

SEC Denies Motion to Stay Resource Extraction Rules

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In early October, the American Petroleum Institute, Chamber of Commerce, Independent Petroleum Association of America and National Foreign Trade Counsel had filed a complaint and a petition for review in the D.C. Circuit Court of Section 13(q) of the Exchange Act, which under Dodd-Frank required the Commission to issue rules mandating reports by resource extraction issuers relating to payments made to a foreign government or the U.S. federal government in order to further the commercial development of oil, natural gas or minerals. The plaintiffs later submitted a motion requesting that the Commission stay the effective date of the final rules.

The SEC has now issued an [order](#) denying the motion to stay the implementation of the rules. The SEC adopting rules require issuers to comply for fiscal years ending after September 30, 2013, with each annual report due no later than 150 days after the end of the most recent fiscal year, such that the first reports would be due on February 28, 2014, at the earliest. This timing largely drove the Commission's decision on this motion.

In denying the stay, the Commission indicates that they do not believe the plaintiffs have demonstrated imminent, irreparable harm, given that the court's expedited briefing and argument schedule may determine the validity of the rules as soon as spring 2013. The Commission was also unpersuaded by the plaintiff's claims of harm with respect to: (a) initial compliance costs to document the payment information required under the rule; (b) competitive disadvantage for new contracts; (c) detrimental effects on existing contracts where disclosure is prohibited; and (d) competitive harms resulting from competitors' use of the disclosed information. In addition, the Commission found that the plaintiffs have not demonstrated a likelihood of success on the merits of their petition, based on the Commission's view of the strength of the explanations set forth in the rule's adopting release.

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.

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