ES150954

From:	Bugala, Paul
To:	CHAIRMANOFFICE
Cc:	Rule-Comments
Subject:	FW: Calvert Investment Management Comment Regarding Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
Date:	Monday, November 25, 2013 11:04:14 AM
Attachments:	Calvert Investment Management Comment to SEC Regarding Section 1504 of Dodd Frank 071813.pdf Calvert Investment Management Comment on Exchange Act Section 13(q) Materiality and Implementation.pdf

Dear Chair White:

Calvert Investment Management, Inc. would like the attached documents to be included among the comments submitted regarding Specialized Disclosures; Resource Extraction Issuers Title XV Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resource-extraction-issuers.shtml).

Both documents have been shared with the Office of the Chair, commissioners' offices, and the Division of Corporation Finance previously. Please let me know if you have any questions.

Sincerely,
Paul Bugala

Paul Bugala
Senior Sustainability Analyst, Extractive Industries
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From: Freeman, Bennett
Sent: Thursday, July 18, 2013 3:29 PM
To: 'chairmanoffice@sec.gov'
Cc: [redacted] Bugala, Paul
Subject: Calvert Investment Management Comment Regarding Section 1504 of the Dodd-Frank

Dear Chair White:

Please find attached a comment from Calvert Investment Management, Inc. regarding Section 1504 of the Dodd-Frank Act. Thank you for your consideration.

Sincerely,
Bennett Freeman

Bennett Freeman
Senior Vice President
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ES150954

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July 18, 2013

Mary Jo White
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")

Dear Chairman White:

I am writing on behalf of Calvert Investment Management, Inc. to commend the Securities and Exchange Commission (SEC) on the thoroughness of the rulemaking for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") [or Exchange Act Section 13(q)] and the Commission's vigorous defense of these critical rules. Calvert is a diversified financial services company based in Bethesda, Maryland with more than $12.7 billion in assets under management, as of July 16, 2013. My comments follow Calvert's numerous previous submissions to the SEC as well as meetings with commissioners, their staff and the professional staff of the Commission throughout the rulemaking process for Section 13(q). Calvert's most recent communication with the SEC on this topic was a letter submitted on December 20, 2012 that commend the Commission's November 7, 2012 denial of the request for stay of the rules for the implementation of Section 13(q) made by the American Petroleum Institute (API), U.S. Chamber of Commerce (the Chamber), Independent Petroleum Association of America (IPAA), and National Foreign Trade Council (NFTC).

Let me acknowledge and express our appreciation to the SEC for the approval on August 22, 2012 of final rules for the implementation of Section 13(q). The rulemaking process for Section 13(q) was comprehensive and demonstrated the talent and dedication of the Commission's staff, in particular, that of Division of Corporate Finance as well as the offices of the commissioners and Chairman. The rulemaking has contributed significantly to the subsequent development of a companion law in the European Union and a similar regulation under development in Canada that constitute a global standard for oil, gas and mining industry payment disclosure.

Calvert believes the July 2, 2013 U.S. District Court ruling in the case of API vs. SEC that vacated the rules for the implementation of Section 13(q) and required the Commission to review them does not reflect the importance investors place on mandatory and disaggregated payment disclosure in the oil, gas and mining sectors. Calvert was among the investors representing more than a $1 trillion in assets under management that submitted comments in support of the proposed rules for the implementation of Section 13(q). These comments indicated that the information disclosed pursuant to Section 13(q) is material to investors and needed as soon as possible to address gaps in disclosures made by the covered issuers.

In our comments submitted to the SEC regarding the proposed rules and subsequent statements related to the motion for stay, Calvert has emphasized the need for public reporting by individual companies of oil, gas and mining payments to host countries governments on an entity level and project-by-project basis without exemptions for reporting in any country. The aggregation of the disclosure required by Section 13(q) into a compilation or the exemption of

the reporting of data originating from certain countries, as suggested in the API vs. SEC ruling, would undermine the value of this law to investors to a very significant extent.

The rules for the implementation of Section 13(q) require company-specific and project-level payment disclosure without exemptions for reporting in any country, which is consistent with the companion law adopted by the EU. Company-specific and project-level disclosure requirements were also included in the latest revision of the Extractive Industries Transparency Initiative (EITI) standard in order align it with the SEC rules and EU law. Both investors and issuers compelled to make disclosures pursuant to these regulations benefit from the consistency of the data required for disclosure, as it facilitates comparison of the disclosure of different entities and lessens regulatory inconsistency between jurisdictions. Calvert hopes the Commission will bear value investors place of consistent and comparable disclosures in mind as it considers its response to the U.S. District Court's ruling in API vs. SEC.

Calvert appreciates the Commission's responsiveness to our comments throughout the Section 13(q) rulemaking process and related litigation. We also thank and commend the SEC for its vigorous defense of this important reform and the leadership the Commission has demonstrated through its carefully considered implementation. Calvert remains prepared to be of assistance in any ways which the Commission may deem useful.

Sincerely,

Bennett Freeman
Senior Vice President, Sustainability Research and Policy
Calvert Investment Management, Inc.
4550 Montgomery Ave., Suite 1000N
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CC:

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Calvert Investment Management, Inc. Comment on Exchange Act Section 13(q) Materiality and Implementation

Calvert Investment Management, Inc. is a diversified financial services company based in Bethesda, Maryland with more than $12.8 billion in assets under management, as of October 29, 2013. Calvert has been actively involved with the rulemaking process for Section 13(q) of the Exchange Act (added by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) since 2010. During that time, we have submitted multiple comments and have had numerous meetings with commissioners, their staff and the professional staff of the Commission. Calvert has been closely involved with the implementation of Section 13(q) given of our view that the statute requires disclosure of material information that address significant needs for investors in the oil, gas and mining sectors. Based on our understanding of the importance of Section 13(q), we summarize our view of the materiality of the disclosures the statute requires[1] and desirable next steps for its implementation.

Currently investors do not have access to sufficiently detailed, reliable, and comparable data regarding oil, gas and mining companies' payments to host governments to account for material and distinct social, political and regulatory risks to accurately assess cash flows or account for factors such as acquisition costs and management effectiveness. Section 13(q) of the Exchange Act addresses these challenges.

Despite growth of oil, gas and mining production in the U.S., rapidly growing global demand is forcing the oil, gas and mining industry to operate in more unstable environments where political and regulatory risks are material. Among many other things, the SEC's Modernization of Oil and Gas Reporting permitted the inclusion of proven hydrocarbon reserves extracted from shale, oil sands and coal in company's disclosures in recognition of dramatic changes in the industry that investors could not fully understand using existing reporting. Similarly, the industries' ongoing technological development, including the capacity of liquid natural gas infrastructure and mining techniques such as cyanide heap leaching, are expanding the economic viability of ignored or abandoned assets around the world. Increasing demand for energy and materials as well as national operating companies' (NOCs) control of the vast majority of the world's hydrocarbon reserves also have sent oil, gas and mining companies into more operating environments for which current disclosure requirements are insufficient.

Royalty and tax payment disclosure gives an indication of a project's and company's exposure to risk relative to particular operation and within a particular country. It also has the benefit of isolating the project's and company's relationship to the host government itself through the oil, gas or mining acquisition, exploration, development, and production phases.

Investors have a wealth of data from sources such as the World Bank and United Nations regarding the political and regulatory risks that oil, gas and mining companies increasingly face as the industry goes further and further afield to meet our resource needs. However, we don't have company disclosure specific enough to attribute those risks on the segment or project basis, which makes understanding the impact of these risks on future cash flows very difficult.

[1] A more detailed assessment of the material of Exchange Act Section 13(q) disclosures can be found in "Materiality of disclosure required by the. Energy Security through Transparency Act" (April 2010) http://www.calvert.com/NRC/literature/documents/10003.pdf.

Currently, relevant regulations such as (Financial Accounting Standard) FAS 69 permit oil and gas companies to report their segments in aggregated geographic areas that can be as large as continents and do not provide sufficiently detailed information to assess these risks. Material considerations may also go unreported, because segment reporting standards like FAS (Accounting Standard Codification) ASC 280 allows operating segments to be aggregated for reporting purposes even though they may be material individually.

Beyond Risk Allocation and Assessment

Net Present Value
The payments disclosed by Section 13(q), including royalties and taxes, can have a significant impact on the net present value (NPV) for a project, especially when they are estimated over the life of the project and those estimations are subject to inaccuracies such as those caused by regulatory instability. NPV measurements help analysts determine that management is focusing on those projects that create the maximum overall value for shareholders. During cycles of higher commodity prices, more economically marginal projects come online and these are more susceptible to the imposition of new or additional taxes or royalties. Changes in these factors can a significant impacts on expected cash flows related to oil, gas and mining projects.

Cut-Off Grades
Changes in cutoff grades have a direct impact on the ability of a mining company to grow reserves, which is a key consideration in measuring the financial and economic viability of a project and its operator. Tax, fee and royalty assessments disclosed as part of Section 13(q) can have a significant impact on whether mining reserves meet cut-off grades and are particular useful in increasing number of circumstances were ore grades are particularly low.

Section 13(q) Implementation

The U.S. District Court in the District of Columbia's July 2, 2013 decision in the case of the American Petroleum Institute (API) vs. the U.S. Securities and Exchange Commission (SEC) does not fully reflect the importance investors place on transparency in the oil, gas and mining sectors. A group of a group of 44 investors representing more than $5.6 trillion, including the world's largest private wealth manager, made this point clear in a letter[2] sent to the SEC on August 14, 2013 that commended the Commission on issuing rules for the implementation of Section 13(q) that protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

U.S. District Court ruling requires the Commission to examine how it exercised its judgment related to Section 13(q)'s requirement that all company payments reports be made public and the decision not to grant exemptions for foreign law prohibitions. In order to reflect the clear will and interest of investors, the SEC should provide greater justification for its decisions related to these issues rather than abandoning the deliberate and thoughtful work of the Commission staff and the accompanying contributions by a wide variety of observers represented by the 360 comments received through the Section 13(q) rulemaking process.

[2] http://www.calvert.com/Documents/InvestorStatementtoSECregardingAPIvsSEC082813PUBLICLEGAL.pdf

Public Disclosure

Public disclosure of full payment information is compelled Section 13(q) and cannot be satisfied by the release of a compilation of aggregate information. First, the statute states that Section 13(q) requires "public disclosure of the issuers' annual reports." Without the public disclosure of this information filed with the SEC the statute's value to investors would be diminished significantly. For example, the contemplation and treatment of individual company's project-level payments in categories consistent with those outlined in the Extractive Industries Transparency Initiative's (EITI) Standard would be an empty exercise if these disclosures made in an aggregate compilation rather than in the issuers' annual reports. It is worth noting the European Union Accounting and Transparency Directives[3], which mirror Section 13(q) in most substantive ways, have no provision for such a compilation and require disclosure by each reporting company. The EITI Standard also compels disclosure on a company-by-company and project-level, which would seem incompatible with Section 13(q) disclosure done only on the basis of a compilation.

Reporting Exemptions

The extensive comments regarding the Section 13(q) rulemaking do not appear to include reference to laws, regulations or contracts that would prohibit the statute's disclosures in any country in which the oil, gas and mining industry operates, which indicates exemptions to the law's reporting requirements are not necessary. Instead, for example, the February 21, 2011 comment[4] submitted by Petrobras states the following.

> Brazil's oil and gas regulations do not prohibit the disclosure of payments by resource extraction companies to the Brazilian government or to any government outside of Brazil. We are active in 29 countries outside of Brazil and we are not aware of such a prohibition in any of those countries.

Of the four countries cited by the commentators as those with laws prohibiting Section 13(q) disclosures, Petrobras is active in Angola and China[5]; other comments made by RELUFA Cameroon indicate no conflict with laws in that country[6], [7]; and a letter from the Qatari Minister of Energy and Industry submitted by ExxonMobil lacks reference to current statutes that would prohibit Section 13(q) disclosure and, in fact, indicates providing exemptions may create the incentive for countries to develop conflicting laws after the fact[8].

[3] http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=oj:JOL_2013_182_R_0019_01&from=EN
[4] http://www.sec.gov/comments/s7-42-10/s74210-25.pdf
[5] http://www.petrobras.com/en/about-us/global-presence/
[6] http://www.sec.gov/comments/s7-42-10/s74210-96.pdf
[7] http://www.sec.gov/comments/s7-42-10/s74210-74.pdf
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