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Going, Going, Gone: First Law of the Trump Administration Repeals Regulations Implementing Section 1504 Reporting Requirements for Payments to Governments by Oil, Gas, and Mining Companies

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In what President Donald Trump termed “a big deal,”¹ the death knell has sounded for the latest version of Rule 13q-1, a Securities and Exchange Commission (“SEC” or the “Commission”) regulation set to require resource extraction companies to publicly disclose—in the interests of “combat[ing] global corruption and promot[ing] accountability”—any payments to the U.S. or foreign governments related to the commercial development of oil, natural gas, or minerals. Anticorruption activists have argued that such payments to foreign governments are often a cover for illegal bribes. However, on Friday, February 3, 2017, the U.S. Senate joined the House of Representatives in voting to repeal the SEC rule under a little-used statute that allows Congress to abrogate agency regulations. The bill, repealing the reporting requirements that were set to kick in in 2018, became the first new law of the administration when it was signed by the President yesterday, fulfilling, in part, his campaign promise to roll back regulations. Indeed, as Representative Bill Huizenga (R-MI) noted at the signing “[o]ver 20 years, there’s been 56,000 rules that have been put in place with very little legislative input or oversight, and it’s time that changed.”²

The repeal marks yet another setback to the Commission’s efforts to promulgate regulations under Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), which directed the SEC to “issue final rules that require each resource extraction issuer to include in an annual report . . . information relating to any payment made . . . to a foreign government or the [U.S.] Government for the purpose of the commercial development of oil, natural gas, or minerals.” 15 U.S.C. § 78m(q)(2)(A).

The tumultuous history of that provision has been recounted in previous client alerts.³ Following Dodd-Frank’s directive, the SEC first issued its final Section 1504 reporting rules for resource extraction issuers on August 22, 2012. Those rules required annual reporting on a new form—Form SD—of certain details regarding any payment or series of payments to governments aggregating \$100,000 or more during an issuer’s fiscal year. However, less than a year later, on July 2, 2013, Judge John Bates of the United States District Court for the District of Columbia vacated the SEC’s Section 1504 rules,



finding that the Commission had overstepped its Dodd-Frank mandate (1) by requiring unrestricted public disclosure of all reported payment information, and (2) by failing to grant an exception to issuers operating in four countries whose laws expressly prohibit the disclosure.⁴

The district court's decision sent the SEC back to the drawing board. On June 27, 2016, the Commission announced its adoption of a new Rule 13q-1, which the SEC claimed remedied the defects identified in the 2013 ruling.⁵ The new Rule 13q-1 contained extensive discussion regarding the availability of disclosed information to the public but rejected numerous comments and proposals urging anonymized reporting. The Commission explained its view that this level of transparency was both an appropriate use of its discretion to fulfill its Dodd-Frank mandate and consistent with other reporting regimes also requiring public disclosure.⁶ Finally, the Commission rejected numerous comments and submissions urging a blanket exception for payments made in countries prohibiting the required disclosure. U.S. companies would have been required to start complying with the rule in late 2018.

No longer. In an op-ed in *The Wall Street Journal* on January 24, 2017, House Republican Majority Leader Kevin McCarthy argued that Rule 13q-1 “adds an unreasonable compliance burden on American energy companies that isn’t applied to their foreign competitors” and “would put American businesses at a comparative disadvantage.”⁷ Within a week, the GOP-led Congress intervened, with the House of Representatives voting to repeal Rule 13q-1 on Wednesday, February 1, 2017. The repeal measure passed the Senate two days later, and on Tuesday, February 14, was signed into law. In connection with the signing, the White House echoed Mr. McCarthy’s argument against the regulation noting that it “created an unfair advantaged to foreign-owned extraction companies” and the repeal “could save American businesses as much as \$600 million annually in regulatory costs and spare them 200,000 hours of paperwork.”⁸ Speaker of the House Paul Ryan went further, adding that the now-repealed regulations “actually could have threatened the safety of American workers abroad.”⁹

Anticorruption activists have criticized the development, arguing that Rule 13q-1 is a necessary tool for preventing corruption in the natural resources sector. Others contend that the repeal of such pro-transparency measures in the United States stands in conflict with President Trump’s campaign promise to “drain the swamp.”¹⁰ However, given the President’s frequent campaign-trail promises to repeal regulations viewed as impeding the energy sector and his statement at the signing that there are “many more left,”¹¹ this repeal may signal the beginning of a larger regulatory roll-back promised during the presidential campaign. As forecasted by Speaker Ryan, this is “the first of many Congressional Review Act bills to be signed into law.”¹²

While the current version of Rule 13q-1 is now dead, celebration in the energy sector may be premature, and—for the time being—extraction companies should refrain from jettisoning any records or programs created to comply with the existing disclosure rules. For one thing, the SEC will get another bite at the apple. Section 1504 of Dodd-Frank is still in effect, meaning that unless and until this portion of Dodd-Frank is itself repealed, the SEC continues to be required by statute to promulgate rules mandating disclosure of payments to foreign governments. Second, several jurisdictions, including the European Union, have adopted rules for extractive companies substantially similar to the now-repealed Rule 13q-1.



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¹ Press Release, The White House, Remarks by President Trump at Signing of H.J. Resolution 41 (Feb. 14, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/02/14/remarks-president-trump-signing-hj-resolution-41>

² *Supra*, n.1.

³ See "[Federal Court Vacates the SEC's Section 1504 Reporting Requirements for Payments to Governments by Oil, Gas, and Mining Companies](#)" and "[Take Two—The SEC Adopts Section 1504 Reporting Requirements for Payments to Governments by Oil, Gas, and Mining Companies.](#)"



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- ⁴ See *Am. Petroleum Inst. v. S.E.C.*, 953 F. Supp. 2d 5 (D.D.C. 2013).
- ⁵ Disclosure of Payments by Resource Extraction Issuers, 17 CFR Parts 240 and 249, Release No. 34-78167 (June 27, 2016) (the “Final Rule”). The Final Rule and accompanying SEC Release can be found [here](#).
- ⁶ Final Rule at pp. 98–109.
- ⁷ Kevin McCarthy, Op-Ed., *How the House Will Roll Back Washington’s Rule by Bureaucrat*, WALL ST. J., Jan. 24, 2017, available at <https://www.wsj.com/articles/how-the-house-will-roll-back-washingtons-rule-by-bureaucrat-1485302719>
- ⁸ Press Release, The White House, President Trump: Cutting Red Tape for American Businesses (Feb. 14, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/02/14/president-trump-cutting-red-tape-american-businesses>
- ⁹ Press Release, Speaker Ryan Press Office, Statement on First CRA Bill Signed into Law (Feb. 14, 2017), available at <http://www.speaker.gov/press-release/statement-first-cra-bill-signed-law>
- ¹⁰ Samuel Rubinfeld, *Republicans Move to Kill Extractive Anti-Graft Rule*, WALL ST. J., Jan. 25, 2017, available at <http://blogs.wsj.com/riskandcompliance/2017/01/25/republicans-move-to-kill-extractive-anti-graft-rule/>
- ¹¹ *Supra*, n.1.
- ¹² *Supra*, n.9.