

PUBLICATION

10Qs and 10Ks Now Required to Include Transactions Subject to Economic Sanctions

February 26, 2013

Effective February 6, 2013, companies required to file quarterly and annual reports (10Qs and 10Ks) with the Securities and Exchange Commission (SEC) are required to include information about certain of their own *and their affiliates'* transactions related to entities and activities subject to economic sanctions. This requirement brings violations and potential violations of the U.S. economic sanctions that are enforced by the Department of Treasury within the framework of the securities laws—a way for the government to encourage openness because the consequences of false reports to the SEC can be dire for companies and their managers. This requirement was included in the Iran Threat Reduction and Syria Human Rights Act of 2012 to increase U.S. business's accountability for their navigation of economic sanctions laws, which have traditionally been enforced in more ad hoc ways.

Reports made pursuant to the new requirement must be accompanied by notices that the filings contain such reports, and the reports will be transmitted to the president and to Congressional committees and published on the Internet. The president is required to investigate most of the new reports and to decide whether to impose sanctions on the companies that filed them. It is important to note that the reporting requirement does not just apply to illegal activities. Some types of transactions required to be reported were legal when they happened, either because the laws prohibiting them had not come into effect yet or because they were permitted by licenses from the [Office of Foreign Assets Control \(OFAC\)](#).

The following types of transactions must be reported, whether it was the U.S. issuer itself or its domestic or foreign affiliate that engaged in them:

- Substantial investments that contribute to Iran's or Libya's ability to develop their petroleum resources;
- Facilitation by a foreign financial institution of efforts of the government of Iran, the Central Bank of Iran, any other Iranian financial institution, or the Iranian Revolutionary Guard Corps (IRGC) to:
 - Acquire or develop weapons of mass destruction;
 - Provide support for a designated terrorist organization;
 - Facilitate the activities of a person subject to financial sanctions imposed by the U.N. Security Council or of a person subject to control by such a person; or
 - Launder money for any person subject to Security Council sanctions;
- Facilitation of a significant transaction or provision of financial support for:
 - The IRGC or any of its agents or affiliates that are blocked by OFAC or
 - Any person whose property or interests are blocked in connection with weapons of mass destruction, delivery systems for weapons of mass destruction, or support for international terrorism
- Any transaction, owned or controlled by a U.S. financial institution benefitting the IRGC or any of its blocked agents or affiliates;
- Transfer of a technology or provision of a service likely to be used to commit human rights abuses or transfer of a sensitive technology to the government of Iran;

- Any transaction with a person blocked by an executive order identifying terrorists and their supporters that focuses on Al Qaida;
- Any transaction with a person that is blocked by an executive order identifying proliferators of weapons of mass destruction and their supporters, including several North Korean entities; and
- Any transaction with a person identified in the regulations defining the government of Iran.

U.S. issuers must be very familiar with and have complete records of their activities and their affiliates' activities that relate to any of the above. An issuer that finds any red flags indicating possible connections to the types of transactions that have to be reported should conduct a very careful analysis of Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 and audit its affiliates' activities related to Iran, Libya or North Korea and all activities that appear to be connected with red flags. Whatever the consequences of a voluntarily disclosed violation of a sanctions program, it could be devastating to fail to file a required report with the SEC in addition to having committed the violation itself.

If you have questions please contact your Baker Donelson attorney.