

SEC Proposes Rule Requiring Oil, Gas and Mining Companies to Disclose Payments to Governments

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By [Jonathan Halpern](#) and [Thomas Kokalas](#) Under a rule proposed by the Securities and Exchange Commission, oil, gas and mining companies listed on U.S. stock exchanges would be required to disclose payments they made to foreign governments or the United States government in connection with a broad swath of activity, from exploration to oil processing. The proposed rule builds on a provision of the Dodd-Frank Act that requires listed energy companies to disclose payments to foreign governments for the "commercial development of oil, natural gas or minerals." Specifically, Section 1504 imposes requirements on resource extraction issuers to disclose, in annual reports, information regarding any payment made to either the federal government or any foreign government by the issuer, a subsidiary, or an entity under the issuer's control, for the purpose of the commercial development of oil, natural gas or minerals. Section 1504 defines "commercial development of oil, natural gas, or minerals" to include the exploration, extraction, processing, export and other significant actions relating to oil, natural gas or minerals, or the acquisition of a license for any such activity, as determined by the SEC. Companies that fail to disclose the payments to the SEC risk being de-listed. The proposed rule is not yet final, and it cleared the SEC by a 4-0 vote. The kinds of payment information called for under the proposed rule include:

- the type and total amounts of payments made for each applicable project and 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
- the project of the resource extraction issuer to which the payments relate

- any other information the SEC deems necessary or appropriate in the public interest or to protect investors

Pending further interpretive guidance by the SEC, Section 1504 potentially imposes on affected issuers increased compliance obligations and costs. Moreover, the prospect of the rule's new disclosure requirements for payments to foreign governments also offers issuers the timely opportunity to review and evaluate their existing controls under the Foreign Corrupt Practices Act for any payments to "foreign officials." The review should assess whether effective safeguards are in place to detect and deter payments made to any individual on behalf of a foreign government by issuers, their subsidiaries and representatives. A review of the adequacy of the issuer's accounting controls should also be evaluated. Unwitting or unaddressed deficiencies in protocols for the required payment disclosure under Section 1504 or for effective deterrence and detection under the FCPA can both pose nettlesome and costly consequences for resource extraction issuers. But they would be well advised to consider the long-term savings and comprehensive protection that tested and properly implemented protocols can provide.