

Upcoming Deadline for Resource Extraction Issuers to File First Form SD Disclosures

WRITTEN BY

Thomas M. Rose | Shona Smith | Nicole A. Edmonds | Jason L. Langford

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**.

The rule included a two-year transition period, requiring that issuers make such disclosures within 270 days after their fiscal year-end, beginning for fiscal years ending no earlier than two years after the date of the effective date of the final rule. As such, for calendar year companies, the first Forms SD to disclose such payments are coming due on September 26, 2024.

The Final Rule

A “**resource extraction issuer**” is an issuer that (i) is required to file an annual report with the Securities and Exchange Commission (SEC), and (ii) engages in the “commercial development of oil, natural gas, or minerals.”

The “**commercial development of oil, natural gas, or minerals**” includes 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.

[Form SD](#) requires resource extraction issuers to report 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** by type and total amount on a per “project” basis, as long as such payments equal or exceed US\$100,000 (which payments are considered “not de minimis”).

“**Payments**” are defined broadly under the [final rule](#) and include:

- Taxes;
- Royalties;
- Fees (including license fees);

- Production entitlements;
- Bonuses;
- Dividends;
- Payments for infrastructure improvements; and
- Community and social responsibility (CSR) payments that are required by law or contract (which could include funds to build or operate a training facility for oil and gas workers, funds to build housing, payments for tuition or other educational purposes, and in general, payments to support the social or economic well-being of communities within the country where the expenditures are made).

“**Project**” as defined under the rule is determined by three criteria:

- The type of resource being commercially developed;
- The method of extraction; and
- The major subnational political jurisdiction where the commercial development of the resource is taking place.

Under the rules, a resource extraction issuer must also disclose payments made by its subsidiaries and other entities under its control, based on accounting principles.

Form SD Requirements

The Form SD must include:

- The type and total amounts of the payments, by payment type, for each project;
- The type and total amounts of the payments, by payment type, for all projects to each government;
- The total amount of the payments, by payment type;
- The currency used to make the payments;
- The fiscal year 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;
- The particular resource that is the subject of commercial development;
- The method of extraction used in the project;
- The major subnational political jurisdiction of the project; and
- iXBRL formatting.

Alternative Reporting

A resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime, which has been deemed by the SEC to require disclosure that satisfies the transparency objectives of Section 13(q) of the Exchange Act, may satisfy its disclosure obligations by including, as an exhibit to the Form SD, a report complying with the reporting requirements of the alternative jurisdiction.

The alternative report must be the same as the one prepared and made publicly available pursuant to the requirements of the approved alternative reporting regime, subject to changes necessary to comply with any conditions to alternative reporting set forth by the SEC.

Concurrent with the adoption of the final rule, the SEC issued an order recognizing that the resource extraction payment disclosure requirements of the European Union, United Kingdom, Norway, and Canada satisfy the transparency objectives of the Section 13(q) rules. Consequently, a resource extraction issuer will be able to submit a report complying with the reporting requirements of either the EU Accounting Directive or the EU Transparency Directive, in each case as implemented in an EU or European Economic Area (EEA) member country, the UK Reports on Payments to Governments Regulations, Norway's Regulations on Country-by-Country Reporting, and Canada's Extractive Sector Transparency Measures Act (ESTMA), to satisfy its disclosure obligations under the rule.

Exemptions

A resource extraction issuer that is prohibited by the law of the jurisdiction where the project is located from providing the payment information required by Form SD may exclude such disclosure, subject to certain conditions.

A resource extraction issuer that is unable to provide the payment information required by Form SD without violating one or more contract terms that were in effect prior to the effective date of the rule may exclude such disclosure, subject to certain conditions.

Issuers that are smaller reporting companies or emerging growth companies under SEC rules are exempt from the Form SD requirement unless such issuers are otherwise subject to an alternative reporting regime that has been deemed by the SEC to require disclosure that satisfies the transparency objectives of Section 13(q). See

“Alternative Reporting” above.

Payments That “Are Not De Minimis”

Under the final rule, disclosure must be made concerning payments that are “not de minimis,” meaning that a payment is equal to or in excess of US\$100,000, or its equivalent in the issuer’s reporting currency (whether made as a single payment or a series of payments). In the case of any arrangement providing for periodic payments or installments, a resource extraction issuer must use the aggregate amount of the related periodic payments or installments to determine whether the payment threshold has been met for that series of payments and, accordingly, whether disclosure is required. For payments not made in U.S. dollars or the issuer’s reporting currency, issuers must make a conversion calculation to determine the amounts paid. While the exact conversion method is not prescribed (Form SD offers three alternatives), the conversion method must be consistent and must be disclosed.

Form SD and Filing Deadlines

Form SD contains the relevant instructions and requirements for resource extraction issuers under Rule 13q-1. The form’s instructions spell out all the necessary requirements for disclosure as outlined in the final rule. An issuer is required annually to submit Form SD no later than 270 days following the end of its most recently completed fiscal year.

Additionally, a Form SD is required by Exchange Act Rule 13p-1 for issuers that have “conflict minerals that are necessary to the functionality or production of a product manufactured or contracted by that registrant to be manufactured.” A report filed under Rule 13p-1 is due May 31 following an issuer’s most recent calendar year.

As such, issuers filing a Form SD for disclosing payments under Rule 13q-1 must check the appropriate box on the Form SD cover page to ensure proper filing.

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