To kick off Congress’ efforts to roll back portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), the Senate approved House Joint Resolution 41 on February 3, 2017, after the Resolution was introduced in the House of Representatives on January 30, 2017 and passed the House on February 1, 2017. The joint resolution, issued under the Congressional Review Act, sought to “disapprove” the Securities Exchange Commission’s 2016 rule titled “Disclosure of Payments by Resource Extraction Issuers.” President Donald J. Trump signed the joint resolution into law on February 14, 2017, suggesting that the ultimate repeal of this rule is part of his administration’s efforts to bring back jobs to the American workforce.


The SEC initially adopted amendments to its disclosure rules to implement Section 1504 of Dodd-Frank on July 20, 2016. Section 1504 added Section 13(q) to the Securities and Exchange Act of 1934 (the “Exchange Act”) which resulted in the SEC adopting Rule 13q-1. Rule 13q-1 states that resource extraction issuers must disclose “information relating to certain payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas or minerals.” The rule was originally adopted in 2016 “to further the statutory objective to advance U.S. foreign policy interests by promoting greater transparency about payments related to resource extraction.” U.S. Securities and Exchange Commission, *SEC Adopts Rules for Resource Extraction Issuers under Dodd-Frank Act*, (June 27, 2016), https://www.sec.gov/news/pressrelease/2016-132.html.
Representative Bill Huizenga of Michigan led the opposition to the rule arguing that it burdens the SEC and drains resources from companies that could be used to create jobs. Rene Marsh, *House Republicans look to roll back transparency law for energy companies*, (CNN Politics January 31, 2017), http://www.cnn.com/2017/01/31/politics/oil-industry-regulations/. Rule opponents also argued that it puts U.S. companies at a competitive disadvantage since foreign competitors are not subject to the same rules. There is also the risk that trade secrets could be divulged since companies will be required to share cost estimates for particular projects. Kimberly R. Anderson, *A Long and Winding Road Ends for Resource Extraction Disclosure*, (Governance & Compliance Insider February 17, 2017), https://governancecomplianceinsider.com/a-long-and-winding-road-ends-for-resource-extraction-disclosure/; John Berlau, *Congress Should Eliminate SEC Rule that Discloses Company Information to Foreign Governments* (Competitive Enterprise Institute January 31, 2017), https://cei.org/blog/congress-should-eliminate-sec-rule-discloses-company-information-foreign-governments. In addition, rule opponents argue that the SEC is not the proper regulatory body for “implementing foreign policy objectives such as anti-corruption.” John Berlau, *Congress Should Eliminate SEC Rule that Discloses Company Information to Foreign Governments*, (Competitive Enterprise Institute January 31, 2017), https://cei.org/blog/congress-should-eliminate-sec-rule-discloses-company-information-foreign-governments.

On the flip side, House Representative Maxine Waters of California stressed that the repeal of the rule would “mean that Big Oil companies like ExxonMobil would be able to continue their questionable dealings with corrupt parties such as Vladimir Putin and Russia.” See Rene Marsh, *House Republicans look to roll back transparency law for energy companies*, (CNN Politics January 31, 2017), http://www.cnn.com/2017/01/31/politics/oil-industry-regulations/ (citing
Maxine Waters). In addition, some critics of the repeal argued that lack of transparency could impact national security. Specifically, Jodi Vittori, a former military officer and current professor at Georgetown University argues that a lot of the money “gets diverted to other places out of these slush funds they can be going to hackers that are hacking political parties. It could be going to terrorists, insurgents, warlords, criminals, wherever these authoritarian governments or the cronies who have access to their money choose to divert it.” See id.

What does this mean for industry practitioners?

Most importantly, the compliance deadline for this rule was not until September 2018 so the rule was not yet applicable to U.S. filers. Specifically, the rule provides that the issuer must file the requisite disclosures 150 days after the end of the fiscal year starting on or after September 30, 2018. U.S. Securities and Exchange Commission, Disclosure of Payments by Resource Extraction Issuers, A Small Entity Compliance Guide (September 19, 2016), https://www.sec.gov/info/smallbus/secg/resource-extraction-small-entity-compliance-guide.htm. Companies currently expecting to comply with this rule can cease compliance preparations given that, under the Congressional Review Act, there are restrictions on the SEC’s ability to issue rules in the same substance and form as the original which was disapproved. G. Michael O’Leary, Scott L. Olsen, Dodd-Frank Rollback Begins – Congress Overturns SEC’s Resource Extraction Issuer Payment Disclosure Rule, (Andrews Kurth February 8, 2017), https://www.andrewskurth.com/insights-1471.html. While possible, some practicing attorneys believe that the “SEC is unlikely to commence the rulemaking process for resource extraction issuer payment disclosure for a third time.” Id. Attorneys should also be aware, however, of similar reporting rules and related requirements in other jurisdictions, including the EU Accounting Directive, the EU Transparency Directive and Canada’s Extractive Sector Transparency Measures Act. Id.