March 16, 2020

Via email: rule-comments@sec.gov

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Proposed Rule: Disclosure of Payments by Resource Extraction Issuer, Release No. 34-87784; File No. S7-24-19

Dear Secretary Countryman:

I respectfully submit the following comment to the Securities and Exchange Commission ("SEC") regarding my opposition to its proposed rule, Disclosure of Payments by Resource Extraction Issuer. While I commend the SEC's efforts to implement this rule as required by Section 1504 of the Dodd-Frank Act, I think the proposed rule eliminates some of the most important disclosure requirements of Section 1504, thus eviscerating its purpose, which is to require disclosure of payments made by oil and gas companies to governments to fight global corruption.

1. First, in many ways the current proposed rule does not comply with the spirit and purpose of Section 1504 because it narrowly constrains Section 1504's mandate. While it is true that in 2017 Congress passed a joint resolution disapproving the 2016 proposed rule on Section 1504 pursuant to the Congressional Review Act, this notably did not have an impact on Section 1504's mandate. The SEC is still supposed to adopt rules "that require each resource extraction issuer to include in an annual report information relating to any payment made by the resource extraction issuer, a subsidiary . . . or any entity under [its] control . . . to a foreign government or the Federal Government . . ." even if it may not reissue the 2016 rules in substantially the same form as they were issued previously.

2. Second, one of the most significant issues with this proposed rule is that instead of employing the specific "contract-level disclosure" provided for in the 2016 rule, the SEC has broadened the requirement to disclosure per "project," which would permit resource extractors to aggregate the information they disclose on three basis: the resource being commercially developed; the method of extraction; and the major subnational political jurisdiction where the commercial development is taking place. These categories are so broad that it becomes impossible to discern corruption when the payments are grouped together by these categories. Instead, the purpose of Section 1504 of the Dodd-Frank Act is to help specifically identify corruption and eliminate it. This can only be done with contract-level disclosure. This position is shared by civil society members of other countries that struggle with corruption (*see* the comment submitted by the leader of Publish What You Pay – Indonesia).
    a. Additionally, the "major subnational political jurisdiction" category is problematic because not only is it broad but it also is not a useful category

because it does not require the issuer to identify the specific government entity or individual paid. Disclosures at this level would mean that the public would only know about the total disclosures per year that were made in an *entire* state, province, or territory (for example), instead of requiring that disclosures be made for individual leases – which would reveal how much individual companies paid to governments per year. Furthermore, instead of knowing the entity or individual that was paid, all the issuer has to specify is whether the government paid was a state, county, province, etc. This is not sufficient for understanding whether corruption is occurring between individuals.

3. Third, the proposed rule's $750,000 aggregate *de minimis* payment threshold is very problematic. The SEC has not properly justified its need to set the disclosure threshold so high. Moreover, even if the overall 'project' exceeds the $750,000 threshold, companies can avoid disclosure of payments less than $150,000. This lack of transparency is deeply problematic and threatens to undermine the legislator's original intent in passing Section 1504 of the Dodd-Frank Act – which was to require disclosure in order to address the serious problem of global corruption in the oil and gas sector. Furthermore, since Dodd-Frank passed in 2010, more than 30 countries (including members of the EU, Canada, Norway, and the UK) have passed bills that require disclosure if payments are $100,000 or higher – and these companies are still economically competitive, so it cannot be a viable position to suggest, like the SEC has, that U.S. companies will suffer competitive harm when so many other countries are employing a lower threshold or that compliance will be too burdensome when these countries have been doing it since 2010.

4. Lastly, the added exemptions from disclosure (since 2016) are also disappointing. With regards the exemption for smaller reporting companies and emerging growth companies, it does not make sense to treat them any differently than large companies if the goal is eradicating corruption. The purpose of Section 1504 is to level the playing field – and by allowing small or emerging growth companies to avoid disclosure, the SEC is just perpetuating the problem Section 1504 is attempting to address. Even more concerning is the fact that there is an exemption for companies where disclosure would conflict with foreign laws. This exemption threatens to undermine Section 1504's mandate completely. The purpose of Section 1504 is to identify and eliminate instances of corruption. By allowing companies to evade disclosure requirements because they are not required or prohibited in foreign countries, this proposed rule instantly eliminates disclosure requirements for a number of companies.

I hope you will consider these comments carefully. While the SEC is to be commended for moving forward in implementing Section 1504 after several prior attempts, it would be better if the proposed rule more closely aligned with the purpose of Section 1504 of the Dodd-Frank Act, then to move forward with a proposed rule that cannot do what the statute intended it to do.

Thank you for considering these comments.

Best regards,
Shannon Gough