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# House Votes to Invalidate Extraction Payment Disclosure Rule

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On February 1, 2017, the U.S. House of Representatives passed House Joint Resolution 41 to annul the Extraction Payment Disclosure Rule. The rule would require oil and gas companies to disclose in annual reports for fiscal years ending on or after September 30, 2018 payments of $100,000 or more annually made to the U.S. or foreign governments connected to the development of oil, natural gas and minerals. If passed by the Senate and signed by the President, the resolution would invalidate the rule under the Congressional Review Act, which allows Congress to invalidate recently adopted regulations through a simple majority vote. This would prevent the Securities and Exchange Commission from implementing the rule and from issuing a substantially similar one without authorization from Congress.

On September 26, 2016, the Commission adopted the Extraction Payment Disclosure Rule, implementing the bipartisan Cardin-Lugar Amendment to Section 13 of the Securities Exchange Act of 1934 under Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the disclosure of payments by resource extraction issuers. The adoption of the rule and the related amendment to Form SD under the Exchange Act require an issuer to disclose payments made by the issuer or its subsidiaries to the U.S. federal government or a foreign government in connection with the commercial development of oil, natural gas or minerals. The rule excludes de minimis payments of under $100,000 during the fiscal year. Proponents cheered the rule as a positive step toward ending global corruption, while opponents argued that it was overly burdensome and put U.S. companies at a competitive disadvantage.

The Commission initially adopted a different version of the rule on August 22, 2012, but the U.S. District Court for the District of Columbia vacated the rule. The Commission reworked some aspects of the rule, and since 2012, 30 countries, including Canada and those of the European Union, adopted transparency initiatives similar to Cardin-Lugar. On September 2, 2015, the U.S. District Court for the District of Massachusetts ordered the Commission to fast-track the promulgation of the rule. The re-proposed rule that includes certain exemptions was issued December 11, 2015 and finalized September 26, 2016.

Even if the Extraction Payment Disclosure Rule is invalidated, public oil and gas companies will still be subject to the anti-fraud and accounting provisions of the Foreign Corrupt Practices Act and related disclosure obligations (as well as the anti-corruption laws that apply in the countries where they have a presence).

The final Extraction Payment Disclosure Rule is available ***here***.  The text of the resolution and the legislative update are available ***here***.