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PHILLIPS NIZER LLP

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## REAL ESTATE and INTERNATIONAL TRUSTS & ESTATES LAW ALERT

## US GOVERNMENT TO PENETRATE SECRECY IN MANHATTAN, MIAMI RESIDENTIAL TRANSACTIONS

On January 13, 2016, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") ordered certain title insurance companies to identify the individuals behind the purchase of residential real estate in Manhattan (New York County, New York) and Miami-Dade County, Florida and to report this information to FinCEN to be retained in its database.

FinCEN's Geographic Targeting Orders ("GTOs") take effect on March 1, 2016 and are initially scheduled to remain in effect for 180 days, through August 27, 2016. The GTOs apply to the purchase of residential real estate by otherwise-anonymous entities such as limited liability companies, and requires the disclosure of the identity of any individual that owns at least 25% of the entity. The GTOs impose the identification and disclosure requirements on purchases in excess of $3 million in Manhattan, and in excess of $1 million in Miami-Dade, where there is no bank loan (or similar form of external financing) and where any part of the purchase price is paid in currency, cashier's check, certified check, traveler's or money order.[1]

### What is FinCEN?

FinCEN was established in April, 1990, to provide a "government-wide, multi-source intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies." [2]

FinCEN derives its legal authority from the Bank Secrecy Act, which was originally enacted by Congress in 1970 to combat money-laundering activities, and from Title III of the USA Patriot Act of 2001, which was enacted after the 9/11 terrorist attacks. FinCEN issues regulations, conducts enforcement activities, and shares information with domestic and foreign law enforcement partners.

### FinCEN's Next Steps?

Since FinCEN has no other good source to obtain the desired information, and since FinCEN has often extended the time frame for other GTOs through other channels and a precedential review of other GTOs and, we anticipate that FinCEN will seek to extend the GTOs beyond the initial 180-day period, and will implement new GTOs covering other jurisdictions where non-US purchasers have been attracted to high-end residential real estate transactions.

In the New York metropolitan area, likely targets for additional GTOs include Nassau, Suffolk and Westchester Counties in New York, Fairfield County in Connecticut, and Bergen, Essex and Morris Counties

[1] U.S. Department of the Treasury, Financial Crimes Enforcement Network, Real Estate GTO Order 1.13.16, NYC (generic) and MIA (generic)

[2] https://www.fincen.gov/about_fincen/pdf/FincenOurStory.pdf

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in New Jersey. Across the nation, other high-end residential real estate market targets might include metropolitan Boston, Los Angeles, San Diego, San Francisco, San Jose ("Silicon Valley") and Seattle, as well as the state of Hawaii.

At a future date, FinCEN could seek to apply the same approach to all-cash acquisitions of commercial real estate, including office buildings, shopping centers, warehouses and the like. However, the commercial real estate industry is highly organized with a strong lobbying presence in Washington, and would likely oppose such measures.

### Impact on Real Estate Market; Estate and Tax Planning

In the near term, the GTOs are likely to dissuade some prospective high-net worth individuals from purchasing expensive residential real estate. Even prospective purchasers who have "nothing to hide" will be concerned that the disclosure requirements will limit the number of prospective purchasers when it is time to resell the property. In Manhattan, where the supply of residences for $10 million or more may have already outstripped demand, the GTOs will contribute to a continuing softening of the market in 2016.

High-net worth individuals who wish to invest in United States real estate, especially those who are neither citizens nor domiciliaries of the U.S., will continue to have a legitimate purpose in using domestic and foreign entities as part of their income and estate tax planning. These individuals should continue to utilize proper planning techniques to preserve their public anonymity and to afford themselves of legally compliant ways to limit their U.S. income, estate and gift tax liabilities.

We are able to provide counsel and guidance in matters of real estate, international trusts and estates and taxation, including those specifically related to the continuing developments of the US Treasury Department's Financial Crimes Enforcement Network ("FinCEN") identification and disclosure requirements in residential purchases. For additional information, please contact the attorneys named below or the attorney with whom you have a primary relationship.


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