

## International Trade Alert

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### Could Your Affiliate's Activities Subject Your Company to the New Iran Reporting Requirements?

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The Securities and Exchange Commission ("SEC") has issued guidance on the new requirement that all companies with stock traded on U.S. exchanges, whether U.S. or foreign, publicly disclose certain of their affiliates' activities involving Iran. The requirement is one of the numerous measures implemented under the Iran Threat Reduction and Syrian Human Rights Act of 2012 (the "ITRSHRA"), signed into law on August 10, 2012.

#### Iran Threat Reduction and Syrian Human Rights Act of 2012

The ITRSHRA significantly expanded the U.S. sanctions program against Iran to provide for, among other things, liability of U.S. parent companies for the activities of their foreign subsidiaries involving Iran. After February 6, 2013, U.S. parent companies will be subject to civil penalties for a foreign subsidiary's "knowing" involvement in transactions that would be prohibited if undertaken by a U.S. person. See Executive Order 13628, Oct. 9, 2012. Among other notable provisions, the ITRSHRA also increased the list of prohibited activities under the Iran Sanctions Act of 1996 ("ISA") (as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA")), and enhanced the variety and number of sanctions that must be imposed against individuals or companies, both U.S. and non-U.S. alike, found to have engaged in the prohibited activities involving Iran.

#### Iran Reporting Requirements

Section 219 of the ITRSHRA amended the Securities and Exchange Act of 1934 to require that all issuers make detailed disclosures in their annual and quarterly reports as to whether the issuer, or any "affiliate" of the issuer, knowingly engaged in certain activities that violate provisions of the ISA or CISADA, or knowingly dealt with certain "blocked persons" designated by the Department of Treasury's Office of Foreign Assets Control ("OFAC").

If an issuer or its affiliate has engaged in such activities, the issuer must include in any required annual or quarterly report to SEC for the relevant period a notice including:

- A full description of the nature of the activities;
- The gross revenues and net profits, if any, attributable to the activity; and
- A statement declaring whether the issuer or its affiliate intends to continue the activity.

The ITRSHRA requires the SEC to disclose the report publicly, and to transmit the report to the President and Congress. Upon receipt of the report, the President must initiate an investigation into the activities, and determine within 180 days whether to impose sanctions on the reporting entity and/or affiliates involved in the activities.

#### SEC Questions and Answers

The SEC provided guidance regarding its interpretation of the new reporting requirement in the Questions and Answers recently issued. Among other things, the SEC clarified that:

- It will adopt the definition of the term "affiliate" currently in the SEC's regulations, which state: "An '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." 17 C.F.R. § 240.12b-2.
- The reporting requirement will apply to all reports due after February 6, 2013, regardless of the actual date on which the report is filed.
- Reports due after February 6, 2013 must disclose any reportable activities involving Iran that occurred during the period covered by the report, including any activities that may have occurred prior to the enactment of the ITRSHRA.
- Reportable transactions or dealings must be disclosed unless they were specifically authorized by a U.S. federal department or agency. For example, transactions authorized via an OFAC general or

specific license are exempt from disclosure. However, transactions authorized by a foreign governmental authority must still be reported, although the issuer may include a discussion of the foreign approval to provide context.

- All notices of reportable transactions included in periodic reports will automatically become publicly available upon filing with the SEC through its EDGAR system.

#### **What Does This Mean for Your Company?**

- **All U.S. companies should carefully review whether any foreign subsidiary or other affiliated entity is engaged in activities involving Iran.** While U.S. companies have long been subject to the prohibitions on activities involving Iran, the activities of their foreign subsidiaries have largely been excluded from the scope of the prohibitions. With the enactment of the ITRSHRA, it is essential that U.S. companies with global operations conduct a comprehensive audit to identify any activities of their foreign subsidiaries involving Iran. In light of the recently expanded sanctions, U.S. companies may be subject to liability for such activities, regardless of whether they played any role in the underlying transaction.
- **Keep in mind the February 6, 2013 deadline. All companies registered on a U.S. exchange, whether U.S. or foreign, should assess their activities involving Iran to ensure compliance with the new reporting requirement.** As noted, the new reporting requirements apply to U.S. and non-U.S. companies alike. Therefore, any company with stock traded on a U.S. exchange should promptly initiate a thorough review of its operations, as well as those of any affiliated entity, to comply with the new reporting requirement for all periodic reports due to be filed with the SEC after February 6, 2013.
- **U.S. and non-U.S. companies should review and update their compliance programs with respect to the expanded Iran Sanctions.** The enhanced prohibitions and penalties now available under the U.S. sanctions program necessitate a more comprehensive approach to identifying, reporting and vetting any company transactions involving Iran. The extra-territorial reach of the U.S. sanctions against Iran, and the enhanced sanctions imposed under similar foreign sanctions regimes, are increasingly encouraging companies to adopt absolute prohibitions on any dealings with Iran. To the extent that non-U.S. companies continue to engage in business with Iran, the new requirements necessitate a careful review of these activities to assess their compliance with the numerous U.S. and foreign Iranian sanctions programs.

Contact the attorneys in Venable's **International Trade and Customs Group** for additional details on how the strengthened U.S. sanctions against Iran or the new Iran reporting requirements may impact your company, or for assistance in developing a U.S. sanctions compliance program.