

FACT SHEET

Disclosing Payments by Issuers Engaged in Resource Extraction

SEC Open Meeting

Aug. 22, 2012

The Commission will consider whether to adopt rules mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring resource extraction issuers to disclose payments made to governments.

Background

In 2010, Congress passed the Dodd-Frank Act, which directs the Commission to issue rules requiring the disclosure of certain payments made to the federal government or foreign governments by resource extraction issuers – companies engaged in the development of oil, natural gas, or minerals.

In particular, Section 1504 of the Act amends the Securities Exchange Act of 1934 by adding a new section, Section 13(q).

The Rules

Who Must Disclose:

The new rules would require a resource extraction issuer to disclose payments made to governments if:

- The issuer is required to file an annual report with the SEC.
- The issuer engages in the commercial development of oil, natural gas, or minerals.

The new disclosure requirements would apply to domestic and foreign issuers and to smaller reporting companies that meet the definition of resource extraction issuer.

In addition, the issuer would be required to disclose payments made by a subsidiary or another entity controlled by the issuer. A resource extraction issuer would need to make a factual determination as to whether it has control of an entity based on a consideration of all relevant facts and circumstances.

What Must Be Disclosed:

Under the new rules, a resource extraction issuer would be required to disclose certain payments made to a foreign government (including subnational governments) or the U.S. government.

Resource extraction issuer would need to disclose payments that are:

- Made to further the commercial development of oil, natural gas, or minerals.

- “not de minimis”
- Within the types of payments specified in the rules.

The rules would define commercial development of oil, natural gas, or minerals to include exploration, extraction, processing, and export, or the acquisition of a license for any such activity. The rules would define “not de minimis” to mean any payment (whether a single payment or a series of related payments) that equals or exceeds \$100,000 during the most recent fiscal year.

The types of payments related to commercial development activities that would need to be disclosed include:

- Taxes
- Royalties
- Fees (including license fees)
- Production Entitlements
- Bonuses
- Dividends
- Infrastructure Improvements

The new requirements clarify the types of taxes, fees, bonuses, and dividends that are required to be disclosed. These types of payments generally are consistent with the types of payments that the Extractive Industries Transparency Initiative suggests should be disclosed. Congress specifically referenced the EITI in defining “payment” in the law.

The rules would require a resource extraction issuer to provide the following information about payments made to further the commercial development of oil, natural gas, or minerals:

- Type and total amount of payments made for each project.
- Type and total amount of payments made to each government.
- Total amounts of the payments, by category.
- Currency used to make the payments.
- Financial period in which the payments were made.
- 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.
- The project of the resource extraction issuer to which the payments relate.

The new rules leave the term “project” undefined to provide resource extraction issuers flexibility in applying the term to different business contexts. However, the rule release provides some guidance on the Commission’s view as to what a project would be.

How It Must Be Disclosed:

The new rules would require a resource extraction issuer to disclose the information annually by filing a new form (Form SD). The information must be included in an exhibit and electronically tagged using the eXtensible Business Reporting Language (XBRL) format.

When It Must Be Disclosed:

A resource extraction issuer would be required to file the form on the SEC public database EDGAR no later than 150 days after the end of its fiscal year.

A resource extraction issuer would be required to comply with the new rules for fiscal years ending after Sept. 30, 2013. For the first report, most resource extraction issuers may provide a partial report disclosing only those payments made after Sept. 30, 2013.