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SEC Elects Not To Appeal Court Decision Vacating Disclosure of Government Payments by Resource Companies

The Securities and Exchange Commission (the “SEC”) has elected not to appeal the July 2, 2013 decision of the U.S. District Court for the District of Columbia vacating Rule 13q-1 (“Rule 13q-1”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Rule 13q-1 was promulgated by the SEC under Section 13(q) of the Exchange Act, having been mandated by Section 1504 of the Dodd-Frank Act. The rule, which is no longer effective, would have required resource extraction issuers, including foreign private issuers and MJDS-eligible Canadian issuers, to disclose certain payments made to the U.S. Federal government and foreign governments.

Although the SEC elected not to appeal the District Court’s decision, the SEC has a statutory obligation to promulgate a revised rule in a form that complies with Section 13(q) of the Exchange Act, including the District Court’s interpretation of that provision. Specifically, the District Court found that Congress did not intend that reports filed under Section 13(q) be publicly disclosed and that the SEC’s denial of an exemption from disclosing payments to governments that prohibited such disclosure was arbitrary and capricious.

In the coming months, the SEC will begin the process of promulgating a revised rule responsive to the District Court’s holdings. We expect that the new rule proposal will be subject to a process of public notice and comment, which generally takes several months to complete, and will not become effective until after the publication of a final revised rule.

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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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