



SEC Adopts Resource Extraction Disclosure Rules No Exemption for Smaller Reporting Companies or Foreign Private Issuers

As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in July 2010, the Securities and Exchange Commission adopted rules governing disclosure of payments by resource extraction issuers in August 2012. These rules will require any issuer required to file an annual report with the SEC that is engaged in the commercial development of oil, natural gas or minerals to prepare and file annually new Form SD with the SEC within 150 days of the end of its fiscal year containing disclosure of non-de minimis payments to governmental parties to further commercial development of such resources. The new rules are applicable to all issuers (including smaller reporting companies and foreign private issuers) for fiscal years ending after September 30, 2013, although payments made prior to October 1, 2013 need not be disclosed. The final rules do not provide an exemption for situations in which foreign law may prohibit the required disclosure or for commercially sensitive information, nor do they exempt an issuer subject to confidentiality obligations.

“Resource Extraction Issuer” and “Payment” Definitions

As described above, the new rules specify that a “resource extraction issuer” is any issuer required to file an annual report with the SEC that is engaged in the “commercial development of oil, natural gas or minerals,” which latter term is defined to include the activities of exploration, extraction, processing, and export, or the acquisition of a license for any such activity. A disclosable “payment” is any payment that is made to further the commercial development of oil, natural gas, or minerals, is “not de minimis” (*i.e.*, equal to or greater than \$100,000 in a single payment or a series of related

payments) and includes taxes, royalties, fees (including license fees), production entitlements, bonuses, dividends and payments for infrastructure improvements.

Payees and Payors

Under the new rules, a resource extraction issuer must disclose any “payments” made:

- by the issuer, a subsidiary of the issuer, or an entity under the “control” of the issuer, to
- a foreign national government, a foreign subnational government -- such as the government of a state, province, county, district, municipality, or territory under a foreign national government -- a company majority-owned by foreign national or subnational government, or the United States Federal Government.

Annual Report on Form SD

The required disclosure about these payments must be filed under the cover of a new annual report, rather than in the issuer’s annual report on Form 10-K or 20-F, as originally proposed by the SEC. New Form SD requires issuers to include a brief statement under the heading “Disclosure of Payments By Resource Extraction Issuers,” with detailed payment information contained in an XBRL interactive data standard exhibit to the Form SD.

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The detailed, electronically-tagged disclosures in the exhibit must specify:

- total amounts of the payments, by category;
- the currency used to make the payments;
- the financial period in which the payments were made;
- business segment of the resource extraction issuer that made the payments;
- which government received the payments, and the country in which the government is located; and
- the project of the resource extraction issuer to which the payments relate.

As noted above, Form SD will be required for a resource extraction issuer for fiscal years ending after September 30, 2013, although a partial year report for the period from October 1, 2013 to the end of its fiscal year may be filed by an issuer whose fiscal year began before September 30, 2013.

Scope of Required Disclosures

Notwithstanding significant commentary by many interested parties, the SEC declined to provide narrowing interpretative guidance regarding the terms “extraction,” “processing,” and “export” as used in the new rules, resulting in many downstream issuers that may not be directly involved in extractive activities being comprehended in the definitions. Additionally, the term “project” was left undefined by the SEC with the stated intention of allowing flexibility for different

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types and sizes of businesses. Given the potential effect of an issuer’s position regarding certain aspects of the new rules, issuers whose activities may be seen as being part (directly or indirectly) of the commercial development of oil, natural gas or minerals should begin considering their operations and reporting systems to determine methods of complying with the Form SD requirement well in advance of the stated deadline.

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