

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

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On December 16, 2020, the U.S. Securities and Exchange Commission (“SEC”) adopted **final rules** requiring resource extraction issuers that file reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (“Exchange Act”) to include payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals in annual reports.

The rules solidify **several attempts** by the SEC to implement Section 13(q) of the Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act. According to the SEC, the rules are intended 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 to comply with the Congressional Review Act.

The final rules require resource extraction issuers to disclose payments that are:

- made to the U.S. federal government or a foreign government;
- made to further the commercial development of oil, natural gas, or minerals;
- *not de minimis*; and
- includes royalties, fees, production entitlements, bonuses, and any other material benefits that the SEC determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals (such as dividends and payment for infrastructure improvements and community and social responsibility payments).

Under the final rules, a “*not de minimis*” payment means “any payment, whether made as a single payment or a series of related payments, that equals or exceeds \$100,000, or its equivalent in the resource extraction issuer’s reporting currency.”

The SEC **highlights** that the rules will:

- require public disclosure of company-specific, project-level payment information;
- include, in the definition of “project,” the requirement of disclosure at the national and major subnational political jurisdiction (as opposed to the contract level which was proposed in the 2016 disapproved version of the rule), recognizing that more granular contract-level disclosure could be used to satisfy the rule;
- add two new conditional exemptions which do not require preapproval by the SEC for circumstances 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;
- exclude, from the definition of “control,” entities or operations in which an issuer has a proportionate interest;
- limit the liability for the required disclosure on Form SD by deeming the payment information to be furnished to, but not filed with, the SEC;
- add IPO transitional relief; and
- extend the deadline for furnishing the payment disclosures.

Along with the rules, the SEC also [issued an order](#) finding that (i) Canada’s Extractive Sector Transparency Measures; (ii) the EU Accounting Directive 2013/34/EU; (iii) the EU Transparency Directive 2013/50/EU; (iv) the UK Reports on Payment to Governments Regulation 2014; and (v) the Norwegian Regulation on Country-by-Country Reporting are alternative reporting regimes that satisfy the transparency objectives of Section 13(q) under the Exchange Act for purposes of alternative reporting under Rule 13q-1(c) and paragraph (c) of Item 2.01 of Form SD.

The final rules will be effective 60 days following 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. So, 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).

For questions regarding the final rules or disclosure requirements, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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