

SEC Reporting & Compliance Alert

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SEC Proposes Rules to Implement Resource Extraction Issuer Disclosure Provisions

On December 11, 2015, the U.S. Securities and Exchange Commission (SEC) released another set of proposed rules to implement the resource extraction issuer disclosure provisions in Section 1504 of the Dodd-Frank Act. The proposed rules would require resource extraction issuers to disclose in an annual report (on Form SD) payments made by the issuer, a subsidiary or another entity controlled by the issuer to a foreign government or to the United States federal government for the commercial development of oil, natural gas or minerals. The SEC adopted similar rules on August 22, 2012, but those rules were subsequently vacated by the U.S. District Court for the District of Columbia.

Overview. The new proposed rules would apply to issuers that are required to file annual reports with the SEC and that engage in the commercial development of oil, natural gas or minerals. Under the proposed rules, disclosure would be required for payments relating to the exploration, extraction, processing and export of oil, natural gas or minerals, or for the acquisition of a license for any such activity. Payments that would need to be disclosed include taxes, royalties, fees (including license fees), product entitlements, bonuses, dividends and infrastructure improvements. The proposed rules would provide an exemption for any payment (whether a single payment or a series of related payments) that is less than \$100,000.

The proposed rules would require a resource extraction issuer to publicly disclose the information annually using Form SD. The disclosure would be provided in an exhibit and electronically tagged using the eXtensible Business Reporting Language (XBRL) format. Resource extraction issuers would be required to comply with the rules 150 days after the end of their fiscal year-end, starting with their fiscal year ending no earlier than one year after the effective date of the adopted rules. As a result, reporting under the new rules should not be required for calendar year reporting companies until 2017 or later.

Response to Legal Challenges. In response to the legal challenges following the first set of adopted rules, the SEC noted the following in its release for the proposed rules:

- To address issues about potential prohibitions on the proposed disclosures under a company's host country's laws or the potential of competitive harm if the proposed disclosures were required, the SEC noted that it could provide exemptive relief from the requirements of the proposed rules on a case-by-case basis using its existing authority under the Exchange Act; and

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- In light of international developments and progress made by the U.S. Extractive Industries Transparency Initiative (USEITI), a resource extraction issuer would be allowed to use a report for foreign regulatory purposes or for the USEITI to comply with the proposed rules, if the SEC determines the requirements are substantially similar to the proposed rules.

Next Steps. Initial public comments on the proposed rules are due by January 25, 2016. Reply comments, which may respond only to issues raised in the initial comment period, are due on February 16, 2016. A copy of the proposing release for the resource extraction issuer disclosure rules is available [here](#), a copy of the press release issued by the SEC regarding the proposed rules is available [here](#) and a copy of Chair Mary Jo White's statement about the proposed rules is available [here](#).

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