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SEC Staff Provides Welcome Guidance to Resource Extraction Issuers

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As discussed in our January 10, 2024 webinar, new SEC rules require resource extraction issuers that file reports with the SEC to file a Form SD within 270 days after each fiscal year end to report their payments to the U.S. federal government and foreign governments. An issuer's initial filing deadline in 2024 will therefore depend upon its fiscal year end, with reports from many companies already due, and others' deadlines fast approaching. For an issuer with a December 31 fiscal year end, the Form SD will be due no later than September 26, 2024. In informal discussions, the SEC's staff has provided our firm with welcome guidance on a number of related questions, including:

- If using the SEC's standards under Rule 13q-1 and Form SD, an issuer has no reportable payments for a particular fiscal year, the issuer will not be required to file a Form SD with the SEC for that fiscal year, but may voluntarily elect to do so.

- If an issuer is subject to Canada's Extractive Sector Transparency Measures Act (ESTMA) with respect to a particular fiscal year, but applying ESTMA rules is not required to file an ESTMA report in Canada for that fiscal year, the issuer will also not be required to file a Form SD with the SEC for that fiscal year, but may voluntarily elect to do so. While this guidance was limited to ESTMA, we anticipate the staff may take a similar position with respect to the other SEC approved alternative reporting regimes.

- An issuer is permitted to file a Form SD with reports from more than one reporting regime. For example, if an issuer has some projects subject to ESTMA reporting and other projects that are not subject to ESTMA or any other accepted alternate reporting regime, the issuer can file a Form SD with ESTMA reports for certain of its projects and apply the SEC's reporting standards to the remainder of its projects. If the issuer chooses to use this approach, the type of reporting for each of its projects, or entity-level payments, should be clearly identified in the Form SD.

- If an issuer has a 100% owned subsidiary that is subject to the United Kingdom's Reports on Payments to Government Regulations 2024 and files thereunder a report for the issuer's fiscal year that covers all applicable projects of the issuer, the issuer should be able to rely on Form SD's alternative reporting regime, attaching the UK report of the subsidiary and explaining these facts in the body of the Form SD. While

Related People

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this guidance was limited to the UK regime, we anticipate the staff may take a similar position with respect to the other SEC approved alternative reporting regimes.