

Securities Regulation and Compliance Alert

October 5, 2012

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or your regular Skadden contact.

Brian V. Breheny

202.371.7180

brian.breheny@skadden.com

Marc S. Gerber

202.371.7233

marc.gerber@skadden.com

Samuel Scrimshaw

202.371.7336

samuel.scrimshaw@skadden.com

New Requirements for SEC Reporting Companies to Disclose Certain Iran-Related Activities and Transactions

On August 10, 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITR Act) into law. Section 219 of the ITR Act (Section 219) requires companies that file public reports with the U.S. Securities and Exchange Commission (SEC) to disclose certain additional information in their annual and quarterly reports, including whether they or any of their affiliates knowingly have engaged in certain activities that are sanctionable pursuant to the Iran Sanctions Act of 1996 (1996 Act) or the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (2010 Act) or knowingly have engaged in any unlicensed transaction with the government of Iran or with persons designated for sanctions pursuant to certain executive orders (a group that includes most Iranian banks and many large commercial enterprises).

The provisions of Section 219 do not require SEC rulemaking to become effective. As a result, the disclosure requirements of Section 219 will take effect with respect to periodic reports on Forms 10-K, 10-Q, 20-F and 40-F that are required to be filed with the SEC on or after **February 6, 2013**.

New disclosure requirements. Section 219 requires an SEC reporting company to disclose whether, during the period covered by a periodic report, it or its affiliates knowingly engaged in:

- any activities sanctionable under the 1996 Act or the 2010 Act, including:
 - the transfer of technology or services to Iran that are likely to be used for human rights abuses against the Iranian people, including technology or services used to restrict the free flow of unbiased information in Iran or to disrupt, monitor or restrict the speech of the people of Iran;
 - transactions relating to Iran's petroleum industry;
 - transactions facilitating Iran's procurement or proliferation of conventional weapons or weapons of mass destruction; and
 - certain financial transactions with Iranian financial institutions and other Iranian entities.

- transactions with persons whose assets are frozen pursuant to executive orders dealing with terrorism or the proliferation of weapons of mass destruction; or
- transactions with the government of Iran without the specific authorization of a federal department or agency.

For the purposes of the ITR Act, the term “knowingly” with respect to conduct, a circumstance or a result means that a person has actual knowledge or should have known of the conduct, the circumstance or the result.

Companies that trigger the disclosure provisions must report the following information:

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

Notice requirements. If a company reports that it or any of its affiliates has knowingly engaged in any activity described above, the company also must file with the SEC concurrent with its periodic report a separate notice that the disclosure of such activity has been included in the periodic report and identifying the company and the detailed information described above. The SEC is required to transmit these separate notices to the president of the United States and to certain congressional committees. The SEC is required to make these separate notices publicly available on its website.

Upon receiving a notice of conduct that is reportable under this provision of the ITR Act, the president is required to initiate an investigation. Within 180 days of the initiation of such an investigation, the president is required to make a determination with respect to whether sanctions should be imposed against the company or the affiliate of the company.

Recommended actions. Companies should review their activities and the activities of their affiliates to determine whether they have engaged in any specified activities or transactions involving Iran and whether disclosures will be required under the new requirements. Obtaining the information necessary to make these determinations may prove difficult, especially from non-controlled affiliates (*i.e.*, entities that are “affiliates” for securities law purposes, such as parent companies or entities under common control, but as to where the company does not have the actual power to cause cooperation) and issues may exist even in obtaining information from controlled affiliates, for example, if there are third-party investors in such affiliates to which fiduciary or contractual duties may be owed. Companies that are required to provide the new disclosures will need to move quickly to ensure that they are ready to provide the new disclosures within the timetable for initial reporting. Companies also should be mindful of the fact that the conduct described in this part of the ITR Act may violate other U.S. laws — specifically the U.S. economic sanctions with respect to Iran, which include criminal penalties — and also may meet the criteria for the imposition of broader economic sanctions against the company.

Companies also should confirm that their internal detection and reporting systems specifically cover the targeted information to ensure that any Iran-related conduct occurring in the future is identified and properly disclosed in the company’s periodic reports. These internal

detection and reporting systems will need to be able to identify activities and transactions both at the parent company level and for company affiliates. Companies also should review their compliance and internal reporting systems to ensure they properly cover the other provisions of the ITR Act.

* * * * *

For additional information about the ITR Act, please see the Skadden publication found [here](#).