

Recent Regulatory Developments and the New US Presidential Administration's Actions Affecting Public Companies

March 2017

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There have been several recent developments and proposed initiatives related to deregulation impacting US public companies and foreign private issuers ("FPIs"). Below is a brief summary of regulatory changes that have been implemented and the current status of certain proposals aimed at changing or eliminating existing or pending regulations.

Regulatory Developments

Repeal of Resource Extraction Rule

On February 14, 2017, President Trump approved a joint resolution of Congress, passed pursuant to the Congressional Review Act ("CRA"), repealing Rule 13q-1 of the Securities Exchange Act of 1934 ("Exchange Act"). Rule 13q-1 would have required domestic and foreign public companies engaged in the commercial development of oil, natural gas or minerals to publicly disclose any payments to the US or foreign governments related to the development of those resources for fiscal years ending on or after September 30, 2018.

While Rule 13q-1 has been rescinded, the Securities and Exchange Commission ("SEC") is still required by Section 1504 of the Dodd-Frank Act of 2010 ("Dodd-Frank Act") to promulgate rules mandating disclosure of payments to foreign governments. However, the CRA expressly prohibits the SEC from any rulemaking that is "substantially the same" as the disapproved rule without additional statutory authorization, which is unlikely to be forthcoming.

Hyperlinks Required for Exhibits to SEC Filings

On March 1, 2017, the SEC adopted a final rule regarding the inclusion of hyperlinks for exhibits in certain public filings. Companies that file registration statements and periodic and current reports that are subject to the exhibit requirements under Item 601 of Regulation S-K, or that file on Forms F-10 or 20-F, will be required to include a hyperlink to each exhibit listed in the exhibit index of the relevant filing. At this time, exhibit hyperlinks are not required in other forms under the multijurisdictional disclosure system used by certain Canadian issuers or in Form 6-K. The final hyperlink rule will become effective for filings submitted on or after September 1, 2017 (with "smaller reporting companies" having until September 1, 2018 to comply).

Foreign Private Issuers: Required Submission of Financial Statements in XBRL¹

On March 1, 2017, the SEC published a taxonomy on its website that would enable FPIs that prepare their financial statements in accordance with International Financial Reporting Standards (“IFRS”) to submit those reports in eXtensible Business Reporting Language (“XBRL”) format. While the XBRL rules have been in place for a number of years for both domestic and foreign issuers that prepare their financial statements in accordance with US GAAP, FPIs that prepare their financial statements under IFRS have been relieved from compliance pending the SEC’s approval of the IFRS taxonomy. Now that a taxonomy has been approved, FPIs that prepare their financial statements in accordance with IFRS may begin immediately to submit their financial statements in XBRL. Otherwise, all such FPIs must submit their financial statements in XBRL for fiscal periods ending on or after December 15, 2017.

Deregulation Initiatives

Reconsideration of Conflict Minerals Rule Guidance

In his January 31, 2017 statement, acting SEC Chairman Michael S. Piwowar directed the Staff to reconsider whether the SEC’s 2014 guidance on the conflicts minerals rule (Rule 13p-1 under the Exchange Act) is still appropriate and whether any additional relief for companies should be considered.

While the SEC is seeking public comments on the conflict minerals rule and there have been indications that a suspension of the rule is under consideration by President Trump’s Administration, at this time, the rule remains in effect, with the next round of filings due on May 31, 2017.

Evaluation of Pay Ratio Rule

The SEC is accepting public comments on any challenges that issuers have experienced as they prepare to comply with the SEC’s pay ratio rule. The Staff will reconsider the implementation of the pay ratio rule based on comments received to determine whether additional guidance or relief may be appropriate. Currently, the first disclosures under the rule are due in 2018, covering fiscal years beginning on or after January 1, 2017.

Other Deregulation Initiatives

“Two for One” Executive Order (“Reducing Regulation and Controlling Regulatory Costs”)

Consistent with the new Administration’s deregulation policies, on January 30, 2017, President Trump signed an executive order requiring federal agencies to revoke two existing regulations for every new rule introduced and set an annual cap on the cost of new regulations. For the remainder of fiscal 2017, the cap will require that the cost of any additional regulations be completely offset by undoing existing rules. While technically the order does not cover independent agencies that crafted many of the rules required by the Dodd-Frank Act, including the SEC and the Commodity Futures Trading Commission, and also would not apply to rules mandated by statutes, this executive order shows how President Trump’s administrative appointments to such independent agencies are likely to view regulation going forward.

Comprehensive Review of Financial Regulation (“Core Principles for Regulating the United States Financial System”)

On February 3, 2017, President Trump issued an executive order that builds on the “Reducing Regulation and Controlling Regulatory Costs” executive order (discussed above), calling for a comprehensive review of existing financial regulations, including the Dodd-Frank Act. The order directs the Secretary of the Treasury to consult with the heads of the member agencies of the Financial Stability Oversight Council and report to the President within 120 days (and periodically thereafter) on existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other government policies, and to identify any such laws that inhibit federal regulation of the US financial system in a manner consistent with the core principles described in the executive order.

¹ On March 1, 2017, the SEC also voted to propose amendments that would require the use of Inline XBRL for the submission of operating company financial statement information and mutual fund risk/return summaries. The proposal would also eliminate the requirement for filers to post XBRL data on their websites.

Deregulation Task Forces (“Enforcing The Regulatory Reform Agenda”)

On February 24, 2017, President Trump signed an executive order directing each federal agency (with limited exemptions) to create a dedicated task force to “research all regulations that are unnecessary, burdensome and harmful to the economy and therefore harmful to the creation of jobs and business” and to make recommendations to repeal or simplify those regulations.

SEC Leadership and Related Considerations

The Senate confirmation for the incoming Chairman of the SEC, Jay Clayton, is pending. Until that confirmation, the SEC, as an independent agency, is not expected to move aggressively on regulations. In addition, the SEC currently has only two commissioners on its five-member board. Both of those commissioners have to agree for any rulemaking to move forward.

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