

# DR Advisor Alert

September 2012

## SEC Adopts Rule Requiring Resource Extraction Issuers to Disclose Payments to the U.S. Government or Foreign Governments

### Introduction

On August 22, 2012, the U.S. Securities and Exchange Commission (SEC) adopted a final rule (pursuant to Release No. 34-67717)<sup>1</sup> that requires resource extraction issuers to disclose certain payments to the U.S. federal government or foreign national and subnational governments.

This new rule applies to any company that:

- files an annual report with the SEC; and
- engages in the commercial development of oil, natural gas, or minerals.

All companies that meet these criteria, including foreign private issuers, must disclose payments annually by filing with the SEC a Form SD (a newly-created form). The rule applies regardless of a company's size or the extent of its extraction operations. The required disclosure covers payments made by the company itself or by any subsidiary or other entity controlled by the company. The payments required to be disclosed are those:

- made to further the commercial development of oil, natural gas, or minerals; and
- equal to or greater than US\$100,000 made during a given fiscal year, either as a single payment or a series of related payments.

Issuers covered by the rule must provide the required disclosure for fiscal years ending after September 30, 2013. A Form SD must be filed no later than 150 days after the end of each applicable fiscal year. In the case of a company's initial report on Form SD, if its fiscal year began before September 30, 2013, it can file a partial year report covering only the period from October 1, 2013 through the end of the fiscal year. The required payment information must be included in a single exhibit using the SEC's XBRL interactive data standard.

The rule does not apply to Level 1 ADR issuers that are exempt from the reporting requirements of the Securities Exchange Act of 1934.

### Definition of commercial development of oil, natural gas, or minerals

The rule defines commercial development of oil, natural gas, or minerals as including the activities of exploration, extraction, processing, and export, or the acquisition of a license for any such activity. Examples of each type of activity are provided in the SEC's rule release.

### Types of payments that must be disclosed

The types of payments related to the above activities include:

- Taxes
- Royalties
- Fees (including license fees)
- Production entitlements

<sup>1</sup> The rule (<http://www.sec.gov/rules/final/2012/34-67717.pdf>) was adopted under Section 13(q) of the Securities Exchange Act of 1934, which was enacted pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

- Bonuses
- Dividends
- Payments for infrastructure improvements

The SEC release notes that the above payments are generally consistent with the types of payments that the Extractive Industries Transparency Initiative<sup>2</sup> suggests should be disclosed.

Such payments must be disclosed if made to the U.S. federal government, to a foreign national government or any foreign (but not U.S.) subnational government, such as the government of a state, province, county, district, municipality or territory within a foreign national government.

#### Other information required in Form SD

In addition to disclosing the types of payments it has made to further commercial development of oil, natural gas, or minerals, the company must provide the following information about these payments:

- total amounts of payments, by category;
- currency used to make the payments;
- financial period during which the payments were made;
- business segment of the company that made the payments;
- the government that received the payments, and the country in which that government is located;
- type and total amount of payments made to each government;
- the project to which the payments relate; and
- type and total amount of payments made for each project.

Although the rule does not define the term “project,” the SEC’s rule release provides some guidance on the meaning of the term for purposes of the rule.

For more information, please contact your J.P. Morgan Depositary Receipt Group representative.

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<sup>2</sup> This Initiative is a coalition of oil, natural gas and mining companies, foreign governments, investor groups and other international organizations. See <http://eiti.org>

