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Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Comments on Proposed Resource Extraction Issuer Payments Disclosure Rule (File No. S7-25-15)**

Dear Mr. Fields:

This letter contains comments on proposed Rule 13q-1 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the related amendments to Form SD (collectively, the "Rule"), each as contained in Release Number 34-76620 (the "2015 Proposing Release").

The comments made herein reflect the personal views of the undersigned, as a practitioner with approximately 25 years of experience advising issuers and other clients on supply chain, responsible sourcing and corporate social responsibility ("CSR") matters across a range of commodities, geographies and regulations. The comments contained in this letter do not necessarily represent the views of others at this firm or the views of the firm's clients.

The comments below are limited to selected aspects of the Rule, including some of the areas on which the Securities and Exchange Commission (the "Commission") specifically has requested comment.

The Rule Discourages Issuers From Providing Supplemental Information Not Required by the Rule

As noted in the 2015 Proposing Release, many commenters have commented on whether the information required by the Rule should be treated as furnished or filed for purposes of Section 18 of the Exchange Act.

This comment does not address whether the payments information *required* by the Rule should be furnished or filed. Instead, it is limited to *supplemental* disclosures not required by the Rule that an issuer may wish to include in its filing.

To the extent that an issuer wishes to include supplemental disclosures in its Form SD, it should be permitted to furnish rather than file that information. Many issuers shy away from making elective CSR disclosures in Commission filings due to liability concerns. If issuers can furnish rather than file supplemental information that they believe might be useful to readers, they will be more likely to include that information in their Form SDs. For example, if the information can be furnished, issuers may elect to discuss their social or community payments or other information that provides context to or additional color on their required payments disclosures. An issuer could disclose this supplemental information through another medium, such as on its website or in a CSR report, and is still likely to do so. However, if the information is included with the issuer's required payments disclosures, the reader will have more context, which will enable it to better understand and evaluate both the supplemental information and the required payments information.

In addition, non-governmental organizations ("NGOs") and socially responsible investors ("SRIs") encourage issuers to publicly disclose more granular supply chain and CSR information, across a range of different issues, than issuers are required by law to disclose. NGOs and SRIs are likely to advocate for Form SD disclosures beyond those required by the Rule through, among other methods, expectations documents, rankings and shareholder proposals. The disclosure objectives of these constituencies also will be served if the Rule does not disincentivize issuers from including such information in their filings.

This recommendation could easily be incorporated into the final Rule by allowing issuers to indicate under a separate heading or using other explanatory text the information that is being furnished rather than filed.

In the 2015 Proposing Release, the Commission noted that some commenters had previously asserted that allowing information to be furnished would diminish its importance. However, this assertion should not be persuasive if limited to supplemental information not required by the Rule. Since the supplemental information is not required to be included in the Form SD, its inclusion increases its importance. Such information also would be treated seriously since it would be subject to potential liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Finally, the logic cited by the Commission for providing that required payments information should be filed should not be applicable to voluntary supplemental disclosures.

The Final Rule Should Expressly Recognize Current Substantially Similar Alternative Reporting Regimes

In the 2015 Proposing Release, the Commission notes the similarities between the Rule and other existing payments disclosure regimes. The Commission should designate in the final Rule or through contemporaneous guidance which of these disclosure regimes are substantially similar to the Rule. Doing so will reduce issuers' compliance costs by enabling them to use a single disclosure to satisfy multiple disclosure requirements. It also will eliminate the need to submit an application to the Commission seeking recognition of an existing alternative reporting regime as substantially similar, and the related costs of submitting the application. If the Commission does not make a determination as to which existing disclosure regimes are substantially similar to the Rule at the time the Rule is adopted, it is a virtual certainty that third party applications requesting a determination will be submitted shortly after the adoption of the Rule.

Users of filings submitted under the Rule also will benefit from such a determination by the Commission since they will be able to more efficiently review and effectively evaluate the payments information disclosed by issuers that are able to use a single disclosure that satisfies multiple disclosure requirements. Recognition by the Commission at the time of the adoption of the Rule of substantially similar alternative reporting regimes will therefor advance the articulated policy goals of the Rule of promoting transparency and combatting global corruption.

In Question 57, the Commission requested input as to whether, if found to be substantially similar, disclosures made under the USEITI reporting framework should be permitted to be submitted in lieu of the U.S. Federal government payments disclosure required by the Rule. For the reasons stated in the preceding paragraphs, disclosures made under the USEITI reporting framework should be permitted if the USEITI is determined to be substantially similar.

The Process for Determining Which Disclosure Regimes Are Substantially Similar Should Be Flexible

In Question 52, the Commission requested input concerning the process for determining whether another payments disclosure regime is substantially similar to the Rule.

The Commission should be able to make a determination on its own initiative, without being requested to do so. For example, it may decide to make such a determination if another jurisdiction unilaterally determines that the Rule is substantially similar to its disclosure regime. Issuers and foreign jurisdictions also should be permitted, but not required, to submit an application. All of the foregoing methods are specifically referenced in Question 52.

In addition to the methods referenced in Question 52, trade and industry associations should expressly be permitted to submit an application. Although not listed in Question 52, these are the

most likely constituencies to submit an application to the Commission, since many issuers will not have the expertise and/or resources to individually submit an application. This view is supported by the fact that many of the comments on the Rule have been submitted by trade and industry associations.

The Commission should not require specific information to be provided as part of an application or that information be provided in a specified format. A prescriptive approach is not necessary since applicants are likely to be sophisticated parties with deep industry and regulatory expertise. As a result, the applicant will be able to assess and articulate the information that should be relevant to the application. The applicant also will be able to best determine how to organize the information contained in the application.

A prescriptive approach also is unnecessary since an application is likely to involve an iterative process between the Commission and the applicant and independent research and fact-finding by the Commission. Finally, a prescriptive approach should not be adopted since the information required by the Commission may change over time as additional jurisdictions adopt payments disclosure rules and the Commission gains experience in evaluating whether those rules are substantially similar to the Rule.

The Commission specifically requests input in Question 52 as to whether it should require a legal opinion that the disclosure requirements of the Rule and the disclosure regime that is the subject of the application are substantially similar. For the reasons stated above, a flexible approach should be adopted and specific documentation, including a legal opinion, should not be required. If a legal opinion were required, this may present practical difficulties, since the counsel would need to be admitted to practice in both jurisdictions. In addition, in some countries, legal opinions are not common and may therefore be difficult to obtain. Furthermore, a determination that disclosure requirements are substantially similar may require a subjective judgment that is not opinable or that is subject to assumptions and qualifications.

The Rule Should Provide for a Longer Transition Period, As Well As Some Additional Transition Periods for Specified Categories of Issuers and Circumstances, As Discussed Below

The final Rule should provide for a longer transition period than is contemplated by the proposed Rule. This transition period should be applicable to all issuers.

Based on our experience with other CSR and supply chain disclosure rules, it often is a time consuming and expensive process for issuers to put in place the necessary systems and gather the information required for the initial disclosures required by these rules, even though the rule may be relatively simple or straightforward on its face. In the 2015 Proposing Release, the Commission describes some of the compliance costs and implementation challenges that may be faced by issuers that should be factored into the transition period. With respect to other CSR and supply chain

disclosure rules, issuers have faced unanticipated issues and challenges that did not surface until they began their compliance efforts, and there is no reason to expect that the Rule will be different in this regard. We defer to industry commenters as to the length of the transition period. However, for the reasons stated above, the transition period contained in the Rule seems too short.

In addition, a longer transition period will help mitigate the negative competitive impact of the Rule on issuers that are required to file a Form SD. Issuers should be afforded a reasonable period of time to seek to modify existing contracts that may prohibit the disclosures required by the Rule, as well as to seek changes to foreign laws that may prohibit the disclosures required by the Rule or to obtain clarity where the impact of foreign law is uncertain. Because the other party to the contract is a government entity, these activities are likely to take longer than the proposed transition period.

A longer transition period also will enable issuers to benefit from the experiences of companies that are subject to EU and Canadian payments disclosure provisions, which the 2015 Proposing Release notes are in the process of being adopted. In addition, a longer transition period will allow for data to be collected and disseminated on the impact of those requirements on subject companies. All of the foregoing are likely to reduce compliance costs for issuers subject to the Rule and result in more useful disclosure, since issuers subject to the Rule will benefit from the compliance lessons learned by companies in the European Economic Area and Canada, the compliance tools and processes developed by them and third-party service providers and the feedback of NGOs and SRIs on their initial disclosures.

We also recommend a further transition period for accelerated filers, non-accelerated filers and smaller reporting companies. The Commission has recognized in many other rules and contexts the significant burden that new disclosure requirements often place on mid-sized and smaller companies, through extended transition periods and other accommodations such as scaled disclosure. These issuers often face significant resource constraints in complying with new rules and this is likely to be the case with the Rule. For the reasons stated in the preceding paragraph, "second movers" are likely to experience lower implementation and compliance costs. A longer transition period will therefore help to reduce the financial and operational burden of the Rule on these issuers.

Emerging growth companies also should be given an additional transition period for the policy reasons underlying the JOBS Act.

Emerging growth companies, accelerated filers, non-accelerated filers and smaller reporting companies are likely to in the aggregate represent a relatively small percentage of the total payments made to governments by resource extraction issuers. Accordingly, providing these issuers with a longer transition period should not impair the effectiveness of the Rule or the policy considerations underlying the Rule.

A Transition Period Also Should be Provided for Acquired Companies and IPO Issuers

Instruction 3 to Item 1.01 of Form SD provides a transition period for an issuer that acquires a privately held company that was not previously subject to the Conflict Minerals Rule. The transition period allows the issuer time to extend its supply chain reporting and related compliance procedures to the acquired company. FAQ 11 to the Conflict Minerals Rule indicates that the Commission staff will not object if an IPO issuer avails itself of a similar accommodation.

Resource extraction issuers that acquire privately held companies or that undergo an IPO should be provided a separate transition period for compliance to the extent the acquired entity or the IPO issuer is not already subject to a reporting regime that has been determined by the Commission to be substantially similar to the Rule. Many of the reasons for a longer transition period noted in the immediately preceding comment are applicable to this recommended transition period as well.

The Rule Should Clarify That the Failure to Timely File a Form SD Would Not Cause an Issuer to Lose Eligibility to Use Form S-3

In FAQ 12 to the Conflict Minerals Rule, the Division of Corporation Finance indicated that the requirement to file a Form SD regarding conflict minerals does not impact an issuer's eligibility to use Form S-3, since the filing is required to be made under Section 13(p) of the Exchange Act rather than under Section 13(a), 15(d), 14(a) or 14(c). Although the answer to FAQ 12 is limited by its wording to the Conflict Minerals Rule, the conclusion reached applies equally to the Rule, which is being adopted under Section 13(q). Accordingly, the Rule or the Instructions thereto should include a similar statement to that contained in FAQ 12.

Issuers Should Have the Flexibility to Provide Information in the Body of the Form SD, on an Exhibit, or in a Combination of the Two Locations

In Question 58, the Commission asked for input as to whether information should be required to be presented in the body of the Form SD and, if so, what information, including whether a summary of information also presented in the exhibit should be required to be included in the base Form SD.

The Rule should provide issuers with the flexibility to present information in either the body of the Form SD or on an exhibit, as well as the flexibility to decide whether to summarize or include selected information contained in the exhibit in the base Form SD. Disclosure norms and preferences with respect to location, formatting and supplemental content are likely to develop over time among issuers, NGOs, SRIs and other external stakeholders, as has been the case with the Conflict Minerals Rule and other mandatory and voluntary CSR disclosures. The Rule should be flexible enough for this process to occur, so that information can be presented in the format that is the most useful to readers and best communicates the information contained in the filing.

Furthermore, the appropriate form of presentation is likely to differ among issuers, depending upon the issuer's business activities, the complexity of its payments information and the other information that it elects to include in the filing.

We hope that the Commission and its Staff will find these comments helpful in their rule-making process. We would be glad to discuss any of our comments with members of the Staff at their convenience.

Sincerely,

Michael R. Littenberg