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HEALTH AND SAFETY, SECURITIES AND MERGERS AND ACQUISITIONS CLIENT ALERT

SEC ISSUES FINAL RULES CONCERNING DISCLOSURE OF GOVERNMENT PAYMENTS BY RESOURCE EXTRACTION ISSUERS

On August 22, 2012, the Securities and Exchange Commission (SEC) adopted final rules implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act that requires “resource extraction issuers” to report certain payments to the U.S. and foreign governments for the commercial development of oil, natural gas or minerals. The final rules apply to U.S. and foreign companies (including smaller reporting companies) that meet the definition of a resource extraction issuer, which is any company that is required to file an annual report with the SEC and engages in the commercial development of oil, natural gas or minerals. The new rules must be complied with for fiscal years ending after September 30, 2013.

The SEC’s rules define “commercial development of oil, natural gas or minerals” to include the activities of exploration, extraction, processing and export, or the acquisition of a license for any such activity. This includes both the production of oil and natural gas as well as the extraction of minerals. The term “commercial development” is intended to capture only activities that are directly related to the commercial development of oil, natural gas or minerals, excluding any ancillary or preparatory activities.

Under the new rules, a resource extraction issuer is required to disclose payments that are:

- made to further the commercial development of oil, natural gas or minerals,
- not de minimis, which generally means any payment (or series of related payments) that equals or exceeds \$100,000 during the most recent fiscal year, and

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- within the types of payments specified in the rules, which includes payments for taxes, royalties, fees (including license fees), production entitlements, bonuses, dividends and infrastructure improvements.

The required disclosure under the final rules includes the type and total amount of payments made for each project, the type and total amount of payments made to each government, the total amounts of the payments (by category), 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. In addition, a resource extraction issuer is required to disclose payments made by its subsidiaries or any entity under its control to a foreign government or U.S. government for the purpose of commercial development of oil, natural gas or minerals.

Beginning with the fiscal year ending after September 30, 2013, resource extraction issuers must disclose the required information annually by filing a Form SD with the SEC no later than 150 days after the end of its fiscal year. Form SD is a new form created for these disclosure requirements. For the first report filed, a resource extraction issuer may provide a partial year report if the issuer's fiscal year began before September 30, 2013. The required disclosure must be included in an exhibit and must be electronically tagged using the eXtensible Business Reporting Language (XBRL) format. The Form SD, including the interactive data exhibit, is treated as "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, which means that it is subject to liability for misleading statements. The SEC's rules will likely impose substantial additional costs for many resource extraction issuers to implement the disclosure controls and procedures necessary to comply with the new disclosure obligations.

The following is a link to the SEC's final rule implementing Section 1504 of the Dodd-Frank Act for your reference: <http://www.sec.gov/rules/final/2012/34-67717.pdf>.