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Using the Courts to Force the SEC to Act on Dodd-Frank Rulemaking

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It has been nearly four years since April 17, 2011, the original deadline under Dodd-Frank for the SEC to adopt a resource extraction disclosure rule. After the SEC adopted a rule 2012, the U.S. District Court for the District of Columbia vacated it the next year, which we previously **discussed here**. The court remanded it to the SEC, and it has not been re-proposed since then.

Last fall, Oxfam America sued the SEC to get the agency to act, filing a summary judgment motion for an injunction in the U.S. District Court for the District of Massachusetts. Oxfam contends that the SEC should be forced to propose a rule by August 2015 and issue a final rule by November 1.

In early March, the SEC asked the judge to reject Oxfam's suit, calling it an "extraordinary" remedy given that the agency is already burdened with other Dodd-Frank rulemaking initiatives, crucial enforcement actions and limited resources. The SEC defended the delay, since it had already once promulgated a rule which was vacated, and stated that it expects to consider a revised proposed rule by October 31, 2015.

Oxfam recently responded, reiterating its main argument that the failure to meet a deadline under a Congressional statute constitutes agency action "unlawfully withheld" under the Administrative Procedure Act, and by awarding injunctive relief, the court would restore the "supremacy of the legislative branch." It also faults the SEC for working instead on rulemaking for which Congress has set no deadline.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com