

Exxon Mobil and Royal Dutch Shell Encourage the SEC to Adopt Resource Extraction Disclosure Rules

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While the battle over the SEC's conflict minerals reporting rules have been the subject of much attention, less focus has fallen on the SEC's defunct resource extraction rules. Since those rules were struck down in July 2013 as we previously [discussed](#), the SEC has made no attempt, at least known publicly, to promulgate revised rulemaking in compliance with the Dodd-Frank statutory mandate.

While that may appear to be an ideal situation in some sense for companies, recently, Exxon Mobil and Royal Dutch Shell sent a [letter](#) to Chair White urging the SEC to provide some indication of the "probable direction" of SEC rulemaking.

As the letter explains, the companies are facing similar requirements under EU Accounting & Transparency Directives, which must be implemented by legislation adopted individually in each EU Member State by June 2015. The Directives would compel companies in the extraction industry to disclose payments totaling more than €100,000 that they have made to governments on a per-country and per-project basis, which resembles the requirements under Section 1504 of the Dodd-Frank Act that companies engaged in the commercial development of oil, natural gas or other minerals disclose the type and total amount of payments made, if over \$100,000, to a foreign government or the U.S. federal government for each project and each government in order to further the commercial development of oil, natural gas or minerals.

The U.K. has publicly committed to be the first to implement the Directives, and has already issued draft legislation for public comment with the goal of adopting by October 2014. The two companies believe that if the SEC were willing to consider proposing new rules before this timeframe, the U.K. government could take the SEC approach into account in its own initiatives or defer implementation until 2015. Since the U.K. will be the first EU Member State to implement the Directives, it would set a precedent for other member states.

The companies note that this would be important for purposes of "equivalency" between the EU and U.S. reporting requirements, which they deem critical in order to avoid an outcome under which multinational companies are required to file multiple reports in different jurisdictions providing essentially the same information but in different forms. They suggest that "an ideal solution" may be that compliance with reporting rules in one country would suffice for other countries. The letter urges the SEC to work toward publishing proposed rules in 2014.

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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