

February 14, 2013

Flash Report: Section 219 Disclosures Under the Iran Threat Reduction and Syria Human Rights Act of 2012

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As of noon today, eight SEC-registered issuers have made disclosures of Iran-related activities pursuant to the new reporting requirements under Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“Section 219”). As the SEC has provided little guidance on the scope of disclosure required under Section 219, the initial batch of disclosures provide a useful guide for SEC-registered issuers intending to make disclosures in their next periodic report filed with the SEC.

Initial Key Findings

- Issuers appear to be conducting a thorough review of their business activities to identify reportable activity.
- The apparent intent of Section 219 is being fulfilled as disclosed activities to date were primarily conducted by non-US affiliates.
- Issuers, where appropriate, are making it clear that the disclosed business activities are non-sanctionable or were not sanctionable at the time of the activities.

Introduction

Section 219 amends Section 13 of the Securities Exchange Act of 1934 (the “Exchange Act”) and requires SEC-registered issuers to disclose in periodic reports filed under the Exchange Act, among other things, any “transaction[s] or dealing[s]” with the “Government of Iran”¹ and persons or entities designated by the US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) for support of global terrorism or weapons of mass destruction

¹ The term “Government of Iran” includes: (a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran; (b) Any person owned or controlled, directly or indirectly, by the foregoing; (c) Any person to the extent that such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly, for or on behalf of the foregoing; and (d) Any other person determined by the Office of Foreign Assets Control to be included within paragraphs (a) through (c) of this section. 31 CFR Part 560.304.

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proliferation activities, and other business activities relating to Iran.² Section 219 disclosure requirements are effective for periodic reports filed with the SEC after February 6, 2013.

As of today, the following SEC-registered issuers have made disclosures pursuant to Section 219 in periodic reports filed with the SEC: Novartis AG, Schlumberger Limited (Schlumberger N.V.), Novo Nordisk A/S, Delphi Automotive PLC, United Technologies Corporation, AllianceBernstein L.P.³ LyondellBasell Industries N.V.⁴ and Hyatt Hotels Corporation.⁵

Initial Batch of Section 219 Disclosures: Characteristics and Trends

Although at this juncture, roughly one week after the first Section 219 disclosures were filed, the sample size of precedents is relatively small with just eight disclosures having been made by SEC-registered issuers to date, some characteristics and patterns have emerged:

- **Transactions or dealings with the “Government of Iran.”** Seven issuers disclosed dealings with either the Government of Iran or entities that are affiliated, owned or controlled by the Government of Iran. Such entities include Iranian embassies in third countries, financial institutions owned by the Government of Iran, entities that have been designated by OFAC as constituting the “Government of Iran” (e.g., National Petrochemical Company of Iran), the Iranian Ministry of Health and the Iran Chamber of Commerce Industry Mines and Agriculture.
- **Transactions with Iranian financial institutions.** Four issuers disclosed financial transactions with Iranian banks that have been designated by OFAC or are owned or controlled by the Government of Iran.
- **Activities involving small currency amounts.** In our November 8, 2012 Client Publication, we noted that Section 219 did not contain a materiality threshold. One

² For a complete summary of the disclosure requirements under Section 219, please refer to our Client Publication “*Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 – Additional Reporting Requirements for US Domestic and Foreign Issuers Registered with the SEC*” (November 8, 2012), which can be found [here](#). For a summary of CD&Is on Section 219 released by the SEC, please refer to our Client Publication “*SEC Releases CD&Is for Iran Sanctions Disclosures Required Under Exchange Act Section 13(r)*” (December 5, 2012), which can be found [here](#).

³ AllianceBernstein L.P. and AllianceBernsteinHolding L.P. made identical Section 219 disclosures in their respective Form 10-Ks filed on February 12, 2013.

⁴ In its quarterly report on Form 10-Q for the quarter ended December 31, 2012 filed on February 14, 2013, Warner Music Group Corp. disclosed that LyondellBasell Industries is an affiliate of Access Industries, Inc., the controlling stockholder of Warner Music Group Corp. Accordingly, Warner Music Group Corp. made a disclosure pursuant to Section 219 that quoted verbatim the LyondellBasell Industries Section 219 disclosure.

⁵ In a Form 6-K filed on February 5, 2013, BP PLC stated that it would disclose in its Annual Report and Form 20-F certain information required by Section 219 “in respect of its interest in the North Sea Rhum Field.” According to the Form 6-K filed by BP PLC, the Iranian Oil Company (UK) Limited has a 50% interest in the North Sea Rhum Field.

issuer, United Technologies, disclosed activities of its affiliate Otis – elevator maintenance repair services to support the Frankfurt premises of Bank Saderat – that resulted in net profits of \$1,500.

- *Statements by issuers that activities disclosed in report did not violate US economic sanctions laws.* Five issuers included with their disclosures statements, in various forms, that the activities disclosed in the report pursuant to Section 219 did not violate applicable laws, including US sanctions laws and regulations. In one instance, an issuer included a caveat that certain contracts did not violate applicable laws “when they were executed.”
- *Intentions to cease Iran-related business activities.* Six of the eight issuers noted that they intended to discontinue the disclosed activity in 2013 or that the issuer had previously instituted a policy restricting business activities relating to Iran. The two issuers who explicitly stated that they would continue the disclosed business activities in Iran – Novartis and Novo Nordisk – distribute vaccines and other pharmaceuticals in Iran. Such activity is generally authorized under current OFAC regulations.
- *Disclosed activities primarily conducted by non-US affiliates of issuer.* In all instances of disclosure under Section 219 to date, the activities disclosed were conducted by non-US downstream affiliates or subsidiaries of the issuer. In one instance, however, AllianceBernstein disclosed activities of non-US subsidiaries of its parent, AXA Group.

Summary of Section 219 Disclosures

Below is a summary of the Section 219 disclosures that have been included in periodic reports filed with the SEC as of February 14, 2013:

- *Schlumberger Limited (Schlumberger N.V.) ([Form 10-K for the fiscal year ended December 31, 2012, filed January 31, 2013](#))*
 - Schlumberger disclosed that certain of its non-US affiliates provided oilfield services to the National Iranian Oil Company (“NIOC”) and certain of its affiliates. In connection with the provision of these services, Schlumberger stated that its non-US affiliates had related dealings with the Government of Iran and entities associated with the Government of Iran that were incidental to operating in Iran, including the payment of taxes, duties, license fees and other typical government charges. Schlumberger noted that it intends to discontinue its activities in Iran in 2013.
 - In addition, Schlumberger disclosed that in connection with its operations in Iran it maintains depository accounts with Bank Saderat Iran and Bank Tejarat in Iran. Schlumberger further noted that NIOC made payments to its non-US subsidiaries through bank accounts held by NIOC at Bank Melli Iran.
 - Schlumberger’s Section 219 disclosure is located in Item IA (Risk Factors) of the Form 10-K under the heading “A significant portion of our revenue is derived from our non-United States operations, which expose us to risks inherent in doing business in each of approximately 85 countries in which we operate.” Of the issuers who have made disclosures pursuant to Section 219 to date, Schlumberger is the only issuer that did not reference Section 219 specifically in connection with the disclosure.
- *United Technologies Corporation ([Form 10-K for the fiscal year ended December 31, 2012, filed February 7, 2013](#))*
 - United Technologies provided perhaps the most detailed disclosure of the disclosures made pursuant to Section 219 to date. United Technologies stated that in 2009 it adopted a corporate policy prohibiting new business in or with Iran. The Section 219 disclosure involved activities relating to the wind-down of operations in Iran by two of its non-US affiliates that were acquired by United Technologies in 2011. United Technologies disclosed that during 2012

these affiliates received payments from and provided certain fire detection and fire suppression equipment for use by the Pars Oil & Gas Company, which has been designated by OFAC. United Technologies stated that the fire suppression equipment provided to Pars Oil & Gas Company incorporated a small amount of US-origin springs and that “an appropriate disclosure” had been made to OFAC.

- United Technologies also disclosed that non-US affiliates of its Otis business segment conducted service, maintenance, and modernization activities on elevators previously installed at Iranian diplomatic premises in France, Kuwait and Hungary, and at the Frankfurt premises of Bank Saderat. According to the disclosure, all of the contracts relating to these activities have been terminated.
- The United Technologies Section 219 disclosures are located in Item 1 (“Business”) under the sub-heading “Compliance with Environmental and Other Governmental Regulations.”
- *Delphi Automotive PLC* ([Form 10-K for the year ended December 31, 2012, filed February 11, 2013](#))
 - In its Section 219 disclosure, Delphi Automotive states that its non-US affiliates have ceased all transactions involving Iran as of October 9, 2012, but that prior to that date, some of its non-US affiliates “sold items out of general inventory to non-US distributors outside of Iran, who sold those items to retail or automotive assembly, service or repair establishments in Iran,” alluding to the general inventory “exception” for exports to Iran by US persons. The Section 219 disclosure also states that Delphi Automotive’s non-US affiliates received payments from the distributors through banks outside of Iran and that “some of those transactions may have involved transfers of funds to the distributors through Iranian Government-owned banks, and we are not certain of the exact path of such transfers, and whether those transactions are therefore required to be disclosed under” Section 219.
 - The Delphi Automotive Section 219 disclosures are located in Item 3 (“Legal Proceedings”) under the heading “Iran Sanctions Disclosures.”
- *AllianceBernstein L.P.* ([Form 10-K for the fiscal year ended December 31, 2012, filed February 12, 2013](#))
 - AllianceBernstein made a disclosure pursuant to Section 219 for business activities of its parent AXA Group. Alliance Bernstein disclosed that “AXA has reported to [AllianceBernstein]” that certain insurance policies underwritten by two of AXA Group’s European insurance subsidiaries that were in-force in 2012 “potentially come within the scope of the disclosure requirements” of Section 219. One such policy concerned a property in France where the insured is an entity that “may have, direct or indirect, ties to the Government of Iran.”
 - The second AXA Group policy disclosed by AllianceBernstein concerns insurance provided to the International Road Transport Union (“IRU”), a non-governmental organization based in Geneva that acts as the implementing partner, under the mandate of the United Nations, of the Transports Internationaux Routiers Customs Transit System (“TIR System”). The policy insured against losses for non-payment of customs duties and taxes to contracting countries for goods transported under the TIR System. According to the disclosure, over 70 countries, including the United States and Iran are participants in the TIR System. The disclosure noted that the AXA policy “guaranteed duty payments on behalf of the IRU to the TIR national transport associations in each of the more than 70 participating countries, which includes Iran’s TIR System national transport association (the Iran Chamber of Commerce Industry Mines and Agriculture)” and the United States.
 - The AllianceBernstein Section 219 disclosure is located in Item 1 (“Business”) under the heading “Iran Threat Reduction and Syria Human Rights Act.”

- *LyondellBasell Industries N.V. (Form 10-K for the year ended December 31, 2012, filed February 12, 2013)*
 - LyondellBasell disclosed that in connection with its decision in 2010 to cease all business in Iran, two non-US subsidiaries had dealings with several Iranian entities, one that is 50% owned by the National Petrochemical Company of Iran and another that is 20% owned by the National Oil Company of Iran, in connection with the cessation of its Iranian business activities. LyondellBasell noted that none of the transactions would have violated US sanctions laws.
 - The LyondellBasell disclosure is located under the heading “Disclosure pursuant to Section 219 of the Iran Threat Reduction & Syria Human Rights Act.”
- *Hyatt Hotel Corporation (Ex. 99.3 to Form 10-K for the year ended December 31, 2012, filed February 13, 2013)*
 - Hyatt Hotel Corporation disclosed that individuals stayed at the Park Hyatt Hamburg pursuant to a pre-negotiated standard preferred rate agreement with Europaeische-Iranische Handelsbank AG, an entity that has been designated by OFAC for support of proliferation of weapons of mass destruction in Iran. Hyatt noted that it believed that the disclosed activity was not in violation of US economic sanctions laws.
 - Hyatt made the disclosure in an exhibit to its Form 10-K, not in the main document.
- *Novartis AG (Form 20-F for the year ended December 31, 2012, filed January 23, 2013)*
 - Novartis disclosed sales of influenza vaccines and rabies vaccines by non-US affiliates to Medical Equipment and Pharmaceutical Holding Co. of Iran. The disclosure state that Novartis “understands” Medical Equipment and Pharmaceutical Holding Co. of Iran to be an affiliate of the Iranian Ministry of Health. Novartis stated that it expects to continue such sales in 2013.
 - The Novartis Section 219 disclosure is located in Item 8A (Consolidated Financial Statements and Other Financial Information) of the Form 20-F under the heading “Disclosure pursuant to Section 219 of the Iran Threat Reduction & Syria Human Rights Act (ITRA).”
- *Novo Nordisk A/S (Form 20-F for the year ended December 31, 2012, filed February 6, 2013)*
 - Novo Nordisk disclosed activities in Iran that “relate primarily” to sales of pharmaceutical products and devices within the diabetes care and biopharmaceutical business segments. The Novo Nordisk disclosure referenced business dealings with a manufacturing partner controlled by the Government of Iran, a contract with the Iranian Blood Research & Fractionation Company, which is owned by the Iranian Ministry of Health, for the production of human plasma derivatives, and the conduct of clinical research studies and trials in collaboration with certain Iranian state universities. Novo Nordisk stated that it expects to continue such activities.
 - Without specifically naming the banks, Novo Nordisk disclosed that it makes payments to and receives payments from “certain GOI-owned or controlled” banks with respect to activities conducted by Novo Nordisk Pars, its wholly-owned affiliate in Tehran, Iran.
 - Novo Nordisk’s Section 219 disclosure is located in Item 4 (Information on the Company) of the Form 20-F under the sub-heading “Iran related activities.”

Too Early To Call

As it relates to a number of critical questions and approaches to Section 219 disclosures, it may be too early to ascertain “market practice.” In this regard, a number of issues bear watching:

- The extent to which issuers will be “reporting up,” i.e., SEC-registered subsidiaries reporting on activity conducted by their parents or their parents’ other affiliates.
- The extent to which issuers will be examining the business activities of directors and their affiliates.
- Given the lack of a materiality threshold in Section 219, whether small value transactions will result in an “investigation” by the US Government as required under Section 219.

Conclusion

The Section 219 disclosures in periodic reports filed with the SEC to date cover a variety of Iran-related activities conducted by SEC-registered issuers and their affiliates (including activities of parent companies of the issuer). At a minimum, the disclosures to date demonstrate that the issuers have conducted a thorough review of business activities that might be subject to disclosure under Section 219.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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