

New Reporting Company Disclosure Requirements for Activities Relating to Iran

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On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012, or the TRA. Section 219 of the TRA amends Section 13 of the Securities Exchange Act of 1934 to add subsection (r), which requires an issuer that files periodic reports with the Securities and Exchange Commission to disclose in its periodic reports if, during the reporting period, it or any of its affiliates has *knowingly* engaged in certain specified activities involving contacts with, or support for, Iran or identified persons involved in terrorism or the creation of weapons of mass destruction.

Section 219 does not require the SEC to promulgate any new rules to implement Section 219. Section 219 will become automatically effective 180 days after enactment of the TRA, or February 6, 2013. Thus, reporting companies will have to comply with the disclosure requirements with respect to their periodic reports that are due on or after February 6, 2013, including annual reports on Form 10-K or 20-F for calendar year end companies. Issuers may not avoid disclosure by filing reports prior to the effective date, and all activities specified in subsection 13(r) of the Exchange Act that occurred during the reporting period covered by the report must be disclosed, even if the events occurred prior to the enactment of the TRA.

Under Section 13(r)(1), an issuer must disclose in annual and quarterly reports filed with the SEC its activities and those of its affiliates that involve:

- Transactions that could directly and significantly contribute to Iran's energy industry, such as an investment that directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources; transactions that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products; and transactions that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products.

- Transactions that could contribute materially to Iran's development of weapons of mass destruction or other military capabilities, such as the ability of Iran to acquire or develop chemical, biological or nuclear weapons or related technologies, or to acquire or develop destabilizing numbers and types of advanced conventional weapons.
- Activities of a non-U.S. financial institution that facilitate the efforts of the Government of Iran or any Iranian financial institution relating to the acquisition or development of weapons of mass destruction or the support of terrorism-related organizations, or that facilitate the activities of a person subject to United Nations financial sanctions with respect to Iran.
- Transactions engaged in by any person owned or controlled by a U.S. financial institution with, or benefitting, Iran's Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act.
- Transactions that transfer goods or technologies, or provide services with respect to goods or technologies, to Iran that are likely to be used by the Government of Iran or any of its agencies or instrumentalities to commit serious human rights abuses against the people of Iran.
- Transactions or dealings with any person the property and interests of which are blocked pursuant to executive orders dealing with terrorism or the proliferation of weapons of mass destruction.
- Transactions or dealings with any person or entity identified as the Government of Iran unless specifically authorized by a U.S. federal department or agency.

For purposes of the TRA, the term "Government of Iran" includes the state and the Government of Iran, as well as any political subdivision, agency or instrumentality thereof; any entity owned or controlled directly or indirectly by any of the foregoing; any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since August 20, 1997, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and any person or entity designated by the Secretary of the Treasury. The names of the persons so designated by the Secretary of the Treasury may be found on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the "SDN List") with the identifier "[IRAN]."

Although Section 13(r) generally focuses on disclosure of transactions relating to Iran, it could encompass transactions unrelated to Iran, because persons who have connections to terrorism or weapons of mass destruction proliferators and their supporters could be located anywhere in the world. In addition, it includes persons who purport to act on behalf of Iran.

Section 13(r)(2) contains no materiality threshold for the obligation to disclose. Rather, it provides that if an issuer or an affiliate of the issuer knowingly has engaged in any activity described above, a detailed description of each such activity, including the following, must be disclosed:

- the nature and extent of the activity;
- the gross revenues and net profits, if any, attributable to the activity; and
- whether the issuer or the affiliate of the issuer (as the case may be) intends to continue the activity.

On December 4, 2012, the SEC's Division of Corporation Finance updated its Compliance and Disclosure Interpretations to provide guidance on how to comply with Section 13(r). The SEC provided clarifications on the following:

- If an issuer and its affiliates have not engaged in any of the activities specified in Section 13(r)(1) during the reporting period, the issuer does not need to include an affirmative statement to that effect.

- A transaction or dealing with any person or entity identified as the Government of Iran must be disclosed even if it had been specifically authorized by non-U.S. governmental authorities. If such a transaction had been specifically authorized by a non-U.S. governmental authority, an issuer could disclose that fact, in addition to the other information required by Section 13(r)(2) to provide the appropriate context for the disclosure.
- An issuer does not have to disclose a transaction if it was authorized by either a general or a specific license issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury, provided that all conditions of the applicable license are strictly observed.

Section 13(r) also requires an issuer that includes a description of an identified activity in a periodic report to file concurrently with the SEC a notice that identifies the issuer and indicates that disclosure of the activity has been included in its periodic report. The issuer must file such notice using a new EDGAR form type called IRANNOTICE. The notices will appear with the issuer's filing history on EDGAR and will be searchable through the EDGAR system.

Section 13(r) requires disclosure only in an issuer's periodic reports filed under the Exchange Act, and does not require that such disclosure also be included in registration statements or other filings. Nevertheless, issuers conducting securities offerings should consider including similar disclosure in prospectuses or offering documents if the disclosure of their activities under the new requirement may have a material impact on the issuer or its operations.

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