Financial Reporting Update - Resource Payments Disclosure

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Spotlight on Corruption

• The Panama Papers have recently focussed the spotlight on corruption and the calls for more transparency
  -- Corruption – the abuse of entrusted authority for private gain
  -- Corruption undermines social cohesion and broad participation in economic and political life by distorting the allocation of resources and the delivery of public services, usually in ways that particularly harm the poor. . . . (USAID)

• In the case of investors, corruption can increase the risks they face and/or the returns they realize from the companies they invest in
US Anti-Corruption Enforcement

• US Foreign Corrupt Practices Act makes it a crime to make payments to foreign government officials to assist in obtaining or retaining business and subjects companies to criminal penalties

  -- FCPA applies to all US persons and to foreign persons who use US jurisdictional means to take acts in furtherance of such corrupt payments

  -- FCPA also requires SEC registered reporting companies to put in place internal controls and to keep accurate books and records. Failure to disclose bribes violates these provisions

• US Department of Justice announced earlier this month that it is implementing pilot program to motivate companies to disclose voluntarily potential misconduct involving the FCPA in exchange for a 50% reduction in fines

• At the same time the DOJ is increasing resources to step up FCPA law enforcement
Public Company Disclosure as a Tool to Combat Corruption

- SEC Natural Resource Payments to Governments Rule was reproposed in December 2015

- primary purpose is to achieve a social benefit, not investor protection

- aimed at creating greater transparency and accountability of governments in resource-rich countries to their citizens for the wealth generated by those resources

- also intended to strengthen governance and anti-corruption efforts in the oil, gas and minerals industries
**SEC Resource Payments Disclosure Rule - History**

- Originally adopted in 2012 to implement the mandate of the US Dodd Frank Act to require resource extraction issuers to include information in their annual report relating to payments to governments for the purpose of commercial development of oil, natural gas or minerals.

- Original rule was successfully challenged by various groups including the U.S. Chamber of Commerce and the American Petroleum Institute.

- On July 2, 2013 the US District Court vacated the original rule on the grounds that:
  1. The SEC misread the Act as compelling public disclosure; and
  2. The SEC’s explanation for not granting an exemption when disclosure is prohibited by foreign governments was “arbitrary and capricious”
SEC’s new rule proposal has been influenced by recent developments elsewhere

- Since 2013 there have been several significant developments
  - in Europe through the EU Accounting Directive and Transparency Directive
  - in Norway through rules requiring payments to governments on a project level, and
  - in Canada through the Extractive Sector Transparency Measures Act (ESTMA)
  - by the Extractive Industry Transparency Initiative (EITI), a voluntary coalition of governments, companies and industry groups which now includes the US government
### EITI Reports

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<th>51</th>
<th>US $1.85 TR WORTH OF GOVERNMENT REVENUES FROM OIL, GAS AND MINERALS DISCLOSED</th>
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<td>COUNTRIES IMPLEMENT THE EITI</td>
<td>ARE COMPLIANT WITH THE EITI REQUIREMENTS</td>
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- To be a member of the EITI, a country must adhere to the EITI Standard
- The EITI Standard lays out seven requirements on how to report activity in the oil, gas and mining sectors along the value chain of extracting a resource to turning it into public benefit
- All information is published in a country’s EITI Report
SEC’s New Proposed Rule (in short)

• The SEC’s new rule is similar to its 2012 rule with certain changes to harmonize the US disclosure rules with the EU Directives, ESTMA and the EITI standards

• Applies to SEC registered reporting companies engaged in the commercial development of oil, natural gas or minerals

• Requires detailed, company specific, project-level public disclosure of payments made to further the commercial development of oil, natural gas or minerals (that are not de minimis)
  • Includes taxes, royalties, license fees, production entitlements, bonuses and payments for infrastructure improvements – but excludes social or community payments
  • Project defined as operational activities that are governed by a single contract, license, lease, concession or similar legal agreement

• Permits an issuer to comply with the disclosure rules through alternative reporting which the SEC deems substantially similar

• Still no exemption if disclosure is prohibited by host country law, however provides exemptive relief on a case-by-case basis
Current Status of Proposed Rule

- Not all concerns have been addressed by the new proposed rule:
  - Detailed project disclosure could result in competitive harm
  - No exemption for conflict with host country law
  - Practical compliance issues
    - Reporting by joint ventures
    - Contract-based project definition
  - Burden of compliance
    - Volume and scope of information required
- Comment period has ended. SEC required to issue new rule by June 2016
Momentum is growing for more social impact transparency:

• Transparency on climate change impact

• Measures that forewarn of potential safety and environmental incidents

• Board Accountability
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