

February 4, 2016

The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Rulemaking for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chair White,

We write to express our support for the Commission's proposed rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and to address two key components that the Commission should strengthen in order to ensure the final rule fully captures the investor protection and international transparency goals Congress intended.

We commend the Commission for its work in preparing a strong proposed rule. Public disclosure by individual issuers of disaggregated project-level payments with no exemptions accurately captures Congressional intent. By aligning the rule with the disclosure rules of the European Union (EU) and Canada, as well as with the Extractive Industries Transparency Initiative (EITI), the Commission has taken an important step in developing a global transparency standard for the extractive industry. We also welcome the anti-evasion provisions in the proposed rule, which will promote compliance with the disclosure requirements.¹

We note the letters from the Department of State, the Department of Interior and USAID in support of strong regulations to increase transparency, reduce corruption in the oil, gas and minerals sectors, and support stable and democratic governments.² In combination with the transparency rules in other markets, a strong final rule will enhance the stability of oil, gas and mining investment environments, support stable economic growth around the world, and support and protect U.S. investors.

We write to highlight two areas where the final rule could be improved.

¹ Securities and Exchange Commission, Disclosure of Payments by Resource Extraction Issuers, Proposed Rule, 80 Fed. Reg. 80,058, 80,071-80,073, 80,109 (23 December 2015) (hereinafter "Proposed Rule").

² See Comment letter submitted by Catherine A. Novelli, Under Secretary for Economic Growth, Energy, and the Environment, United States Department of State (13 November 2015), available at <https://www.sec.gov/comments/s7-25-15/s72515-1.pdf>; Comment letter submitted Jennifer L. Goldblatt, Chief of Staff, Office of Natural Resources Revenue, United States Department of the Interior (6 November 2015), available at <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-96.pdf>; Comment letter submitted by Eric G. Postel, Assistant Administrator, Bureau for Economic Growth, Agriculture, and Trade, United States Agency for International Development (15 July 2011), available at <http://www.sec.gov/comments/s7-42-10/s74210-101.pdf>.

First, one of the primary goals of Section 1504 is to support and protect investors. We believe the Commission's proposed rule, with its public, company-by-company project-level reporting, in line with other markets, effectively does this. As the Commission notes in the proposed rule release, the Congressional record reflects the importance of ensuring that the disclosures required by the rule provide useful and transparent information for investors.³ Project-level payment disclosures for each company provides precisely the information investors want and need when they are making decisions about whether to invest in particular extractives companies and the risks involved in doing so. For this reason, over the course of the rulemaking process, investors with over \$8.5 trillion in assets under management have written to the Commission in support of regulations that align with those in other markets.⁴ They cite a range of rationales for supporting the rule, including the protection to investors, as well as enabling more efficient functioning of capital markets and capital formation through the public disclosure of factual, relevant information from issuers. These investors constitute reasonable investors and it is crucial that the Commission recognize and acknowledge their significant interests in the final rule.

Second, we agree with the Commission's decision not to provide for unnecessary and inappropriate exemptions based on foreign law or contractual provisions.⁵ As prior submissions to the Commission have noted, exemptions for companies where the laws in host countries prohibit required reporting would contradict the purpose of the legislation and risk creating an incentive for those countries, who want to prevent transparency, to pass new laws against disclosure.⁶ These are precisely the jurisdictions for which investors and the public need greater transparency. Moreover, we emphasize that we are not aware of any country that bans Section 1504-type disclosures. Critically, the Commission's approach to exemptions also ensures consistency with the EU, Canadian and EITI reporting schemes and furthers the U.S. Government's goal of promoting an international transparency standard.

We note that the Commission has suggested the possibility that it could provide case-by-case exemptions under its existing exemptive authority if warranted. This approach is more appropriate than providing for blanket exemptions, but we urge the Commission to provide guidance to issuers in the final rule and ensure adequate safeguards to prevent abuse of the process by clearly delineating the specific criteria the Commission will assess in considering whether to exercise its exemptive authority.⁷ In particular, any such requests must be released for public comment to ensure maximum transparency and issuers seeking an exemption must be required to provide, at a minimum, an opinion from legal counsel identifying the clear conflict

³ Id. at 80,065 n. 75.

⁴ See e.g. Comment letter submitted Steve Berexa, Managing Director, Global Head of Research, Allianz Global Investors et al. (28 April 2014), available at <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf> (writing on behalf of 34 signatories with assets under management collectively totaling more than \$6.40 trillion); Comment letter submitted by Peter Lundkvist, Senior Strategist & Head of Corporate Governance, AP3/Tredje AP-Fonden (Third Swedish National Pension Fund) et al. (28 April 2014), available at <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-36.pdf> (investors representing more than \$2.85 trillion in assets under management)

⁵ Id. at 80,081.

⁶ See, e.g. Comment letter submitted by five United States Senators (31 January 2012) p. 2, available at <http://www.sec.gov/comments/s7-42-10/s74210-122.pdf>; Comment letter submitted by five member of United States Congress (1 March 2011) p. 2, available at <http://www.sec.gov/comments/s7-42-10/s74210-42.pdf>; Comment letter submitted by United States Senator Carl Levin (1 February 2011) p. 4, available at <http://www.sec.gov/comments/s7-42-10/s74210-19.pdf>.

⁷ Proposed Rule, 80 Fed. Reg. at 80082.

with Section 1504; the text of the relevant law; and a detailed explanation of the steps the issuer has taken to obtain permission to disclose. Such requests should be reserved by issuers as a last resort, and narrowly tailored exemptive relief should only be available to those issuers who provide unambiguous evidence of a foreign law prohibition pre-dating the passage of Section 1504 and who have made all possible good faith efforts to disclose the required the information.

This rule is much needed in a time of volatile commodity prices. In such an environment, transparency provides investors with essential clarity on the operations of company projects and their risk exposure. Likewise, transparency is a critical tool to ensure that citizens in resource-rich countries can monitor the economic performance of oil, gas and mining projects and ensure that revenues, especially if more meager than hoped, are used responsibly.

We applaud the Commission for its efforts to restore American leadership in promoting extractive sector transparency and encourage the Commission to produce a strengthened final rule by June 2016.

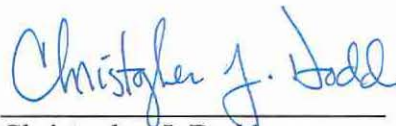
Sincerely,



Richard G. Lugar
United States Senator (Ret.)



Carl Levin
United States Senator (Ret.)



Christopher J. Dodd
United States Senator (Ret.)

CC:

Commissioner Michael Piwowar
Commissioner Kara Stein