

## Press Release

# SEC Adopts Final Rules for the Disclosure of Payments by Resource Extraction Issuers

**FOR IMMEDIATE RELEASE**  
**2020-318**

*Washington D.C., Dec. 16, 2020* —The Securities and Exchange Commission today voted to adopt final rules that will require resource extraction issuers that are required to file reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 to disclose payments made to the U.S. federal government or foreign governments for the commercial development of oil, natural gas, or minerals. The rules implement Section 13(q) of the Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The rules are intended both (1) to achieve the statutory objective of increasing the transparency of payments to governments for the purpose of the commercial development of their oil, natural gas, and minerals and (2) to comply with the Congressional Review Act (CRA).

The adopted rules will require a domestic or foreign reporting issuer to disclose payments made by the issuer or a subsidiary or entity controlled by the issuer to the U.S. federal government or a foreign government if the issuer engages in the commercial development of oil, natural gas, or minerals.

The Commission adopted rules to implement Section 13(q) in 2016, but the 2016 Rules were disapproved pursuant to the CRA by a joint resolution of Congress. Although the 2016 Rules were disapproved under the CRA, the statutory mandate in Section 13(q) of the Exchange Act has remained in effect. As a result, the Commission remains statutorily obligated to issue a new rule, however, pursuant to the CRA the Commission may not reissue the disapproved rule in “substantially the same form” or issue a new rule that is “substantially the same” as the disapproved rule. Today’s action completes a rulemaking process commenced in 2019 that was designed to address both requirements.

“The final rules represent another step in the Commission’s continued efforts to implement Section 1504 of the Dodd-Frank Act,” said SEC Chairman Jay Clayton. “The final rules are designed to achieve the statutory objective of promoting the transparency of resource extraction issuers’ payments to governments while adhering to the CRA’s limitation that the new rule not be substantially the same as the disapproved rule. Achieving this was not a straightforward task, and I applaud the staff for their considerable efforts in these unique circumstances.”

The final rules will be effective 60 days following publication in the Federal Register.

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### **FACT SHEET**

#### **Disclosure of Payments by Resource Extraction Issuers**

The Securities and Exchange Commission today adopted rules to implement Section 13(q) of the Exchange Act. The rules will require resource extraction issuers (defined as oil, natural gas, and mining companies that are required to file reports under Section 13 or 15(d) of the Securities Exchange Act of 1934) 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 Federal Government.

#### **Background**

Section 13(q) was added to the Exchange Act in 2010 by Section 1504 of the Dodd Frank Act. Section 13(q) directs the Commission to issue final rules that require each resource extraction issuer to include in an annual report information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals. The Commission

adopted rules to implement Section 13(q) in 2016, but the 2016 Rules were disapproved pursuant to the Congressional Review Act by a joint resolution of Congress.

### **Highlights**

The final rules will, among other things:

- require public disclosure of company-specific, project-level payment information;
- define the term “project” to require disclosure at the national and major subnational political jurisdiction, as opposed to the contract, level, recognizing that more granular contract-level disclosure could be used to satisfy the rule;
- add two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure;
- add a conditional exemption for smaller reporting companies and emerging growth companies;
- define “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;
- 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?**

Rule 13(q)(1) will become effective 60 days after publication in the Federal Register. Following a two-year transition period, an issuer will be required annually to submit Form SD no later than 270 days following the end of its most recently completed fiscal year. For example, if the rules were to become effective on March 1, 2021, the compliance date for an issuer with a December 31 fiscal year-end would be Monday, September 30, 2024 (i.e., 270 days after its fiscal year end of December 31, 2023).

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