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SEC Rejects Motion to Stay Resource Extraction Disclosure Rules

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On November 8, the **Securities and Exchange Commission** denied a motion to stay the effective date of the recently enacted resource extraction disclosure rules. These rules, adopted by the SEC on August 22, require public companies that are engaged in the development of oil, natural gas or minerals to publicly disclose each payment of more than $100,000 made to any foreign government or the US federal government for each "project" related to extractive industries. Various trade associations and the Chamber of Commerce of the United States of America filed the motion to stay on October 25 in connection with their lawsuit challenging the resource extraction disclosure rules, which they filed on October 10. Click here to view a *Katten Corporate & Financial Weekly Digest* article discussing the resource extraction disclosure rules, and here to view a *Katten Corporate & Financial Weekly Digest* article discussing the lawsuit.

The SEC ruled that the movants failed to show that implementation of the resource extraction disclosure rules as scheduled would cause "imminent, irreparable harm." In doing so, the SEC noted that a determination in the lawsuit could come as soon as the spring of 2013. The resource extraction disclosure rules do not require a company to file a Form SD until 150 days after the first fiscal year ending after September 30, 2013, at which point the lawsuit will likely have been determined. The SEC found that initial compliance costs that companies may incur to prepare for the rules would not constitute irreparable harm.

The SEC also found that the movants did not demonstrate a likelihood of success on the merits, noting that the adopting release for the rules contained strong explanations regarding the validity of the rules and an appropriately thorough economic analysis. The SEC was also not persuaded that a stay would serve the public interest.

In contrast to this ruling, in 2010 the SEC granted a request to stay the effective date of the proxy access rules implemented by Exchange Act Rule 14a-11 pending judicial review. The SEC noted that the stay would avoid potentially unnecessary costs, regulatory uncertainty, and disruption that could occur if the proxy access rules were to become effective during the pendency of a challenge to their validity. The United States Court of Appeals for the District of Columbia Circuit vacated Rule 14a-11 in 2011.

Click here to view the SEC's order denying the stay.

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