UPDATE ON U.S. SANCTIONS AGAINST IRAN

New legislation, implemented by regulations and executive orders, prohibits foreign subsidiaries of U.S. companies from knowingly engaging in any transaction with the government of Iran or Iranian persons, even if no U.S. person is involved in the Iranian business. The legislation also amends the Securities Exchange Act to require reporting companies to disclose sanctionable activity for themselves and their affiliates in their quarterly and annual reports, and in a special notice to the SEC. Another new executive order prohibits all dealings with foreign persons who facilitate deceptive transactions designed to evade U.S. sanctions against Iran. The author discusses these initiatives, their impact on several industries, and OFAC's guidance for a risk-based compliance program.

By F. Amanda DeBusk *

A flurry of new sanctions against Iran impose complex compliance obligations on companies and carry new Securities and Exchange Commission reporting requirements. In 2012, two new major laws have been enacted, new executive orders and regulations have been issued, and further new legislation is currently pending. Because the laws, executive orders, and regulations cover hundreds of pages of dense legal text and have overlapping provisions, this article seeks to highlight the changes that are most important for public companies.

The U.S. Congress recently enacted the Iran Threat Reduction and Syria Human Rights Act of 2012 ("TRA") and the National Defense Authorization Act for Fiscal Year 2012 ("NDAA"). The TRA establishes a framework for imposing additional sanctions against those aiding Iran's petroleum, petrochemical, insurance, shipping, and financial sectors. Moreover, the TRA now extends Iranian sanctions to foreign subsidiaries of U.S. companies; previously, foreign subsidiaries of U.S. companies could operate in Iran provided there was no involvement of U.S. persons, products, or technology, but that is no longer the case. The TRA also has a new


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SEC reporting requirement for Iranian operations. The NDAA, on the other hand, imposes sanctions on foreign financial institutions3 that facilitate financial transactions with the Central Bank of Iran ("CBI") or other designated Iranian financial institutions, in order to further isolate Iran from the international financial system.4 Numerous executive orders and regulations implement the new legislation and impose additional sanctions.5 The most significant of these is Executive Order 13608, which targets foreign sanctions evaders and gives the president broad discretion to sanction any party that evades the other sanctions.6

Finally, a new Iran sanctions bill passed the Senate on November 30, 2012 by a 94-0 vote in the form of an amendment to the National Defense Authorization Act for Fiscal Year 2013.7 The legislation would impose new financial penalties on foreign banks and businesses involved in Iran’s energy, shipping and shipbuilding sectors, and its metals trade.8 It also targets persons who provide underwriting services, insurance or reinsurance, and foreign financial institutions that facilitate financial transactions for Iranian persons included on the list of specially designated nationals (“SDN”).9 The amendment could become law early in 2013.10

To assist companies in complying with these new laws, the Office of Foreign Assets Control ("OFAC")11 has provided guidance on compliance best practices for the securities and investment sector. The guidance highlights the need for increased due diligence and a review of risk-management practices.

This article discusses highlights of the new Iranian sanctions laws, executive orders, and legislation, including the new SEC reporting requirements. It concludes with a discussion of the new guidance on best practices.

BACKGROUND

The United States began imposing sanctions against Iran in the late 1980s, culminating in OFAC’s Iranian Transactions Regulations (now called Iranian Transactions and Sanctions Regulations, “ITSR”),12 which imposed a near total trade embargo against Iran for its support of international terrorism and pursuit of weapons of mass destruction (“WMD”). With the


4 NDAA § 1245(d).

5 Most notably, President Barack Obama signed Executive Order 13599 Blocking Property of the Government of Iran and Iranian Financial Institutions (February 5, 2012), Executive Order 13608 Prohibiting Certain Transactions with and Suspending Entry into the United States of Foreign Sanctions Evaders with Respect To Iran and Syria (May 1, 2012), and Executive Order 13622 Authorizing Additional Sanctions with Respect to Iran (July 30, 2012). The Iranian Financial Sanctions Regulations (“IFSR”) (31 C.F.R. Part 561) have also been amended several times to implement the financial sanctions provisions in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”), NDAA, and the TRA.


10 The House has passed a bill that has to be reconciled with the Senate version.

11 OFAC is located within the U.S. Department of Treasury. It has primary responsibility for implementing most of the U.S. economic and trade sanctions programs.

12 31 C.F.R. Part 560. For consistency, we refer to these regulations throughout as the Iranian Transactions and Sanctions Regulations, even though until October 2012 they were called the Iranian Transactions Regulations.
exception of transactions involving U.S. origin goods, technology, or services, non-U.S. entities (including non-U.S. subsidiaries of U.S. companies) for the most part have not been directly subject to the prohibitions or sanctions of the ITSR. U.S. financial institutions, however, are generally barred under the ITSR from direct or indirect involvement in the financing or support of transactions with Iran by non-U.S. persons.

The focus of other Iranian sanctions beyond the ITSR, including the most recent sanctions legislation, has been extraterritorial. The Iran Sanctions Act of 1996 ("ISA") provided that where specified conditions are met, the president is required to impose certain sanctions on non-U.S. persons who invested $20 million or more in the development of Iran’s petroleum and natural gas resources. A menu of six sanctions could be imposed on the subject entity, subject to the president’s power to waive any sanctions if he determined that such a waiver was “important” to the U.S. national interest. The ISA was significantly strengthened and expanded to cover more transactions, include more sanctions, and provide for less presidential discretion by CISADA, and then expanded even further by the TRA to increase coverage as well as sanctions. CISADA also imposes financial sanctions on foreign financial institutions that engage in certain activities, such as facilitating Iran’s efforts to acquire WMD or support terrorism, laundering money, or facilitating significant transactions for Iran’s Revolutionary Guard Corps (“IRGC”).

THE TRA CLOSES A LOOPHOLE

Section 218 of the TRA, as implemented by Executive Order 13628, prohibits foreign subsidiaries of U.S. companies from knowingly engaging in any transaction with the Government of Iran ("GOI") or any person subject to its jurisdiction, that would be prohibited by any order or regulation issued pursuant to the International Emergency Economic Powers Act ("IEEPA") if the transaction were engaged in by a U.S. person or in the United States. This means that foreign subsidiaries of U.S. companies can no longer operate in Iran, even if there is no U.S. person involvement in the Iranian business. The TRA will impose IEEPA penalties on the U.S. parent company for violations by its foreign subsidiaries, unless the U.S. company divests or terminates its business with its foreign subsidiaries that have Iranian operations by February 6, 2013. OFAC has informed companies that if they have trouble meeting this deadline, they should contact OFAC.

SEC REPORTS ON IRANIAN OPERATIONS

Section 219 of the TRA amends Section 13 of the Securities Exchange Act of 1934 by adding new disclosure requirements for publicly traded companies, including foreign issuers whose shares are traded on U.S. exchanges, effective February 6, 2013. Companies required to file annual (10-K) or quarterly (10-Q) reports on

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13 The current definitions of “U.S. financial institution” and “foreign financial institution” are contained in the IFSR, 31 C.F.R. §§ 561.308-09.

14 This includes, as of November 2008, a prohibition on U.S. financial institutions from engaging in “U-turn” transactions that dollarize transactions by non-U.S. entities with Iran. See ITSR, 73 Fed. Reg. 66,541 (Nov. 10, 2008) (31 C.F.R. § 560.516).


16 Such sanctions include ineligibility for government contracts, prohibition on receiving export licenses, and restrictions on receiving loans from U.S. financial institutions. ISA § 6.

17 Because of strong opposition from U.S. allies to the statute’s extraterritorial effect, no sanctions were imposed under the ISA until very recently. For a list of entities subject to ISA sanctions as of January 2012, see http://www.treasury.gov/resource-center/sanctions/Programs/Documents/isa.pdf.


19 See discussion in “Petroleum and Petrochemical Sector” section below.

20 Section 104(c) of CISADA contains the financial sanctions imposed on foreign financial institutions. 22 U.S.C. § 8513(c).

21 Defined to include “a person organized under the laws of Iran or any jurisdiction within Iran, ordinarily resident in Iran, or in Iran, or owned or controlled by any of the foregoing.” Exec. Order 13628 § 13(g).


23 TRA § 218(d). According to United against Nuclear Iran, 24 states and the District of Columbia have also enacted divestment legislation or policies, and many state and local pensions funds have divested from companies doing business in Iran. United Against Nuclear Iran, Eye on Divestment Tracker, http://www.unitedagainstmianiran.com/divestment (last visited Dec. 14, 2012).
after this date must disclose in those reports whether the reporting company or any “affiliate” has “knowingly engaged” in sanctionable activity, which includes the following:

- activities with respect to the development of Iran’s petroleum resources, the production of refined petroleum products in Iran, and the export of refined petroleum products to Iran, as well as activities relating to Iran’s development of WMD or other military capabilities prohibited under Section 5(a) and (b) of the ISA;

- a foreign financial institution facilitating the efforts of the GOI to acquire WMD or support international terrorism; facilitating transactions of a person subject to financial sanctions under United Nations Security Council resolutions; engaging in money laundering or facilitating efforts by the CBI or other Iranian financial institutions to carry out the above two activities; or facilitating significant transactions for the IRGC or a financial institution whose property or interests in property are blocked in connection with Iran’s proliferation of WMD or support for terrorism under Section 104(c)(2) of CISADA;

- any person owned or controlled by a U.S. financial institution knowingly engaging in a transaction benefitting the IRGC or any of its agents or affiliates whose property or interests in property are blocked under Section 104(d)(1) of CISADA;

- activities with respect to transferring or facilitating the transfer of goods or technologies to Iran, or providing services likely to be used to commit serious human rights abuses in Iran under Section 105A(b)(2) of CISADA;

- transactions with any person whose property and interests in property are blocked pursuant to Executive Order 13224 (relating to persons who support terrorism) or Executive Order 13382 (relating to WMD proliferators and supporters); and

- transactions with any person or entity included in the definition of GOI under the ITSR, 31 C.F.R. Section 560.304, which includes any entity anywhere in the world that is owned or controlled by the GOI, without specific authorization from the U.S. government.

U.S. companies are not only required to comply with U.S. sanctions against Iran and report on their own activities related to the above, but they now must also report on the same activity for their non-U.S. affiliates. Non-U.S. issuers that are subject to U.S. reporting obligations would also be subject to these requirements. While the TRA does not define “affiliate,” the SEC has stated that the term “affiliate” has the same meaning as the term is defined in Exchange Act Rule 12b-2. Rule 12b-2 defines an “affiliate” of an issuer as a “person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the [issuer].” “Control” in turn means 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.” Therefore, the new reporting obligations could potentially cover sanctionable activity undertaken by a broad range of related persons or entities.

An issuer’s disclosure in its quarterly or annual report must include a detailed description of each of the above activities, including (1) the nature and extent of the activity, (2) the gross revenues and net profits attributable to the activity, and (3) whether the issuer or its affiliate intends to continue the activity. If the issuer reports such activity, the company must separately file with the SEC, concurrently with its annual or quarterly report, a notice that the disclosure of that activity has been included in the relevant report. Upon receiving the notice, the SEC will transmit the company’s report to the president, the House Committees on Foreign Affairs and Financial Services, and the Senate Committees on Foreign Relations and Banking, Housing, and Urban Affairs, and will make the information disclosed in the report and notice publicly available on the SEC’s website. Upon receiving the report, the president will initiate an investigation and make a determination regarding whether sanctions should be imposed on the issuer or its affiliate within 180 days. Because the new reporting requirements will be added to Section 13 of the

24 The SEC has stated that the new disclosure requirements apply to any periodic report with a due date after February 6, 2013, regardless of when the report is actually filed. In addition, the report must include disclosure of activities specified that occurred during the fiscal year but prior to the enactment of the TRA. SEC, Exchange Act Sections Compliance and Disclosure Interpretations, http://www.sec.gov/divisions/corpfin/guidance/exchangeactsections-interps.htm#147 (last updated Dec. 4, 2012).

25 TRA § 219.

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Exchange Act, reporting companies will also be subject to liabilities under Section 18 of the Exchange Act for any false or misleading statements, and to penalties under Section 32 for willfully or knowingly making such false or misleading disclosures. Overall, the burden for companies resulting from the new SEC disclosure requirements imposed by the TRA can be significant.

NEW RISKS FOR SPECIFIC INDUSTRIES

The TRA and NDAA build on previous laws and on each other to establish tighter sanctions against Iran. In this section, we discuss, in turn, sanctions that apply to the financial sector, securities and insurance sector, and petroleum or petrochemical sector.

Financial Sector

While there are differences in the triggering activities under Section 104(c) of CISADA and Section 1245(d) of NDAA, the potential sanctions on foreign financial institutions under both statutes are basically the same – prohibiting or imposing strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts.

As background, Section 104(c) of CISADA imposes financial sanctions on foreign financial institutions that engage in certain activities, such as facilitating Iran’s effort to acquire WMD or support of terrorism, money laundering, or significant transactions for the IRGC. Section 104(d) of CISADA prohibits entities owned or controlled by U.S. financial institutions from knowingly engaging in any transactions with or benefiting the IRGC or its agents or affiliates whose property and interests in property are blocked pursuant to IEEPA. Section 1245(c) of the NDAA builds on CISADA by requiring the president to block and prohibit all transactions in all property and interests in property of an Iranian financial institution that are within the United States or within the possession or control of a U.S. person. Pursuant to that authority, President Obama issued Executive Order 13599 on February 5, 2012, which extends further than the NDAA by blocking not only all property and interests in property of any Iranian financial institutions (including the CBI) that come into the possession or control of U.S. persons, but also all property and interests in property of the GOI and of all persons determined to be owned or controlled by, or to have acted for or on behalf of, any person whose property and interests in property are blocked pursuant to the order.

The TRA expands the financial sanctions contained in Section 104 of CISADA to cover foreign financial institutions that facilitate activities of a person acting on behalf of, or owned or controlled by, a person subject to financial sanctions pursuant to the specified United Nations Security Council resolutions against Iran. Sanctions are also now authorized against foreign financial institutions that facilitate significant transactions with a person (and not just a financial institution) whose property or interests in property are blocked pursuant to IEEPA in connection with Iran’s proliferation of WMD or support of terrorism. Moreover, the TRA now makes it a sanctionable activity for a foreign financial institution to act on behalf of, or as an intermediary for, or otherwise assist another person

27 NDAA sanctions are also subject to certain exceptions: (i) transactions for sale of food, medicine, or medical devices are not covered; (ii) NDAA sanctions may only be imposed subject to the president’s periodic determinations that there is a sufficient supply of petroleum and petroleum products from countries other than Iran; and (iii) NDAA sanctions will not apply to countries that have significantly reduced their volume of crude oil purchases from Iran. 31 C.F.R. § 561.203(f)-(h).

28 The financial provisions in both CISADA and NDAA are implemented by the IFSR, 31 C.F.R. §§ 561.201-03. Foreign financial institutions sanctioned under both CISADA and NDAA are added to the List of Foreign Financial Institutions Subject to Part 561 (the Part 561 List). The name of each sanctioned foreign financial institution and the relevant prohibition or strict condition(s) on the opening or maintaining of correspondent or payable-through accounts in the U.S. are also added to the “Part 561 List” at http://www.treasury.gov/ofac/downloads/561list.pdf (last updated July 31, 2012).

29 31 C.F.R. § 561.202. Any U.S. financial institution that violates the IFSR’s correspondent account provisions or who owns or controls entities that knowingly violate IFSR’s prohibitions on engaging in transactions with the IRGC (and the U.S. financial institution knows or should have known that the entity violated the IFSR) may be subject to civil penalties of up to the greater of $250,000 or twice the transaction value. Willful violations of IFSR’s correspondent account provisions may also result in criminal penalties of up to $1,000,000 and 20 years in prison. 31 C.F.R. § 561.701.

30 Exec. Order No. 13599, 77 Fed. Reg. 6,659 (Feb. 8, 2012). The NDAA and Executive Order 13599 blocking provisions are subject to General License A (transactions authorized under existing general or OFAC-specific licenses) and General License B (personal remittances). The Iranian Transactions Regulations were amended and changed to become the ITSR on October 22, 2012 in order to implement Executive Order 13599 and subsections 1245(c) and (d)(1)(B) of the NDAA. ITSR, 77 Fed. Reg. 64,664 (Oct. 22, 2012) (to be codified at 31 C.F.R. pt. 560).
with respect to, activity already sanctioned under section 104(c)(2) of CISADA. A foreign financial institution that is owned or controlled by another foreign financial institution that knowingly engages in such activity can also now be subject to CISADA sanctions.31

On July 30, 2012, around the same time that Congress passed the TRA, President Obama issued Executive Order 13622, which allows for NDAA-like correspondent account sanctions to be imposed on foreign financial institutions that knowingly conduct or facilitate (1) any significant financial transaction with the National Iranian Oil Company ("NIOC") or Naftiran Intertrade Company ("NICO") or (2) a significant transaction for the purchase or acquisition of petroleum, petroleum products, or petrochemical products.32 In addition, the Secretary of the Treasury may block property and interests in property of persons who materially assist, sponsor, or provide financial, material, or technological support for, or goods and services in support of, the NIOC, NICO, or CBI, or the purchase or acquisition of U.S. bank notes or precious metals by the GOI.

Finally, consistent with the regulatory tightening of sanctions on Iran, the U.S. government has also become increasingly aggressive in its enforcement of sanctions with respect to financial institutions. On June 12, 2012, ING Bank N.V., a Netherlands financial institution, agreed to pay $619 million to settle what, at that time, the largest sanctions case to date. ING was accused of “stripping,” or systematically removing references to sanctioned parties from wire-transfer payment messages.34 Multiple government agencies cooperated in the investigation, including OFAC, the U.S. Attorney’s Office for the District of Columbia, the Department of Justice’s National Security Division and Asset Forfeiture and Money Laundering Section, the Department of Commerce’s Bureau of Industry and Security (“BIS”), and the New York County District Attorney’s Office.

In another recent high-profile case, on August 14, 2012, Standard Chartered Bank (“SCB”), a wholly owned subsidiary of Standard Chartered plc, a UK-based bank, reached a $340 million settlement with New York State’s Department of Financial Services (“DFS”) over charges that it violated money laundering provisions in connection with its handling of Iranian transactions.35 The case is most striking in that the newly created DFS forced a separate settlement ahead of the other federal and state agencies, and rejected OFAC’s position that SCB’s stripping of information with respect to U-Turn transactions did not constitute a violation of the ITSR, while the U-Turn exemption was still in effect prior to November 6, 2008. On December 10, 2012, SCB agreed to a settlement with additional agencies for sanctions-related activities. In particular, the Federal Reserve Board announced that SCB would pay $100 million in civil penalties and would forfeit $227 million to the U.S. Department of Justice and the New York County District Attorney’s Office.37 SCB also agreed to pay $132 million to settle alleged sanctions violations with OFAC – this payment is deemed satisfied by the forfeiture announced by the U.S. Department of Justice.38

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31 All of the above provisions in the TRA amending section 104 of CISADA have been implemented in the amended IFSR, 31 C.F.R. § 561.201. IFSR, 77 Fed. Reg. 66,918 (Nov. 8, 2012) (to be codified at 31 C.F.R. pt. 561).

32 By a letter to the U.S. Congress on September 24, 2012, OFAC made a determination, pursuant to Section 312 of the TRA, that the NIOC is an agent or affiliate of the IRGC. Based on this determination, the NIOC is now also a person described under Section 104(c)(2)(E)(i) of CISADA, which means that foreign financial institutions that knowingly facilitate significant transactions with the NIOC are now exposed to CISADA sanctions as well. OFAC, Questions Related to Determination Pursuant to Section 312 of the Iran Threat Reduction and Syria Human Rights Act of 2012, http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx#itrshra.


34 F. Amanda DeBusk & Lynn G. Kamarck, Record-Breaking Fines in ING Bank Sanctions Case Show Hazard of Doing

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On December 11, 2012, HSBC Holdings plc ("HSBC") bank was subjected to $1.9 billion in penalties for violations of the Bank Secrecy Act and U.S. sanctions -- the largest bank settlement in U.S. history. The HSBC settlement was the result of combined federal, state, and international action. This settlement included an $875 million settlement with the U.S. Department of the Treasury over HSBC’s alleged money laundering and sanctions violations. The Treasury portion of the settlement was the largest settlement in the Department’s history and involved the collective action of the following divisions within the Treasury Department: OFAC, the Financial Crimes Enforcement Network (FinCEN), and the Office of the Comptroller of the Currency (OCC). These recent enforcement cases highlight the vigorous enforcement climate, especially for non-U.S. banks.

**Securities and Insurance Sector**

Section 212 of the TRA imposes ISA sanctions on a person who knowingly provides underwriting services, insurance or reinsurance for NIOC, the National Iranian Tanker Company ("NITC"), or a successor entity to either company. The president is authorized not to impose sanctions on such persons if he receives reliable assurances that the person will terminate the provision of underwriting services, insurance or reinsurance for NIOC, NITC, or any successor entity within 120 days after the TRA’s enactment. In addition, Section 213 of the TRA imposes ISA sanctions on a person who knowingly purchases, subscribes to, or facilitates the issuance of sovereign debt of the GOI, including government bonds, or the debt of any entity owned or controlled by the GOI, including bonds.

**Petroleum and Petrochemical Sector**

Iran’s petroleum and petrochemical sectors are a major focus of U.S. sanctions against Iran. As mentioned above, the ISA was significantly expanded to cover more activities, include more sanctions, and reduce presidential discretion to waive such sanctions by CISADA. The recently enacted TRA expands ISA even more by adding the following to its list of sanctionable activities:

- a person who knowingly contributes to Iran’s ability to import refined petroleum products by bartering, including the insurance or reinsurance of such exchanges, as well as purchasing, subscribing to, or facilitating the issuance of GOI sovereign debt;
- a person who knowingly participates in a joint venture with respect to the development of petroleum resources outside of Iran, in which the GOI is a substantial partner or investor, or through the operation of which Iran could receive technological knowledge or equipment not previously available to it that could directly and significantly contribute to the enhancement of Iran’s ability to develop petroleum resources in Iran;
- a person who knowingly sells, leases, or provides to Iran goods, services, technology, or support that could directly and significantly contribute to Iran’s development of petroleum resources in Iran, its domestic production of refined petroleum

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40 The president is authorized not to impose sanctions on a person who provides underwriting services, insurance, or reinsurance if he determines that the person has exercised due diligence in establishing and enforcing official policies and controls to ensure that the person does not provide such services for the NIOC, the NITC, or a successor entity to either company. There is also an exemption for providing such services when related to the provision of agricultural commodities, food, medicine, or medical devices to Iran or the provision of humanitarian assistance to the people of Iran. TRA § 212(b).

41 Specifically, CISADA added the following to ISA’s list of sanctionable activities: (i) making an investment that directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources, and (ii) the provision to Iran of goods, services, and technology that facilitate Iran’s domestic production of refined petroleum products, or its ability to import refined petroleum products. CISADA also increased ISA’s menu of sanctions from six to nine, and the minimum number of sanctions the president has to impose from two to three. In addition, under CISADA, the president may only waive sanctions if such a waiver is “necessary” instead of just “important” to the national interest. CISADA § 102.

42 The TRA provides an exception for persons who terminate their participation in such joint ventures within 180 days after the date of enactment of the TRA. TRA § 201.
products, or its domestic production of petrochemical products; and

- a person who is a controlling beneficial owner of, or otherwise owns, operates, controls, or insures a vessel that is used to transport crude oil from Iran to another country.

In addition, the TRA also adds three sanctions to the ISA’s existing menu of nine sanctions and now requires the president to impose a minimum of five instead of three sanctions on each sanctioned person. Finally, the TRA reduces the president’s discretion to waive the above sanctions in energy-related cases to situations in which a waiver is “essential” to U.S. national security interests.

SANCTIONING FOREIGN PERSONS WHO EVADE U.S. SANCTIONS

On May 1, 2012, the president issued Executive Order 13608, which provides for sanctions against foreign sanctions evaders. Section 217(b) of the TRA authorizes sanctions imposed by this executive order to continue in effect until the president certifies to Congress that Iran has ceased supporting terrorism and developing weapons of mass destruction.

The order targets foreign persons (i) who violate or attempt to violate any license, order, regulation, or prohibition contained in previous executive orders relating to national emergencies or property and interests in property concerning Iran, (ii) who facilitate deceptive transactions intended to help evade U.S. sanctions against Iran, and (iii) who are owned or controlled by, or acting on behalf of, any person meeting the above criteria. The order prohibits all transactions or dealings involving evaders, including any exporting, re-exporting, importing, selling, purchasing, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing in relation to any goods, services, or technology in or intended for the United States or provided by or to U.S. persons, wherever located.

While the order is broad in scope, its coverage is especially relevant for the financial sector because authorized sanctions cut off designees from the U.S. commercial and financial systems. The order does not implement a blocking program, but requires that any payments related to deceptive transactions must be rejected and accounts restricted.

OFAC GUIDANCE ON COMPLIANCE BEST PRACTICES

Given the ever-tightening sanctions on Iran and aggressive enforcement by federal and state agencies, it is crucial that companies adopt best practices to mitigate the risks of violations. In particular, OFAC has encouraged firms in the securities and investment sector to adopt a risk-based compliance program “designed to detect, monitor, and address potential violations in a systematic and thorough manner.” Developing a robust OFAC compliance program begins with conducting a risk assessment of a firm’s business to identify areas that pose a greater risk of violating OFAC sanctions. Identifying such vulnerabilities then provides the firm with a basis for developing comprehensive policies and procedures for mitigating the risks and preventing violations from occurring.

In the financial and securities sector, for example, automated screening for SDNs alone does not eliminate an entity’s exposure to OFAC risks. Particularly in the banking sector where a premium is placed on data privacy and customer confidentiality, a firm should conduct a risk-based assessment of its activities and identify high-risk transactions where the name of the sanctioned target may not be readily apparent, or where ownership or control by other entities may not be obvious for enhanced due diligence. The complex layering of securities transactions involving multiple institutions and intermediary entities may also pose similarly high risks so as to justify enhanced due diligence.

43 This includes any significant assistance to petroleum refineries or directly associated infrastructure, including port facilities, railways, and roads, the primary use of which is to support the delivery of refined petroleum products. Id.

44 TRA adds the following new sanctions: (1) the president may prohibit any U.S. person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person; (2) the president may direct the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the United States, a corporate officer or shareholder with a controlling interest in a sanctioned person; and (3) the president may impose on the principal executive officers of any sanctioned person any one of the menu of 12 sanctions now available under the ISA. TRA § 204.

45 Exec. Order 13608 § 1.

OFAC’s risk-based approach takes into account factors such as: types of products and services offered by the firm; the nature of its customer base, including geographic location and market, products, and downstream customers; and the jurisdictions in which a firm deploys its capital.\textsuperscript{47} Whether a firm employs software or relies on employees to identify unusual activity, these processes should ultimately map out areas of the firm’s business or types of financial transactions that pose higher risks than others and flag them for additional due diligence. For example, based on a typical risk assessment, OFAC has highlighted the following hypothetical securities and investment scenarios as potentially requiring further due diligence:\textsuperscript{48}

- A U.S. bank’s direct customer is a foreign financial institution located in a high-risk country that uses its omnibus account to trade or hold securities on behalf of several undisclosed third parties.

- A U.S. hedge fund or other investment vehicle has overseas institutional investors that are investing on behalf of their own clients, whose identities are not disclosed to the U.S. fund.

- A U.S. person invests in foreign securities or foreign investment funds or exchanges that are not subject to U.S. jurisdiction and are located in high-risk geographic areas.

Especially in cases where obtaining specific ownership information on an account is difficult or impossible, communicating a firm’s OFAC obligations to customers, affiliates, or counterparties in a transaction can also mitigate OFAC risk and help protect the firm. U.S. financial institutions may wish to include specific sanctions provisions or warranties in agreements requiring customers or affiliates to agree not to engage in prohibited transactions. Finally, given the ever-changing landscape of Iran sanctions and the inherent limitations in screening software, the key to OFAC compliance will now more than ever be regular employee training and compliance program audits. Employees working in compliance must not only be familiar with OFAC regulations but must also consult OFAC resources frequently in order to stay current in a rapidly evolving area.\textsuperscript{49}

**CONCLUSION**

The new Iranian sanctions are complex and broad. It is important for companies to update their compliance programs to account for the new risks. In addition, the new SEC reporting requirements are designed to shine a spotlight on any companies subject to U.S. securities reporting requirements that have operations in Iran. The spotlight will create public pressure and bring enforcement scrutiny, thereby increasing pressure on companies to disengage with Iran. The sanctions will further isolate Iran from the international community.\textsuperscript{49}


\textsuperscript{48} See supra note 46, at 23-24.

\textsuperscript{49} For OFAC resources for the financial sector, see OFAC, *OFAC Information for Industry Groups*, http://www.treasury.gov/resource-center/sanctions/Pages/regulations.aspx.
**GLOSSARY**

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<th>Acronym</th>
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<tr>
<td>BIS</td>
<td>U.S. Department of Commerce, Bureau of Industry and Security</td>
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<td>CBI</td>
<td>Central Bank of Iran</td>
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<td>CISADA</td>
<td>Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010</td>
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<td>DFS</td>
<td>New York State’s Department of Financial Services</td>
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<td>GOI</td>
<td>Government of Iran</td>
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<td>HSBC</td>
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<td>IRGC</td>
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<tr>
<td>NIOC</td>
<td>National Iranian Oil Company</td>
</tr>
<tr>
<td>NITC</td>
<td>National Iranian Tanker Company</td>
</tr>
<tr>
<td>OFAC</td>
<td>U.S. Department of Treasury, Office of Foreign Assets Control</td>
</tr>
<tr>
<td>SCB</td>
<td>Standard Chartered Bank</td>
</tr>
<tr>
<td>SDN</td>
<td>Specially Designated Nationals</td>
</tr>
<tr>
<td>SEC</td>
<td>Securities and Exchange Commission</td>
</tr>
<tr>
<td>TRA</td>
<td>Iran Threat Reduction and Syria Human Rights Act of 2012</td>
</tr>
<tr>
<td>WMD</td>
<td>Weapons of Mass Destruction</td>
</tr>
</tbody>
</table>