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Iran Threat Reduction and Syria Human Rights Act of 2012 Imposes a New Iran-Related SEC Disclosure Requirement

As part of the tightening of sanctions against Iran, in August 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (the "Act"). The Act significantly expands U.S. sanctions against Iran, including by (i) adding new activities to the list of trigger events mandating sanctions; (ii) providing for three new types of sanctions and requiring the President to select at least five or more of the 12 sanctions available; (iii) making U.S. companies subject to significant civil penalties if their foreign subsidiaries engage in transactions with Iran; and (iv) imposing a new disclosure requirement relating to knowing engagement in sanctionable activities for companies required to file reports with the U.S. Securities and Exchange Commission (the "SEC").

The following memorandum addresses the new disclosure requirement introduced by the Act. These new disclosure provisions will apply to reports required to be filed with the SEC after February 6, 2013.

SEC Disclosure Relating to Sanctionable Activities

Under Section 219 of the Act, all companies required to file reports under Section 13 of the Securities Exchange Act of 1934 (including foreign private issuers) are subject to a new disclosure requirement. Specifically, SEC reporting companies are now required to make a specific disclosure in their annual and quarterly reports if, during the period covered by the report, they, or any of their affiliates, have:

- knowingly engaged in an activity covered by section 5(a) or 5(b) of the Iran Sanctions Act of 1996 ("ISA");
- knowingly engaged in an activity or transaction described in section 104(c)(2) or (d)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA");
- knowingly engaged in a transaction covered by section 105A(b)(2) of CISADA; and
- knowingly conducted any transaction or dealing with (i) any person who has property blocked pursuant to Executive Order No. 13224 (relating to persons who commit, threaten to commit, or support terrorism); (ii) any person who has property blocked pursuant to Executive Order No. 13382 (relating to weapons of mass destruction proliferators and their supporters); or (iii) the government of Iran, any entity owned or

controlled by the government of Iran, or any person acting on its behalf, without the specific authorization of a U.S. government agency.

The relevant disclosable activities include the following:

- Section 5(a) of ISA covers activities relating to the energy sector of Iran (including providing support for the development or production of petroleum resources or the production of refined petroleum or petrochemical products in Iran; exporting or supporting the export of refined petroleum products to Iran; participating in petroleum joint ventures with Iranian partners outside Iran; and transporting crude oil by vessel from Iran);
- Section 5(b) of ISA covers activities with respect to development by Iran of weapons of mass destruction or other military capabilities (including providing support for Iran's acquisition or development of chemical, biological, or nuclear weapons or advanced conventional weapons);
- Section 104(c)(2) and (d)(1) of CISADA covers activities that facilitate the transactions or activities of Iran's Revolutionary Guard Corps, of U.S.-sanctioned persons in Iran, or of any blocked person in Iran in connection with weapons of mass destruction or terrorism; and
- Section 105A(b)(2) of CISADA covers activities that support Iran's acquisition or use of goods or technologies that are likely to be used to commit human rights abuses (e.g., firearms or ammunition, rubber bullets, police batons, pepper or chemical sprays, or stun grenades) or to restrict, disrupt or monitor the free flow of information.

If an issuer discloses that it, or one of its affiliates, has engaged in any of these reportable activities during the relevant reporting period, the issuer is also required to provide a detailed description of such activity, including:

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

An issuer reporting knowing engagement in any of the foregoing activities in its annual or quarterly report is further required to file with the SEC a notice stating that the required disclosure has been included in the annual or quarterly report. The notice, which is required to be filed concurrently with the filing of the report, would also identify the issuer and include the detailed description of the activity from the report. Upon receipt of such notice, the SEC is required to transmit the relevant annual or quarterly report to the President and specified committees of the Congress, and to post the report and the notice on its website.

Following the receipt of the relevant report from the SEC, the President is required to initiate an investigation into whether sanctionable conduct has occurred under ISA, CISADA, or any

other relevant provision of U.S. law, and, within 180 days after the start of the investigation, to determine whether any sanctions should in fact be imposed.

Since few if any issuers will want to report to the SEC (and U.S. enforcement agencies) that they have engaged in sanctionable conduct without also reporting that such activity has been or is being terminated, this new provision of law has more to do with increasing pressure on non-U.S. companies to terminate business with Iran than with disclosing risks to investors. Given that the SEC already attempts to track business between issuers and designated terrorism-supporting countries (including Iran), issuers who reportedly have business with Iran (for example, based on press reports or website references) can be expected in the future to receive inquiries from SEC staff concerning whether they have engaged in activity that needs to be reported under Section 219 of the Act.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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