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Securities Regulation Daily Wrap Up, TOP STORY—President upends SEC's resource extraction issuers rule, (Feb. 14, 2017)

Securities Regulation Daily Wrap Up

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By Mark S. Nelson, J.D.

President Trump signed a joint Congressional resolution that disapproves the **SEC**'s resource extraction issuers rule. The Commission adopted the Dodd-Frank Act-mandated rule last summer which, under the timing provisions of the Congressional Review Act, made the rule eligible for a second look by lawmakers. This was the first time Trump has signed CRA legislation, according to a transcript of the signing ceremony published by the White House. Trump had earlier pledged to "dismantle" the Dodd-Frank Act, although today's action on the resolution does not repeal the Dodd-Frank provision itself.

More CRA disapprovals to come. President Trump's signature on the joint resolution essentially repeals the **SEC**'s resource extraction issuers rule. The Republican-led effort to push the joint resolution through Congress emphasized the costs of the rule to businesses and the impact of foreign competition on U.S. firms. Democrats had emphasized the rule's anti-corruption goals.

Said the president: "This is one of many that we've signed, and we have many more left. And we're bringing back jobs big league, we're bringing them back at the plant level; we've bringing them back at the mine level. The energy jobs are coming back. And it's—you see what's going on with the stock market. They know that we know what we're doing, so it's going up."

In a separate press release, the White House characterized the **SEC**'s resource extraction issuers rule as "misguided" and "burdening American extraction companies." The summary also cited the $600 million cost estimate relied on by Congressional Republicans in debates on the joint resolution. That number comes from the **SEC**'s final rule, which also provided a lower bound estimate ($96 million) to the $591 million upper bound. The White House summary document also reiterated the rule's impact on jobs and U.S. competiveness as reasons for the repeal.

The joint resolution's author, Rep. Bill Huizenga (R-Mich), briefly spoke at the signing ceremony about the regulatory burdens and job creation worries over the **SEC**'s rule, themes he previously emphasized leading up to passage of the resolution by the House when he said: "For too long, regulators have saddled U.S. companies with burdensome regulations putting them at a competitive disadvantage on the global stage. By sending the **SEC** back to the drawing board, Congress is demonstrating that it is serious about strengthening the economy, boosting private sector job creation, and helping American workers."

Disclosure here, exposure overseas. Dodd-Frank Act **Section 1504** granted the **SEC** authority to require specialized disclosures by resource extraction issuers about payments they make to the U.S. or foreign governments for the purpose of commercially developing oil, natural gas, or minerals. The provision was known as the Cardin-Lugar amendment after its bi-partisan sponsors, former Sen. Richard Lugar (R-Ind) and Sen. Ben Cardin (D-Md).

Jay Branegan, a senior fellow at The Lugar Center, decried lawmakers' roll-back of the resource extraction issuers rule in a blog post. He noted that the law was premised on disclosures in the U.S. and the exposure of persons living in resource-rich countries to those disclosures as a way of holding governments in developing countries accountable for the allocation of scarce natural resources.

Senator Cardin had not yet issued a statement as of publication. But he did issue the following statement after the Senate's early-morning vote to approve the joint resolution: "Big Oil might have won the battle today, but I'm

not done fighting the war against entrenched corruption that harms the American people's interests and leaves the world's poor trapped in a vicious cycle of poverty while their leaders prosper."

Oxfam America, Inc., which had sued the **SEC** to speed the agency's re-write of the resource extraction issuers rule, issued a statement objecting to the president's action. "Oxfam will continue its fight against radical secrecy that hurts investors and the poorest people in the world," said Isabel Munilla, Senior Policy Advisor for Extractive Industries at Oxfam. "We are exploring all options to ensure the rule is implemented whether through legal, legislative or regulatory action."

But drafting another rule may be challenging for the **SEC**. House Financial Services Committee Ranking Member Maxine Waters (D-Calif) had previously noted that the **SEC** may face an uphill battle if it chooses to re-issue the resource extraction issuers rule because the CRA bars a new rule that is in substantially the same form as the repealed rule.

What was repealed. The **SEC**'s latest version of the resource extraction issuers rule was the product of a re-write following protracted court battles. Legislation to repeal the rule passed Congress just as the White House was unveiling a series of executive orders and other memoranda directing reviews of the Department of Labor's fiduciary standard rule and a wide-ranging review of U.S. financial system regulations.

The revised resource extraction issuers rule applied broadly to payments that are "not de minimis," meaning one or a series of related payments of at least $100,000. The rule included exemptions for acquired companies and for exploratory activities, and it reiterated that the Commission could grant other case-by-case exemptions. The rule became effective September 26, 2016, and compliance was set to begin for fiscal years ending on or after September 30, 2018.

Companies: The Lugar Center; Oxfam America, Inc.

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