

Reminder for Resource Extraction Issuers: Form SD Due September 2024

Under the final rule, domestic or foreign “resource extraction issuers” are required to annually disclose information about certain payments made to foreign governments or the U.S. federal government on Form SD.

As previously reported on our Securities Regulation and Corporate Governance Monitor on December 16, 2020 (available [here](#)), the Securities and Exchange Commission (the “SEC”) adopted the final rule (available [here](#)) requiring additional disclosures by public companies that engage in the commercial development of oil, natural gas or minerals. Under the final rule, domestic or foreign “resource extraction issuers” are required to annually disclose information about certain payments made to foreign governments or the U.S. federal government on Form SD.

The final rule became effective on March 16, 2021 allowing for a two-year transition period after the effective date, with initial Form SD filings due no later than 270 calendar days after the end of an issuer's next completed fiscal year (e.g., September 26, 2024 for issuers with a December 31, 2023 fiscal year end). While the adopting release specifically referred to September 30, 2024 as the due date for a company with a fiscal year end of December 31, 2023 (274 days after year end), we recommend filing the Form SD by September 26, 2024 to ensure timely compliance with the rule's deadline. We note that for 2025, 2026 and 2027, the form will be due by September 27 for companies with a December 31 fiscal year end (270 days after the fiscal year end in non-leap years), unless September 27 is a Saturday, Sunday or holiday, in which case the deadline is the next business day.

What kind of information is required to be disclosed?

The final rule implements Section 13(q) of the Securities Exchange Act of 1934, as amended, which requires disclosure of company-specific, project-level information on Form SD (available [here](#) and on page 212 of the [adopting release](#)), including the:

- type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas or minerals;
- type and total amount of such payments for all projects made to a government, as well as the country in which each such government is located;
- currency used and the fiscal year in which the payments were made;
- fiscal year in which the payments were made;
- business segment of the issuer that made the payments;

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- specific projects to which such payments relate and the resources that are being developed;
- method of extraction used in the project and the major subnational political jurisdiction of each project; and
- payments made by a subsidiary or entity controlled by the issuer.

What kinds of activities does the rule apply to, and to whom does the rule apply?

The adopted rule applies to any resource extraction issuer. Resource extraction includes: the commercial development of oil, natural gas or minerals; the exploration, extraction, processing and export of oil, natural gas or minerals; or the acquisition of a license for any such activity.

For example, companies engaged in oil exploration and production operations and the mining industry will generally be subject to the rule.

For resource extraction joint ventures or arrangements where no one party has control, the operator of the venture or arrangement must report all of the payments. Non-operator members are only required to report payments that, as resource extraction issuers, they make directly to governments.

Who is exempt from the rule?

There are exemptions for:

- issuers that are unable to comply with the final rule without violating the laws of the jurisdiction where the project is located;
- issuers that are unable to comply with the final rule without violating the terms in a contract that became effective before the final rule was adopted;
- smaller reporting companies, meaning issuers with a public float of less than \$250 million and issuers with annual revenues of less than \$100 million for previous year and public float of less than \$700 million; and
- emerging growth companies, meaning issuers with total annual gross revenues of less than \$1,235,000,000 during their most recently completed fiscal year and that have not sold common equity securities under a registration statement.

We note that the final rule includes transitional relief for recently acquired companies that were not previously subject to the rule and for issuers that completed their initial public offering within their last full fiscal year.

What relief is afforded to acquisitions?

Form SD reporting obligations for an acquired entity will depend on whether the acquired entity was subject to Section 13(q) for the fiscal year prior to the acquisition. If the acquired entity was not subject to Section 13(q) (or an alternative reporting regime) for the issuer's last full fiscal

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year prior to the acquisition, then the issuer will be required to begin reporting payment information for that acquired entity starting with the Form SD submission for the first full fiscal year immediately following the effective date of the acquisition. The issuer will therefore not be required to provide the (excluded) payment disclosure for the year in which it acquired the entity.

However, this transition period does not apply to acquisitions of entities that were already subject to Section 13(q)'s disclosure requirements. In these instances, disclosure is required for the fiscal year of the acquisition.

By way of example, if an acquisition of an entity that was not subject to Section 13(q) closes in November 2024, assuming a December 31 fiscal year end, then the acquired entity's payments will be first reported on the Form SD covering fiscal year 2025, which must be filed by September 28, 2026, given that September 27, 2026 is a Sunday. However, if the acquired entity was already subject to Section 13(q), then the acquired entity's payments will be reported on the Form SD covering fiscal year 2024, which must be filed by September 29, 2025, given that September 27, 2025 is a Saturday.

What about interpretive questions raised by the rule and adopting release but left unanswered?

As resource extraction issuers analyze their disclosure obligations on Form SD, various interpretative questions have arisen. We recommend coordinating discussions on these questions with your peers and industry groups. In addition, Gibson Dunn lawyers are available to assist in addressing any questions that you may have regarding compliance with this new rule and related Form SD filing requirements, as we have been working through questions with our various clients that operate in the oil and gas and mining industries.

[Read More](#)

The following Gibson Dunn lawyers assisted in preparing this update: Hillary Holmes, James Moloney, Harrison Tucker, Malakeh Hijazi, and Meghan Sherley.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more, please contact the Gibson Dunn lawyer with whom you usually work in the firm's [Securities Regulation and Corporate Governance](#) practice group, or the following authors:

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