



January 31, 2011

Via Email to: rule-comments@sec.gov

Ms. Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: Dodd-Frank Wall Street Reform and Consumer Protection Act
Section 1504
and Securities and Exchange Commission Proposed Rule
Release No. 34-63549
Disclosure of Payments by Resource Extraction Issuers
File Number S7-42-10

Dear Ms. Murphy:

The American Exploration & Production Council (“AXPC”) is pleased to participate in and provide comments to the Securities and Exchange Commission (“Commission”) concerning the regulations contained in the proposed rule referenced above (“Rule”) related to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act”).

AXPC is a national trade association representing thirty (30) companies that are involved in the various aspects of both domestic and international oil and gas extraction activities including, but not limited to, exploration, extraction, processing, exporting, refining, marketing and transportation of oil and natural gas resources.

The Act and Rule will have a significant impact on AXPC members. Therefore, AXPC provides the following comments and input in response to the Commission's proposal and request for comment.

General Comments

AXPC members appreciate and respect the efforts of the Commission to develop regulations that further the intent and language of the Act. In some respects, however, the Act and the Rule include terms and phrases that are unclear, ambiguous or vague and which thus may make compliance difficult. In addition, in certain respects, compliance with the Rule could lead to disadvantages to those trying to compete in the resource extraction industries. The Commission obviously recognizes some of these issues and AXPC supports the Commission's approach of seeking clarity through the comment process. AXPC, therefore, submits the following specific comments.

Specific Comments

1. Definitions

The Commission is given discretion to define certain terms. It should use that discretion to ensure that such terms are specifically defined. Terms such as "resource extraction issuer", "commercial development of oil, natural gas, or minerals", "project", "payment", "*de minimis*" and "foreign government" should be well defined. To the extent possible, the definitions should (i) be made consistent with corresponding terms in the Commission's rules for reporting oil and gas producing activities and oil and gas reserves (i.e., Regulation S-K, Item 1201 et seq); and (ii) specify the list of items included in and the list of items excluded from any such term and, where the term refers to a monetary amount or other quantity, provide an objective (numerical) threshold or formula (if possible or practical). This specificity and objectivity enhances clarity, which, in turn, brings certainty to those who regulate and to those who are regulated.

By way of example, the Commission's proposed "not *de minimis*" standard for disclosure of an amount may be subject to varying interpretations – what is "de minimis" for a "large cap" resource extraction issuer may not be "*de minimis*" for a "small cap" resource

extraction issuer. The Commission should consider providing an objective standard that issuers can refer to in determining if a particular payment must be disclosed. The Commission has provided objective standards in various other contexts – for example, (1) for disclosure of related party transactions (\$120,000), (2) for disclosure of monetary sanctions for alleged environmental violations (\$100,000), (3) for exhibit filing of long-term debt instruments (10% of consolidated total assets) and (4) for 8-K disclosure regarding private placements of stock (1% of the number of shares outstanding).

Additionally, the statute contains certain phrases that are vague or ambiguous, such as “other significant actions” and “other material benefits”. To the extent possible, those phrases should be defined.

2. Competitiveness and Aggregation

In many respects, the resource extraction industries are highly competitive. The reporting of sensitive, proprietary or confidential information by resource extraction issuers could place those issuers at a competitive disadvantage to non-issuers who are not obligated to publicly report under either the Exchange Act or the Act, and may, in certain circumstances, lead to disclosure of information that is prohibited or restricted by law or contract. One way to protect the reporting issuers is to aggregate the reported information to a sufficient level (for example, by “geographic area” as defined in Item 1201 of Regulation S-K) so that those who are not regulated are not given a competitive advantage. Aggregation may also protect the reporting issuer from a claim of breach of applicable law or contract.

3. Competitiveness and Limitations on Disclosures

Along the same lines as the above concern, the Commission should consider providing an exception permitting the non-disclosure of information that would cause competitive harm for the issuer, such as the Commission has previously provided, for example, in Instruction 4 to Item 402(b) of Regulation S-K (in the context of executive compensation target levels). At a minimum, the Commission should consider confirming the availability of the general confidential treatment procedures in Exchange Act Rule 24b-2 and providing

guidance to issuers regarding the applicability of such rule in the context of the proposed Rule.

4. Compilation/Consistency with the EITI

Section (3)(A) of the Act requires the Commission to make available to the public a compilation of the information required to be submitted. The Commission should adopt regulations and a methodology of the public release of information to ensure that it is a compilation, as required by the Act.

The Commission should also strive to ensure that its regulations and methodology for the compilation, and the Rule in general (as finalized and enacted), are, to the extent possible and practical, consistent with the provisions of the Extractive Industries Transparency Initiative (“EITI”), as certain of the AXPC’s members are currently participating in the EITI’s pilot program and/or may be subject to the EITI’s mandates in the future.

5. Uniform Accounting Method

In order to provide for better comparability of disclosures, the Commission should require that issuers report payments on either a cash basis or an accrual basis (versus allowing issuers the option of choosing an accounting/reporting method).

AXPC thanks the Commission for the opportunity to provide input and offers to meet with the Commission or its staff to discuss any of these concepts or provide additional information. Please feel free to contact the undersigned with any question at either 202-652-2359 or via email at bthompson@axpc.us.

Very truly yours,

V. Bruce Thompson
President