

February 15, 2017

## **President and Congress Eliminate SEC Resource Extraction Rule**

On February 14, 2017, President Trump signed a joint resolution of Congress passed under the Congressional Review Act (“CRA”) eliminating a U.S. Securities and Exchange Commission (“SEC”) rule requiring resource extraction issuers to disclose payments made to the U.S. federal government or foreign governments for the commercial development of oil, natural gas or minerals.

The CRA permits the nullification of any recently finalized federal regulation by a simple majority vote in both chambers, subject to presentment to the President for signature or veto. A rule invalidated under the CRA is treated as not having taken effect and may not be reissued in substantially the same form unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule. The CRA also provides that congressional nullification of a regulation is not subject to judicial review. Since the law was enacted in 1996, it has been used only once before to nullify a rule promulgated by the Clinton Administration related to workplace ergonomics when Senate Republicans initiated the resolution of disapproval.

Section 1504 of the Dodd-Frank Act of 2010 directed the SEC to issue rules requiring resource extraction issuers to include, in an annual report, information relating to any payment made by the issuer or its affiliates to the U.S. federal government or a foreign government for the purpose of the commercial development of oil, natural gas or minerals.

The original resource extraction rule was adopted by the SEC in August 2012. Following a challenge by the American Petroleum Institute, the U.S. Chamber of Commerce and two other industry groups in 2013, the rule was vacated by the U.S. District Court for the District of Columbia. The court found that the SEC had incorrectly interpreted the statutory requirement, holding that (i) Congress did not specifically intend that reports filed with the SEC be publicly disclosed and (ii) the SEC’s denial of any exemption from disclosure in respect of countries that prohibit payment disclosure was arbitrary and capricious.

In December 2015, the SEC re-proposed the resource extraction disclosure rule, in part to address the concerns that led to the original rule being vacated. The rule was adopted substantially as re-proposed in June 2016 and would have required that resource extraction issuers comply with the disclosure requirements starting with their fiscal year ending on or after September 30, 2018.

Given that Canada and the European Union have adopted disclosure initiatives similar to the SEC’s original rules, the elimination of this rule will not have a significant impact on companies subject to those disclosure regimes.

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The elimination of the disclosure requirements for resources extraction issuers marks the first action by Congress to roll back regulations implementing parts of the Dodd-Frank Act. We will continue to monitor and report on proposed changes to the comprehensive set of rules that were promulgated pursuant to the Dodd-Frank Act. At this point, it is impossible to predict what the regulatory landscape, which since the financial crisis has been shaped by national and global responses to the root causes of the crisis, ultimately will look like.

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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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