

Press Release

SEC Proposes Rules to Implement the Statutory Mandate to Adopt Resource Extraction Disclosure Rules

FOR IMMEDIATE RELEASE

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Washington D.C., Dec. 18, 2019 — Following a series of Commission actions, court proceedings and Congressional action, the Securities and Exchange Commission today voted to propose rules that would require resource extraction issuers to disclose payments made to foreign governments or the U.S. federal government for the commercial development of oil, natural gas, or minerals.

The Commission first adopted rules in this area in 2012, as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The 2012 rules were vacated by the U.S. District Court for the District of Columbia. The Commission then adopted new rules in 2016, which were disapproved by a joint resolution of Congress pursuant to the Congressional Review Act.

Although the joint resolution of Congress vacated the 2016 rules, the statutory mandate remains in effect. As a result, the Commission is statutorily obligated to issue a rule. Under the Congressional Review Act, however, the Commission may not reissue the same rule in “substantially the same form” or issue a new rule that is “substantially the same” as the disapproved rule.

“I commend the staff for expertly navigating legal and regulatory questions when crafting this proposal,” said Chairman Jay Clayton. “The proposal is designed to address the statutory mandate in a manner that does not result in undue compliance burdens or competitive harm.”

The proposal will have a 60-day public comment period following its publication in the Federal Register.

FACT SHEET

Disclosure of Payments by Resource Extraction Issuers

December 18, 2019

The Securities and Exchange Commission today proposed rules to implement Section 13(q) of the Exchange Act, mandated by the Dodd-Frank Act. The proposed rules would require resource extraction issuers to file a Form SD on an annual basis that includes information about payments related to the commercial development of oil, natural gas, or minerals that are made to a foreign government or the U.S. federal government.

Highlights

The proposed rules would require a domestic or foreign issuer to disclose payments made to a foreign government or the U.S. federal government if the issuer engages in the commercial development of oil, natural gas, or minerals and is required to file annual reports with the Commission under the Securities

Exchange Act. The issuer would also be required to disclose payments made by a subsidiary or entity controlled by the issuer.

The proposed rules would require public disclosure of company-specific, project-level payment information. The proposed rules include several changes compared to the 2016 rules vacated pursuant to the Congressional Review Act. For example, the proposed rules would:

- revise the definition of the term “project” to require disclosure at the national and major subnational political jurisdiction, as opposed to the contract level;
- revise the definition of “not de minimis” to include both a project threshold and an individual payment threshold so that disclosure with respect to payments to governments that equal or exceed \$150,000 would be required when the total of the individual payments related to a project equal or exceed \$750,000;
- add two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure;
- add an exemption for smaller reporting companies and emerging growth companies;
- revise the definition of “control” to exclude entities or operations in which an issuer has a proportionate interest;
- limit the liability for the required disclosure by deeming the payment information to be furnished to, but not filed with, the Commission;
- permit an issuer to aggregate payments by payment type made at a level below the major subnational government level;
- add relief for issuers that have recently completed their U.S. initial public offerings; and
- extend the deadline for furnishing the payment disclosures.

What’s Next?

The proposal will be subject to a 60-day public comment period. To submit comments, use the SEC’s Internet submission form or send an email to rule-comments@sec.gov.

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