

STRENGTH IN NUMBERS: THE FIRST "TRI-SEAL COMPLIANCE NOTE" AMPLIFIES THIRD-PARTY SANCTIONS AND EXPORT CONTROLS EVASION RISKS AND THE NEED FOR STRONG COMPLIANCE PROGRAMS TO MANAGE THOSE RISKS

On March 2, 2023, the U.S. Department of Commerce (Commerce), U.S. Department of the Treasury (Treasury), and U.S. Department of Justice (DOJ) issued their first "Tri-Seal Compliance Note" (Note). The Note, "[Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls](#)," amplifies prior warnings from the U.S. Government regarding compliance risks for companies arising from attempts by counter-parties to evade Russia-related sanctions and export controls. These U.S. compliance risks have expansive extraterritorial application for companies anywhere in the world transacting in U.S. dollars, U.S.-origin or controlled products, information and data, or U.S. persons.

In June, the Financial Crimes Enforcement Network (FinCEN) and Commerce's Bureau of Industry and Security (BIS) issued a joint alert regarding evasion attempts ("[FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Urge Increased Vigilance for Potential Russian and Belarusian Export Control Evasion Attempts](#)"), which we wrote about [here](#) (Alert). Both the Note and prior Alert focus companies' attention on the red flags of third-party evasion tactics, including:

- Use of shell companies and other corporate vehicles to obscure ownership, source of funds, or sanctioned country involvement;
- IP addresses that do not correspond to a customer's reported location data;
- Last minute changes to shipping instructions, including changes to shipping instructions where Russia or Belarus were the prior destination;

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- Reluctance to share information about the end use of the product;
- Use of personal email addresses or use of residential addresses;
- Payments coming from a third-party country;
- Routing purchases through transshipment points, including jurisdictions close to Russia;
- Entities with little or no web presence;
- Dividing shipments of controlled items into smaller shipments;
- Use of aliases; and
- False or misleading statements on shipping forms, including overestimating the purchase price of merchandise.

The Note's message is strong and clear, companies are on notice that evasion is and will continue to happen and that companies must be vigilant in their efforts to detect and stop such attempts through effective, robust, and risk-based compliance programs. The Note also specifically reminds and encourages companies that compliance programs should empower staff to identify and report potential violations of U.S. laws and regulations so that companies can move swiftly to voluntarily disclose to the U.S. Government the potential violations.

The Note and related guidance encourages companies to take the following concrete steps:

- Regularly consult the guidance and advisories from Treasury and Commerce.
- Review BIS, U.S. Department of Treasury Office of Foreign Assets Control (OFAC) and DOJ enforcement actions and settlements for examples of evasion tactics used by bad actors. The Note provides sets forth a few case studies to highlight specific evasion-related activity in recent enforcement actions.
- Systematically assess their risk of exposure to potential sanctions evasion in their business.
- Conduct risk-based due diligence on customers, intermediaries, and counterparties.
 - The Note also states manufacturers, distributors, resellers, and freight forwarders, specifically, are in the best position to identify warning signs and/or red flags of potential export controls or sanctions violations and that when such warning signs are detected "*they should exercise heightened caution and conduct additional due diligence.*"
- Tailor training and compliance controls to manage such risks, including conducting sanctions/export control screening on current and new customers, intermediaries, and counterparties through the Consolidated Screening List and OFAC Sanctions List.

The Note recognizes that there has been a proliferation of sanctions and export controls imposed on Russia, but that businesses "*should act responsibly by implementing rigorous compliance controls, or they or their business partners risk being the targets of regulatory action, administrative enforcement action, or criminal investigation.*"

Companies should take the time to review the adequacy of their most recent risk assessment to identify the current risk profile, consider whether their existing compliance framework is designed to manage those risks within the company's risk tolerance, and ensure that measures and training help to detect the "red flags" listed. The Note ends with a final reminder that, "*While this [Note] focuses on Russia-related sanctions and export controls, these principles apply broadly to all U.S. government enforcement regimes, including the Disruptive Technology Strike Force, which was announced on February 16, 2023.*" The Strike Force, which we previously wrote about [here](#), was established to protect against illegal transfers of sensitive technologies to U.S. adversaries, such as Russia and Iran. The Note makes clear and reinforces the message that the best and only defense in the current climate is strong compliance.

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