

As we discussed in blog posts on [September 3, 2015](#) and on [October 2, 2015](#), Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act required the SEC to issue resource extraction payment rules. The purpose of those rules was to promote the federal government's desire for transparency about resource extraction payments made by commercial entities to governments around the world. The initial rules were issued by the SEC on August 22, 2012. The American Petroleum Institute challenged the initial rules, and they were struck down by the DC district court on July 2, 2013. The court remanded the rules to the SEC for it to address what the court said were two flaws in the rules:

- the rules required full public disclosure of the reports submitted to the SEC, and
- the SEC did not provide for an exemption from the requirements in situations when the disclosure about the extraction payments was prohibited by the relevant foreign government.

Time passed and interested parties waited for the SEC to issue revised proposed rules. Finally, on September 18, 2014 (more than a year after the initial rules were struck down), Oxfam grew tired of waiting and filed an action to compel the SEC to issue revised proposed rules by a certain date. On September 2, 2015, nearly a year after Oxfam filed that action, a federal judge imposed a deadline of October 2, 2015 for the SEC to file an "expedited schedule" for issuing the final resource extraction payment rules. As required, the SEC filed its expedited schedule on October 2 and committed to issue revised proposed rules by December 31, 2015. On December 11, 2015, almost three weeks ahead of schedule, the SEC issued revised [proposed resource extraction payment rules](#). **Initial comments on the proposed rules are due by January 25, 2016. Reply comments are due by February 16, 2016.**

## Who would be covered by the proposed rules?

An issuer that:

- is required to file annual reports under the Securities Exchange Act, and
- engages in the commercial development of oil, natural gas or minerals.

Payments made by subsidiaries or other entities controlled by the reporting company would also be included in the disclosure.

## What would have to be disclosed?

The issuer would have to disclose certain payments made to a foreign government, a foreign subnational government (like a province or other administrative division) or the US federal government. Disclosure would be required for:

- payments made for the "commercial development of oil, natural gas or minerals" as long as those payments are "*not de minimis*."

"Commercial development of oil, natural gas or minerals" includes: exploration, extraction, processing, export or the acquisition of a license for any of those activities.

"Not *de minimis*" is any payment, individually or in a series of related payments, of US\$100,000 or more during a fiscal year.

The types of payments to be disclosed would include: taxes, royalties, fees (including license fees), production entitlements, bonuses, dividends and payments for infrastructure improvements. Note: these are valid and legal payments. The focus of the resource extraction payment rules is not bribery or anticorruption. Instead, the focus is transparency and making the information about any relevant payment publicly available in order to pressure the governments receiving these payments to use them for legitimate purposes.

The proposed rules include a long list of detailed information that must be disclosed about the payments made, including: type and total amount of payments for each project, type and total amount of payments to each government, total amounts by category, currency used, relevant financial period, business segment making the payment, government and country receiving the payment, projects to which the payments relate, the resource being developed and the geographic location of the project. This information would be provided in an interactive data format.

Importantly, the rules would give the SEC the authority to allow exemptions from the requirements on a case-by-case basis.

The SEC intends for these resource extraction payment rules to be consistent with the Extractive Industries Transparency Initiative and with similar rules already adopted by Canada and the EU. In fact, the rules would allow issuers to use reports prepared for other regulatory purposes to fulfill their requirements under the SEC rules as long as the requirements are "substantially similar."

## How would the disclosure be made?

The proposed rules would require the issuer to disclose the relevant payment information by an annual filing with the SEC on an exhibit to Form SD (the form that is currently used to house conflict minerals disclosure). The filing would be required no later than 150 days after the end of the issuer's most recent fiscal year.

The deadline for initial comments to the revised proposed rules is January 25, 2016. Reply comments are due by February 16, 2016. We will continue to monitor this proceeding and will issue further guidance throughout the rule-making process.

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