a significant new [Executive Order](#) further tightening the U.S. sanctions against Iran and Syria. The Executive Order “Prohibiting Certain Transactions with and Suspending Entry into the United States of Foreign Sanctions Evaders with Respect to Iran and Syria” (“FSE EO”), signed on May 1, 2012, targets non-U.S. entities and individuals that violate, attempt to violate, conspire to violate, or cause a violation of U.S. economic and financial sanctions against Iran or Syria, or who facilitate a “deceptive transaction” for or on behalf of persons subject to such U.S. sanctions. Consequences for “foreign sanctions evaders” are severe: they may be effectively cut off from the U.S. trading market and financial system, and individual violators may be denied entry into the United States.

The FSE EO reaches conduct by non-U.S. persons that violates U.S. sanctions pertaining to Iran or Syria, as well as conduct by non-U.S. persons that—while not directly violating U.S. sanctions measures—causes others to violate those sanctions. As explained in [guidance](#) published by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), the FSE EO gives OFAC the “capability to put the world on notice as to such foreign persons’ activity and the risk of similar future activity,” to help U.S. persons avoid unwittingly engaging in transactions with non-U.S. persons that may expose U.S. persons to the risk of sanctions violations.

The Order was issued just one week after another Executive Order, summarized in our [e-alert of April 27, 2012](#), extended the U.S. sanctions programs against Iran and Syria to reach parties responsible for using or providing information or communications technology to facilitate human rights abuses by the Iranian or Syrian governments.<sup>1</sup> The FSE EO represents a continued effort on the part of the U.S. government to increase the pressure on and isolation of Iran and Syria, focusing particularly on non-U.S. entities and persons that continue to do business with the two countries and their governments.

#### IMPACT OF THE FSE EO

The FSE EO is noteworthy in several regards. First, it underscores the fact that non-U.S. parties may violate U.S. sanctions laws and regulations when they cause or procure a violation of such laws or regulations by a U.S. person. It also introduces as a distinct type of sanctionable conduct facilitating a “deceptive transaction.” And finally, it imposes a set of draconian consequences on those who are designated for having violated the Order.

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<sup>1</sup> The Executive Order issued April 23, 2012, Executive Order 13606 Blocking the Property and Suspending Entry into the United States of Certain Persons with Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology (the “GHRVITY EO”), blocked the property and interests in property of persons determined by the U.S. government to have operated or provided goods, services or communication technology that facilitates computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Iranian or Syrian governments.

The International Emergency Economic Powers Act (“IEEPA”), one of the statutory bases for the FSE EO and various other U.S. sanctions measures, already prohibits conduct that causes a violation of U.S. sanctions, and it has been construed to reach non-U.S. persons who order U.S. goods for transshipment to sanctioned countries. This concept is elaborated in the FSE EO, which provides that a non-U.S. person may be sanctioned if it “has violated, attempted to violate, conspired to violate, or caused a violation of any license, order, regulation, or prohibition contained in, or issued pursuant to” particular earlier executive orders imposing sanctions against Iran or Syria.

In addition, sanctions may be imposed under the FSE EO if a non-U.S. person “has facilitated deceptive transactions for or on behalf of any person subject to United States sanctions concerning Iran or Syria....” The term “deceptive transaction” is defined to mean “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.”

One significant question raised by the FSE EO is the reach of this prohibition on the facilitation of deceptive transactions. While the intent of the provision may be to sanction parties who actively assist in the evasion of the U.S. sanctions against Iran or Syria, the term “facilitation” is generally construed broadly in the sanctions regulations. The FSE EO seems to leave open the possibility that it covers conduct by a non-U.S. person that facilitates a transaction in which another person has withheld or obscured information. In other words, the FSE EO could cover a broader category of transaction participants than just those who actually obscure and withhold information.

The FSE EO also authorizes the Treasury Department to impose sanctions on any non-U.S. entity that is owned or controlled by, or is acting or purporting to act for or on behalf of, directly or indirectly, any non-U.S. person determined to meet the criteria for being designated as a “foreign sanctions evader.”

According to OFAC, the FSE EO will allow it to punish non-U.S. persons who violate U.S. sanctions laws and regulations pertaining to Iran or Syria, but whose conduct does not meet the criteria for designation under other Iran and Syria-related sanctions laws and executive orders, or who may be beyond the jurisdictional reach of the U.S. judicial and administrative systems.

The Secretary of the Treasury may prohibit all transactions or dealings, direct or indirect, involving a person who is designated as a “foreign sanctions evader.” This includes a wide range of dealings involving goods, services or technology in or intended for the United States or provided by or to U.S. persons, wherever located. Transactions within the scope of the Order include exports, reexports, imports, sales, purchases, transportation, swaps, brokering, and activities related to approving, financing, facilitating or guaranteeing. In addition, individual persons so designated may have their right to enter the United States suspended.

Importantly, while these sanctions impose broad restrictions on U.S. trade and other dealings with parties designated as “foreign sanctions evaders” under the FSE EO, they do not block the property of such designated persons. However, U.S. persons are still prohibited under the FSE EO from providing to or procuring from designated parties property or services, such as financial services related to property, without authorization from OFAC. Accordingly, U.S. financial institutions holding an account for a designated party may not allow it to be operated without OFAC authorization, and will be required to reject any wire transfer involving a designated party and file a report with OFAC within 10 days.

No parties have yet been designated under the FSE EO.

## CONCLUSION

While there is likely to be debate about what conduct is covered by the FSE EO and the statutory basis for broadly precluding access to the U.S. market by “foreign sanctions evaders,” one thing is clear: the new FSE EO adds significant additional risk to non-U.S. companies and persons that engage in ongoing dealings with Iran or Syria that could have some nexus to the U.S. market. It thus may lead more non-U.S. companies and persons to cut off ties to Iran and Syria for fear of violating the terms of the FSE EO and losing access to the U.S. market and financial system.

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The U.S. sanctions against Iran and Syria are fluid and may change again in the near future. We will circulate additional e-alerts concerning these developments as circumstances warrant. In the meantime, please contact any of the members of our international trade group listed below for more information on the FSE EO or other developments involving Iran and Syria.

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If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls practice group:

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