



## *SECURITIES CLIENT ALERT*

### **SEC Proposes Revised Disclosure Rules for Resource Extraction Issuers**

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On December 18, 2019, the U.S. Securities and Exchange Commission **proposed 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 proposed rules are the SEC's third attempt to implement Dodd-Frank's resource extraction disclosure mandate, after earlier versions were respectively vacated in 2012 by a federal court and disapproved of by Congress in 2016.

**Resource Extraction Issuers.** The proposed rules would only apply to "resource extraction issuers," defined as domestic and foreign private issuers that (1) are required to file annual reports on Form 10-K, Form 20-F or Form 40-F, and (2) are engaged in the commercial development of oil, natural gas or minerals. Emerging growth companies and smaller reporting companies would not be subject to the proposed rules. The proposed rules provide transitional relief for newly acquired companies and conditional exemptions if foreign law or a pre-existing contract prohibits the disclosure and certain requirements are met. Notably, reliance on these exemptions does not require preapproval by the SEC.

**Required Disclosures.** The proposed rules would require resource extraction issuers to furnish the SEC a new Item 2.01 to Form SD disclosing not *de minimis* payments made by the company (or a subsidiary or entity controlled by the company) to a foreign government or the U.S. federal government. This disclosure would be required to include public disclosure of company-specific, project-level payment information, including (1) the type and total amount of payments for each project, for all projects made to each government, and by payment type; (2) the currency used to make the payments; (3) the fiscal year in which the payments were made; (4) the business segment of the issuer that made the payments; (5) the governments that received the payments and the countries in which they are each located; (6) the specific projects that the payments relate to; (7) the resources that are being developed; and (8) the method of extraction used in the project and the major sub-national political jurisdiction of each project. The term "not *de minimis*" is defined as any payment that equals or exceeds \$150,000 made in connection with a project that equals or exceeds \$750,000 in total payments.

**Timing and Liability.** The proposed rules would require a resource extraction issuer with a fiscal year ending on or before June 30 to furnish a Form SD no later than March 31 of the calendar year following their most recent fiscal year, while a resource extraction issuer with a fiscal year ending after June 30 would have until March 31 of the second year following their most recent fiscal year.

Note that the Form SD would be deemed “furnished” as opposed to “filed” with the SEC for liability purposes.

Companies have until March 16, 2020, to submit any comments to the SEC. Jeffrey T. Haughey and Jeff Roderick are attorneys in GableGotwals’ Corporate & Securities Law Group. For help analyzing the amendments recently proposed by the SEC or navigating the complexities of federal and state securities laws, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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