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Iran Notices Update: SEC-Registered Issuers Continue to Adapt to Their New Normal

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It has been over eight months since SEC-registered issuers began making mandatory disclosures of business activities in or with Iran. During that period, issuers have filed over 400 Iran Notices with the SEC, including numerous repeat filers. Being two full reporting periods removed from enactment of this landmark reporting requirement, it seems that the time is now ripe to assess how SEC-registered issuers are adjusting to their new reporting obligations.

Noteworthy Trends

- The collective disclosures reveal a general disclosure format.
- Reporting issuers continue to recognize that the SEC interprets both “affiliate” and “control” broadly.
- Private equity firms and sponsors are triggering intricate and overlapping reporting trees.
- Reporting issuers are revamping their internal controls to accommodate their new reporting obligations.
- Reporting issuers continue to make disclosures of *de minimis* conduct.
- Some issuers are reading Section 219 as having a duty to update.
- Disclosures vary drastically in scope and detail across industries.
- To date, the government has not announced the results of any of the mandatory investigations triggered by Section 219 disclosures.

Background on Section 219 Disclosures

As we have previously discussed, Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”) (codified as Section 13(r) of the Securities Exchange Act) came

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into effect on February 6, 2013. Section 219 requires SEC-registered issuers to disclose in their annual or quarterly reports filed under Section 13 of the Securities Exchange Act of 1934, among other things, any "transaction or dealing" by the issuer or its affiliates with: (i) the "Government of Iran" as defined by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"); (ii) specially designated or blocked persons ("SDNs") designated by OFAC for supporting global terrorism ("SDGT"); or (iii) SDNs designated by OFAC for supporting weapons of mass destruction proliferation activities ("NPWMD").[1] The purpose of this publication is not to catalogue the more than 400 Iran Notices that have been filed since enactment of the reporting requirement, but rather to identify commonalities among reporting issuers in their approach to various concerns and issues common to SEC-registered issuers. With this purpose in mind, we attempt to make sense of the steady stream of disclosures.

General Format of a Section 219 Disclosure

As an initial observation, there is an emerging consensus as to the structure and content of a Section 219 disclosure. Almost all disclosures begin with a generic discussion of the requirements of Section 219. The common language is something to the effect of: "Pursuant to Section 219 of the Iran Threat Reduction and Syrian Human Rights Act of 2012, which added Section 13(r) to the Securities Exchange Act of 1934, as amended, an issuer is required to disclose in its annual or quarterly report whether it or its affiliates knowingly engaged in certain activities, transactions, or dealings relating to Iran or specially designated nationals pursuant to various Executive Orders." Depending on the nature of the conduct to be disclosed or the general risk profile of the industry in which the reporting issuer operates, the disclosure may contain additional information relating to the present climate of sanctions enforcement or the comprehensive nature of US (and in certain disclosures, EU) sanctions targeting Iran and to a lesser extent, Syria, Cuba, and Sudan. We note that disclosures from reporting issuers involved in the financial, oil and gas, and shipping sectors commonly include this additional information.

After this introductory paragraph, most disclosures provide a general disclaimer noting that, to the reporting issuer's knowledge, neither it, its subsidiaries, nor its affiliates have engaged in any conduct needing to be disclosed under Section 13(r) of the Securities

[1] For additional information on Section 219's disclosure requirements, see our previous Client Publications, "Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 – Additional Reporting Requirements for US Domestic and Foreign Issuers Registered with the SEC" (November 8, 2012) (which can be found here), "SEC Releases CD&Is for Iran Sanctions Disclosures Required Under Exchange Act Section 13(r)" (December 6, 2012) (which can be found here), "Flash Report: Section 219 Disclosures Under the Iran Threat Reduction and Syria Human Rights Act of 2012" (February 14, 2013) (which can be found here), and "What's Going On – Over a Month of Section 219 Disclosures Under the Iran Threat Reduction and Syria Human Rights Act of 2012" (March 20, 2013) (which can be found here).

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Exchange Act "except for the following." The reporting issuer then proceeds to disclose the relevant Iranian or SDN-related activity. The level of detail given relating to the disclosed activity varies dramatically. Indeed, the ITRA only requires that the reporting issuer disclose the "nature of the activity"; thus the reporting issuer is given broad discretion to shape its disclosure in the best possible light. If factually accurate, a reporting issuer will also mention that the activity was lawful or not sanctionable (especially if it was licensed by OFAC) during the time that it was committed or at least that the reporting issuer believes that to be the case.

As to the "gross revenues and net profits, if any, attributable to the activity," there is no clear developing consensus regarding the extent to which, how, or in what form this information must be disclosed. Several reporting issuers, such as Sony Corp (a Japanese company) and Polymet Mining Corp (a Canadian company), simply state that they do not customarily allocate net profit on a country-by-country or activity-by-activity basis other than as set forth in their consolidated financial statements. As is the case with Polymet, a few reporting issuers will also note that "[i]t is not possible to determine accurately the precise net profit attributable to [such] transactions." Other reporting issuers disclose this information using generalizations, such as that the Iran-related activity was "negligible relevant to overall profits" (Abbey National), that "[r]evenues and profits from these activities are not calculated but would be negligible" (Credit Suisse), or that "[t]here was no measurable revenue or profit generated by this activity" (RBS Holdings). Still other reporting issuers took great efforts to report revenues and profits at the most granular level, reporting on the gross profit or net revenue received from each disclosed Iranian-related activity. For example, Tata Communications Limited (an Indian company) disclosed that one of its affiliates received US $41 and US $65 from supplier of services agreements it had with Telecommunications Company of Iran, an instrumentality of the Iranian government.[2]

Lastly, the reporting issuer will conclude its disclosure by stating, as required under Section 219, whether it intends to terminate or continue the disclosed activity. If the reporting issuer intends to continue this conduct, it usually provides a short and simple justification for doing so, such as that provided by Century Aluminum Co. (a US company), which noted that "[i]n accordance with applicable US and foreign sanctions laws, [its] non-US Stockholder Affiliates expect to continue to engage in similar activities in the future" or EDAP TMS S.A. (a French medical supply company), which merely stated that "[w]e intend to continue to honor previous warranty commitments and will provide the necessary parts and disposables to allow patients to

[2] A corollary issue, relating to the gross revenues and net profits of the reportable activity, is in what currency this information will be reported if engaged in by a non-US SEC-registered issuer. The emerging consensus is to provide the values in both the national currency of the reporting issuer and in US dollars.

be treated with our devices." However, if the reporting issuer has terminated or intends to terminate such activity, it will most likely provide specific dates regarding terminated activity.

Issuers Note the SEC's Broad Interpretation of Both "Affiliate" and "Control"

Reporting issuers typically note the clear distinction between their subsidiaries and their affiliates. Where the information involves that of an "affiliate" based on the SEC's definition of the term, almost all issuers are quick to point out that this term is interpreted broadly. For example, Vanguard Health Systems, Inc. (a US company) noted that "the SEC defines the term 'affiliate' broadly, it includes any entity controlled by us as well as any person or entity that controls us or is under common control with us." Further, several issuers, including Vanguard and Accellent Inc. (a US company), noted that the term "control" is also interpreted broadly. Specifically, Accellent stated that "[b]ecause the SEC defines the term 'affiliate' broadly, it includes any entity controlled by us as well as any person or entity that controls us or is under common control with us ('control' is also construed broadly by the SEC)." Based on these broad interpretations, Accellent disclosed that its sponsor, Kohlberg Kravis Roberts & Co. L.P., had included information in its annual report regarding the activities of its portfolio companies. Similarly, US Foods, Inc. (a US company) noted that because the SEC defined the term control broadly, it was disclosing information obtained from one of its affiliates that an indirect subsidiary of an affiliate of an affiliate of US Foods had maintained bank accounts in a French branch of Bank Melli with the approval of French financial regulators applying EU law. US Foods' disclosure exemplifies some of the extremely attenuated affiliate disclosures that have been made.

In addition, if the disclosure relates to a wholly-unrelated entity, except for the SEC's expansive definition of affiliate, a reporting issuer is more likely to attach the disclosure as an Exhibit 99.1 and include a brief statement noting the disclosure is made in said exhibit. For example, BRE Select Hotels Corp. (a US company) simply noted that, pursuant to Section 219 of the ITRA, it "hereby incorporates by reference herein Exhibit 99.1[,] . . . which includes disclosures publicly filed and/or provided to the Blackstone Group L.P., an affiliate of [its] Sponsor."

The Domino Effect of Affiliate Disclosure Trees

The Accellent and BRE Select Hotels disclosures referenced above also demonstrate the most notable consequence of such a broad definition of "affiliate" and "control," *i.e.*, intricate affiliate relationships that trigger a domino effect of Section 219 disclosures. Because the definition of affiliate includes any person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the reporting issuer, many SEC-registered issuers report on activities of a possible affiliate without conceding that the party with Iranian-related activity is in fact an affiliate. Indeed, in Accellent's disclosure it stated that it had "no involvement in or control over such activities, and [it had] not independently verified or participated in the preparation of the disclosure described in such filing." Nevertheless, Accellent ultimately disclosed that one of its affiliates invested in two non-US entities: one "sold television content to the Islamic Republic of Iran Broadcasting" and the other "shipped a cancer drug" to an entity in Iran.

As another example, the disclosure made by LPL Financial (a US company) exemplifies the intricacies associated with such reporting trees. LPL Financial disclosed that a minority-owned portfolio company of Hellman & Friedman, which holds a "minority interest" in LPL Financial, also own a minority interest in another company, a French engineering company, that had entered into a license agreement in December 2002 with Iran Shipbuilding & Offshore Industries Complex Co. ("ISOICO"), an instrumentality of the Iranian government. Although no performance or services were ever made or provided under this license agreement (nor did the French company ever receive any revenues under this agreement), the French company gave notice of termination of this agreement (effective December 23, 2013) to ISOICO.

Thus, LPL Financial disclosed the termination of a license agreement with an Iranian entity that was made by an affiliate of its affiliate.

The largest affiliate reporting tree involves affiliates of the Blackstone Group L.P. , a US-based multinational private equity and investment management firm. Indeed, twenty-three SEC-registered issuers are responsible for at least twenty-seven Iran Notices concerning Blackstone Group affiliates.

Although the Blackstone Group is the largest affiliate reporting tree, there are several other notable reporting trees, including, among others, Warburg Pincus LLC affiliates, LyondellBassell Industries NV affiliates, UBS affiliates, The Carlyle Group affiliates, and Hellman & Friedman LLC affiliates.[3] Generally, in these disclosure trees when one affiliate reports, all additional reporting issuers subsequently report (or revise their initial reports to include) the identical disclosure prefaced with a disclaimer indicating that the reporting issuer (1) does not control the entity engaged in the sanctionable activity, (2) did not derive any benefit from the sanctionable activity, and (3) did not independently verify nor participate in the preparation of the disclosure.

A Duty to Update?

Although the ITRA does not expressly require a duty to update, many reporting issuers have updated their Section 219 disclosures during the relevant reporting period. For example, Royal Dutch Shell disclosed that after further review in the second quarter 2013, it identified certain retail credit card transactions with the Iranian embassy in Malaysia that were not included in Shell's Form 20-F. Shell then disclosed that the underlying contracts for these retail-services transactions, which generated a net profit of US $556, were terminated effective July 18, 2013.

In addition, either explicitly (*e.g.*, Accellent noting that "[t]o the extent KKR makes additional disclosure under Section 13(r), we will provide updates in our subsequent filings.") or implicitly (see Blackstone affiliates), some issuers have taken it upon themselves to update the SEC as it relates to their affiliates disclosing reportable activity after they had already submitted their own Iran Notice or regular report to the SEC. For example, Central Pacific Financial Corp. (a US company) noted that following its initial filing, it was advised by its affiliate, The Carlyle Group, that it was disclosing activities related to Applus Servicios Technologies SLU, a European company in which the Carlyle Group's private equity funds had invested, which had provided certain services to an agency of the Government of Iran. Central Pacific subsequently filed a 10-K/A that included the additional disclosure. Similarly, BBVA, a foreign bank, which filed its 20-F in April, updated its Section 219 Disclosure in July noting that "[a]fter further review, [it had] identified that an affiliate maintained an individual pension contract in the amount of approximately €5,000 for one individual designated by the US under Executive Order 13382." In another example, Sabine Pass LNG LP, a Blackstone affiliate, initially disclosed various activities relating to Iran-related activities of Blackstone affiliates. The following week, Sabine filed an amended 10-Q to disclose "recently provided information." Sabine continued that "[o]ther than this additional compliance disclosure . . . no part of the Original Filing [wa]s amended hereby, and this amendment d[id] not reflect events that have occurred after the Original Filing date."

[3] The Blackstone Group affiliates include: Apria Healthcare Group Inc., BRE Select Hotels Corp, Capital Trust Inc., Catalent Pharma Solutions, Inc., Cheniere Energy Inc., Cheniere Energy Partners, DJO Finance LLC, Freescale Semiconductor, Ltd, HealthMarkets, Inc., Kosmos Energy, Ltd, Michaels Stores Inc., Nielsen CO B.V., Nielsen Holdings N.V., Orbitz Worldwide, Inc., PBF Energy Inc., Pinnacle Foods Inc., Polymer Group Inc., Sabine Pass LNG, L.P., Seaworld Entertainment, Inc., Sungard Capital Corp., Sungard Data Systems Inc., Travelport Ltd, and Vanguard Health Systems Inc.

Impact of OGSR Inquiries

The SEC's Office of Global Security Risks ("OGSR")was created in 2004, at the direction of Congress, with a mission to monitor and then seek disclosure from companies that appear to be doing business with state sponsors of terrorism. The OGSR's website notes that OGSR works closely with the Division of Corporation Finance to "monitor whether the documents public companies file with the SEC include disclosure of material information regarding global security risk-related issues," including what it considers to be "asymmetrical material risks," *i.e.*, whereby financially immaterial business dealings nevertheless pose material risks to the issuer due to the possibility that such dealings could result in public or government opposition, consumer boycotts, litigation, or other actions that could themselves have a material adverse impact.

To this end, the intersection of the OGSR and Section 219 disclosures are critical for at least three reasons. *First*, as apparent from the correspondence between one reporting issuer and the OGSR, the OGSR is looking at *pre*-ITRA activities and past inquiries and its prior correspondence with issuers to make sure they are complying with their Section 219 disclosure obligations. For example, on November 20, 2012, the OGSR sent an initial inquiry letter to Terex Corporation (a US company) inquiring into contacts it disclosed with countries in its 2011 Form 10-K. In that letter, OGSR noted that in a previous letter it received from Terex dated July 17, 2009, Terex stated that its foreign subsidiaries sold foreign-manufactured equipment to Iran, Sudan, and Syria. OGSR, however, noted that this information was not disclosed in Terex's 10-K. This November inquiry letter ultimately lead to three subsequent letters from Terex to OGSR, in which the company was obliged to answer pointed questions regarding its business dealings in sanctioned countries. In its last letter dated February 28, 2013 (same day that it submitted its Iran Notice), Terex informed OGSR that it was writing this letter for the purpose of "supplement[ing] the two prior responses provided . . . to the Commission." Terex noted that in connection with preparing the submission of its annual report and meeting its Section 219 disclosure requirements, "the Company has determined that its prior letters to the Commission were not complete." Terex then proceeded to disclosure Iranian related conduct ranging from 2009-2012. Based on the correspondence between Terex and OGSR, SEC-registered issuers should also be aware that conduct previously disclosed in correspondence with the OGSR may need to be addressed in its Section 219 disclosures to the extent that any of that previous activity is traceable to the relevant reporting period.

Second, OGSR inquiries based on a reporting issuer's limited disclosure of information in its annual or regular report may also trigger a duty to amend. For example, on September 11, 2013, Navios Maritime Holdings Inc. (a Marshall Islands company) filed an amendment to its 20-F originally filed on April 24, 2013 adding a subsection "Exchange Act Section 13(r) Activities." Navios then proceeded to disclose that its prior 20-F was incomplete because three vessels owned by subsidiaries or affiliates and chartered to third parties made port calls to Iran during 2012 for a combined length of approximately fifteen days for the transportation of crude oil from Iran to China and Taiwan. Navios further disclosed that the shipper of the cargo in all cases was National Iranian Oil Company ("NIOC"). Correspondence letters between the OGSR and Navios reveals that Navios did not initially disclose this information in its SEC filings but agreed to amend its filings when OGSR prompted it do so. In its amended 20-F, Navios noted that, as a non-US person, although NIOC was an entity whose name appeared on the SDN List at the time of the port calls, the purchase and lifting of NIOC crude oil did not constitute prohibited activity by Navios's non-US affiliates. Further, Navios noted that the transportation of the crude oil to China did not constitute sanctionable activity under US sanctions targeting Iran. Nevertheless, Navios stated that its vessels have not performed any voyages involving calls to Iran since May 2012.

Third, other companies' correspondence (published in EDGAR) with the OGSR may provide additional insight into the types of information that should be disclosed in an issuer's SEC filings to avoid an inquiry letter from the OGSR. This is especially true because OGSR inquiry letters force companies to respond to precise and searching questions rather than to exercise their own judgment as to the scope and detail of disclosures and, in doing so, may force them to disclose additional sensitive information. Thus, it is in the reporting issuer's best interest to provide sufficient information in its Section 219 filing to avoid receiving a comment letter from OGSR.

Disclosures Provide Insight into Companies' Internal Controls

Section 219 disclosures reveal that several reporting issuers have implemented extensive internal controls to support their reporting obligations. Pursuant to their disclosure obligations, reporting issuers generally have noted that they had reviewed their compliance practices and those of their subsidiaries regarding exports and sanctions regulations administered by OFAC. From this internal review, the reportable activity typically related to that of their affiliates. For example, Web.com (a US Company) disclosed that it determined after such a compliance review that one of its recently acquired affiliates, NetSol, had provided domain name registration services to an agency of the Government of Iran and two entities included on OFAC's SDN List. NetSol had sold domain name registration services to the three SDNs between 1999 and 2002, well before NetSol was acquired by Web.com Group in 2011.

Similarly, Esterline Technologies Corp. (a US company) disclosed on August 30, 2013 that one of its Canadian subsidiaries had permitted a newly-designated SDN to download a software update before the company's screening controls had caught it. In March 2013, the Canadian affiliate sold a one-year subscription to a navigation database that is used in aircraft flight-management systems at a price of US $8,814, to Ukrainian-Mediterranean Airlines. Subsequently, on May 31, 2013, OFAC designated UM Air an SDGT. On June 19, 2013, the Canadian affiliate automatically delivered an email notification update to UM Air. Within four days thereafter, the Canadian subsidiary ran its periodic prohibited party screening of its customer base and discovered that UM Air had been designated as a global terrorist. The affiliate promptly stopped UM Air from downloading further updates to its navigation database and ceased any further transactions with UM Air.

Further, reporting issuers' heightened internal controls (and extensive internal inquiries) are also implicit from the *de minimis* values (when compared to the reporting issuers' aggregate revenue and net profits) and detailed descriptions of their Iranian or SDN-related business activities. Below are some examples of the *de minimis* values of far-ranging disclosable activity being reported by SEC-registered issuers:

- Citibank (a US company) disclosed that its affiliate in Bahrain processed domestic checks and ATM transactions for an SDN bank. The domestic check transactions resulted in no revenues or net income to Citibank, while the ATM transactions resulted in approximately US $8.00 in gross revenues and approximately US $4.00 in net income to Citibank.

- Costco (a US company) disclosed that it processed transactions for four cardholders from Iranian embassies. Gross revenue from these transactions was approximately US $5,178 from the Iranian embassy cardholders and profit of less than US $160. It also processed a transaction for a cardholder affiliated with Iran Air, but no revenue or profit was attributable to that transaction.

- Dell Inc. (a US company) disclosed that one of its recently acquired UK affiliates, Quest Software, Inc. had a maintenance services software renewal transaction with Melli Bank that was valued at approximately US $ 169.90.

- Telecom Argentina SA (an Argentine company) disclosed that it received approximately US $11 from its roaming agreements and total charges paid, under its Iranian-related roaming agreements, were US $369.
- Hyatt Hotels Corp disclosed that several individuals stayed at the Park Hyatt Hamburg, a property leased by a foreign subsidiary of the Registrant for a total of thirty-three nights pursuant to a pre-negotiated standard preferred rate agreement with Europaeisch-Iranische Handelsbank AG, an SDN. The aggregate revenues received by the hotel for such stays were approximately US $9,300 with an aggregate net profit of approximately US $2,600.
- Ecolab Inc. (a US company) disclosed that one of its recent acquisitions (December 2011) had foreign subsidiaries that engaged in sales in Iran. Although Ecolab instructed the entity to cease all business in Iran, a payment from an Iranian government affiliate was made during this winding-down process. The payment was for approximately US $14,600 in regards to a 2011 sale of Nalco's water processing products (pre-tax net profit was estimated to be US $2,900-$4,400).
- Exxon Mobil Corporation (a US company) disclosed that its majority-owned Canadian affiliate, Imperial Oil Limited, made several fleet sales of motor fuel with an aggregate total sales price of approximately 11,000 Canadian dollars (approximately US $10,603) to the Iranian Embassy in Canada with net profits being approximately 500 Canadian dollars (approximately US $482). Imperial Oil Limited also made this same disclosure in its SEC filing.

US-Based SEC-Registered Issuers Are Taking Additional Remedial Measures

The collective body of Section 219 disclosures also reveals that a number of reporting issuers (mainly US companies) have taken additional remedial measures as it relates to their discovery of continued business dealings or transactions in Iran or with SDNs post-enactment of the ITRA. For example, Esterline, discussed above, noted that its Canadian subsidiary had enhanced its customer screening practices to more timely identify and address such issues in the future in light of information acquired during the disclosure process.

Generally speaking, reporting issuers do not provide specific details of the remedial measures taken but rather acknowledge that such actions have been taken. Parsing the Section 219 disclosures, it seems that the remedial measures taken by reporting issuers have included additional screening procedures or improving their compliance measures across their subsidiaries to flag customers located in Iran or included on OFAC's SDN list to prevent any future violations of OFAC sanctions regulations. Depending on the severity of the disclosure, some reporting issuers have also disclosed that they have launched full-scale internal investigations that have culminated in the reporting issuer making a voluntary disclosure to OFAC. Below, we discuss in further detail, disclosures made by three well-known US companies.

Federal Express

FedEx began its Section 219 disclosure by touting its current sanctions controls. FedEx noted that it has comprehensive export controls and economic sanctions programs designed to ensure compliance with United States and other applicable export laws, rules, and regulations. FedEx reported, however, that it had recently identified shipments to Iran or involving an SDN as part of its ongoing efforts to monitor the effectiveness of its international trade compliance programs. Specifically, a Dubai-based package consolidator tendered approximately 32,000 shipments to FedEx Express during 2013 for handling, including 16 separate shipments for delivery to various foreign branches of Mir Business and Bank Melli, both of which are SDNs. According to FedEx, each of these shipments contained only documents, and their aggregate revenue was a mere $212 with no associated profit. FedEx also noted that this consolidator tendered six separate shipments to FedEx for delivery to Iranian embassies and a consulate in Germany, Malaysia, Australia, Thailand, and Argentina. These additional shipments contained documents, books, magazines, CDs, toys, nuts, and candy. The aggregate revenue for these shipments was $218 and again FedEx derived no profit from these shipments. FedEx stated that it has since implemented enhanced controls, procedures, and other measures in connection with its international trade compliance programs that are designed to prevent these activities from recurring. It did not, however, detail these new measures beyond noting that it had terminated its contract with the Dubai consolidator and otherwise limited or restricted certain services in Dubai. Lastly, FedEx noted that it made an initial voluntary disclosure to OFAC.

Oracle

Similarly, Oracle began its Section 219 disclosure by noting that it has a robust economic sanctions and export controls program designed to ensure compliance with US and other applicable export laws and regulations by Oracle and its resellers, distributors, and customers. As part of its ongoing efforts to monitor and review transactions to ensure the effectiveness of its trade compliance program, however, Oracle discovered a *single* order placed in February 2013 for $1,541.05 for one of its database software products by a non-US third party reseller through a non-US third party partner on behalf of an entity that is an overseas branch location (outside of Iran) of a financial institution owned or controlled by the Government of Iran that has been designated an SDN. According to Oracle, its software was included as part of an overall banking software solution being licensed from the non-US reseller to this entity, and the Oracle software constituted a very small component—approximately 2% of the cost—of the overall solution. To its knowledge, no employees of Oracle had any contact with this entity during fiscal 2013. Nevertheless, upon learning of this order and verifying the identity of this entity, Oracle deactivated this entity in its ordering systems and terminated all business activities involving the entity. Oracle also noted that it has since implemented additional measures designed to prevent such activity from recurring. Like FedEx, Oracle made a voluntary disclosure of this matter to OFAC.

Web.com Group

As briefly discussed above, Web.com noted that it had conducted a review of its compliance practices and those of its subsidiaries in regards to exports and sanctions regulations administered by OFAC. During the course of that review, Web.com Group determined that NetSol, an entity that Web.com Group acquired in 2011, provided domain name registration services to an agency of the Government of Iran and two entities included on the SDN List that had not been authorized by a US federal department or agency. As previously noted, these entities made upfront pre-payments to NetSol of $134.91 each to renew their respective domains and to allow such domains to remain active for nine-year terms. NetSol received the upfront pre-payments in 2007 and years prior, and therefore had not received any payments for any of the three domains in the last five years. Web.com Group, however, recognized a total of $74.21 in gross revenue from the above three domains during the second quarter of 2013, with net profits of substantially less than that amount. Due to its perceived internal control failure, NetSol locked and de-provisioned the above three domains on May 14, 2013 and as a result, the websites for the domain names were no longer accessible to the public. In addition, it implemented a transfer lock on the domains, meaning that the domains could not be transferred to another domain name registrar. Web.com also stated that it was in the process of implementing additional screening procedures across its subsidiaries to flag customers located in Iran or included on OFAC's SDN list to prevent future violations of OFAC sanctions regulations. Lastly, Web.com reported that it had filed a voluntary disclosure with OFAC.

Non-US Reporting Issuers

Unlike US companies, non-US SEC-registered issuers are not prohibited by the ITRA from conducting business in Iran. Indeed, a significant number of non-US issuers (43 out of 100 to date) expressly stated their intent to continue conducting business with Iran (and presumably if relevant with a person (individual or entity) listed on the SDN List).[4] To that end, several non-US reporting issuers assert that they or their affiliates currently comply with *applicable* laws and intend to comply with said laws in the future. Assuming that their Iran-related business does, in fact, comply with "applicable" laws and does not come within the scope of US prohibitions, non-US reporting issuers have a different risk calculus from US issuers. In those situations, the primary risk to non-US reporting issuers derives from investors' reluctance to continue to invest in a company with substantial connections or business dealings in Iran. Accordingly, non-US reporting issuers often attempt to take the sting out of the disclosure by being quite descriptive concerning their relationships with any parties in Iran and the extent to which those parties, to the non-US reporting issuer's knowledge, have any association with the Government of Iran.

Moreover, even companies that assert they are not obliged to follow US sanctions are often careful to disclose how violations of applicable US laws could have material adverse effects on business, reputation, and sales and to assure investors they are sensitive to that risk. As a result, such companies incorporate language akin to that used in describing risk factors. For example, Sinopec Shanghai Petrochemical Co. Ltd, a Chinese energy company, noted that Sinopec Corp., its current controlling shareholder, and Sinopec Group, the controlling shareholder of Sinopec Corp., have engaged in operations in or purchasing crude oil sourced from Iran and may continue to do so in the future. It noted it had no control over the activities of Sinopec Group or Sinopec Corp. in connection with any activities that they may conduct in Iran. Further, Sinopec Shanghai warned that due to these activities it could be subject to OFAC sanctions, including being prohibited from engaging in business activities in the United States or with US individuals.

While these disclosures are generally detailed, they are also saturated with qualifiers as to the non-US reporting issuer's actual knowledge of end-users in Iran, *i.e.*, whether they or their affiliate are working with a government affiliate or entity owned or controlled by the Iranian government. For example, Unilever asserts, "to the best of our knowledge we did not generate any revenues or net profits from transactions with the Government of Iran or affiliated entities" and that no products were sold directly to the Government of Iran or affiliated parties, which leaves some room for the possibility that a government-affiliated entity received products. Similarly, BBVA Banco Frances states that it did not knowingly engage in transactions with Iran.

At the other end of the spectrum, occasionally, companies go to extremes to disclose the possibility that they are in relations with the Government of Iran. For example, GlaxoSmithKline sends certain pharmaceuticals and vaccine products and other healthcare products to Iran through sales by non-US entities to three privately held Iranian distributors. It states, however, that although it does not believe any distributors are in sanctionable categories, downstream customers could include government-owned hospitals and pharmacies owned or controlled directly or indirectly by Iranian government. Specifically, GlaxoSmithKline notes that "while the Group has *no direct* knowledge of the identity of its distributors' downstream customers, it is possible that these customers include entities, such as government-owned hospitals and pharmacies, that are owned or controlled directly or indirectly by persons or entities sanctioned."

Notable Disclosures by Industry

In the world of Section 219 disclosures, there is no one-size-fits-all disclosure. Each SEC-registered issuer's decision to report, and the supporting procedures, is a fact intensive enterprise that depends on a multitude of factors, including,

[4] Another 27 of these 100 non-US SEC-registered issuers did not expressly state their intentions.

among many others, the industry in which the reporting issuers operate. Thus, we review some other notable disclosures based on the industry in which they operate to provide additional context to these disclosures.

Financial Institutions and Financial Services

As a general rule and in part due to the additional risks and sanctions in place, financial institutions (US and non-US) appear to have taken a risk-adverse posture by electing to disclose any and all activity with Iran, including licensed activity. In general, financial institutions have the greatest risk exposure under US economic sanctions. To this end, US financial institutions continue to disclose all manner of transactions with any SDN regardless of the amount. Notable disclosures from SEC-registers issuers in the financial sector include:

- Abbey National Treasury Services PLC (a UK company) disclosed that an Iranian national, resident in the UK, who is currently designated by the US and the UK, held a mortgage (issued prior to such designation) with Santander UK plc, one of its affiliates within the Banco Santander group. No further drawdown has been made (or would be allowed) under this mortgage, although Santander UK plc continues to receive repayment installments.
- Credit Suisse Group AG (a Swiss Company) disclosed that during 2012, Credit Suisse AG processed a small number of *de minimis* payments related to the operation of Iranian diplomatic missions in Switzerland and to fees for ministerial government functions such as issuing passports and visas. Credit Suisse noted that processing these payments was permitted under Swiss law and was performed with the consent of Swiss authorities, and as such Credit Suisse AG intended to continue processing such payments. Credit Suisse also noted that it holds funds from two wire transfers to non-Iranian customers which were blocked pursuant to Swiss sanctions but that such funds are maintained in blocked accounts opened in accordance with Swiss sanctions requirements.
- Lloyds Banking Group PLC (a UK company) disclosed that its non-US affiliates, Lloyds TSB Bank plc and Bank of Scotland plc, received or made payments involving entities owned or controlled by the Government of Iran. In all cases, the payment was either allowed under UK and EU sanctions legislation or specific authority was sought from and granted by HM Treasury, the UK's competent authority.
- Bank of Ireland (an Irish company) disclosed that it holds certain accounts for the Embassy of Iran and certain Embassy personnel in Ireland and processes payments into and out of those accounts related to official Embassy business, scholarship payments to Iranian students in Ireland, and the personal expenses of Embassy personnel. These accounts are used for local expenses and are operated in accordance with applicable local law and authorizations. Bank of Ireland noted that it intended to maintain these accounts, in accordance with applicable local law and authorizations.
- Banco Bilbao Vizcaya Argentaria, SA (an Argentine company) disclosed that it had identified that an affiliate maintained an individual pension contract in the amount of approximately €5,000 for one individual designated by the United States. Such contract was terminated on April 13, 2012. BBVA noted that the estimated gross revenue in 2012 relating to this contract, which includes fees and commissions, was nil.
- RBS Holdings (a Dutch company) made disclosures relating to licensed payments, legacy guarantees, and clearing systems. As to licensed payments and legacy guarantees, RBS noted that in full compliance with applicable sanctions and under applicable licenses granted by appropriate authorities, it had engaged in both and intended to continue to engage in such licensed transactions. RBS noted, however, that although it had made considerable efforts to exit and formally cancel its legacy guarantees, it had been unable to do so to date under applicable law but intended to terminate such legacy guarantees if the law changed. Lastly, RBS disclosed that it participates in local government-run

clearing and settlement exchange systems in a number of countries in compliance with applicable laws and regulations. Iranian government-owned banks, including certain banks designated under Executive Order 13382 or 13224, participate in some of these clearing systems, which create the risk that RBSG Group could participate in transactions in which such Iranian banks are involved. To mitigate or address that risk, RBSG Group stated that it had instituted procedures, where legally permissible, to screen and halt any outgoing and incoming payments to and from Iranian banks in these clearing systems prior to settlement. In addition, RBSG Group stated that pursuant to its licenses to participate in local payment and settlement systems in the UAE, it had, during 2012, processed transactions in the UAE that involved Iranian government-owned banks, certain of which are SDNs. RBSG Group stated that it intended to continue to participate in the clearing and settlement exchange systems in various countries and will continue to seek to limit the risk of participating in transactions involving Iranian government-owned financial institutions in accordance with applicable laws and regulations.

- Mitsubishi UFJ Financial Group, Inc. (a Japanese company) disclosed that one of its non-US banking subsidiaries issued letters of credit and guarantees and other settlement services in connection with customer transactions related to the purchase and exportation of Iranian crude oil to Japan. Mitsubishi noted that these transactions did not involve US dollars nor clearing services of US banks for the settlement of payments and were reviewed for compliance with applicable US and non-US laws and regulations. Further, Mitsubishi noted that some of these transactions were conducted through the use of non-US dollar correspondent accounts and other similar settlement accounts maintained with BTMU outside the United States by Iranian financial institutions and other entities affiliated with Iran. Mitsubishi concluded its disclosure by noting that this non-US banking subsidiary would continue to conduct these types of transactions relating to customer imports of Iranian crude oil into Japan, maintain accounts in Japan of Iranian entities and individuals, and obtain interest and fee income and repayment of principal in connection with existing loans to borrowers in or affiliated with Iran.

- Arthur J Gallagher & Co. (a US company) disclosed that a company it acquired in 2011, Health Lambert Limited (a UK company) (“HLL”), had a marine hull insurance contract with Bimeh Iran Insurance Company (UK) Limited. As part of winding down legacy matters, Gallagher & Co. submitted to Bimeh a claim for payment on a reinsurance contract relating to a 1998 claim and, in June 2012, received £9,353.00 (US$ 14,343.75) from Bimeh. Gallagher & Co. noted it subsequently sought to send these legacy reinsurance funds to the UK-based ceding insurer, but the offer was declined by the ceding insurer due to Bimeh’s involvement. No revenue or profit was generated by HLL in handling or holding the funds. HLL stated that it intended to hold the funds in accordance with company policy and applicable laws until authorized with the appropriate license to remit payment to the UK-based ceding insurer.

Pharmaceuticals/Medical Devices

No surprise, a number of foreign pharmaceutical companies stated their intention to continue providing medicine or medical supplies to individuals in Iran, even if the Government of Iran is likely to be the end-user. In most cases, the pharmaceutical companies emphasized their global mission of providing healthcare products to patients and healthcare providers around the world, implicitly invoking a higher purpose than inter-national disputes.

- EDAP TMS S.A. (a French company) emphasized in its disclosure that it is engaged in sales and marketing activities with hospital, clinics distributors, or agents in countries on a worldwide basis to provide minimally invasive therapeutic solutions to patients with prostate cancer or urinary stones. EDAP then disclosed that it honored warranty contracts in 2012 on previous sales of lithotripsy devices to three Iranian public hospitals. As part of these warranty commitments, EDAP invoiced €7,838.60 of medical equipment to the hospitals. EDAP concluded its disclosure by noting that it intends to continue to honor previous warranty commitments and will provide the necessary parts and disposables to allow patients to be treated with their devices.

- AstraZeneca PLC (a UK company) similarly began its disclosure by noting that it is a global, innovation-driven biopharmaceutical business with operations in over 100 countries and that its innovative medicines are used by millions of patients worldwide. Although AstraZeneca did not have a legal entity based in Iran, or any employees or an office located in Iran, the company made sales in Iran through a single third-party distributor. AstraZeneca also noted that it had a valid and existing OFAC license covering the sale of certain US-origin medicines to the three known entities used by its sole distributor in the Iranian distribution chain, although, to date, AstraZeneca has sold only non-US origin medicines to Iran. AstraZeneca concluded its Iranian disclosure by noting that "[a]t the time of publication, the management of AstraZeneca does not anticipate any change in its activities in Iran that would result in a material impact on the Group."

Similarly, several smaller US healthcare companies also expressed their intent to continue their business operations in or with Iran.

- Gilead Sciences Inc. (a US company) disclosed that it was "committed to providing access to certain of [its] HIV and other products in the developing world" and, in that connection, had provided medical education related to the treatment of HIV in these countries. Gilead then disclosed that it invited four Iranian doctors to attend a conference discussing strategies for the treatment and prevention of HIV. At least two of these four Iranian doctors were officials for the Iranian National AIDS Program. Gilead disclosed that one of its European affiliates reimbursed the travel expenses, visa fees, and airline tickets for a total expense of US $3,330. Gilead concluded its disclosure, noting that: "We have no current intention to engage in the activities described above in the future, directly or pursuant to any of its non-US subsidiaries."
- Zoetis, Inc. (a US company) disclosed that,as a global company, it conduced business in multiple jurisdictions throughout the world. Zoetis noted that during 2012 its activities included supplying animal health products for consumer use in Iran and Syria. Zoetis noted that US law allowed it to seek and rely on licenses issued by OFAC to supply its products to customers in these sanctioned countries. Zoetis further stated that it intended to continue its global activities to enhance the health of animals in a manner consistent with applicable laws and its internal policies.
- John Wiley & Sons (a US company) disclosed that it had recorded revenue and net profits of approximately $0.3 million and $0.1 million, respectively, related to the sale of scientific and medical content to certain government-funded universities, hospitals, and institutions. Wiley & Sons noted that it had assessed its business relationship and transactions with Iran and believed it was in compliance with the regulations governing the sanctions and thus intended to continue in these or similar sales as long as they continued to be consistent with all applicable sanction-related regulations.

Non-Medical Consumer Goods

A number of well-known consumer-goods companies also made Section 219 disclosures. The majority of these disclosures, however, are due to the companies' affiliate relationship with private equity funds or sponsors. However, there have also been a few disclosures from consumer goods companies that merit additional attention.

Sony Corp. disclosed a number of transactions involving professional broadcast equipment (*i.e.*, cameras, switchers, monitors, etc.), medical instruments (such as medical printers and monitors), video security cameras and hard disk products, and video conference equipment. These transactions all involved a third-party-owned dealer in Dubai, who then sold the various products with Sony's knowledge to various end users in Iran. These end users included the Islamic Republic of Iran Broadcasting, the Iranian Ministry of Health, Ferdowsi University, Iran Railway, Bank Sepah, Bank Melli, and the Information Technology Department of the Iranian Police. Sony noted that although it did not expect to engage in any additional disclosable transactions for the rest of the year, it did intend to maintain its representative office in Iran and to continue selling to the Islamic Republic of Iran Broadcasting and the Iranian Ministry of Health through third-party owned dealers. Sony also noted that in the future it "may conduct additional sales activities in Iran through third-party-owned dealers/distributors, which may require disclosure pursuant to Section 13(r) of the Exchange." Sony asserted that it "intends to conduct any such sales in accordance with applicable law." Sony concluded its Section 219 disclosure by stating: "Sony believes that, and maintains policies and procedures designed to ensure that, its transactions with Iran and elsewhere have been conducted in accordance with applicable economic sanctions laws and regulations [but that] there can be no assurance that Sony's policies and procedures will be effective."

By way of contrast, Canon Inc. (also a Japanese company) disclosed over a dozen Iran-related activities involving its affiliates. Canon also noted that all of these transactions were conducted in compliance with applicable law in the respective countries. Generally, Canon's disclosures related to affiliates or wholly-owned subsidiaries that performed various one-off services under existing service contracts. For example, nine of the disclosed transactions related to servicing copier machines at various Iranian embassies or consulate general offices, such as the following disclosure: "[a] wholly-owned affiliate had a maintenance contract for one copier machine with the Iranian embassy in Tokyo, Japan; and during the reporting period, this Canon affiliate sold one staple cartridge and performed one spot repair." Canon's other disclosures related to equally innocuous activity such as performing maintenance services on two copier machines in various Iranian entities' offices outside Iran (Iran Air's office in Kuala Lumpur, Naftiran Intertrade offices in Switzerland, and an Iranian Hospital in Dubai) and selling TV camera lenses through a distributor to Islamic Republic of Iran Broadcasting. After providing these disclosures, Canon stated that it did not intend to conduct any further business activities with Iranian counterparties, except for sales of consumables, repair, and maintenance services for products Canon previously sold to such entities.

Similar to Canon, Costco Wholesale Corporation (a US company) disclosed transactions relating to Iranian embassies abroad. Costco reported that it had cardholders at its subsidiaries in Japan and the United Kingdom, including four individuals under two business memberships in the name of the Iranian embassy and two individuals under one business membership in the name of Iran Air, who purchased goods from Costco. Gross revenue during this reporting period from these transactions was approximately $5,178 from the Iranian embassy cardholders and profit of less than $160. Costco recognized no revenue or profit attributable to the Iran Air membership. Costco stated that all memberships had since been cancelled and that it did not intend to continue these activities.

Hospitality / Airlines Industry

JetBlue Airways Corporation (a US company) disclosed that its affiliate, Deutsche Lufthansa AG , provided air transportation services from Frankfurt to Tehran pursuant to Air Transport Agreements between the German and Iranian governments. JetBlue speculated that "there may be additional civil aviation related dealings with Iran Air as part of typical airline to airline interactions." Alas, JetBlue noted that "[i]n response to [its] inquiry, Lufthansa did not specify the total revenue it receives in connection with the foregoing transactions, but confirmed the transactions are not prohibited under any applicable laws."

Two other notable disclosures in the hospitality services sector involve the two Blackstone affiliates.

- Travelport Ltd (a Bermuda company) disclosed that as part of its global business in the travel industry, it provided certain passenger travel-related services to Iran Air, Iran Air Tours, and Syrian Arab Airlines. According to the company, all of these services either fall within the statutory exemption in the International Emergency Economic Powers Act for transactions ordinarily incident to travel or, to the extent not otherwise exempt, were specifically licensed by OFAC. Travelport stated that, subject to any changes in the exempt/licensed status of such activities, it intended to continue these business activities, which are directly related to and promote the arrangement of travel for individuals. The services relating to Syrian Arab Airlines were terminated following the May 2013 action by OFAC to designate this airline an SDN.
- Hilton Hotels Worldwide (a US company) disclosed, among other things, that the Iranian Ministry of Youth and Sports purchased a number of room nights at the Hilton Ankara in Turkey, which is leased by a foreign affiliate of Hilton. Revenue received by Hilton for these hotel stays was approximately $4,360, and net profit was approximately US $1,700. Hilton also disclosed that the Embassy of Iran purchased a number of rooms at the hotel and organized a concert event in the hotel ballroom. Revenue received by Hilton for the services provided to the Embassy of Iran in 2012 was approximately $11,070, and net profit was approximately $4,300. Hilton stated, without any explanation, that it believed that the hotel stays were exempt from US sanctions. It also noted that the Hilton Ankara intended to continue engaging in future similar transactions to the extent they remain permissible under the law.

Extractive Industries / Natural Resources

As one might expect, reporting issuers in the extractive industries tended to include robust disclosures, including their reliance on OFAC-issued specific licenses where applicable.

- Total S.A. (a French company) disclosed that it had made investments in Iran in excess of US $20 million (excluding the investments made as part of the development of South Pars). However, it noted that it had had no production in Iran since 2011, and its position since 2008 had consisted essentially in being reimbursed for its past investments as part of buyback contracts signed between 1995 and 1999 with respect to permits on which it was no longer the operator. Total also provided a lengthy review of the current sanctions laws not just for the US, but the EU as well. Finally, Total stated that it will continue to closely monitor legislative and other developments in France, the EU, and the US to determine whether its limited activities or presence in sanctioned or potentially sanctioned jurisdictions could subject it to the application of sanctions.
- Statoil ASA (a Norwegian company) disclosed that it is a party to agreements with NIOC, namely, a Development Service Contract for South Pars Phases 6, 7, and 8 (offshore part), an Exploration Service Contract for the Anaran Block, and an Exploration Service Contract for the Khorramabad Block, all of which are located in Iran. Statoil's obligations under these agreements have terminated and the licenses have been abandoned; thus it stated that its remaining activity in Iran during 2012 was limited to cost recovery efforts, including tax and Social Security Organization ("SSO") settlements. Statoil disclosed that it had received US $220 million in remaining cost recovery for the South Pars field during 2012, booked as gross revenue from sales, and US $108 million in net cost recovery after deduction of taxes owed to Iran, depreciation, and expenses. It further stated that it would not make any investments in Iran under present circumstances and noted that it had regularly provided information about its Iran-related activity to the US State Department since 2009, as well as to the Norwegian Ministry of Foreign Affairs. As a result, it had received a letter from the US State Department in 2010 stating that the company was not considered to be a company of concern based on its previous Iran-related activities.

- Baker Hughes Incorporated (a US company) disclosed payment of corporate income taxes in Iran in January 2012. It noted that it had no sales or services in Iran in 2012 itself, and no sales or services would be made in 2013.

Telecommunications / Software

Similar to pharmaceutical companies, foreign telecommunications companies have also stated in a straight-forward manner their intent to continue their business with Iran (and even other countries designated as state sponsors of terrorism). Most notable here, America Movil SAB de CV (a Mexican company) that provides wireless services had one of the briefest disclosures to date. After recapping the requirements of the ITRA, it simply stated: "Several of our subsidiaries have entered into roaming interconnection agreements with MTN Irancell. To date, our subsidiaries have no revenues under the agreements. We intend to continue this relationship."

Below are some other disclosures made by telecommunication companies:

- PT Indosat Tbk (an Indonesian company) disclosed that, as part of the global coverage it offers to its customers, it offers "international calling services to Iran and to Cuba, Sudan, and Syria. There are roaming arrangements between Indosat and each of Mobile Company of Iran, C Com, Syriatel Mobile Telecom SA, and Sudanese Mobile Telephone Co. Mobitel for Iran, Cuba, Syria and Sudan, respectively." PT Indosat noted that it considers its business in Iran, Cuba, Syria, and Sudan as "being insignificant relative to its size." It made no disclosure of intent, but its disclosure reads as an implicit statement of its intent to continue to provide global coverage to its customers.

- Portugal Telecom, SGPS, S.A. (a Portuguese company) disclosed that it had entered into roaming agreements with MTN Irancell through a subsidiary. Pursuant to such roaming agreements, its customers are able to roam on the particular Iranian network (outbound roaming), and customers of the Iranian operator are able to roam on the subsidiary's network (inbound roaming). For outbound roaming, the subsidiary pays the Iranian operator roaming fees for use of its network, and for inbound roaming, the Iranian operator pays Portugal Telecom roaming fees. The company noted that the purpose of all of its agreements is to provide its customers with coverage in areas where it does not own networks. For that purpose, it intends to continue maintaining these agreements; it also intends to continue providing services to embassies of many nations, including Iran.

- Vimpelcom LTD (a Dutch company) stated that its Armenian subsidiary, ArmenTel, and Telecommunications Company of Iran ("TCI"), an Iranian Government-owned company, have an agreement for the provision of voice services which has been in place since 2003. Under the agreement, ArmenTel sends direct traffic to TCI and TCI sends both direct and transit traffic to ArmenTel. Although the disclosure notes that neither the parent nor the subsidiary provided any telecommunications equipment or technology to TCI, it did note that "ArmenTel intended to continue providing voice services to TCI under the agreement for the foreseeable future." The company also noted that it also had active roaming agreements with TCI that it intended to continue as well.

- Telecom Argentina SA (an Argentine company) disclosed certain roaming agreements with Iranian companies, but noted that the related revenues and charges were immaterial to its consolidated revenues and operating expenses. According to Telecom Argentina, the purpose of the roaming agreements was to provide customers with coverage in areas where Telecom did not own networks, and it therefore intended to continue maintaining the roaming agreements.

- Ericsson LM Telephone Co. (a Swedish company) disclosed that it made sales of telecommunications infrastructure-related products and services during the second quarter of 2013 to MTNIrancell and to Mobile Communication Company of Iran, which generated gross revenues (reported as net sales) of approximately

SEK 175 million. Ericsson noted that it did not normally allocate quarterly net profit (reported as net income) on a country-by-country or activity-by-activity basis. Notably, Ericsson stated that it strongly believes in enabling communication for all and believes that access to communications can enable the right to health, education, and freedom of expression. Despite this strong statement and Ericsson's longstanding presence in Iran, Ericsson nevertheless disclosed that it was phasing out the sale of telecommunications infrastructure products in Iran and its future business will consist of performance under existing contracts.

Finally, one foreign telecommunications company also issued a general disclosure of risks relating to its business model:

- Turkcell Iletisim Hizmetleri AS (a Turkish company) disclosed that it had entered into direct international roaming agreements with GSM operators around the world, including in Cuba, Iran, Sudan, Libya, and Syria. It noted that these arrangements have been entered into in the ordinary course of business and on arm's-length terms and that, in financial terms, it did not believe that its roaming arrangements were material. Nevertheless, it also noted that current and future US and international laws and regulations targeting certain countries, companies, and individuals may curtail its ability to acquire companies outside of Turkey, do business in affected countries, and impede its exercise of control over foreign subsidiaries.

Shipping and Logistics

A number of reporting issuers, in the shipping and logistics industry, have taken the step of pre-emptively making a Section 219 disclosure where the issuers perceive themselves as having heightened exposure to conducting business in Iran (or Syria) without their immediate knowledge. In these types of disclosures, reporting issuers are not disclosing an actual violation, but rather that they could be subject to one in the future.

For example, Box Ships Inc. (a Greek company) provided a blanket disclosure noting that it entered into charter agreements or engaged in certain other activities with countries or government-controlled entities or customers associated with countries that are subject to restrictions imposed by the US government. Box Ships then stated that although no vessels operated by it had called on ports located in countries subject to US sanctions, including Cuba, Iran, Sudan, and Syria, in the future its vessels may call on ports in those countries.

In contrast, Overseas Shipholding Group Inc. (a US company) disclosed that the TI pool decided to terminate all new business involving Iranian ports in February 2012 after the EU adopted sanctions on such activity. The company stated that no vessel owned or chartered-in by OSG or any of its domestic or foreign subsidiaries has called on an Iranian port since January 2012, and, moreover, that it would not allow its vessels to make such calls, whether through a pooling arrangement or otherwise, until the US and EU sanctions regimes permit such calls.

Mission Accomplished?

Over the years, US sanctions against Iran have grown increasingly more rigorous and expansive. For a long time now, US companies have been barred, with certain carefully delineated exceptions, from doing virtually any business in or with Iran or Iranian entities. Moreover, in recent years, the United States has sought to influence the conduct of non-US companies by threatening to restrict their access to US markets and financial institutions if they continued to do certain types of business, particularly in the oil and gas sector, with Iran. The twin ITRA provisions, Section 218 that imposes penalties on US parents for the acts of offshore subsidiaries and Section 219 that imposes disclosure obligations on all issuers, represent additional steps in that effort.

ITRA requires that the President (*i.e.*, the Treasury or the State Department via delegation) (1) initiate an investigation and (2) make a determination, within 180 days (six months), whether the activity is sanctionable. As of today, we are not aware of OFAC (or any governmental entity) issuing any public releases detailing the status of any investigations commenced due to Section 219 disclosures. It is unlikely, however, that Congress really expected companies to disclose illegal conduct (although some Congressmen may have hoped that formal admissions by energy companies of participation in certain projects might spur the Executive to impose sanctions under existing provisions of the Iran Sanctions Act). Instead, the point of Section 219 is a form of "name and shame," with the idea that companies that are forced to disclose that they are doing business with a "pariah state" will withdraw rather than face governmental, investor, and NGO pressure. Indeed, the fact that well after 180 days after companies filed their first set of Section 219 disclosures neither the US government nor any company has disclosed that the President has, in fact, concluded that their conduct was in violation of US sanctions appears to confirm this view.

The question then, is whether the naming has indeed shamed the companies and furthered the US goal of discouraging foreign companies from doing business with Iran, further isolating it from the global economy. Certainly, with the exception of certain sectors, such as pharmaceuticals (which benefit from a general license under US law anyhow), the evidence seems to be that many companies are indeed scaling back, if not entirely abandoning business with Iran. Whether, however, this is due to Section 219 or, more likely, to the increasing scope of EU and European national sanctions is a reasonable question that probably cannot be entirely answered one way or the other.

Practice Tips

- Although Section 219 on its face paints with a broad brush, there has not been any guidance yet from the SEC or other government agencies as to whether companies are drawing the correct lines in terms of affiliates and scope of conduct. For now, it is probably better to err on the side of comprehensive disclosures; whether to provide granular detail, however, is likely less a legal question than a strategic decision to demonstrate that the disclosed conduct is truly immaterial, remote, or *de minimis*.
- Conducting even permissible business with Iran (whether under US, EU, or UN regulations) carries with it risks of governmental attention, investor concern, and reputational harm. Carefully describing the business and placing it squarely within recognized exceptions and policies will help mitigate those risks.
- Companies must establish controls to ensure that their disclosures are accurate and complete. Whether a particular company is directly covered by US sanctions regulations is relatively irrelevant; the issue is whether the issuer's Section 219 disclosures are supported by internal controls and diligence so that it can make a representation (whether it is "we don't do this," "we only do this where legal," or "we missed a few") with confidence that there are no ticking bombs lurking in its corporate books.
- To some degree, it is permissible to rely on another company's disclosures. You should, however, carefully discuss this issue with your disclosure lawyers.

As always, please feel free to call any of the partners listed above or your regular Shearman contact if you would like to discuss issuers relating to Section 219 disclosure requirements in particular or economic sanctions compliance in general.

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