

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515

March 13, 2020

The Honorable Jay Clayton  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File No. S7-24-19, Rulemaking for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chairman Clayton:

We understand the Commission is currently seeking comments on a new proposed rule to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Section 1504”). We write today to urge the Commission to issue a strong final rule that is consistent with the original Congressional intent behind the law to ensure that the rule serves as an effective tool for protecting investors and combating global corruption. In particular, we consider it essential that the final rule, at a minimum, be consistent with the existing international standard of oil, gas and mining transparency in order to maintain United States leadership on anti-corruption efforts and to fulfill the statutory directive.

We commend the Commission for the work undertaken during the rulemaking process to issue a draft rule that attempts to respond to the joint resolution of disapproval (H.J. Res 41) pursuant to the Congressional Review Act (“CRA”) passed by Congress in 2017. However, while the joint resolution vacated the 2016 rule, it does not repeal Section 1504. The Commission remains legally obligated to produce a final rule that is fully compliant with the text of Section 1504 and the investor protection and international transparency goals intended by Congress. We are concerned, however, that the proposed rule strays too far from Congressional intent in certain key ways.

Firstly, we do not believe that the proposed definition of “project” will enable citizens and other stakeholders to use the disclosures to combat corruption. By allowing issuers to report payment disclosures in aggregate, at the country and subnational level, without noting the contract or license that gave rise to the payments, the proposed rule would produce information of significantly limited use. Many governments distribute oil, gas and mining revenues to agencies or subnational governments based on a percentage of a project payment mandated by each contract or license. To determine if government funds have been stolen from a payment received from a company, the payments made for each separate project must be disclosed and compared to government receipts. The proposed rule would prevent this straightforward approach to combating oil, gas and mineral revenue theft and corruption. As a result, the deterrent effect of the

disclosures would be lost with the aggregation proposed by the draft rule, since corrupt actors would know that law enforcement would not be able to easily verify whether the government received the amount paid by an issuer.

The Commission itself recognized that public, granular disclosure is necessary to deter and combat corruption based on extensive analysis conducted for the 2016 rule: “[O]ur own experience in implementing the Foreign Corrupt Practices Act leads us to believe that the granular disclosures that our definition will produce will better help combat corruption than the aggregated (and anonymized) disclosures that the API Proposal would yield. We have found that requiring issuers to maintain detailed, disaggregated records of payments to government officials significantly decreases the potential for issuers and others to hide improper payments and as such their willingness to make such payments. This experience has led us to believe that, where corruption is involved, detailed, disaggregated disclosures of payments minimizes the potential to engage in corruption undiscovered. We thus believe that the more granular the disclosure in connection with the transactions between governments and extractive corporations, the less room there will be for hidden or opaque behavior.”<sup>1</sup>

We agree with the Commission’s assessment. We therefore also find that there is no scope for the Commission to issue a rule that allows for anonymous reporting wherein issuers would be permitted to provide payment information to the Commission, which would produce an anonymized compilation of payments. This approach would nullify the anti-corruption benefits intended by Congress, while preventing investors from assessing risk to specific issuers. Likewise, we strongly disagree with the suggestion that in some instances the government payee would be anonymous or only generally described. Full public reporting – including of the company making the payment and the entity receiving it – is a basic requirement of an effective transparency regime.

Secondly, we are significantly concerned that the comments of investors documented in the Commission’s voluminous record do not appear to be adequately reflected in the proposed rule. Since the law was enacted in 2010, investors with assets under management of more than \$10 trillion have repeatedly submitted comments to the Commission calling for a rule that requires public, contract-based project disclosures with no exemptions and emphasized the importance of international consistency.<sup>2</sup> This notably includes the United States’ largest public pension fund, CalPERS and the second largest pension fund CalSTRS, which is also the largest pension fund in the world for educators, supporting teacher retirement. The many investor submissions have argued that such a rule would provide investors insights needed to assess securities valuations as well as company exposure to risks caused by local corruption and instability in host countries.<sup>3</sup>

Despite this fact, the proposed rule dismisses even the basic premise that these disclosures are material to investors and largely disregards the formal submissions of notable investor commenters. In fact, the

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<sup>1</sup> See SEC 2016 Rules Adopting Release at P. 86. Release No. 34–78167 [81 FR 49359 (July 27, 2016)].  
<https://www.sec.gov/rules/final/2016/34-78167.pdf>

<sup>2</sup> See submission summarizing investor comments from Columbia Center on Sustainable Investment, Dec. 10, 2019.  
<https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cl16-6521646-200386.pdf>

<sup>3</sup> See for example, submission from California State Teachers’ Retirement System (CalSTRS), Feb. 2, 2018.  
<https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cl16-3079757-161907.pdf>

proposed rule cites the comments of covered issuers over seven times more than investor comments.<sup>4</sup> In discrediting and neglecting these investor submissions, the proposed rule problematically asserts that investors either do not or should not use these disclosures in their analysis. As noted by Commissioner Jackson, “the first argument amounts to an untested empirical assertion about investor behavior based exclusively on one’s intuition. The second substitutes our view from Washington about what is important for the collective views of investors around the world.”<sup>5</sup>

The Commission’s dismissal of investor comments in the proposed rule directly contradicts the clear intent of Congress. By adding Section 1504 to the Securities Exchange Act of 1934, Congress recognized the serious risks faced by investors in oil, gas and mining companies and the duty of the Commission to ensure that issuers publicly disclose payments to governments according to each project to inform investors about potential risk exposure. In the context of significant commodity price volatility and market uncertainty, investors have made repeated requests to the Commission for granular information. A final rule that ignores these requests will contravene the intent of the statute and the Commission’s mission.

Thirdly, we oppose overly broad exemptions that are not clearly tied to a specific need or demonstrated evidence of harm. We note that over 850 companies have now reported over \$800 billion in payments under rules now in force in other markets,<sup>6</sup> which do not allow for exemptions of any kind including potential conflicts of law or contract or categorical exemptions based on the size of the issuer. Despite this, we have seen no evidence in the draft rule, or otherwise, of harm experienced by reporting companies in the absence of exemptions for conflicts of law or contract, nor of overly burdensome implementation costs, even based on the size of reporting companies. For example, we note oil major Total, the world’s sixth largest oil company by market capitalization, confirmed that its implementation costs have been substantially lower than the Commission previously predicted.<sup>7</sup> This is despite the fact the public reporting in other markets is disaggregated according to each contract, a level more granular than presently proposed by the Commission. Given the lack of evidence of actual need, it is imperative that the Commission ensure that any approach to exemptions will not create significant gaps in coverage or create perverse incentives for corrupt foreign governments to pass laws to prevent future issuer disclosure. Any contemplated exemption procedures must reflect the current market realities, be based on clear evidence of potential harm, limited in duration and scope to prevent abuse, and subject to thorough public scrutiny.

Fourth, we note with concern that the Commission proposes new “de minimis” thresholds that would limit disclosure and be inconsistent with the global transparency standard. As Commissioner Lee explains, “First, we have introduced a project-level de minimis threshold—a concept that did not exist in the prior version of the rule—allowing for no disclosure whatsoever for any projects up to three-quarters of a million dollars, a number without support anywhere in the release. It stretches credulity to call three quarters of a

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<sup>4</sup> This figure is based on the number of instances that individual submissions to the SEC by investors, investor groups, companies and industry associations were referenced in the footnotes of the proposed rule.

<sup>5</sup> See public statement made by Commissioner Robert J. Jackson Jr., Dec. 18, 2019. <https://www.sec.gov/news/public-statement/statement-jackson-2019-12-18-resource-extraction>.

<sup>6</sup> See <https://resourceprojects.org/company-profiles>

<sup>7</sup> See submission by Total, Feb. 17, 2020. “[T]he internal cost for this reporting is low, in the region of \$200k per year.” <https://www.sec.gov/comments/s7-24-19/s72419-6879145-210715.pdf>

million dollars ‘de minimis’ in this context. What’s more, under our new proposal, even if you exceed this project-level threshold, you can still avoid disclosure of individual payment types if they do not equal or exceed \$150,000.”<sup>8</sup> We agree with Commissioner Lee’s assessment that these novel proposals lack necessary justification, including analysis of reporting in other markets: “Despite the fact that the agency has data from international filings that would shed light on this important feature, that data, and an analysis of it, is nowhere to be found in the release.”<sup>9</sup>

While there is room for the Commission to alter the rule in ways that will remain faithful to Section 1504, as well as the CRA, these key issues must be addressed to strike the proper balance. Ensuring these issues are addressed will result in a strong final rule that will be a critical addition to the set of tools that the United States has historically championed to prevent corruption. A strong rule would restore American leadership on anti-corruption and transparency by aligning with the international standard enshrined in disclosure laws now in effect in over 30 countries, and lead to improved governance and rule of law in countries around the world, reducing the need for U.S. foreign aid and security assistance.

Finally, we request a 30-day extension of the comment period and recommend the Commission also consider the addition of a “rebuttal” comment period to allow commenters to analyze and respond to the broad swath of changes proposed in the rule from its previous version and suggest necessary adjustments to ensure that the final rule meets the requirements of the CRA while still meaningfully fulfilling Congressional intent.

We applaud the Commission for its continuing efforts to protect American investors and for its commitment to restore American leadership in fighting corruption and promoting international transparency

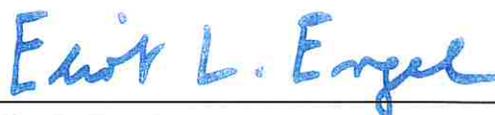
We look forward to working with the Commission in support of policies that benefit the public, investors and U.S. national interest.

Sincerely,



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**Maxine Waters**  
Chairwoman  
House Committee on Financial Services



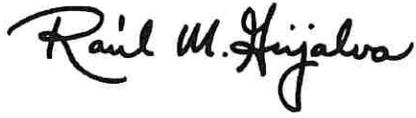
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**Eliot L. Engel**  
Chairman  
House Committee on Foreign Affairs

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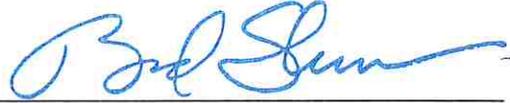
<sup>8</sup> See public statement made by Commissioner Allison Herren Lee, Dec. 18, 2019. <https://www.sec.gov/news/public-statement/statement-lee-2019-12-18-resource-extraction>

<sup>9</sup> Ibid



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**Raúl M. Grijalva**  
Chairman  
House Natural Resources Committee



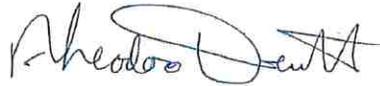
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**Brad Sherman**  
Chairman  
Financial Services Subcommittee on Investor  
Protection, Entrepreneurship, and Capital Markets



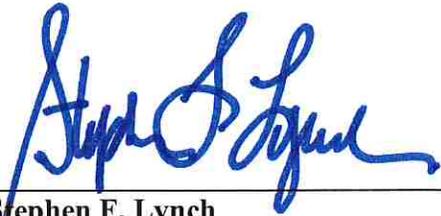
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**Wm. Lacy Clay**  
Chairman  
Financial Services Subcommittee on Housing,  
Community Development and Insurance



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**Ted Deutch**  
Chairman  
Foreign Affairs Subcommittee on Middle East,  
North Africa, and International Terrorism



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**Stephen F. Lynch**  
Chairman, Financial Services Task Force  
on Artificial Intelligence