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## **District Court Vacates SEC Rule 13q-1 Requiring Disclosure of Government Payments**

Today, the District Court for the District of Columbia vacated Rule 13q-1 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which required resource extraction issuers to disclose payments made to the U.S. Federal government and foreign governments. The District Court found that the Securities and Exchange Commission (the “SEC”) incorrectly interpreted Section 13(q) of the Exchange Act, which mandated the promulgation of Rule 13q-1. A copy of the Court’s decision is available [here](#).

Specifically, the District Court found that Congress did not specifically intend that reports filed under Section 13(q) be publicly disclosed. The District Court wrote: “Section 13(q) requires in subsection (2)(A) disclosure of annual reports but says nothing about whether the disclosure must be public or may be made to the Commission alone. Neither the dictionary definition nor the ordinary meaning of ‘report’ contains a public disclosure requirement. And section 13(q) expressly addresses public availability of information in the following subsection, (3)(A), establishing a different and more limited requirement for what must be publicly available than for what must be annually reported. Topping things off, the Exchange Act as a whole uses the word ‘report’ to refer to disclosures made to the Commission alone.”

The District Court also found that the SEC’s denial of any exemption from disclosure in respect of countries that prohibit payment disclosure was arbitrary and capricious. The District Court explained: “[i]t may be entirely reasonable for the Commission to conclude that requiring disclosure from a certain issuer or about a certain country goes to the heart of the provision’s goal, and that the burden reduction is not worth this loss. But here, the Commission impermissibly rested on the blanket proposition that avoiding all exemptions best furthers section 13(q)’s purpose. It did not consider whether a certain country or certain issuer that represents a high portion of the burden on competition and on investors is sufficiently central to that purpose to make an exemption unwarranted.”

Based on these conclusions, but without considering the plaintiff’s First Amendment argument regarding compelled speech, the District Court vacated Rule 13q-1 and has ordered the SEC to conduct further proceedings before enacting a new rule under Section 13(q). The SEC may appeal the decision to the Circuit Court of Appeals for the District of Columbia. It is not yet entirely clear if the SEC will ultimately be required to rewrite the rule, or when a final rule will be effective. While the result of the decision is that Rule 13q-1 is no longer effective, a rule in some form must be promulgated by the SEC to implement Section 13(q), and such rule will require resource extraction issuers to collect and report to the SEC (in

some form) payments made to the U.S. Federal government and foreign governments. Thus, the significant efforts that issuers have made to comply with Rule 13q-1 have not been wasted.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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