

SEC Adopts Rules Regarding Disclosure of Payments by Resource Extraction Issuers

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The Securities and Exchange Commission has adopted final rules pursuant to Section 13(q) of the Securities Exchange Act of 1934 which require public companies engaged in the commercial development of oil, natural gas and minerals to provide an annual report in an interactive data format describing payments made to a foreign government or the United States federal government for the commercial development of oil, natural gas, or minerals. Compliance with the new rules is required for fiscal years ending after September 30, 2013. For the first report, most resource extraction issuers may provide a partial report disclosing only those payments made after September 30, 2013.

Resource Extraction Issuers

The rules apply to all United States companies and foreign companies that are engaged in the commercial development of oil, natural gas, or minerals, and that are required to file annual reports with the SEC, regardless of the size of the company or the extent of business operations constituting commercial development of oil, natural gas, or minerals.

Commercial Development

Commercial development means the activities of exploration, extraction, processing, export and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity.

- "Extraction" includes the production of oil and natural gas as well as the extraction of minerals.
- "Processing" includes field processing activities, such as the processing of gas to extract liquid hydrocarbons, the removal of impurities from natural gas after extraction and prior to its transport through the pipeline, the upgrading of bitumen and heavy oil and the crushing and processing of raw ore prior to the smelting phase but does not include refining or smelting.

The rules do not require disclosure of payments made for transportation for a purpose other than the export of the oil, natural gas, or minerals. Similarly, the rules do not including marketing in the list of covered activities in the definition of "commercial development".

Disclosure of Payments

The rules require a resource extraction issuer to disclose payments (including in kind payments) that are (i) not de minimis, (ii) made by the issuer, any of its subsidiaries or any entity under its control to (iii) a foreign government (including companies owned by a foreign government) or the United States federal government for the purpose of commercial development of oil, natural gas, or minerals in (iv) the fiscal year covered by the report.

Payments made to subnational governments such as state, province, county, district, municipality, or territory under a foreign national government must be reported but payments to United States state or local governments are not required to be reported.

The term “not de minimis” means any payment, whether made as a single payment or a series of related payments, that equals or exceeds \$100,000.

The payment information must be submitted on Form SD using electronic tags that identify:

- the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;
- the type and total amount of such payments made to each government;
- the total amounts of the payments, by category listed below;
- the currency used to make the payments;
- the financial period in which the payments were made;
- the business segment of the resource extraction issuer that made the payments;
- the government that 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.

The payment categories are: (a) taxes levied on corporate profits, corporate income, and production, (b) royalties, (c) fees, (d) production entitlements, (e) bonuses, (f) dividends (other than dividends paid to a government as a common or ordinary shareholder of the issuer as long as the dividend is paid to the government under the same terms as other shareholders), and (g) payments for infrastructure improvements.

Although payments are to be described on a project basis, the rules permit issuers to disclose payments at the entity level if the payment is made for obligations levied on the issuer at the entity level rather than the project level. For example, if a foreign government levies income tax on the issuer with respect to the issuer’s income in the country and not on particular projects within the country, the issuer may disclose the resulting income tax payment or payments without specifying a particular project associated with the payment.

The rules contemplate the payment information to be presented on an unaudited, cash basis for the year in which the payments are made.

Form SD

The rules require resource extraction issuers to file Form SD on EDGAR no later than 150 days after the end of the issuer's most recent fiscal year. The payment information must be presented in one exhibit to new Form SD using the XBRL interactive data standard.



Please contact Paul De Rosa by phone at (412) 297-4821 or by e-mail at pderosa@cohenlaw.com or Christie Tillapaugh by phone at (412) 297-4603 or by e-mail at ctillapaugh@cohenlaw.com for further information or if you have any questions concerning this topic.

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