

KIRKLAND ALERT

January 2013

U.S. Sanctions Update:

Non-U.S. Entity Activity with Iran and Other Sanctions Targets Now Required to be Disclosed to the SEC, Additional U.S. Sanctions Targeting Non-U.S. Business with Iran Imposed, and OFAC Sanctions Regulations Amended

Issuers subject to the jurisdiction of the Securities and Exchange Commission (“SEC”), as well as, more broadly, many non-U.S. companies should be aware of the potential impact of the latest expansion of U.S. economic sanctions laws targeting Iran and other areas, such as international terrorism. Beginning on February 6, 2013, issuers required to file periodic reports under Section 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) that engage, or have any “affiliates” that engage, in a broad range of activities covered by a recent statute are required to disclose those activities to the SEC, without regard to the materiality of such activities. Such issuers will need to consider carefully how to identify when their affiliates (which may include the issuer’s directors and executive officers) are engaged in such activities so they can comply with the new disclosure requirements. A separate new law expands the range of activities relating to Iran and certain parties targeted as national security threats that, even if conducted by businesses outside of the United States, will be sanctionable by the U.S. government. U.S. companies engaged directly or indirectly in international business should evaluate whether their business activities now could be subject to sanctions, and, in order to avoid becoming subject to sanctions, undertake measures to prevent those activities from occurring in the future.

I. New SEC Disclosure Requirement

A. Introduction

On February 6, 2013, the new mandatory disclosure requirement set forth under Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”) will take effect.¹ Section 219, which amended the Exchange Act, provides that issuers required under Section 13(a) of the Exchange Act to file annual or quarterly reports with the SEC must disclose in those reports and concurrently provide the SEC with a separate notice, if, without regard to materiality, during the period covered by the reports,² the issuer or any affiliate of the issuer knowingly engaged in certain activities relating to Iran³ or with certain other sanctioned parties. Pursuant to Section 219 of the Act and related SEC guidance, “affiliates” may include directors and executive officers of the issuer.⁴

These activities generally already are potentially sanctionable under existing U.S. sanctions laws. However, such activities would not necessarily be a matter of public record or otherwise be reflected in publically disseminated information. The new law now requires that the above-described issuers disclose the information and moreover requires the President to determine whether sanctions should be imposed on the basis of the disclosed information. If an issuer determines that it, or one of its affiliates, engaged in any disclosable activities, the issuer must: (i) describe the nature and extent of each activity; (ii) identify the gross revenues and net profits, if any, attributable to each activity; and (iii) indicate whether the issuer, or one of its affiliates, intends to continue each activity.

B. Activities That Trigger Disclosure Requirement

The following activities may trigger the disclosure requirement:

- Activities relating to Iran’s energy sector, including:

- making an investment that contributes to the enhancement of Iran's ability to develop petroleum resources;
- selling, leasing, or providing goods, services, technology, information, or support to Iran that could facilitate or contribute to the maintenance or expansion of Iran's domestic production of petrochemical or refined petroleum products;
- selling or providing refined petroleum products to Iran;
- selling, leasing, or providing goods, services, technology, information, or support to Iran that could contribute to the maintenance or enhancement of Iran's ability to import refined petroleum products or Iran's ability to develop petroleum resources located in Iran;
- transporting crude oil from Iran or concealing the Iranian-origin of crude oil or refined petroleum products transported from Iran; and
- participating in certain joint ventures with respect to the development of petroleum resources outside of Iran.
- Activities involving Iran's development of weapons of mass destruction or other military capabilities, including:
 - exporting, transferring, or providing goods, services, technology, or other items contributing to the ability of Iran to: (i) acquire or develop chemical, biological, or nuclear weapons or related technologies; or (ii) acquire or develop destabilizing numbers and types of advance conventional weapons; and
 - participating in a joint venture with the Government of Iran, an Iranian entity, or a person acting on behalf of or at the direction of, or owned or controlled by, the Government of Iran or an Iranian entity, relating to the mining, production, or transportation of uranium.
- Activities involving the suppression of human rights in Iran, including transferring goods or technology⁵ or providing services with respect to goods or technology that could or are likely to be used by the Government of Iran or any of its agencies or instrumentalities (or by any other person on behalf of the Government of Iran or any of such agencies or instrumentalities) to commit serious human rights abuses against the people of Iran or restrict the free flow of unbiased information in Iran or to disrupt, monitor, or otherwise restrict free speech of the people of Iran. For example, technology used to block or monitor internet use has been identified as a tool used for these targeted human rights abuses.
- Other activities, including:
 - facilitating the efforts of the Government of Iran, including Iran's Revolutionary Guard Corps ("IRGC") or any of its agents of affiliates, to acquire weapons of mass destruction or delivery systems for weapons of mass destruction or to support designated global terrorists (see below) or acts of international terrorism;
 - facilitating the activities of persons subject to financial sanctions by the United Nations;⁶
 - engaging in money laundering relating to or facilitating efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described above; and
 - facilitating a significant transaction or transactions or providing financial services for: (i) the IRGC or any of its agents or affiliates whose property and interests in property are blocked by the U.S. government; or (ii) a financial institution whose property or interests in property are blocked by the U.S. government in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism.
- Transactions or dealings with or, in the case of the last bullet point, benefitting, the following persons, certain of which, as noted above, may not be located in Iran:
 - any person designated as a global terrorist on the List of Specially Designated Nationals and Blocked Persons ("SDN List"), which is maintained by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC"), pursuant to Executive Order 13224 (Sept. 23, 2001);

- any person designated as a proliferator of weapons of mass destruction on the SDN List pursuant to Executive Order 13382 (June 28, 2005);
- the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, or any person owned or controlled, directly or indirectly, by, or acting or purporting to act for or on behalf of, the Government of Iran;⁷ or
- the IRGC or any of its agents or affiliates whose property and interest in property are blocked by the U.S. government.

II. Expansion of U.S. Sanctions Targeting Non-U.S. Business with Iran

In furtherance of the U.S. government's efforts to disrupt non-U.S. business activities benefiting Iran, on January 2, 2013, the President signed into law the National Defense Authorization Act for Fiscal Year 2013 ("2013 NDAA"), which, among other things, expands U.S. sanctions targeting non-U.S. business with Iran. As a general matter, the sanctions target: (i) businesses or persons involved in the energy, shipping, and ship-building sectors of Iran, including operators of a port in Iran and those providing "significant" financial, material, technological, or other support, or goods or services related to such persons or certain Iranian persons designated on the SDN List; (ii) businesses or persons engaged in the sale, supply, or transfer of certain materials, such as precious metals and other materials, to or from Iran; (iii) businesses or persons engaged in the provision of underwriting services or insurance or reinsurance for activities or persons with respect to which certain sanctions have been imposed by the U.S. government; (iv) foreign financial institutions that facilitate financial transactions on behalf of certain SDNs; (v) the Islamic Republic of Iran Broadcasting and its President, as human rights abusers; and (vi) persons engaged in the diversion of goods intended for the people of Iran or the misappropriation of proceeds from the sale or resale of such goods. The sanctions (with the exception of the activities in clauses (v) and (vi) above⁸) may only be imposed with respect to activities occurring after July 1, 2013 (180 days after enactment of the 2013 NDAA).

III. Amendments to and Issuance of New Sanctions Regulations

As discussed below, OFAC recently amended two sets of sanctions regulations relating to Iran and issued new sanctions regulations relating to Yemen.

- **Amendments to the Iranian Transactions and Sanctions Regulations.** On October 22, 2012, OFAC changed the heading of the Iranian Transactions Regulations (31 C.F.R. Part 560) to the Iranian Transactions and Sanctions Regulations (the "ITSR") and amended the ITSR by, among other things, blocking the Government of Iran and all Iranian financial institutions and adding several new sections, including prohibitions, definitions, interpretations, and revising existing sections in recognition of such blocking.⁹ Due to the extensive nature of such amendments, OFAC reissued the ITSR in their entirety.¹⁰ Subsequently, on December 26, 2012, OFAC amended the ITSR by, among other things, adding a new section prohibiting certain transactions by entities owned or controlled by a U.S. person and established and maintained outside the United States and expanding the categories of persons whose property and interests in property are blocked to include persons that have provided material support for certain Government of Iran-related entities or certain activities by the Government of Iran, on which we previously have reported.¹¹
- **Amendments to the Iranian Financial Sanctions Regulations.** On November 8, 2012, OFAC amended the Iranian Financial Sanctions Regulations (31 C.F.R. Part 561)¹² by, among other things, adding additional categories of sanctionable activities for which foreign financial institutions may lose the ability to establish correspondent account relationships with U.S. financial institutions. For example, the amendments authorize the imposition of sanctions on a foreign financial institution that knowingly facilitates significant transactions or provides significant financial services for a "person" (formerly, a "financial institution") whose property and interest in property are blocked by the U.S. government in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism.¹³

- **Issuance of the New Yemen Sanctions Regulations.** On November 9, 2012, OFAC issued the Yemen Sanctions Regulations (31 C.F.R. Part 552; “YSR”), which block the property and interests in property of persons threatening the peace, security, or stability of Yemen.¹⁴ OFAC published the YSR in abbreviated form and indicated that it intends to supplement the YSR with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

¹ See [Kirkland & Ellis’ September 2012 Alert](#) regarding Iran Sanctions.

² Even if the activities occurred prior to February 6, 2013.

³ Such activities are described in: (i) Sections 5(a) or 5(b) of the Iran Sanctions Act of 1996, as amended (“ISA”); (b) Sections 104(c)(2) or 104(d)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”); and (iii) Section 105A(b)(2) of the CISADA.

⁴ According to Compliance and Disclosure Interpretations published by the SEC on December 4, 2012, the term “affiliate” in Section 13(r) of the Exchange Act is as defined in Exchange Act Rule 12b-2. See <http://www.sec.gov/divisions/corpfin/guidance/exchangeactsections-interps.htm>. According to Exchange Act Rule 12b-2, “[a]n ‘affiliate’ of, or a person ‘affiliated’ with, a specified person, is 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.”

⁵ Including firearms or ammunition, rubber bullets, police batons, pepper or chemical sprays, stun grenades, electroshock weapons, tear gas, water cannons, or surveillance technology.

⁶ Pursuant to United Nations Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008), 1929 (2010), or

any other resolution that is agreed to by the United Nations Security Council and imposes sanctions with respect to Iran.

⁷ The only transactions or dealings with the Government of Iran that are not required to be disclosed under Section 219 of the ITRA are those conducted with the specific authorization of a Federal department or agency.

⁸ As set forth in Sections 1248 and 1249 of the 2013 NDAA, the sanctions may be imposed for activities described in clauses (v) and (vi) that occur at any time following enactment of the 2013 NDAA.

⁹ These amendments were made to implement Executive Order 13599 (Feb. 5, 2012) and Sections 1245(c) and (d)(1)(B) of the National Defense Authorization Act for Fiscal Year 2012 (“2012 NDAA”).

¹⁰ See 77 Fed. Reg. 64664 (Oct. 22, 2012).

¹¹ These amendments were made to implement Section 218 and certain portions of Sections 602 and 603 of the ITRA, Sections 5, portions of Section 6, and other related provisions of Executive Order 13622 (July 30, 2012), and Section 4 of Executive Order 13628 (Oct. 9, 2012). See 77 Fed. Reg. 75845 (Dec. 26, 2012). Executive Order 13628 is discussed in [Kirkland & Ellis’ October 2012 Alert](#) regarding Iran Sanctions.

¹² The IFSR were initially published on August 16, 2010 to implement certain provisions of the CISADA, including Sections 104(c) and 104(d). See 77 Fed. Reg. 49836 (Aug. 16, 2010). OFAC subsequently amended the IFSR on February 27, 2012 to implement Section 1245(d) of the 2012 NDAA, which provides for sanctions on foreign financial institutions that knowingly conduct or facilitate certain significant financial transactions with the Central Bank of Iran or designated Iranian financial institutions. See 77 Fed. Reg. 11724 (Feb. 27, 2012).

¹³ These amendments implement Sections 214 through 216 of the ITRA. See 77 Fed. Reg. 66918 (Nov. 8, 2012).

¹⁴ The YSR implement Executive Order 13611 (May 16, 2012). See 77 Fed. Reg. 67276 (Nov. 9, 2012). The persons subject to blocking under the YSR are designated on the SDN List.

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