CENTER FOR CAPITAL MARKETS COMPETITIVENESS

**Erik Rust**
DIRECTOR

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5629
erust@uschamber.com

March 16, 2020

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Disclosure of Payments by Resource Extraction Issuers; 17 CFR Parts 240 and 249; Release Nos. 34-87783; File No. S7-24-19;RIN 3235-AM06**

Dear Secretary Countryman:

The United States Chamber of Commerce ("the Chamber"), appreciates the opportunity to submit these comments on the Securities and Exchange Commission's ("SEC") proposed rules regarding Disclosure of Payments by Resource Extraction Issuers pursuant to section 13(q) of the Securities Exchange Act of 1934. The Chamber applauds the SEC on the approach it has taken in the proposal to implement this rulemaking according to the Congressional statute with minimal impact on compliance and competition by covered public companies.

Background

The core mission of the SEC is to facilitate capital formation, maintain fair, orderly, and efficient markets, and to protect investors. As part of its mission to protect investors, the SEC regulates corporate disclosure by public companies to ensure that investors have access to decision-useful information. The SEC, as affirmed by the Supreme Court, has long advocated for such disclosure to meet the materiality standard, whereby such information would be useful for a reasonable investor to consider in the mix of information to use in basing investment decisions.

Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") seeks disclosure by companies engaged in resource

extraction in order to increase transparency and accountability related to payments to government entities by companies in connection with the commercial development of a country's natural resources.

The SEC has a long history of working to implement the statute laid out in Section 1504 of the Dodd-Frank Act, with the original proposal adopted in 2012 subsequently vacated by the U.S. District Court for D.C. in 2013 and the second proposal later disapproved by Congress in 2017 under the Congressional Review Act. Such previous efforts have raised competitive concerns in creating new reporting standards that would require disclosure of detailed and sensitive commercial information that would harm shareholders by requiring companies to disclose valuable proprietary information, including information regarding the value it places on particular resource opportunities, and place the company at a disadvantage with competitors not subject to SEC reporting or other reporting regimes. The Chamber supports the SEC's current proposal to mitigate these concerns by implementing the statute laid out by Congress under the Dodd-Frank Act, and we encourage the SEC to finalize the rule with a few notable highlights.

We believe the SEC has sufficient discretion to implement Section 1504 in a manner that is both true to the statutory intent of the provision and is consistent with the Commission's obligations to protect investors and maintain fair, orderly, and efficient markets. Key highlights we think are important for the SEC to consider when finalizing the rulemaking include:

<u>Aggregated compilation of individual filings</u>

The Chamber believes that Section 1504 does not require specific reports filed by issuers themselves to be made publicly available, instead noting that the only reporting obligation is to the SEC who is then required to make a "compilation" available. This approach recognizes the proprietary nature of the information and the need to keep such individual information confidential while still meeting the general legislative goal of providing information on payment flows to governments from resource extracting activities. We request the SEC to incorporate this interpretation as part of its final rules and believe this approach represents the most appropriate balance between carrying out the intention of Section 1504 to support accountability by governments of resource producing countries for the revenues they receive while protecting publicly-traded companies and their shareholders from competitive harm.

Definition of "project"

The Chamber additionally believes that the SEC has discretion in how it defines the term "project" for which data must be reported. Previous rulemakings used a narrow definition for "project" down to the contract level, but we believe that the new definition with its three factors relating to type of resource, method of extraction and major subnational political jurisdiction where commercial development occurred will allow provide a more consistent and user-friendly method for companies to meet their reporting requirements. Additionally, we support the proposal's allowance of payment aggregation at levels below major subnational level as well as the heightened threshold for when a payment is "not de minimis." Ultimately, we believe that the SEC has struck the appropriate balance with its proposed definition of "project."

Conflict with foreign laws or pre-existing contracts

The Chamber supports the proposal's exemptions from reporting payments where disclosure is prohibited by foreign law or by a pre-existing contract, which will help ease many competitive and administrative difficulties for companies operating in jurisdictions where such disclosures are prohibited by applicable foreign law.

Treatment of disclosure

The Chamber further supports the SEC's proposal in treating disclosures made under this section by covered companies as furnished, rather than filed, with the SEC, which will eliminate risk of liability for disclosures under Section 18 of the Exchange Act, as well as risk of incorporation by reference into a company's registration statements filed under the Securities Act.

Overall, the Chamber believes that incorporating these elements into the final rule will help the SEC achieve its obligations as laid out under the Dodd-Frank Act while alleviating many concerns that have been raised in previous rulemakings. Additionally, we commend the SEC for exempting Smaller Reporting Companies ("SRC's") and Emerging Growth Companies ("EGC's") from these disclosure obligations, as these class of issuers have typically been afforded streamlined disclosure requirements as smaller and newer issuers. Finally, the U.S. Chamber is

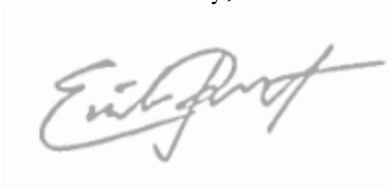
supportive of the SEC deeming alternative reporting regimes, particularly those required in foreign jurisdictions such as the European Union, as equivalent for satisfying these requirements by the SEC, as much of their information is already required to be disclosed publicly. The Commission acting expediently once a rule is finalized to accept reporting by issuers under those foreign jurisdictions will minimize compliance costs for those impacted companies.

**Conclusion**

The Chamber again applauds the Commission for its thoughtful and flexible approach to implementing Section 1504 of the Dodd-Frank Act as laid out in the statute while minimizing competitive and compliance concerns for affected companies.

We appreciate your consideration of these comments, and we stand ready to discuss them further with the Commissioners or Staff at your convenience.

Sincerely,



Erik Rust

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee