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## Dodd-Frank Rollback Begins - Congress Overturns SEC's Resource Extraction Issuer Payment Disclosure Rule

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Last week, Congress utilized the Congressional Review Act (CRA) to pass a joint resolution that disapproves Rule 13q-1 adopted by the SEC,<sup>1</sup> which would have implemented the resource extraction issuer payment disclosure provisions of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The disapproval resolution has been sent to President Trump for his signature, which he is expected to sign.<sup>2</sup>

Under the SEC's rule, a public company that qualified as a "resource extraction issuer" would have been required to publicly disclose in an annual report on Form SD information relating to any single "payment" or series of related "payments" made by the issuer, its subsidiaries or controlled entities of \$100,000 or more during the fiscal year covered by the Form SD to a "foreign government" or the U.S. Federal government for the "commercial development of oil, natural gas, or minerals" on a "project"-by-"project" basis. Resource extraction issuers were not required to comply with the rule until their first fiscal year ending on or after September 30, 2018 and their first report on Form SD was not due until 150 days after such fiscal year end.

As a result of the disapproval resolution (assuming President Trump signs, and does not veto, the resolution), issuers that expected to be subject to the SEC's rule can cease their compliance preparations. Under the CRA, a disapproved rule may not be reissued in substantially the same form or as a new rule that is substantially similar to the disapproved rule unless specifically authorized by a subsequently enacted law. Despite the disapproval resolution and the CRA, Dodd-Frank Section 1504's mandate for the SEC to adopt a resource extraction disclosure rule remains intact unless and until Section 1504 is repealed. In light of the CRA's prohibition on the reissuance of a substantially similar rule, the rule's contested history<sup>3</sup> and the expected reintroduction of the Financial CHOICE Act, which if enacted into law in the form introduced during the previous session of Congress would repeal Section 1504, the SEC is unlikely to commence the rulemaking process for resource extraction issuer payment disclosures for a third time.

Some public companies may still have to disclose similar payment information as required under the SEC's rule pursuant to international resource extraction disclosure laws (for example, the EU Accounting Directive, the EU Transparency Directive and Canada's Extractive Sector Transparency Measures Act).

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Article By [Scott L. Olson](#)  
[G. Michael O'Leary](#)  
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1. H.J.Res.41, available at <https://www.congress.gov/bill/115th-congress/house-joint-resolution/41/text>.

2. The White House, Press Release, H.J. Res. 38, H.J. Res. 36, H.J. Res. 41, H.J. Res. 40, H.J. Res. 37 - Statement of Administration Policy (Feb. 1, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/02/01/statement-administration-policy>.

3. For a brief discussion of the legal challenges to the rulemaking process, see our client alert dated December 17, 2015, SEC Re-Proposes Disclosure Rules for Payments by Resource Extraction Issuers.

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