



Yale Law School

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March 4, 2020

Chair and Commissioners
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File Number S7-24-19

Dear Chair and Commissioners:

Comment on SEC proposed rule 13q-1 to implement Section 1504 of the Dodd-Frank Act

The previous version of this rule was disapproved under the Congressional Review Act (CRA) on February 14, 2017. The CRA instructs the issuing agency not to issue a new rule in “substantially the same form” as the disapproved rule. However, as the SEC recognizes “the statutory mandate under Section 13(q) of the Exchange Act remains in effect”. Hence, whatever the SEC says in this proposal, it is NOT authorized to “achieve an appropriate balance between implementing the statute as required by Congress and addressing the concerns expressed by commenters and members of Congress”. 81 Fed. Reg. at 2528. Rather, it must implement the statute as written. It is not permitted to adjust clear statutory language in light of the subsequent “concerns expressed” by individual members of Congress. The revised rule must conform with section 1504 of the Dodd-Frank Act. If members of Congress object to the wording of Section 1504, they must amend the law, not ask the SEC to find a “balance” between the text and their concerns.

In particular, public disclosure of annual reports from issuers aims to help citizens and watchdog groups understand the financial flows connected with individual projects. Aggregated data will be of little help to those concerned with the approval and operation of individual projects. Opponents of a disaggregated approach argue that it would be costly for firms to provide such information. But that cannot be correct. Any well-run firm must keep records at the project level, taking appropriate account of joint expenses spread over several projects. In fact, it might be more expensive to calculate aggregate data than to report disaggregated information. Thus, my outsider’s guess is that the cost estimates for compliance are overstated. Similarly, it is difficult to see how the several proposed exemptions can be consistent with the statute and with other

SEC mandates. In particular, exempting IPOs and “emerging growth companies” limits the information available to investors.

Furthermore, the goal of Section 1504 cannot be expressed in purely economic cost/benefit terms. It is one part of broader efforts to improve government/business relations worldwide. The background goal is to encourage economic development that helps ordinary citizens improve their lives and economic prospects. Thus, although the US has withdrawn as an implementing country of the Extractive Industries Transparency Initiative (EITI), it continues to be a “supporting country” that is “committed to promote good governance in the extractive industries across the world” (note 39). Section 1504 is one route to that goal that the CRA cannot undermine.

My fields of expertise are political economy of corruption and administrative law, both fields that have been the focus of my research and teaching for many years. I also commented on during a previous comment period on the rule to implement Section 1504 of the Dodd-Frank Act [<https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-30.pdf>]

Sincerely,



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