International Trade & Regulatory ADVISORY

December 20, 2012

SEC Clarifies Reporting Requirements for Certain Activities Relating to Iran and Specially Designated Nationals; DoD, GSA and NASA Issue Interim Procurement Rule to Implement Iranian Sanctions

On August 10, 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "Act"), which includes a wide array of amendments to the Iran Sanctions Act of 1996 (ISA), the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA), and other measures designed to prohibit transactions with Iran and persons or entities listed on the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (SDNs). As discussed in the comprehensive client advisory that Alston & Bird issued August 1, 2012,[1] the Act contains many problematic provisions.

One of the most troubling new requirements is contained in Section 219 of the Act, which was the subject of Alston & Bird's separate November 19, 2012, client advisory.[2] This provision requires all companies whose stock (including American Depository Receipts (ADRs)) is traded on U.S. stock exchanges to disclose whether they or their "affiliates" have "knowingly" engaged in certain activities involving Iran or SDNs identified in connection with terrorism or the proliferation of weapons of mass destruction. Section 219 also mandates the public disclosure of any such information by the U.S. Securities and Exchange Commission (SEC) and requires that the President initiate an investigation into whether any such disclosed activities are sanctionable. This provision is scheduled to take effect on **February 6, 2013**, meaning that all annual or quarterly reports filed with the SEC on or after that date are subject to Section 219's reporting requirements.

On December 4, 2012, the SEC amended its Compliance and Disclosure Interpretations (C&DI) to provide guidance on compliance with the Section 219 requirements.[3] Overall, the guidance aims for strict compliance. Among other things, the guidance:

- Confirmed that "affiliate" for purposes of Section 219 is governed by the Exchange Act Rule 12b-2 definition, which states that "[a]n 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly,

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[1] Available at http://www.alston.com/advisories/international-trade-and-regulatory-advisory-new-sanctions-legislation.

[2] Available at http://www.alston.com/advisories/international-trade-and-regulatory-advisory-congress-finalizes-further-iran-sanctions-legislation.

[3] The C&DI for Section 219 is available at http://www.sec.gov/divisions/corpfin/guidance/exchangeactsections-interps.htm#147.01.

or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." This definition has been further and separately interpreted to include, *inter alia*, directors, executive officers and controlling shareholders if the shareholder has the power to direct management and policies of the issuer.

- Confirmed that the term "knowingly" includes *"should have known."*
- Instructed that issuers may not avoid disclosure by filing early reports prior to February 6, 2013.
- Clarified that reports must include all activities conducted during the reporting period, even if they occurred prior to enactment of the Act. For example, an issuer that files an annual report for the fiscal year ending December 31, 2012, is required to disclose activities that took place between January 1, 2012, and December 31, 2012.
- Explained that the exception in Section 219 for otherwise prohibited transactions with the Government of Iran subject to the "specific authorization of a Federal department or agency" includes both general and specific licenses from the Office of Foreign Assets Control ("provided all conditions of the applicable license are strictly observed"), but not authorizations by any foreign government agency.
- Confirmed that if an issuer and its affiliates have not engaged in any covered activities during the relevant time period, the issuer does not need to include a statement to this effect in its periodic report.

Separately, the Department of Defense (DoD), General Services Administration (GSA) and National Aeronautics and Space Administration (NASA) have also taken action in response to the Iran Threat Reduction and Syria Human Rights Act of 2012. On December 10, 2012, DoD, GSA and NASA issued an interim rule amending the Federal Acquisition Regulation (FAR) to immediately require certain certifications in order to implement the Act's expansion of sanctions relating to the energy sector of Iran and Iran's Revolutionary Guard Corps. The rule requires that each prospective government contractor certify that it, and any person owned and controlled by the prospective contractor, does not knowingly engage in one or more of several types of transactions that involve Iran, including:

- The export of sensitive technology to the Government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the Government of Iran.
- Activities described in Section 5 of the Iran Sanctions Act, which relate to the energy sector of Iran and development by Iran of weapons of mass destruction and other military capabilities.
- Significant transactions with Iran's Revolutionary Guard Corps or any of its officials, agents or affiliates. This includes any transaction that exceeds $3,000.

The rule also revises various provisions of the FAR relating to certain remedies, exceptions and waiver requirements. Interested parties should submit written comments to the Regulatory Secretariat on or before February 8, 2013, to be considered in the formulation of a final rule.

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Please direct any questions concerning Section 219 or the above interim rule to Thomas E. Crocker or Chad A. Thompson of Alston & Bird's International Trade & Regulatory Group at thomas.crocker@alston.com (202-239-3318) and chad.thompson@alston.com (202-239-3927), respectively.

ALSTON+BIRD LLP

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If you have any questions about this advisory or would like additional information, please contact your Alston & Bird attorney or any one of the following:

Thomas E. Crocker
202.239.3318
thomas.crocker@alston.com

Kenneth G. Weigel
202.239.3431
ken.weigel@alston.com

Jon M. Fee
202.239.3387
jon.fee@alston.com

Jason M. Waite
202.239.3455
jason.waite@alston.com

Elizabeth M. Hein
202.239.3478
elizabeth.hein@alston.com

Jeffrey Schwartz
202.239.3486
jeff.schwartz@alston.com

BJ Shannon
202.239.3344
bj.shannon@alston.com

Diego Marquez
202.239.3003
diego.marquez@alston.com

Eric A. Shimp
202.239.3409
eric.shimp@alston.com

Chad Thompson
202.239.3927
chad.thompson@alston.com

Christopher W. Lucas
202.239.3490
chris.lucas@alston.com

Chunlian Yang
202.239.3490
lian.yang@alston.com

ATLANTA
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404.881.7000

BRUSSELS
Level 20 Bastion Tower
Place du Champ de Mars
B-1050 Brussels, BE
Phone: +32 2 550 3700

CHARLOTTE
Bank of America Plaza
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
704.444.1000

DALLAS
2828 N. Harwood St.
Suite 1800
Dallas, TX 75201
214.922.3400

LOS ANGELES
333 South Hope Street
16th Floor
Los Angeles, CA 90071-3004
213.576.1000

NEW YORK
90 Park Avenue
New York, NY 10016-1387
212.210.9400

RESEARCH TRIANGLE
4721 Emperor Boulevard
Suite 400
Durham, NC 27703-8580
919.862.2200

SILICON VALLEY
275 Middlefield Road
Suite 150
Menlo Park, CA 94025-4004
650.838.2000

VENTURA COUNTY
2801 Townsgate Road
Suite 215
Westlake Village, CA 91361
805.497.9474

WASHINGTON, D.C.
The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404
202.239.3300

www.alston.com