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## **CLIENT ALERT**

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# **U.S. Department of the Treasury Clarifies Continued Prohibition on Transfers of Funds to, from or through the U.S. Financial System**

by

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As we previously advised, on January 16, 2016, pursuant to the Joint Comprehensive Plan of Action with Iran, the United States issued General License H (“GL H”), generally allowing foreign subsidiaries of U.S. companies to trade with Iran. Specifically, GL H authorized those transactions as long as other, remaining prohibitions under the Iranian Transactions and Sanctions Regulations (“ITSR”) are not violated. That license specifies a number of these unauthorized activities, which include the transfer of funds to, from or through the United States financial system. This particular prohibition has caused some confusion in the shipping industry over how foreign subsidiaries of U.S. companies can actually take advantage of GL H to do business in Iran. The problem that generally arises is that when a transaction is to be conducted with U.S. dollars, which is often the case, those dollars are almost always cleared through a U.S. financial institution. And, Treasury has been clear that these so-called “U-Turn” transactions, in which a U.S. bank facilitates a U.S.-denominated transaction with Iran, remain prohibited.

Recently, Adam Szubin, Treasury’s acting Undersecretary for Terrorism and Financial Intelligence (“TFI”) explained during testimony to Congress that foreign banks that have U.S. dollar bank notes in their possession would not be exposed to U.S. sanctions if they provide them to Iranian persons pursuant to otherwise permissible transactions. As Mr. Szubin noted, “foreign actors aren’t under our jurisdiction if they choose to give those [dollars] to any actor, including an Iranian actor.” Because dollar bank notes per se are not considered a “controlled commodity”, their transfer is permissible so long as no U.S. financial institution or person is involved in any capacity and as long as other sanctions are not violated (e.g. continuing prohibitions on dealings with SDNs).

Following Mr. Szubin's explanation, we independently followed up with Treasury on its stance with respect to the financing of transactions with Iran now authorized under GL H. An agency representative confirmed that the agency would not consider it a violation of the ITSR if a transaction is denominated and conducted in dollars as long as those dollars are not sourced from, or cleared through, a U.S. financial institution. The representative however noted that it is extremely rare that a foreign bank would have enough U.S. dollars in its vaults to be able to finance a transaction without any involvement of a U.S. bank, leaving aside the inefficiency and inconvenience of using physical cash to finance a shipping transactions. It is also rarely if ever the case that a foreign bank could clear U.S. dollar-denominated transactions in significant amounts without relying on the U.S. financial system. Accordingly, the agency appears to be suggesting that persons trading with Iran try to avoid doing so in U.S. dollars and instead utilize some other currency.

Note that specific licenses granted by OFAC would typically allow related transactions that are ordinary and incidental to the licensed activity, *e.g.* payment in U.S. dollars conducted through a (willing) U.S. financial institution. For example, the recent Boeing/Iran transaction involving the sale of passenger aircraft is authorized under a specific license and undoubtedly will use the services of a U.S. bank to fund the arrangements. However, those transactions are separate and apart from those contemplated by GL H, and would necessitate submitting an application for the specific license to OFAC.

Let us know if you have any other questions.