

March 16, 2020

The Honorable Jay Clayton, Chair
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison H. Lee

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Release No. 34-87783; File No. S7-24-19 Disclosure of Payments by Resource
Extraction Issuers

Dear Chair Clayton and Commissioners:

We are writing to share our comments regarding the proposed Rule 13q-1 of the Securities Exchange Act of 1934 (Exchange Act) to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We are a group of institutional investors with \$5.3 trillion in assets under management (AUM) with a shared interest in transparency and the implementation of Exchange Act Section 13(q) in a manner that protects investors, supports the creation of capital, and promotes efficient markets.

We would like to commend the U.S. Securities and Exchange Commission (Commission or SEC) on the thoroughness of its rulemaking for Exchange Act Section 13(q) beginning with the first proposed rule in 2010. As the SEC engages in a new effort at issuing implementing rules for Section 13(q), we hope to remind you of the universal support the underlying law enjoys from every investor that has submitted a comment during each rulemaking. We would also like to specifically emphasize the value and importance of an implementing rule that results in public disclosure of disaggregated project-level payment information in making investment decisions as well as in reinforcing the objectives of and the global transparency standard reflected in the Extractive Industries Transparency Initiative (EITI) and the Section 13(q) companion laws already implemented through the parallel European Union Accounting and Transparency Directives¹, the United Kingdom's Reports on Payments to Governments Regulations² and Canada's Extractive Sector Transparency Measures Act (ESTMA)³.

Section 1504 of the Dodd-Frank Act added Section 13(q) to the Exchange Act. Section 13(q) directs the Commission to issue rules requiring issuers to include in an annual report information relating to payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. These payments include taxes levied on corporate profits, corporate income, and production; fees, including license fees, rental fees, entry fees, and other

¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034>

² Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013

Reports on Payments to Governments Regulations of 2014.

<https://www.legislation.gov.uk/ukdsi/2014/9780111122235/contents>

³ Extractive Sector Transparency Measures Act. December 12, 2014. <https://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html>

considerations for licenses or concessions; bonuses, including signature, discovery, and production bonuses; royalties, including unit-based, value-based, and profit-based royalties; dividends; and certain in-kind payments. Issuers' current reporting of payments to governments includes disclosures made pursuant to U.S. GAAP, specifically ASC Topic 740 for income taxes and taxes other than income in the statement of cash flows included in their Form 10-K, 20-F or 40-F.

The company-by-company project-level payment information proposed Rule 13q-1 would produce, if it were consistent with the EU, UK and Canadian laws, represents a significant improvement in the potential for analysts to assess and act on a variety of considerations essential to understanding an energy or mining security's proper valuation and risk profile. These analytical tasks are otherwise unachievable with the data provided in current disclosures, which are insufficiently detailed and too aggregated to accomplish these ends. We believe Section 13(q) disclosures can generate measurable, direct economic benefits to investors or issuers if they are treated like other routine financial data.

The SEC's December 18, 2019 release of the proposed rules for Section 13(q) included an extensive list of questions for which the Commission sought comment. Of these, we believe the most important is question 97, which seeks "studies on the potential effects of the proposed rules, the disclosure rules under the EU Directives or ESTMA, or EITI compliance on efficiency, competition, and capital formation". By way of an answer to this prompt, we commend to your attention the study done by WK Associates, which uses public disclosures made by issuers subject to Canada's Extractive Sector Transparency Measures Act (ESTMA) to engage in substantive cash flow forecasting, assessment of income tax offsets and gauging petroleum fiscal regime risk. These findings, which are summarized in a December 10, 2019 submission to the SEC made by the Columbia Center for Sustainable Investment⁴, go beyond theoretical arguments about the value of Section 13(q) payment disclosures in securities analysis and demonstrate their use in valuation and engagement with management that is essential to investment decision-making.

We see great potential for the use of extractives payment data even beyond what is outlined in the WK Associates research, if it is disclosed in the same manner across jurisdictions. For example, with this data analysts should be able to model future changes in production entitlements, income taxes, royalties, bonuses, and other payment types to make an explicit link between fiscal regime disruptions and valuations. The result would be a notable improvement in understanding of the potential for fiscal regime change in a way that is not a significant aspect of typical analytical efforts today for lack of the necessary data.

In order for the potential of this data to be realized, it must be consistent with the global standard for extractives payment disclosure represented by ESTMA, the disclosures required by the European Accounting and Transparency Directives, the UK's Reports on Payments to Governments Regulations, and the current EITI Standard. Central to the global standard is a contract-based definition of project, and fully public, disaggregated reporting. The analytical benefits demonstrated in the WK Associates research are

⁴ Columbia Center for Sustainable Investment. Comment Letter Submitted to the SEC on December 10, 2019. <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cl16-6521646-200386.pdf>.

predicated on the availability of data that is consistent with ESTMA disclosures, and therefore, those resulting from the EU Directives and UK regulations, in all significant considerations.

If one is to seriously consider the conclusions of the WK Associates study and the potential benefits it outlines, several necessary conditions regarding the treatment and disclosure of Section 13(q) data follow. The following are examples of some of these considerations based on the assumption that the data resulting from this statute is financial information in need of the customary regulations and assurances.

In order to be comparable with other financial data and used on a global basis, Section 13(q) data must be available for all issuers with significant presence in all of the world's significant oil, gas and mining reservoirs and deposits. Gaps in the data caused by exemptions provided to companies due their size or perceived competitive disadvantages would undermine the value of these disclosures significantly. We are encouraged that the experience of issuers subject to ESTMA, the European Directives and the EITI Standard has shown no evidences of competitive disadvantage or undue accounting burdens as a result of making these sort of disclosures for as many as five years in many cases.

We also urge against sweeping exemptions to smaller issuers and emerging growth companies. The SEC's own estimates indicate these exemptions would eliminate data from nearly half of the otherwise covered issuers, creating a large transparency gap. Payment data that lack disclosures from these and similarly significant market participants would create inefficiencies by establishing considerable gaps in the data necessary to analyze our portfolios in the energy and mining sectors. A de minimis payment threshold that is inconsistent with the EU, UK and Canadian laws would also limit the usefulness of resulting data for users seeking to analyze securities on a global basis.

We are grateful for the opportunity to provide comment on the proposed implementing rules for Section 13(q) and appreciate the difficulties the SEC faces in providing implementing rules for a new area of financial disclosure. Among these the assessment of benefits arising from new disclosure regulations seems particularly challenging without the benefit of actual examples of how the information is used in securities analysis. So, the existence of extractives payment disclosures resulting from existing laws provides the SEC with a great opportunity to avoid the speculation and arbitrariness potentially necessary in interpreting future outcomes of disclosures and to ground its economic analysis of implementing rules for Section 13(q) in actual analytical applications. It is our hope that the SEC takes full advantage of this opportunity and we look forward to a rulemaking that reflects the SEC's usual thoughtful consideration of the interests of investors, the creation of capital, and the promotion efficient markets.

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

Sincerely,

Frédéric Samama
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Amundi

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Chief Responsible Investment Officer
Aviva Investors

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