

April 28, 2014

Mary Jo White
Chair
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

Dear Chair White:

We write on behalf of the 34 undersigned institutional investors to convey our strong support for the leadership the U.S. Securities and Exchange Commission (SEC) has shown in producing final rules for the implementation of Section 1504 of the Dodd–Frank Wall Street Reform and Consumer Protection Act [Section 13(q) of the Securities Exchange Act of 1934]. This letter follows up on a prior submission made to the SEC on August 14th 2013 on this subject and signed by many of the institutions below.

By way of introduction, the signatories of this submission manage assets that collectively total more than US\$ 6.40 trillion, and our mandate is to deliver sustainable long-term returns to our pensions, insurance and savings clients. It is in this spirit that we wish to contribute our views on the value to investors of improving transparency and governance in the extractives sector through regulations such as Section 1504. We also welcome the parallel submission by Calvert Investment Management et al, and note the common objectives our respective groups of signatories share in promoting high standards of transparency in the extractives sector.

We would like to highlight that we have only belatedly become aware of the detailed submission made on April 15, 2014 by the American Petroleum Institute (API) on this subject. Inasmuch as we had produced this statement, and secured approvals from the undersigned institutions, well before having had an opportunity to review the API submission, we wish to draw your attention to a brief supplementary comment that several of our signatories will shortly be submitting by way of parallel submission in order to address any additional points that are relevant to the API's arguments.

The undersigned signatories strongly support the Extractive Industries Transparency Initiative (EITI). As such, we not only welcome the US's involvement as an EITI Supporting Country since the Initiative's inception in 2003, but are particularly pleased to note its recent

admission as an EITI Candidate Country. We regard the United States' decision as instrumental in establishing the *de facto* global standard for transparency in the extractives sector, and see the steady progress being made as a critical factor in helping to reduce volatility in the oil and other vital hard commodity markets, with beneficial impacts on global financial markets and the real economy.

In line with our support for the EITI, we also highlight that we regard the mandatory project-level reporting provision contained in Section 1504 as entirely consistent with, and complementary to, the goals of the EITI. As such, we wish to underscore the important revisions made in 2013 to the EITI Standard that aim specifically to ensure convergence with the disclosure standard pioneered by Section 1504. These are now echoed in similar legislation already passed by the European Union (Transparency and Accounting Directives) and in progress in Canada (Canadian Mandatory Reporting in the Extractive Sector).

In short, Section 1504 started a process that has now been embraced by the world's other key jurisdictions: where initially it could have placed US listed companies at a commercial disadvantage, this risk has been reduced. As institutions based in numerous international jurisdictions, with both customers and assets spread around the globe, we welcome this virtuous development, and consider that regulations favouring not only high, but just as importantly, globally consistent standards of transparency, are essential to safeguarding the effective functioning of the financial markets.

Finally, we highlight that our portfolios have substantial exposure to the global extractives sector, through both equity and fixed income instruments, and that many of the undersigned also invest actively in the sovereign debt of resource-dependent emerging nations whose fiscal governance has a direct bearing on the quality of the credits they hold. It is therefore specifically with a view to safeguarding and enhancing our clients' portfolio returns that we contribute the following comments.

Chair White, your fellow SEC Commissioner Michael Piwowar has recently been reported to have voiced the concern that Section 1504 may have involved a degree of legislative overreach, by allowing "special interests, from all parts of the political spectrum that are trying to co-opt the SEC's corporate disclosure regime to achieve their own objectives."¹ Commissioner Piwowar raises a valid point that merits discussion: as investors whose interests are inextricably bound with the commercial interests of the oil and mining companies in which we invest, we wish to clarify that we fully agree that the remit of the SEC

¹ Commissioner Michael Piwowar, Speech to U.S. Chamber of Commerce, January 27 2014, "Fate of U.S. agency rule on extractives hangs in the balance as two SEC regulators tilt toward industry", *Reuters*, 25 February 2014.

is, and should remain, that of safeguarding the efficient functioning of financial markets. We also agree that legislative and regulatory tools aimed at achieving purely social aims properly belong within instruments other than SEC regulation.

However, it is our contention that Section 1504, in line with the broader purpose of the Dodd Frank Act, i.e. mitigating systemic financial market risk, plays an essential role in containing behaviours related to extractive sector activity that contribute to damaging levels of financial and economic instability.

As you know, Section 1504 calls for the provision of detailed publicly-available information regarding payments to government. The purpose of such disclosure is to: a) defuse suspicions by civil society; b) curb the incidence of corruption and fiscal mismanagement; c) and thereby reduce the social and political risk factors that drive high levels of operating risk in resource-dependent emerging nations. The latter notably exacerbates the volatility and risk in the commodities markets. It is precisely because of its role in helping to counteract these damaging pressures that we regard Section 1504 as very much in the interests of investors, and consistent with the basic mission of the SEC.

Nevertheless, as investors, we are sympathetic to the concerns of industry regarding the practical impacts of any new legislation in terms of potential administrative complexity and cost burden, particularly in respect of companies that operate in multiple jurisdictions. As such, it is imperative that the disclosure regulations introduced by Section 1504 reflect alignment between the US, EU and Canada – all key jurisdictions for extractive industry issuers. Firstly, this would simplify compliance for extractive companies, particularly for those that already have dual listings. Secondly, it would lift overall transparency standards while deterring less scrupulous issuers from actively seeking out more opaque regulatory regimes. Such ‘forum-shopping’ would not only harm well-governed companies through unfair competition, but expose investors to higher risk, and the general public to greater systemic risk.

Our strong interest as investors is therefore to achieve *both* consistency across competing jurisdictions and high standards, rather than regarding them as necessarily mutually exclusive. In this regard, the moves by the EU and Canada to follow in Dodd Frank 1504’s footsteps signal a clear trend that is now very difficult to reverse: transparency has firmly taken hold, and it would be a mistake to roll backwards.

As a large group of diverse investment institutions, we acknowledge that different investors may make greater or lesser use of the granular data produced through such disclosure for

individual stock decision purposes, depending on the nature of their portfolios and investment processes. However, while individual investment strategies may differ, we are strongly of the view that disclosure of the type called for by Section 1504 affords the following benefits to investors:

- **Putting such information in the public domain is of major indirect benefit to investors, thanks to its impact on the overall quality of the business climate:** better transparency helps to build trust with the citizenry, deter corruption through better scrutiny of revenues and spending, and reduce the likelihood of contract rescissions. An anonymous compilation of the submissions required by Section 1504 would likely not provide the information necessary to serve this purpose.
- The value of such a standard lies in its **consistent application across all global markets:** this means that **country exemptions should not be granted** in cases where foreign jurisdictions wish to impose secrecy – otherwise, such exemptions, often referred to as the “tyrant’s veto”, will merely serve to encourage such governments to introduce anti-transparency standards, thereby undermining the very object of this regulation.
- The impact of such disclosure on competitiveness has been overstated, as demonstrated by the strong support afforded to Section 1504’s Canadian equivalent by the leading trade associations in the Canadian mining sector (Mining Association of Canada and Prospectors and Developers Association of Canada), and the more nuanced position of the Canadian Association of Petroleum Producers relative to the American Petroleum Institute. We also note that this information can be easily obtained by purchasing specialist research – which merely ensures that it is available to competitors who can afford to pay, but not to citizens who cannot. More importantly, as investors, **we stand to benefit more from efficient, competitive markets that enable ethical behaviour than we do from isolated instances of companies gaining a temporary negotiating advantage through secrecy.**
- The impact on companies’ compliance costs should be given due consideration, and we would therefore urge that with regard to the definition of ‘project’, the disclosure framework in Section 1504 be consistent with best practice for disclosing disaggregated production information that references the legal relationship between individual projects and host governments. Such an approach may be modeled on the project-level disclosures that have been developed under the EU Directives and also

made by Statoil², the large Norwegian-based international oil company, as well as Tullow Oil, the FTSE100 UK oil company³. These base their definition, either implicitly or explicitly, on economic rather than geological entities (so-called 'payment liability'), which we regard as a cost-efficient way of mirroring internal corporate reporting. We recommend a single consistent standard in preference to allowing companies to self-define project boundaries for two reasons: 1) a multiplicity of reporting standards would cause confusion and drive up compliance costs; 2) flexibility for companies would also risk undermining the aim of the regulation. Such a standard should also require a consistent and reasonable degree of disaggregation, as this would meet the aims of the regulation, namely improving fiscal governance at both national and subnational level.

In conclusion, we are pleased to signal our strong support for the SEC's leadership in establishing a mandatory reporting standard in the extractives sector that is complementary to the EITI, aligned with equivalent standards in the EU and Canada, and designed pragmatically to deliver the very real benefits that we see coming from enhancing fiscal transparency and accountability in resource-dependent emerging nations. The SEC has demonstrated great diligence in appreciating the changing needs of investors through the implementation of Section 1504. We remain confident that the Commission will see the process through to a conclusion that fulfills its mission and advances the interests of all its stakeholders.

We thank you for your attention to this submission, and remain at your disposal for any further information or clarification.

Sincerely,

- Allianz Global Investors, Steve Berexa, Managing Director, Global Head of Research, Senior Portfolio Manager
- Aviva Investors, Steve Waygood, Chief Sustainable Investment Officer
- British Columbia Investment Management Corporation (bcIMC), Bryan Thomson, SVP Public Equity Investments
- Amundi Asset Management, Pascal Blanqué, Chief Investment Officer
- AP1/Första AP-Fonden (The First Swedish National Pension Fund), Ossian Ekdahl, Head of Communication and ESG
- AP2/Andra AP-Fonden (The Second Swedish National Pension Fund), Ulrika Danielson, Head of Communications and HR and coordination Corp. Governance
- AP3/Tredje AP-Fonden (The Third Swedish National Pension Fund), Peter Lundkvist, Head of Corporate Governance

² Statoil Oil production and entitlement data by license (www.statoil.com)

³ Tullow Oil's payment disclosures are on pages 176 to 179 of its 2013 Annual Report (www.tulloil.com)

- AP4/Fjärde AP-Fonden (The Fourth Swedish National Pension Fund), Arne Lööw, Head of Corporate Governance
- AP7/Sjunde AP-Fonden (The Seventh Swedish National Pension Fund), Richard Gröttheim, Chief Executive Officer
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- State of Connecticut, Denise L. Nappier, State Treasurer
- Element Investment Managers, David Couldridge, Senior Investment Analyst
- ERAFP, Philippe Desfossés, Chief Executive Officer
- Ethos Foundation, Switzerland, Dominique Biedermann, CEO
- F&C Management Ltd., Matthias Beer, Associate Director, Governance and Sustainable Investment
- Henderson Global Investors, Antony Marsden, Head of Governance and Responsible Investment
- Hermes Equity Ownership Services Ltd, Bruno Bastit, Senior SRI analyst – Extractive industries specialist
- Governance for Owners, Paola Perotti, Partner
- ING IM International, Hendrik-Jan Boer, Head of Responsible Investments
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- Legal & General Investment Management Ltd., Sacha Sadan, Director of Corporate Governance
- MN, Anatoli van der Krans, Senior Advisor Responsible Investment & Governance
- Natixis Asset Management and Mirova: Hervé Guez, Director of Responsible Investment Research
- Nordea Asset Management, Sasja Beslik, Head of Responsible Investments
- NEI Investments, Robert Walker, Vice President, ESG Services & Ethical Funds
- OPSEU Pension Trust, Enrique Cuyegkeng, Managing Director, Public Market Investments
- PGGM, Marcel Jeucken, Managing Director Responsible Investment
- Royal London Asset Management, Niall O'Shea, Head of Responsible Investing
- Robeco, Carola van Lamoen, Team Lead Governance & Active Ownership
- RPMI Railpen Investments, Frank Curtiss, Head of Corporate Governance
- SNS Asset Management, Jacob de Wit, Chief Executive Officer
- USS Investment Management, David Russell, Co-Head of Responsible Investment

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