

Reminder: Form SD (Resource Extraction) is Now Due

September 19, 2024

As we previously discussed, the Securities and Exchange Commission (the "SEC") has enacted a final rule requiring public issuers involved in oil, natural gas, or mineral extraction to report specific payments made to foreign governments or the U.S. federal government.

Both domestic and foreign private issuers ("FPIs") engaged in resource extraction must comply with this rule.

The Rule

On March 16, 2021, Rule 13q-1 under the Securities Exchange Act of 1934, as amended (Exchange Act), took effect. This rule requires *resource extraction issuers* to disclose on Form SD information relating to payments made to a foreign government or the U.S. federal government for the purpose of the *commercial development of oil, natural gas, or minerals*.

Initial disclosures are due by **September 26, 2024**, for companies with a fiscal year ending on December 31, 2023. There has been some confusion as to whether the form can be filed by September 30, 2024, but to be safe, issuers should file by September 26 (in 2025, this will be September 27).

Required Information to be filed includes:

- Payment types and total amounts
- Government recipients and countries
- Currency and fiscal year
- Business segment
- Project details
- Extraction methods
- Payments made by subsidiaries

Smaller reporting companies, emerging growth companies, and certain issuers with acquisition-related exemptions may be excluded from these requirements. Reporting obligations for acquired entities depend on their previous compliance with Section 13(q). Generally, the rule does not require issuers to make Section 13(q) disclosures for newly acquired or controlled entities if, in the prior fiscal year, the newly acquired or controlled entity had no Section 13(q) obligations or similar disclosure obligations under an alternative reporting regime. However, the issuer must disclose its reliance on this exemption in Form SD and begin reporting Section 13(q) disclosures for the acquired company in the first full fiscal year following the acquisition's effective date.

Alternative Reporting for Resource Extraction Issuers

The SEC's final rule allows resource extraction issuers to satisfy their disclosure obligations under Section 13(q) by submitting a report that complies with an alternative reporting regime. This regime must be deemed by the SEC to provide equivalent transparency to the Section 13(q) rules

- **Alternative Reporting Regimes:** The SEC has recognized the European Union, United Kingdom, Norway, and Canada's resource extraction payment disclosure requirements as meeting the transparency objectives of Section 13(q).
- **Report Submission:** Issuers can submit a report that complies with the reporting requirements of the EU Accounting Directive, EU Transparency Directive, UK Reports on Payments to Governments Regulations, Norway's Regulations on Country-by-Country Reporting, or Canada's Extractive Sector Transparency Measures Act (ESTMA).
- **Conditions:** The alternative report must be identical to the one prepared and publicly available under the approved regime, with modifications to comply with any SEC-imposed conditions.

By using an alternative reporting regime, eligible issuers can potentially simplify their disclosure requirements.

XBRL Tagging for Form SD Filings

When preparing Form SD filings, the information presented in Item 2.01 must be tagged using standard XBRL instead of Inline XBRL. This is a departure from the tagging format used in many other filings.

Importantly, if a resource extraction issuer is submitting an alternative report to satisfy disclosure obligations, that report must also be tagged using XBRL. This process can get complicated and requires proofing, so if you have not filed yet, do not wait for the last minute.

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