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Impact of Dodd-Frank Act on Public Companies Engaged in Oil, Gas, & Minerals Development

On July 21, 2010, President Obama signed into law a comprehensive financial regulatory reform bill entitled the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

Although Dodd-Frank is principally aimed at reforming the financial services sector with respect to systemic risk and at enhancing consumer protections, Dodd-Frank also imposes new disclosure requirements on public companies engaged in the development of oil, natural gas, and other minerals. Such companies will be required to disclose in their annual reports to the Securities and Exchange Commission (the "SEC") any payments made to the U.S. federal government, foreign governments, or companies owned by a foreign government by the company for the purpose of commercial development of oil, natural gas, or minerals. Such payments include taxes, royalties, fees (including license fees), production entitlements, bonuses, and other payments the SEC may recognize as "part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals."

The SEC must issue rules detailing these disclosure requirements within 270 days of the enactment of Dodd-Frank, and each company covered under the rules will be required to disclose such payments beginning with the first

fiscal year commencing thereafter. Accordingly, affected companies will need to begin preparing to modify their reporting mechanisms in order to comply with the disclosure rules upon their issuance by the SEC.

Disclosure of Payments by Resource Extractors

Section 1504 of Dodd-Frank amends Section 13 of the Securities Exchange Act of 1934 to require the SEC to issue, within 270 days of enactment of Dodd-Frank, rules requiring each "resource extraction issuer" to include in its annual reports information relating to any payment made by the issuer, its subsidiaries, or any entity under the control of the issuer to a foreign government or to the U.S. federal government for the purpose of commercial development of oil, natural gas, or minerals. Such information includes, but is not limited to, the type and total amount of payments made for each of the issuer's oil, gas, or mineral development projects and the type and total amount of such payments made to each government.

The purpose of Section 1504 is to increase transparency of, and limit corruption with respect to, payments made to the U.S. federal government and foreign governments in connection with the energy and mining sectors.

Although the precise scope of Section 1504 will be highly dependent on the implementing rules issued by the SEC, it is likely that Dodd-Frank will have the effect of imposing significant compliance obligations on affected companies in addition to the anti-corruption obligations imposed by the Foreign Corrupt Practices Act (the "FCPA"). Whereas the FCPA prohibits payments to foreign officials, political parties, or candidates for political office for the purpose of influencing any act in order to obtain or retain business, Dodd-Frank requires reporting of all payments "made to further the commercial development of oil, natural gas, or minerals," which includes such legal payments as taxes, royalties, and fees that the SEC deems are "part of the commonly recognized revenue stream from the commercial development of oil, natural gas, or minerals."

The practical implications of Section 1504 will largely be determined by the extent to which the rules issued by the SEC clarify the meanings of the terms "resource extraction issuer" and "payment," as discussed below.

"Resource Extraction Issuers"

Section 1504 defines a "resource extraction issuer" as an issuer that (i) is required to file an annual report with the SEC, and (ii) "engages in the commercial development of oil, natural gas, or minerals," which includes "exploration, extraction, processing, export, and other significant actions relating to, oil, natural gas, or minerals," as determined by the SEC. Given the breadth of this definition, unless the SEC's rules provide substantial clarifications, "resource extraction issuers"

may include entities ranging from mining companies to suppliers of mining equipment and other ancillary services.

"Payment"

The definition of "payment" in Section 1504 is similarly broad, capturing all payments (other than de minimis payments) in furtherance of the commercial development of oil, natural gas, and minerals. Dodd-Frank requires disclosure of all such payments that are made to the U.S. federal government or to a foreign government, the latter of which includes "a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the [SEC]." In other words, companies that qualify as "resource extraction issuers" may be required to track and disclose a wide range of payments made in connection with their operations, especially those payments that are related to such companies' foreign operations.

Effective Date

Section 1504 grants the SEC 270 days from the enactment of Dodd-Frank to issue the rules contemplated therein. The payment disclosure provisions of Section 1504 will then take effect with respect to a particular company as of the first annual report submitted by the company to the SEC in relation to the company's fiscal year ending at least one year after the issuance of the SEC's rules. Accordingly, an affected company should begin tracking the payments required under the SEC rules as of the start of such company's first fiscal year following the issuance of the rules.

Public Availability of Disclosed Information

Dodd-Frank also requires that the SEC, to the extent practicable, make available online to the public the payment disclosures submitted by resource extraction issuers pursuant to the SEC rules promulgated under Section 1504. Affected companies should thus begin preparing for any potential public relations issues that may arise out of the public disclosure of payments of the type contemplated by Dodd-Frank (as such may be clarified by the SEC's rules).

Impact

Gauging the extent of the practical impact of Dodd-Frank will be difficult until the SEC issues the rules required by Section 1504, particularly with respect to determining which entities will be classifiable as "resource extraction issuers" and the scope of the payments required to be disclosed by such entities. Nevertheless, "resource extraction issuers" will be required to commence keeping records of payments of the type contemplated by Dodd-Frank shortly after the issuance of the SEC's rules. It is therefore advisable that companies that may be subjected to the disclosure requirements of Dodd-Frank begin to augment their reporting mechanisms in order to comply with the disclosure rules upon their issuance by the SEC.

If you have any questions about these matters, please contact [John Beardsworth](#), or [Ryan Ketchum](#), or your Hunton & Williams LLP contact.