Global Investigations and International Trade Alert

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FinCEN Seeks to Curb Trade-Based Money Laundering Through Lowered Reporting Threshold

On April 21, 2015, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued a Geographic Targeting Order ("GTO") lowering reporting thresholds and triggering additional recordkeeping requirements for certain financial transactions in a move that is likely to have effects far beyond the 700 Miami-based electronics exporters that are specifically covered by the Order. The order, which went into effect on April 28, 2015, requires targeted businesses to make mandatory filings with FinCEN for any single transaction or for related transactions in which they receive more than $3,000 in currency – a stricter standard than the traditional $10,000 filing threshold imposed by the Bank Secrecy Act, and its implementing regulations. FinCEN has stated that the new reporting requirements are aimed at frustrating complex money laundering schemes believed to be employed in the Miami area by the Sinaloa and Los Zetas drug cartels. Issuance of the GTO in Miami continues the geographic and industry focus of money laundering enforcement that emerged last October when FinCEN issued a similar order for businesses in the Los Angeles Fashion District in an effort to root out suspected money laundering by Mexican and Colombian drug traffickers.

Broadly, issuance of a GTO falls within FinCEN's authority to pursue a variety of criminal, civil and regulatory enforcement methods to combat money laundering and financial funding of terrorism in the U.S. More specifically, a GTO imposes additional recordkeeping and reporting requirements on domestic financial institutions or nonfinancial trades or businesses in a particular geographic area in order to assist regulators and law enforcement agencies in identifying criminal activity that may be occurring. The GTO tool was authorized in 1988, but has only become a key weapon in the fight against organized crime and money laundering in the past few years. A GTO may remain in effect for a maximum of 180 days, and violators of the order may face substantial civil or criminal liability.

An Attack on Sophisticated Money Laundering Schemes

FinCEN's issuance of the GTO takes aim at the complex schemes employed by drug cartels to launder money, including the use of trade-based money laundering. These organizations may attempt to circumvent detection by using the cash proceeds of drug crimes to purchase goods in the U.S., ship the goods out of the country, then resell the goods and recoup laundered cash outside of U.S. borders. The most sophisticated entities are also well-aware of the U.S. anti-money laundering laws and may complete transactions in fragmented sums in order to avoid the suspicions raised by a single large transfer.

In issuing the GTO in Miami, FinCEN partnered with the U.S. Immigration and Customs Enforcement's ("ICE") Homeland Securities Investigations ("HSI"), as well as the Miami Dade State Attorney's Office South Florida Money Laundering Strike Force. By lowering the reporting threshold per transaction and increasing filing requirements, FinCEN and its partner enforcement agencies expect that the order will “disrupt[] the illicit financial infrastructure upon which the[] drug trafficking organizations rely.” They also anticipate that the additional gathered information “will enhance[] law enforcement’s ability to identify and prosecute money launderers.”

Reporting Requirements for Affected Businesses

Under the recently-issued GTO, any trade, business, agent, subsidiary, or franchisee that exports electronics within certain Miami-area zip codes is subject to new requirements. The GTO lowers the threshold at which filing is required from $10,000 to $3,000 for affected businesses, and those businesses must complete reports regarding persons involved in covered transactions. Specifically, beginning April 28, 2015, businesses covered by the order, including exporters of cell phones and other electronics, will be required to file FinCEN Form 8300 for any single transaction or for two or more related transactions in which the business receives more than $3,000. The filing must include:

- Proof of the customer’s telephone number and valid identification, such as a copy of a driver’s license or passport;
- Identification of any third-parties to the transaction, such as a person who provided funds to the customer in order to process the transaction;
- The nature of the goods involved in the transaction;
- The shipping address where the goods are to be received; and
- The name and telephone number of the recipient of the goods.

The filing entity must also retain all business records related to compliance with the GTO for no less than five years from the GTO’s expiration date on October 25, 2015, unless the GTO is administratively renewed for a longer period by FinCEN.

Issuance of GTOs on the Rise

Until last year, FinCEN had rarely invoked its authority to issue GTOs. However, this GTO marks the third such order since August 2014 – each of which has targeted suspected illicit cross-border trade and business with Central and South America.

On August 1, 2014, FinCEN issued a GTO for businesses at two Ports of Entry in California to target perceived gaps in reporting by armored car services. This GTO, issued in collaboration with ICE’s HSI and U.S. Customs and Border Protection, was renewed for an additional 180 days on February 8, 2015.

FinCEN issued its October 2, 2014 GTO directed at the L.A. Fashion District shortly after law enforcement agents poured into the District to carry out a wide-sweeping raid that led to nine money laundering arrests. The raid represented the convergence of multiple investigations led by the Drug Enforcement Administration, the Department of Homeland Security and the Department of Justice. After making initial arrests, the authorities requested additional investigative support from FinCEN in the form of a GTO. As of

December 2014, the investigation had recovered close to $100 million in laundered cash and bank accounts.

A New Trend on the Southern Horizon

Issuance of the Miami GTO appears to confirm a new trend in FinCEN's regulatory enforcement of anti-money laundering laws. According to FinCEN Director Shasky Calvery, FinCEN "will continue issuing GTOs, as necessary, as well as exercising FinCEN's other unique anti-money laundering authorities, to ensure a transparent financial system that impedes money launderers and other criminals from masking their identity and illicit activity." In the three GTOs that it has issued since the start of 2014, FinCEN also has demonstrated that is working with other law enforcement agencies and prosecutors in pursuit of that goal.

Separate and apart from the obvious focus on businesses and individuals involved in intentionally laundering the proceeds of drug crimes through exports of goods, the effects of GTOs may be felt beyond the targeted companies. Enforcement efforts are likely to subsume companies involved the supply chain of the GTO-targeted companies into related criminal investigations and cases.

In addition, enforcement efforts intended to root out trade-based money laundering schemes, including through GTOs, often have overflow effects on otherwise legitimate businesses. Businesses that are unaware that their goods are being directed into complex money laundering schemes may find themselves subject to civil seizures or civil or criminal forfeiture cases to recover illicit funds or goods. Keeping apprised of newly-issued GTOs and the geographic areas, businesses and goods that they cover, while taking steps to monitor that funds used to purchase goods are from legitimate sources will help innocent companies avoid getting caught in the enforcement crosshairs.

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