

# Alert

## SEC Disclosure and Corporate Governance

### SEC Issues Guidance on Disclosure Required for Activities with Iran

The SEC has released seven new Compliance and Disclosure Interpretations (CDIs) relating to Section 13(r) of the Securities Exchange Act of 1934, which implements disclosure obligations imposed by the Iran Threat Reduction and Syria Human Rights Act of 2012 (the Act).

Section 219 of the Act provides that any company required to file annual or quarterly reports under Section 13(a) of the Exchange Act must disclose in such reports whether it or its affiliates have knowingly engaged in certain sanctionable activities involving Iran or Iranian entities or nationals during the applicable period. The disclosure must be included in annual or quarterly reports required to be filed with the SEC after February 6, 2013.

The following is a summary of some of the interpretations:

- *Timing of Initial Disclosure.* Companies cannot avoid the disclosure obligation by filing early. Section 13(r) applies to reports required to be filed after February 6, 2013, regardless of whether the company files its report before the due date. For calendar year companies, the disclosure first applies to the Annual Report on Form 10-K for the fiscal year ended December 31, 2012. (Question 147.01)
- *Fiscal Period Covered.* Companies are required to disclose activities that occurred during the period covered by the report even if the activities occurred prior to the enactment of the Act. (Question 147.02)
- *Definition of Affiliate.* For purposes of Section 13(r), the term “affiliate” is defined by reference to Exchange Act Rule 12b-2. Rule 12b-2 defines “affiliate” by reference to another defined term, “control.”<sup>1</sup> Because the existence of control often depends on facts and circumstances, application of this definition may create challenges for companies involved in joint ventures and other shared ownership arrangements. (Question 147.03)
- *Negative Disclosure Not Required.* Negative disclosure is not required if the company has not engaged in a sanctionable activity during the period covered by the report. (Question 147.04)

Other CDIs relate to omission of certain authorized activities from disclosure and the public nature of the required disclosure. The full text of CDIs can be accessed [here](#).

For a more detailed summary of the new requirements and information on what to do now, please refer to our Alert “President Obama Signs Executive Order on New Iran Sanctions Act” which can be accessed [here](#).

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1. Rule 12b-2 defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the company. “Control” is defined to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

If you have any questions on these matters, please do not hesitate to speak to your regular contact at Weil, Gotshal & Manges LLP or to any member of the Firm’s Public Company Advisory Group:

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