CLIENT UPDATE

SEC REPORTING COMPANIES MUST DISCLOSE CERTAIN IRAN-RELATED ACTIVITIES

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Lurking among the economic sanctions imposed by the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "ITRSHRA"), signed into law by President Obama in mid-summer, is a new disclosure mandate for companies filing periodic reports with the U.S. Securities and Exchange Commission (the "SEC"). Section 219 of the ITRSHRA amended the Securities Exchange Act of 1934 (the "Exchange Act") by adding new Section 13(r), which requires all companies required to file reports with the SEC pursuant to Section 13(a) of the Exchange Act to disclose certain activities relating to Iran (and, in certain cases, certain other countries). This new disclosure requirement is effective with respect to any annual or quarterly report required to be filed with the SEC after February 6, 2013.

This new disclosure obligation applies to all companies with a class of securities listed on a national securities exchange and companies with a class of equity securities registered pursuant to Section 12(g) of the Exchange Act. We have been advised by the SEC staff that it believes companies filing annual and quarterly reports pursuant to Section 15(d) of the Exchange Act are also subject to the requirements of Section 13(r). Under the SEC's long-standing position that voluntary filers must comply with all requirements

applicable to companies reporting under Sections 13(a) and 15(d), voluntary filers will be expected to comply with the requirements of Section 13(r). Finally, foreign issuers, including Canadian issuers filing annual reports on Form 40-F, falling within any of these categories are also subject to this new disclosure mandate.

Accordingly, all companies filing reports with the SEC should promptly prepare to provide the required information.

DISCLOSABLE ACTIVITIES

Under new Section 13(r), disclosure is required in any annual or quarterly report filed with the SEC if, during the period covered by the report, the issuer or any affiliate of the issuer engaged in any one of a broad range of activities specified in certain sections of the Iran Sanctions Act of 1996, as amended (the "Iran Sanctions Act"), or the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, as amended ("CISADA"), or conducted any transaction or dealt with any person designated under Executive Order Nos. 13224 and 13382, as amended (the "Executive Orders"), or the Iranian Transactions and Sanctions Regulations. These activities generally relate to Iran's energy sector, the development of weapons of mass destruction or military capabilities, and human rights abuses. A brief summary of the specified activities is set forth below. However, if there is any possibility that an issuer has engaged in a specified activity, it is essential to review carefully the relevant statute, executive order or regulation.

- The issuer or any of its affiliates knowingly engaged in any activity described in Section 5(a) of the Iran Sanctions Act, generally 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 to Iran goods, services, technology, information or support that could facilitate the maintenance or expansion of Iran's production of refined petroleum products, including directly associated infrastructure,
  - exporting refined petroleum products to Iran;
  - selling, leasing or providing to Iran goods, services, technology, information or support that could contribute to the enhancement of Iran's ability to import refined petroleum products, including underwriting, insuring or reinsuring any such activity, financing or brokering any such activity, providing ships or shipping services to deliver refined petroleum products to Iran, bartering or contracting to exchange goods, including any insurance or reinsurance of such an exchange, or

purchasing or facilitating the issuance of sovereign debt of the Government of Iran,

- participation in a joint venture with respect to the development of petroleum resources outside of Iran if (i) the Government of Iran is a substantial partner or investor or (ii) Iran could receive technological knowledge or equipment not previously available to it that could contribute to enhancement of its ability to develop petroleum resources in Iran,
- selling, leasing or providing to Iran goods, services, technology or support that could contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran or its domestic production of refined petroleum products, including directly associated infrastructure,
- selling, leasing or providing to Iran goods, services, technology or support that could contribute to the maintenance or expansion of Iran's domestic production of petrochemical products, or
- owning, operating, controlling or insuring a vessel used to transport crude oil from Iran to another country or used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported.

- The issuer or any of its affiliates knowingly engaged in any activity described in Section 5(b) of the Iran Sanctions Act, generally relating to Iran's development of weapons of mass destruction or other military capabilities, including:
  - directly or indirectly exporting, transferring or transshipping or otherwise providing to Iran goods, services, technology or other items that the person knew or should have known would materially contribute to the ability of Iran to acquire or develop chemical, biological or nuclear weapons or related technologies or to acquire or develop destabilizing numbers and types of advanced conventional weapons, or
  - participating in a joint venture that involves any activity relating to the mining, production or transportation of uranium with the Government of Iran or an Iranian entity, or any person owned or controlled by them or acting on their behalf or at their direction.
- The issuer or any of its affiliates knowingly engaged in any of the activities described in Section 104(c)(2) of CISADA, which relates to foreign financial institutions, including:
  - facilitating the efforts of the Government of Iran (including Iran's Revolutionary Guard Corps (the "IRGC") or any of its agents or affiliates) (i) to acquire or develop

weapons of mass destruction or delivery systems for such weapons or (ii) to provide support for any terrorist organization or act of international terrorism,

- facilitating the activities of a person subject to financial sanctions relating to Iran by the United Nations, or of any other person acting on behalf of or at the direction of, or owned or controlled by, any such person,
- engaging in money laundering or facilitating efforts by any Iranian financial institution, including the Central Bank of Iran, to carry out any of the foregoing activities, or
- facilitating a significant transaction or transactions or providing significant financial services for the IRGC or any person whose property is blocked by the U.S. government for being an agent or affiliate of the IRGC, or in connection with the proliferation by Iran of weapons of mass destruction or delivery systems for such weapons or its support of international terrorism.

- The issuer or any affiliate knowingly engaged in any activity described in Section 104(d)(1) of CISADA, which relates to U.S. domestic financial institutions and any entities owned or controlled by them, including engaging in a transaction with or that benefited the IRGC or any of its agents or affiliates whose property is blocked by the U.S. government.
- The issuer or any of its affiliates knowingly engaged in any activity described in Section 105A(b)(2) of CISADA, including transferring, or facilitating the transfer of, goods or technologies to Iran, or to an Iranian entity or national that are likely to be used by the Government of Iran or any of its agencies or instrumentalities, or any person acting on their behalf, to commit human rights abuses against the people of Iran, or providing services with respect to such goods or technologies, or
- The issuer or any of its affiliates knowingly conducted any transaction or dealing with:
  - any person or entity whose property is blocked pursuant to Executive Order No. 13224 or 13382, as amended, which relate to blocking of property and prohibiting transactions with persons who commit or support terrorism or proliferate weapons of mass destruction, or
  - the Government of Iran, including any person or entity acting on behalf of or owned or controlled by (i) the Iranian government or (ii) a person or entity designated by the U.S. Department of the Treasury as owned or controlled by the Iranian government, without the specific authorization of a U.S. Federal department or agency (such as a general or specific license issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury).

A number of reporting issuers voluntarily disclose material Iran-related activities, and other issuers have been required to disclose such activities by the SEC's Office of Global Security Risk. New Section 13(r) of the Exchange Act, however, not only applies to all reporting issuers but the required disclosures are not subject to any materiality threshold. Thus, even the most immaterial transaction that falls within the reportable activities may have to be disclosed. Moreover, the disclosure requirement is applicable even if the activity is not subject to U.S. government sanction. This could be problematic for foreign issuers, particularly those organized in countries that maintain diplomatic relations with Iran.

The specified activities need not be directly with the Government of Iran. In many cases, transactions with any person controlled by or acting on behalf of the Government of Iran are covered. Furthermore, new Section 13(r) covers activities of affiliates of the issuer. The SEC staff has issued guidance indicating that, 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 definition may include not only legal entities up and down the corporate chain, but also controlling stockholders and natural persons, such as directors and officers and entities they control.

For an activity to be reportable, Section 13(r) requires that the issuer or an affiliate "knowingly" engaged in the activity. Although the term "knowingly" is not defined in the Exchange Act, it is defined in Section 2 of the ITRSHRA by reference to the definition in the Iran Sanctions Act. As defined in the Iran Sanctions Act, the term "knowingly" means that "a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result." Consequently, we think it likely that a court would apply this definition in determining whether conduct should have been disclosed.

REQUIRED DISCLOSURES

If an issuer or an affiliate of the issuer has engaged in any of the activities described above during the relevant reporting period, it must disclose in detail:

- the nature and extent of the activity,
- the gross revenues and net profits, if any, attributable to the activity, and
- whether the issuer or the affiliate of the issuer intends to continue the activity.

An issuer that has not engaged in any of the activities described in new Section 13(r) does not have to include in its report a statement to that effect.

CONCURRENT NOTICE OF DISCLOSURE

If an issuer has included disclosure of any of these activities in a report filed with the SEC, concurrently with the filing of the report, the issuer must also file, under separate cover, a "Notice of Disclosure" (the "Notice") with the SEC. The Notice must inform the SEC that disclosure of reportable activity has been included in a filed report and furnish the same information disclosed in the filing. Upon receiving the Notice, the SEC must transmit the periodic report to the President and the U.S. Congress and post the information on its website. The President is then required to initiate an investigation for the possible imposition of sanctions. Sanctions under the Iran Sanctions Act, CISADA and other authorities may be severe, including, for example, prohibitions on certain dealings with the U.S. government and restrictions on U.S. persons acquiring instruments issued by the disclosing company. In addition, disclosures could have other adverse consequences, since many state pension funds and other institutional investors have restrictions on investing with firms that do business with Iran.

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As noted above, the new disclosure obligations embodied in Section 13(r) apply to reports required to be filed with the SEC after February 6, 2013. Filing a report early, prior to February 6, will not, however, delay the need to comply with Section 13(r). The SEC has issued guidance that the new disclosure requirements apply to any periodic report with a due date after February 6, 2013, regardless of when the report is actually filed. In addition, the SEC has indicated that an issuer is required to disclose any activities that occurred during the period covered by the report, regardless of whether the activities took place before the ITRSHRA was signed into law. Issuers filing an annual report on Form 10-K, 20-F or 40-F for the year ended December 31, 2012 are thus required to disclose all reportable activities they or any of their affiliates engaged in from January 1, 2012 through December 31, 2012.

Please do not hesitate to contact us with any questions.

January 15, 2013