

## Mining and Natural Resources Law

December 18, 2015

### Second Time's the Charm - SEC Re-Proposes Rules for Resource Extraction Issuer Disclosure

The Securities and Exchange Commission (SEC) recently re-proposed rules to create a new disclosure regime for payments made to a government by domestic and foreign issuers that engage in the commercial development of oil, natural gas and mining. The SEC is accepting comments on the proposed rules until January 25, 2016.

Under the proposed rules, issuers required to file annual reports with the SEC would be required to disclose payments made to the U.S. federal government or a foreign government to further the commercial development of oil, natural gas or minerals. The issuer would also be required to disclose payments made by a subsidiary or entity controlled by the issuer.

#### Background

This is the SEC's second attempt to implement Section 1504 of the Dodd-Frank Act, which directs the SEC to create payment disclosure rules for resource extraction issuers. On July 2, 2013, the District Court for the District of Columbia struck down the rules previously proposed.

The SEC had initially failed to adequately explain its refusal to provide an exemption from disclosure for companies operating in countries that prohibit the disclosures. To address this issue, the SEC noted in the re-proposed rules that it would consider exemptive relief from the requirements on a case by-case basis.

#### Highlights of the Proposed Rules

This development is of interest to the Canadian resource industry. The rules have been proposed in consideration of the recently enacted Extractive Sector Transparency Measures Act (ESTMA), which imposes new mandatory reporting standards for payments made by Canadian extractive companies, and to the rules adopted by the European Union in the EU Accounting Directive and the EU Transparency Directive (collectively, the “**EU Directives**”). The proposed rules are meant to align with these standards in the following respects:

- The proposed rules 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. This approach is meant to enhance international transparency by covering activities similar to those covered by ESTMA and the EU Directives.
- The types of payments required to be disclosed would include taxes, royalties, fees, production entitlements, bonuses, dividends and payments for infrastructure improvements. Payments (or a series of related payments) which equal or exceed \$100,000 during a fiscal year would have to be disclosed.
- Issuers would be required to provide project-level reporting, with “project” defined as the operational activities governed by a single contract, license, lease, concession or similar legal agreement and that form the basis for payment liabilities. The proposed definition of “project” is intended to help reduce costs for issuers listed in the U.S. and either Canada or the EU by not requiring different disaggregation of project-related costs due to different definitions of the term.

# Goodmans<sup>LLP</sup> Update

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- The required disclosure would include (i) the total amount of payments to a government for each project, (ii) the total amount of payments to each government in the aggregate, (iii) the financial period in which the payments were made, (iv) the business segment of the issuer, (v) the specific projects to which such payments related, (vi) the resources that are being developed, and (vii) the sub-national geographic location of each project.
- The proposed rules do not require the disclosure of social or community payments.

The SEC has deviated from the standards established in Canada and the EU by not requiring disclosure of payments to domestic subnational governments.

In recognition of international developments, issuers would be able to satisfy the proposed disclosure requirements by filing a report prepared for a foreign regulator or the Extractive Industries Transparency Initiative as long as the report contains information that is substantially similar to the disclosure required by the proposed rules.

The proposed rules, along with ESTMA and the EU Directives, are important global initiatives to promote greater transparency in payments related to resource extraction in an effort to address global corruption related to resource development in developed and developing countries.

Please contact any member of our Mining and Natural Resources Group for further information on these new proposed disclosure rules.