

“Not De Minimis” Is No Small Thing!

Article By:

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Having failed to meet a *Congressional* deadline for years, a federal court last fall ordered the **Securities and Exchange Commission** to adopt a resource extraction payments disclosure rule as required by Section 13(q) of the Securities Exchange Act. ***Oxfam Am., Inc. v. United States SEC***, 2015 U.S. Dist. LEXIS 116982 (D. Mass. Sept. 2, 2015). Pursuant to U.S. District Court Judge Denise J. Casper’s order, the SEC last month [published](#) for comment proposed Rule 13q-1 and amendments to Form SD.

The SEC’s proposed rules mirrors the statutory definition of “payment”. Under Section 13(q) a “payment” is a payment that, among other things, is “**not de minimis**.” A “not *de minimis*” payment is “one that equals or exceeds \$100,000, or its equivalent in the issuer’s reporting currency, whether made as a single payment or series of related payments”.

Readers will know that I’m a big fan of the Latin language, but does the SEC really need to marry a Latin phrase (*de minimis*) with a negative? Granted, a double negative can sometimes convey a meaning different than a positive statement. As I’ve observed, being described as “handsome” is better than being called “not ugly” or even “not unhandsome”. In this case, however, why not improve upon Congress’ inept drafting by defining “payment” as “one that equals or exceeds \$100,000 . . .”?

In 1998, the SEC [adopted](#) its “Plain English Rules” and issued its Office of Investor Education and Assistance published a [Plain English Handbook](#). Notably, the handbook observed that “Positive sentences are shorter and easier to understand than their negative counterparts”. The SEC should follow its own advice and eschew the negative and embrace the positive!

Another problem with both Section 13(q) and the SEC’s proposal is that the definition of “payment” is also hopelessly circular as it begins by defining “payment” as “a payment”. Defining “payment” as “a payment” provides no useful information and in fact assumes that the reader already knows what a payment is.

On the positive side, the SEC at least understands that the proper Latin phrase is *de minimis* and not *de minimus* as set forth in Section 202 of the [Sarbanes-Oxley Act](#) (P.L. 107-204). For the record, *minimis* is the plural dative form of the adjective *minimus*, *a*, *um*, which is the superlative form of the adjective *parvus*, meaning small. In the plural, the dative ending is the same for the masculine,

feminine and neuter genders.

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