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SEC Informs Court of Resource Extraction Rulemaking Schedule, as Ordered

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The SEC plans to hold a vote on adopting a final resource extraction rule on or before June 27, 2016, which is within 270 days of the filing of a recent notice with the U.S. District Court in Massachusetts. The notice of proposed expedited rulemaking schedule responds to the court's order that the SEC must promulgate rulemaking pursuant to a litigation initiated by Oxfam, which we previously discussed **here**. In order to meet the 270-day schedule, the Commission anticipates voting on a proposed rule before the end of the year and permitting a 45-day comment period thereafter.

The notice included several caveats explaining why the SEC could miss the timing that it has sets for itself. To complete and issue a proposed rule, allow for public comments and analyze those comments for a final draft within 270 days is viewed as highly demanding, particularly because the Commission is currently "engaged in an unprecedented volume of enforcement, rulemaking and other regulatory work." The notice states that this rulemaking is further complicated by the fact that it has "consistently involved sharp disagreement among members of the public."

In addition, the SEC cannot guarantee that the Commissioners will actually vote to approve a final rule during June 2016, as the composition of the members will have changed significantly by then.

Finally, "exigencies" may arise. Examples that the SEC provided were government shutdowns, relevant international developments and "unexpected relevant legal developments" that "may make it impracticable" for the Commission to complete the rulemaking within the 270-day period.

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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