

December 6, 2012

SEC Publishes CD&Is for Iran Sanctions Disclosures Required Under Exchange Act Section 13(r)

On December 4, 2012, the staff of the SEC's Division of Corporation Finance released compliance and disclosure interpretations reflecting the Staff's views on frequently asked questions relating to Section 13(r) of the Securities Exchange Act of 1934. Section 13(r) imposes new requirements on SEC reporting issuers to disclose specified business activities relating to Iran for further investigation by the US Government.

Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "[Threat Reduction Act](#)"), which was enacted on August 10, 2012, requires issuers that are subject to the periodic reporting requirements of the Securities Exchange Act of 1934 to disclose specified business activities relating to Iran — generally relating to Iran's energy and financial sectors and Iran's suppression of human rights, but also relating to transactions with the Government of Iran, global terrorists, and weapons proliferators — for further investigation by the US Government. For a summary of the new requirements, 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 accessed [here](#).

On December 4, 2012, the staff of the SEC's Division of Corporation Finance released compliance and disclosure interpretations reflecting the Staff's views on frequently asked questions relating to Section 219, which is codified as new Section 13(r) of the Exchange Act. The Staff interpretations can be found [here](#).

The Staff interpretations address the following:

- Issuers may not avoid the disclosures required under Section 13(r) by filing early. Thus, Section 13(r) applies to reports required to be filed after February 6, 2013, regardless if the issuer files its report before it is due.
- An issuer is required to disclose activities that occurred during the period covered by the report (e.g., for an annual report, during the fiscal year), even if the activities occurred prior to the enactment of the Threat Reduction Act.
- For purposes of Section 13(r), the term "affiliate" is as defined in Exchange Act Rule 12b-2 ("a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified"). This means that an issuer may be required to disclose activities of entities that fall within the Rule 12b-2 definition of "affiliate" but that the issuer does not sufficiently control to require cooperation of the entity in the collection of information for disclosure purposes, such as joint ventures.

- Although Section 13(r) does not require disclosure of activities subject to “the specific authorization of a Federal department or agency,” this requirement is not satisfied by authorizations by foreign governments, although the issuer may choose to include that authorization with its disclosure. On the other hand, “specific authorization” refers to both general licenses and specific licenses issued by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury.

As always, we are happy to advise on any specific questions that you might have in regard to the new reporting requirements discussed herein, or any other sanctions-related issue.

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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