

Securities Regulation and Compliance Alert

July 3, 2013

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SEC Resource Extraction Issuer Disclosure Rules Vacated

On July 2, 2013, the U.S. District Court for the District of Columbia vacated the resource extraction issuer disclosure rules adopted last year by the Securities and Exchange Commission pursuant to Section 1504 of the Dodd-Frank Act. The rules would have required resource extraction issuers to disclose, on new Form SD, certain payments made by the issuer, a subsidiary of the issuer or another entity under the issuer's control to foreign governments or the U.S. federal government for the purpose of the commercial development of oil, natural gas or minerals. The rules were remanded back to the SEC, which now must make a decision whether to appeal the decision or to revise or rewrite the rules. Although it is unclear what the SEC will do in response to the court's decision, as of now the rules will not apply as adopted.

The court invalidated the rules on two independent grounds. The court disagreed with the SEC's view that Section 1504 mandated that the SEC adopt rules that required issuers to make the details of their resource extraction payments public. The court concluded that Section 1504 instead afforded the SEC discretion to allow issuers to disclose payment information in confidence to the SEC only and that the SEC could then make a compilation of that information available to the public. As a result, the court indicated that the SEC "may materially alter the [rules] in light of flexibility it did not know it had."

The court also found that the SEC's decision to not allow an exemption under the rules for countries that prohibit disclosure of payment information was arbitrary and capricious. The court noted that, by the SEC's own assessment, the lack of such an exemption "drastically increased the [rules'] burden on competition and cost to investors." The SEC will need to revisit this aspect of the rules on remand.

The court did not address several other arguments against the rules, including the claim that the rules violate the First Amendment by compelling companies to engage in speech. The American Petroleum Institute and the U.S. Chamber of Commerce were the plaintiffs in the case.

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In a separate, ongoing case, the U.S. Chamber of Commerce and other groups have challenged the conflict minerals disclosure rules adopted by the SEC pursuant to Section 1502 of the Dodd-Frank Act. These rules require public companies to disclose whether certain minerals from the Democratic Republic of Congo or adjoining countries are necessary to the functionality or production of products that they manufacture or contract to be manufactured.

The effect of the court's decision in the resource extraction issuer disclosure rules case on the conflict minerals disclosure rules case is uncertain. Companies subject to the conflict minerals rules should continue their preparations in anticipation of the May 31, 2014, deadline for filing conflict minerals disclosure reports covering the 2013 calendar year, but should monitor developments in the ongoing case.

A copy of the court's decision is available [here](#).

For additional information about the rules struck down by the court ruling, please see our previous client alerts [here](#) and [here](#).