

February 17, 2011

Ms. Meredith Cross
Director
Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Ms. Cross:

We appreciate this opportunity to submit the following recommendations regarding Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act for the Commission's consideration during the rulemaking process.

I speak on behalf of a group of large and small institutional investors in emerging equity and debt markets who represent a full range of members of the New York City investment community. They include portfolio managers, analysts, traders and other participants from both the buy and sell side. Nearly 100 of us gathered in New York City to discuss the issue in late October. Although many, for various reasons, could not sign this letter, virtually all would agree with the views expressed.

As professional investors who believe that creating long term value for our shareholders is consistent with the promotion of good governance and sustainable development, we believe that the SEC now possesses a unique opportunity to improve upon current standards for financial transparency in the extractives sector and to serve as a global model. In doing so, the Commission would be able to positively influence governance in resource-rich countries afflicted by the resource curse, while promoting the interests of investors in the long-term through reduction of investment risk and disclosure of more accurate, consistent, and detailed information material to risk assessment.

Current U.S. and international accounting standards do not provide adequate revenue and payment data in an easily comparable format. We see the rulemaking process under Section 1504 as a means of enhancing the quality of such information for extractive industry corporate and sovereign investors. Such an improvement would enable corporate and sovereign investors to better assess the myriad risks associated with the extractives industry, including tax and regulatory risks, country-specific production obstacles, reputational risk, and political risk. As a result, investors can develop more accurate predictive models. This would ultimately improve long-term investment performance.

We further urge the Commission to also view Section 1504 as a basis for improving corporate and sovereign accountability. Such transparency would have a positive impact on governance in countries heavily invested in extractive industries and would ultimately result in lowered investment risk. Public disclosure of payments by resource extraction issuers to governments will contribute greatly to the reduction of corruption. Resultant improvements in governance will have a positive social and economic impact for citizens, while mitigating investment risk.

We wish to take this opportunity to underscore the importance of this rule in setting a new global standard. Section 1504 mandates that ~~to~~ the extent practicable, the rules shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.⁺The advantageous effects of this rule will be compounded by its impact on accounting standards internationally, and would set a precedent for the improvement of the existing international effort, the Extractive Industries Transparency Initiative (EITI). Although the EITI is admirable in its goals and has accomplished much since its inception, it has often been criticized for limitations in scope due to its voluntary nature, as well as the variable consistency in the quality of data provided by participating governments. The Commission is now in a position to demonstrate the commitment of the United States to a more rigorous standard of financial transparency, raising the bar worldwide.

Enforcing a higher global standard would not result in the delisting of natural resource companies from US exchanges, due to the importance of the US capital markets. Moreover, investors would penalize natural resource companies that attempt to avoid higher transparency requirements . for example, by moving their listing to a non-US exchange . by imposing a higher risk premium on the stocks and bonds issued by such companies, thereby raising their cost of capital.

Recommendations

I. Definition of payment

An important part of the rulemaking process will be clarification of what constitutes a ~~payment~~⁺requiring disclosure by resource extraction issuers. This will require quantification of the de minimis threshold recommended in Section 1504 as well as enumeration of the types of payments to be reported. Section 1504 delineates the payments falling under its scope as including all ~~taxes~~⁺, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.⁺We suggest as broad a definition of ~~the~~⁺the commonly recognized revenue stream⁺ and as low a de minimis threshold as the Commission deems practicable in order to maximize the availability and accuracy of disclosed data. We recommend that the Commission include, under the definition of ~~payment~~⁺all non-de minimis monetary or in-kind exchanges relevant to extraction activities in all countries in which an issuer operates.

II. Disclosure requirements

We believe that a rule emphasizing disaggregated project-level payment disclosure . as required by the underlying law - would have an extremely beneficial impact on improving investment risk assessment and would provide further levels of corporate and sovereign accountability. Although it could be argued that reporting of project-level data runs counter to competitive interest, we feel that were the rules consistently applied to all resource extraction issuers, the playing field would be level. Moreover, the increase in financial transparency would result in a greatly enhanced investment climate. It might also be argued that disaggregated project-level data would not be of material interest to the investor. We would contend that the investor can only benefit from the increased availability of information, and that it would not be a difficult task to include project data as well as aggregated country and

regional information in a well-designed interactive data format as required by Section 1504.

III. Definition of “project”

We suggest that the Commission clarify what is meant by a “project” and include in the definition all activities material to resource extraction. The language of Section 1504 allows for a broad reading of what is meant by commercial development of oil, natural gas, and minerals. We recommend that the Commission include further detail in the list of extractives activities to which the rule would apply. Specification of what is meant by extraction, processing, and export should include all non-de minimis payments made in associated activities such as transport, as well as contracting for related services, such as security.

IV. Entities to whom this rule applies

Section 1504 mandates that all resource extraction issuers are required to disclose payments made by them, their subsidiaries, and any other entities under their control, and defines an issuer as a company that is required to file an annual report with the Commission and engages in the commercial development of oil, natural gas, and minerals. We recommend that the Commission avoid the creation of broad categories of exceptions to this rule (such as for companies which report in other jurisdictions) in order to maintain a level playing field.

We believe that the Commission is now presented with a singular opportunity to demonstrate and promote full commitment to financial transparency in the extractives sector and protect investors in the process. We respectfully submit the above recommendations in order to aid in the rulemaking process under Section 1504, and hope that the result will be a rule improving the accuracy, specificity, and consistency of payment data made available to investors that will herald positive changes in corporate and sovereign accountability. Although some of the propositions presented may have minor implementation costs in the short term, ultimately, the benefits to governance and the investment climate that would follow will prove to be in interests of investors, companies, and governments alike. We greatly appreciate this opportunity to share our perspective on this issue and welcome any questions the Commission may have.

Sincerely,

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