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The Iran Threat Reduction and Syria Human Rights Act of 2012 – How Are You Planning to Comply with Section 219’s New Reporting Requirements?

In our continuing series on Section 219, we now move beyond interpreting the requirements of Section 219 to the mundane yet important task of complying with these new requirements. Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (the “Threat Reduction Act”) requires SEC-registered issuers to disclose in periodic reports filed with the SEC, among other things, if they or their affiliates knowingly conducted any transaction or dealing with a person or entity affiliated with the Government of Iran or that has been listed on the US Department of the Treasury’s Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List (the “SDN List”) for support of global terrorism or weapons of mass destruction proliferation activities. This publication focuses on practical and realistic measures that SEC-registered issuers should consider when implementing their Section 219 compliance program.

What’s Critical?

- In light of this new requirement, SEC-registered issuers should implement reasonable procedures to evaluate business activities for identifying transactions or dealings with Iranian entities and specially designated global terrorists or national proliferators of weapons of mass destruction, including:
 - Identifying business with entities in Iran and analyzing such business to determine if the counterparty is related to the Government of Iran or if the business is related to the energy sector or has potential application to the development of weapons of mass destruction (chemical, biological, radiological, nuclear, and explosive);
 - Implementing a mechanism for identifying all business (by country) conducted with persons on the SDN List;
 - For entities and geographies identified as being higher risk, retaining commercial software vendors that can automatically flag and identify business partners that are subject to disclosure under the new requirement; and

- Implementing a standardized procedure that can be easily incorporated and adopted into the company's business operations, including, if necessary, the designation of specific persons responsible for Section 219 disclosures across the business platform.
- Issuers have an affirmative obligation to determine whether their affiliates (including parent companies) are engaged in activities that are reportable under the new requirements.
- Accordingly, issuers should develop a mechanism as part of their SEC disclosure process to determine whether their affiliates (either as a whole or individually) are conducting business with Iran or with SDNs.

Recap of Section 219's Disclosure Requirement

Section 219 of the Threat Reduction Act 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:

- transactions related to Iran's energy sector, such as certain investments or the provision of goods, services, technology, or support that could contribute to the development of petroleum and petrochemical resources or the production of refined petroleum products in Iran, exportation of refined petroleum products to Iran, or transportation of crude oil from Iran;
- transactions that could be viewed as supporting Iran's development of weapons of mass destruction or other military capabilities, such as investment in a joint venture with the Government of Iran or an Iranian entity relating to the mining, production, or transportation of uranium, or transactions relating to goods, services, or technology that could enhance Iran's ability to acquire weapons of mass destruction or advanced conventional weapons;
- other transactions with the Government of Iran, including political subdivisions and instrumentalities; and
- transactions with persons or entities designated by the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") for supporting global terrorism or the proliferation of weapons of mass destruction (the "SDN Requirement").¹

Thus, although Section 219 is generally focused on disclosure of business activities relating to Iran, the SDN Requirement to disclose any "transaction or dealing" with OFAC-designated global terrorists or weapons of mass destruction proliferators could encompass business activities that are unrelated to Iran. This is because such designated persons could be located anywhere in the world and conceivably may have no connection at all to Iran.

¹ For a complete summary of the new disclosure requirements under Section 219 of the Threat Reduction Act, 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](#). The SEC's Division of Corporation Finance released compliance and disclosure interpretations relating to Section 219 on December 4, 2012. For a summary of the SEC's release, 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](#).

Disclosure Required if Issuers or Their Affiliates Knowingly Conduct Business with Iran or Certain SDNs.

The new requirements mandate disclosure if the issuer or its affiliate “knowingly” conducted a “transaction or dealing” with Iran or SDNs (designated as a global terrorist or weapons proliferator) during the period covered by the report. Under US law generally, a person “knowingly” engaged in an activity if the person knew (i.e., had actual knowledge), or should have known, that it was engaged in such activity. This suggests that an issuer has an affirmative obligation to review its business activities and those of its affiliates to determine whether such activities are reportable under the new requirements. Accordingly, issuers, in particular non-US issuers who may not have previously considered whether they conduct business with Iran or SDNs, should implement procedures to evaluate business activities worldwide to identify business relationships with Iran or SDNs that must now be disclosed under the reporting requirements of the Exchange Act.

Procedures Should Be Reasonably Calculated to Identify Reportable Transactions or Dealings

It seems unlikely that any issuer could evaluate every customer, vendor, or supplier worldwide to determine whether it is related to Iran or on the SDN List. Therefore, issuers should use a risk-based approach when designing and implementing procedures to identify business activities that must be disclosed under Section 219.

Whether or not an entity is based in Iran is not the sole determining factor, as Iran has sought to evade sanctions by forming shell companies throughout the world. Similarly, SDNs are not located in any particular geography. However, with respect to the SDN Requirement, as a general rule a company may apply a risk-based approach that focuses on identifying geographies and business sectors that are most likely to intersect with individuals or entities that have been designated by OFAC as global terrorists or national proliferators of weapons of mass destruction, and focusing the evaluation of business activities in connection with SEC reporting on these geographies and sectors. There is no “one size fits all” approach to complying with the new requirements. As such, we are interested in hearing from you, as to how your company plans to comply with the new disclosure requirements of Section 219. Below are a few suggested approaches for identifying reportable activities.

- *Business activities in countries that have been designated as “State Sponsors of Terrorism” by the US Government should be carefully reviewed for reportable activity.*
 - Under US law, the US Secretary of State has designated as “State Sponsors of Terrorism” certain countries that have repeatedly provided support for acts of international terrorism. To date, four countries have been designated as “State Sponsors of Terrorism”: Cuba, Iran, Sudan, and Syria. Accordingly, if a US-registered issuer conducts business activities in or relating to any of these countries, such activities should be closely evaluated and issuers should confirm that business partners in these countries are not on the SDN List for support of global terrorism or weapons of mass destruction proliferation activities.
- *Issuers can “screen” business partners against the SDN List using commercially-available OFAC screening software.*
 - Many US financial institutions use commercially-available OFAC screening software to “screen” parties to US dollar transactions that clear in the United States. Depending on the nature of a particular issuer’s business, the implementation of such software to screen business partners could be useful in identifying reportable business activities under Section 219, both with respect to entities related to the Government of Iran and to SDNs, perhaps as part of customer due diligence procedures already in place.

Mapping the Way Forward

In light of Section 219, SEC-registered issuers should implement policies and procedures to ensure that business activities that might not have been reported previously are now adequately captured and reported. If desired, we would be happy to advise on any specific questions that you might have in regards to the new reporting requirements discussed herein or on the implementation of policies and procedures that will best suit your organization to ensure compliance with Section 219.

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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