February 17, 2011

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

Re: Proposed Rules (File Number S7-42-10) Implementing Section 13(q) of the Securities Exchange Act of 1934 (the "Exchange Act"), added by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")

Dear Ms. Cross:

We would like to thank the Commission for the opportunity to contribute to the rulemaking process for Section 13(q) of the Exchange Act,[1] and are pleased to offer this Comment on the proposed amendments to the Commission's rules pursuant to Section 1504 of the Dodd-Frank Act relating to disclosure of payments by resource extraction issuers.

We congratulate the Commission on its excellent work, and in particular, the transparency of the rulemaking process for Section 13(q).

These comments follow and build upon Revenue Watch Institute (RWI)'s previous submissions to the rulemaking process, which may be referenced: (i) in RWI's comment letter dated December 6, 2010,[2] (ii) in the November 22, 2010 Publish What You Pay US coalition (PWYP) letter[3], which RWI signed as a member, and (iii) in subsequent presentations that RWI has made to Commission staff.[4]

---

[1] 15 U.S.C. 78m(q).

[2] See comment letter, Dec 6, 2010, by Karin Lissakers, Executive Director, Revenue Watch Institute [*hereinafter* "RWI submission"], available at http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-98.pdf.

[3] See comment letter by Isabel Munilla, Director, Publish What You Pay U.S., November 22, 2010, signed by Karin Lissakers, Executive Director at RWI, Raymond Offenheiser, President of Oxfam American, Ken Hackett, President of Catholic Relief Services, Corinna Gilfillan, Head of Global Witness' U.S. office, Raymond Baker, Director of Global Financial Integrity, and Arvind Ganesan of Human Rights Watch, [*hereinafter* "PWYP submission"] available at http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-82.pdf.

[4] See comment letter, Dec 17, 2010, by Karin Lissakers, Executive Director, Revenue Watch Institute, available at http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-113.pdf. At this meeting RWI staff submitted two documents for the Commission's consideration: the *RWI Report: Transforming Resource Wealth into Well-Being* (RWI 2010), available at http://www.revenuewatch.org/report (describing RWI and the work we do around the world); and Peter

I. We urge the Commission to uphold Congressional intent and adhere to the plain language of the Dodd-Frank Act by issuing final rules that support the investor protection mandate of the Exchange Act, set a new international standard of transparency, and minimize opportunities for recalcitrant issuers to avoid their reporting obligations under Section 13(q).

First and foremost, we are pleased to see that proposed rules promulgated by the Commission on December 15, 2010[5] are, to a significant extent, faithful to the plain language of Section 1504 and the Congressional intent underlying it.[6] Certain questions raised by the Commission, however, suggest that a final position has not yet been reached on key issues. We believe that resolving these issues is critically important to ensuring that final rules are implemented in a manner consistent with the language and intent of Section 1504, and do not believe that such resolution will require the Commission to employ discretion in its rulemaking where Congress did not grant such discretion. To this end, we would like to respond here to certain claims and arguments that have been offered in opposition to this view by industry commentators.

Specifically, we urge the Commission to consider that:

1. Investor protection from risks inherent in the extractive industries is one of the goals of Section 13(q), and the disclosures it requires are qualitatively similar in nature and purpose to existing disclosures required under Section 13 of the Exchange Act.

The Commission's preliminary proposal to require information to be *furnished*, rather than *filed*, is based on what we feel is an erroneous view that "the nature and purpose of the disclosure required by Section 13(q) is qualitatively different from the nature and purpose of existing disclosure that has historically been required under Section 13 of the Exchange Act."

Such a determination is contrary to Congress's intent to enhance investor protection from country- and project-specific risks through the disclosure provisions of 13(q). While introducing a bill that contained an early version of 13(q), Senator Richard Lugar was careful to note that its disclosure provisions "would allow investors to better evaluate the potential country risk faced by companies."[7] As the purpose of Section 13

Rosenblum & Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (RWI 2009), available at http://www.revenuewatch.org/news/publications/contracts-confidential-ending-secret-deals-extractive-industries (original research we commissioned from the Columbia University School of Law for which the authors undertook a global survey of over 140 resource-extraction investment contracts).

[5] Proposed Rules, Disclosure of Payments by Resource Extraction Issuers, 17 CFR Parts 229 and 249 [Rel. No. 34-63549; File No. S7-42-10].

[6] Compare proposed Item 105 and Items 601(b)(97) and (98) of Regulation S-K and proposed Item 4(c) under part I of Form 10-K in Proposed Rule, Disclosure of Payments by Resource Extraction Issuers, 17 CFR Parts 229 and 249 [Rel. No. 34-63549; File No. S7-42-10] and Section 13(q) of the Exchange Act, added by Section 1504 of the Dodd-Frank Act, 15 U.S.C. 78m(q).

[7] Floor remarks by Senator Lugar, Congressional Record S9746, September 23, 2009.

disclosures is the protection of investors, the enhanced standard of investor protection provided by Section 13(q) makes it of-a-piece with these other disclosures. Specifically, we note that these payments are similar in nature to the production and reserve estimates which are required to be disclosed pursuant to Regulation S-K,[8] since payments to governments must be deducted from production and reserve asset values in the determination of the net return to investors, as well as "to check modeling of income."[9]

As Congress recognized, without reliable and periodic information about trends in these revenue streams, investors face significant barriers in evaluating their exposure to the risks that are inherent in the extractive industries. It is not uncommon to see even marginal projects in a country reach flagship status in the eyes of a new regime or to communities involved in the project, which is one of the reasons why "an entity's exposure to reputational risks and the associated potential economic loss is not correlated to the scale of the entity's investment in a particular country."[10] We urge the Commission to uphold its mandate of investor protection by recognizing the value these disclosures will add to investors through enhanced forecasting of risks.

We also note that the Extractive Industries Transparency Initiative (EITI) requires that payment data reported through EITI first be subject to audit. Final rules under Section 13(q) that would allow for the reporting of unaudited data would move in the opposite direction, given the fact that one of the six basic criteria of EITI implementation is that reported payment data be audited:

> "Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards."[11]

We believe the best way to enhance investor protection through rulemaking for Section 13(q) is to require that resource extraction payment disclosures be *filed* as exhibits, rather than *furnished*, and be included in the audited financial statements.

---

[8] Regulation S-K, 17 C.F.R. Parts 229.1202 ("Disclosure of reserves.") & 229.1204 ("Oil and gas production, production prices and production costs."). However, as these disclosures are intended to serve the additional purpose of increasing transparency, and since reserve disclosure implicates geopolitical stability in a way payment disclosure does not, the definitions contained in Regulation S-X should not be used.

[9] See comment submitted by Norwegian investor KLP, at a June, 2010 IASB-sponsored roundtable, available at http://www.ifrs.org/nr/rdonlyres/9F13BADB-7F27-4481-AAE9-7AFD1B7B815F/15985/20100729120727_IASB_LETTER290710.pdf.

[10] See discussion in the April 2010 Discussion paper commissioned by the International Accounting Standards Board, ¶6.24, at 154, available at http://www.iasb.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A1-0D62EB5DDB99/0/DPExtractiveActivitiesApr10.pdf.

[11] EITI Criteria number 2, available at http://eiti.org/eiti/principles.

2. Materiality and *de minimis* are entirely different, though overlapping, relevancy concepts.

In response to question 26 of the proposed rules, several commentators have suggested that the "not de minimis" standard established in 13(q) is "consistent with and should be interpreted in accordance with well-established interpretations of materiality."[12] We believe this claim contradicts the clear intent of the statute. Rather, we agree with the Commission's interpretation that "not de minimis" is not the same as "material."

Congress used the "not de minimis" qualifier on the definition of "payment" to indicate that it sought a greater amount of disclosure than what would occur under a "material payments" regime.[13] *De minimis* and material are different relevancy concepts. An item is material if its inclusion in a financial report would elicit a reasonable investor to act differently,[14] while an item that is *de minimis* is "so insignificant" as to be overlooked in making a decision.[15] *De minimis* is typically considered a quantitative threshold[16] while "quantifying…is only the beginning of an analysis of materiality".[17] Congress's use of the phrase "not de minimis" shows that its intent was to achieve expanded reporting requirements. This is necessary in the context of this provision because, as noted above, even small payments in the extractive sector can be associated with significant risks.[18] Final rules for the Section should thus reflect the distinction between *de minimis* and materiality and uphold Congress's intent to achieve an expansion in the quantity of information disclosed through Section 13(q)'s reporting requirements.

3. The plain statutory text of Section 13(q) requires the Commission to issue final rules that ensure information on project-level payments is disclosed to the public in an annual report. It does not contemplate that issuers would aggregate project-level data in these disclosures, nor does it contemplate that project-level

---

[12] See, e.g., comment letter by Kyle Isakower, Vice President, Regulatory and Economic Policy, and Patrick T. Mulva, Chairman, Corporate Finance Committee, American Petroleum Institute, dated January 28, 2011, [*hereinafter* "API submission"} available at http://www.sec.gov/comments/s7-42-10/s74210-10.pdf.

[13] 15 U.S.C. 78(q)(1)(C)(i)(II).

[14] Staff Accounting Bulletin No. 99, 17 CFR Part 211 [*hereinafter* "SAB No. 99"].

[15] Black's law dictionary defines a *de minimis* item as a fact or thing "so insignificant that a court may overlook it in deciding an issue". BLACK'S LAW DICTIONARY, 8th Ed., (2004), at 464. Thus, *de minimis* applies to information that can be considered not capable of making a difference to a reasonable person. As something *not capable* of inducing decisions cannot be *likely* to change a reasonable person's behavior, *de minimis* is clearly different from materiality.

[16] An example of a reasonable *de minimis* payment level is provided by the London Stock Exchange (LSE)'s Alternative Investment Market (AIM), which maintains an implicit *de minimis* threshold for those payments that, alone or as a whole, aggregate over £10,000 (or approximately U.S. $15,000). See AIM Note for Mining, Oil and Gas Companies (June 2009), at page 4: http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf; see also Nigeria's reporting as part of its EITI implementation, which requires reporting of payments by company and by payment-category at a U.S. $1,000-level; see also definition of *de minimis* in Section 10A(i)(1)(B)(i) of the Exchange Act of 1934 (defining a *de minimis* exception to the requirement that all audit and non-audit services provided to an issuer must be pre-approved by that issuer's audit committee, whereby non-audit services that are less than 5% of of the total amount of revenues paid by the issuer to the auditor need not be pre-approved).

[17] SAB No. 99.

[18] See *supra* note 10 and accompanying text.

data would be obscured through aggregation in the mandated Commission compilation.

In response to question 86 of the proposed rules, commentators have suggested that because the requirement that issuers report payments "in an annual report" falls under the heading "Disclosure" of Section 13(q) (rather than under the heading "Public Availability of Information"), the provision should be read so as not to require the public availability of the submitted reports themselves. We strongly disagree with this argument and the notion that the Commission may choose to require that only aggregations of data be made available to the public.[19] The headings used by the drafters must be read in such a way as to preserve the clear intent of the statutory language of Section 13(q) taken as a whole. The plain language of the statute clearly reveals Congress's intent that disaggregated information be disclosed to investors via inclusion in company annual reports, and that the Commission's obligation to produce a compilation is distinct from its obligation to write rules requiring disclosure by issuers.

As we noted in our submission dated December 6, 2010, Section 13(q) will create substantial value for equity investors and should lead to greater liquidity for issuers in the long run, as risk premiums decrease to reflect a less uncertain market.[20] The greater the aggregation of payment data, the lower the value of the benefits that accrue from investor analysis.

4. There is no reason to believe that the adverse competitiveness effects of Section 13(q) will be significant enough to warrant issuers exemption from its proposed rules.

As just discussed, some commentators have expressed concerns that project-level disclosures will "provide confidential details of fiscal terms that are competitively sensitive," and that signature bonuses and entry fees are "particularly sensitive in that they may provide information to competitors in bidding on surrounding blocks in a basin or province."[21] However, detailed information on bonus payments and lease fees is already readily available within industry circles. Confidential industry databases, such as those maintained by Wood Mackenzie,[22] or public databases, such as those maintained by the US Department of the Interior,[23] include a wide variety of data on bids and

[19] See, e.g., API submission, *supra* note 12, at 38-41.

[20] See RWI submission, *supra* note 2, at 6.

[21] See API submission, *supra* note 12, at 6 (responding to question 12 of the Proposed Rules).

[22] Wood Mackinzie analyzes the energy and mineral industries, providing a number of tailored client-based databases that "assess, and place a value on, thousands of individual assets and companies around the world". See, e.g., description of the firm, available at http://www.woodmacresearch.com/cgi-bin/wmprod/portal/corp/corpAboutUs.jsp.

[23] The Department of the Interior's Bureau of Land Management (BLM) posts bid information for every lease offered on US federal lands on each BLM state office website within a day or two of sale, and also maintains a national website where statistical data for the BLM is compiled. See BLM webpage for Oil & Gas Statistics, available at http://www.blm.gov/wo/st/en/info/newsroom/Energy_Facts_07/statistics.html.

payments made to governments. Payment information is also available to industry actors through the large number of joint ventures between competitors in the extractive industries. While there are surely projects for which such information is not widely known, we find it hard to credit the argument that the disclosures required by Section 13(q) will markedly impact competitiveness, and harder still to accept that any impact on competitiveness will outweigh the benefits of such disclosure. License and concession fees, for example, are associated with high levels of administrative risk, while bonus payments often directly impact project- and country-level political risk.[24] The value to investors accruing from disclosure of these benefit streams is sure to outweigh any impact on competitiveness that may occur.

Given the financial, regulatory and reputational risks that resource extraction issuers must face in their operations in the U.S. and abroad, and the ability of transparency to help investors diversify away from these risks, it is imperative that the Commission give the highest credence to Congress's stated intent to implement a "new international transparency standard" through its passage of the disclosure standardization requirements of Section 13(q) of the Exchange Act.[25]

5. As a disclosure standardization measure, the mandatory disclosure requirements of Section 13(q) are fully compatible with and supportive of the Extractive Industries Transparency Initiative (EITI), but should not be limited by the EITI's reporting standards. Congress did not intend for EITI to be determinative of the form and extent of disclosure under Section 13(q).

Some commentators assert that the disclosure requirements under Section 13(q) are incompatible with those of the EITI, and that broad deference should be given to EITI standards in final rules. We see no justification for these concerns about incompatibility, and note that the impact of such deference to EITI standards as they currently exist would be to weaken the disclosure rules clearly called for in the statute.

As we noted in our December 6, 2010 comment letter, both PWYP and RWI are among the strongest advocates of the EITI's voluntary disclosure regime, and have supported the increasing implementation of the EITI since its inception. In comments submitted prior to the release of the proposed rules, both PWYP and RWI voiced the strong opinion that Section 13(q) (then Section 1504) is not only compatible with, but supportive of, the EITI[26] and further, "would address several key challenges to EITI

[24] See PWYP submission, *supra* note 3, at 11-12.

[25] In floor statements during Senate debate of the Restoring American Financial Stability Act, Senator Dodd stated that the provision "…is designed to impose a new international transparency standard on companies listed and traded on US exchanges who are active in the oil and gas and mining industries." See http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598157015 at 5:06:25. Senator Cardin stated "This is a bipartisan amendment because Democratic and Republican colleagues both know we are creating a new standard of transparency that will apply to the world's extractive industries and is in the best interest of companies in competing on a level playing field." See http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598156899 at 4:45:06.

[26] See RWI submission, *supra* note 2, at 2.

implementation by providing a model for data disclosure that can be emulated by participating governments."[27] One of the lead sponsors of the legislation, Senator Benjamin Cardin, has clearly stated Congress's intent on the matter: "EITI is a minimum reporting standard, and the intent of Sec. 1504 was to go beyond these requirements."[28]

6. The burden of compliance costs associated with project-level reporting, including those related to necessary updates to internal controls and an expanded auditing system, is unlikely to outweigh the public and investor interests served by the disclosure of payment information under Section 13(q).

Several submissions to the Commission on its proposed rules for Section 13(q) have emphasized the costs that the statute's disclosure requirements will impose on issuers. Some submissions have suggested that compliance costs associated with Congress's intent to compel project-level reporting will be so high as to require the Commission to exercise its discretion in rulemaking, in order to mitigate these costs.

As noted in the PWYP submission, we believe the most logical interpretation of the term "project" is to equate it to the origination of the payment streams to be reported under Section 13(q).[29] In other words, the "project" definition proffered by the Commission should relate to a lease, license or other concessionary contract – which might take the form of a Production Sharing Agreement (PSC) or a risk-sharing agreement (e.g Service Contracts) – or to an issuer (or its controlled entity), in the event that payment obligations for a given set of extractive activities are levied at the entity level. This approach to the definition of project would address concerns raised by industry that a too-granular definition could require costly and arbitrary allocation of payments across different engineering activities.

As we noted in our December 6, 2010 comment letter, we recognize that implementation of rules under Section 13(q), as with any agency rulemaking, will entail additional marginal costs to issuers. But as both RWI and PWYP have noted previously, most issuers already have internal systems in place for recording Section 13(q)'s required payments, and many issuers are already subject to reporting requirements at a project level (as we believe that term should be defined). In Indonesia, for example, the proposed EITI reporting template (currently being tested by the country's multi-stakeholder group) requires reporting at the PSC-level, which replicates the existing reporting mechanism required by the Ministry of Finance's Central Government Financial Reports,[30] while companies operating on U.S. federal lands report royalties

---

[27] See PWYP submission, *supra* note 3, at 18 and 26.

[28] See comment letter, Dec 1, 2010, by Senator Benjamin Cardin, available at http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-94.pdf.

[29] See PWYP submission, *supra* note 3, at 13-17.

[30] Presidential Regulation 26/2010 mandated that the EITI reports be based on the Central Government Financial Reports. The MSG workshop to test the template in its current form is ongoing throughout February-March 2011. See Indonesian Petroleum

paid by lease.[31] As noted by Senator Lugar, these disclosure requirements "would not require the companies to collect any new information, but to report publically financial figures they already maintain."[32]

The financial services firm Calvert Asset Management Company, Inc. has noted that "it is reasonable that a practice undertaken in one operating environment may be adapted to those in other countries without the need to make dramatic changes to the existing systems and processes of an efficiently-run enterprise."[33] We agree, and support the idea that such systems can be adapted in a cost-effective manner to respond to the reporting requirements of Section 13(q). Additionally, as noted above, we believe that costs incurred by issuers as they make adjustments to comply with Section 13(q) are likely to be offset by the benefits that will accrue to issuers through increased liquidity and lower costs of capital in the long run.[34]

Overall, we worry that concerns over compliance costs inflate their likely impact, and may instead reflect an aversion to regulatory compliance and its associated costs that does not account for the benefits of Section 13(q) to the public interest. In January of this year a bipartisan committee convened by President Obama to investigate the BP Deepwater Horizon oil spill released its final Report to the President (the "Report"), which describes in detail how just such an aversion directly contributed to the regulatory failure that caused the BP oil spill disaster. In the context of safety regulation rulemaking for the US oil and gas industry, this Report notes that because more robust standards "would make oil and gas industry operations potentially more costly," the American Petroleum Institute (API) "regularly resists agency rulemakings that government regulators believe would make those operations safer," and instead "favors rulemaking that promotes industry autonomy from government oversight."[35] The Report also cites to the testimony of an industry representative's perception that "API-proposed safety standards have increasingly failed to reflect 'best industry practices' and have instead expressed the 'lowest common denominator'—in other words, a standard that almost all operators could readily achieve."[36] As a result, the Report concludes, "API's shortfalls have undermined the entire federal regulatory system" of

---

Association News, Update on EITI Activities, dated February 2, 2011, available at http://www.ipa.or.id/news_detail.php?page_id=67&page_category_id=7&news_id_send=81.

[31] See Form MMS-2014 - Report of Sales and Royalty Remittance, available at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm.

[32] Floor remarks by Senator Lugar, Congressional Record S9746, September 23, 2009.

[33] See statement made by Bennett Freeman, Senior Vice President, Sustainability Research and Policy at Calvert Asset Management, at a June, 2010 IASB-sponsored roundtable, available at http://www.iasb.org/NR/rdonlyres/2A0A6F2C-E86D-4E06-9A4B-AD99B1976EDF/0/CL6.pdf.

[34] See RWI submission, *supra* note 2, at 3; PWYP submission, *supra* note 3, at 16-17 (quoting Bennett Freeman of Calvert Capital Asset Management, Inc.)

[35] See Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling (January 2011) at 225-229, available at http://www.oilspillcommission.gov/sites/default/files/documents/DEEPWATER_ReporttothePresident_FINAL.pdf.

[36] Id.

safety standards.[37] While safety standards address a different set of risks than reporting standards, the parallel here is clear: exempting issuers from regulation for no better reason than cost prevention – without proper consideration of that regulation's benefit to the public interest –would be an abrogation of the Commission's obligation to serve the public interest.

7. The exercise of broad exemptive authority by the Commission is unwarranted under Section 13(q) as there is little risk of conflict with confidentiality clauses in investment contracts or foreign/host-country law.

Some commentators on the proposed rules have argued that the Commission should create new reporting exemptions through rulemaking pursuant to Section 13(q). As RWI argued in our December 6, 2010 submission, in our experience as a globally active research and technical assistance institute focused solely on the extractive industries, we find that such laws are in fact uncommon, and that confidentiality clauses commonly include exemptions for disclosure of information required "by law".[38] Further we do not believe that offering issuers broad and exploitable exemptions would be consistent with the Congressional intent behind Section 1504. As Senator Benjamin Cardin has noted:

> The language of Sec. 1504 is very clear: there should be no exemptions for confidentiality or for host-country restrictions. It would be too easy for countries who want to avoid disclosures to simply pass their own law against disclosure. The purpose of Sec. 1504 is to not allow for exemptions for confidentiality or other reasons that undermine the principle of transparency and full disclosure.[39]

We therefore support the Commission's preliminary determination in the proposed rules that "all U.S. companies and foreign companies…regardless of size or the extent of business operations constituting commercial development of oil, natural gas, or minerals, would be subject to Section 13(q)."[40]

We also agree that the Commission should ensure the widest possible coverage for Section 13(q) by requiring issuers with securities exempt from registration pursuant to Exchange Act Rule 12g3-2(b) to comply with 13(q)'s requirements, so as to prevent competitive disadvantages.[41]

---

[37] Id. at 225.

[38] See RWI submission, *supra* note 2, at 3-4.

[39] See comment letter, Dec 1, 2010, by Senator Benjamin Cardin, available at http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-94.pdf; see also comment letter, Feb 1, 2011, by Senator Carl Levin, Chairman of the Permanent Subcommittee on Investigations, available at http://sec.gov/comments/s7-42-10/s74210-19.pdf.

[40] See Proposed Rules, Part II.B. "Definition of a Resource Extraction Issuer."

[41] See API submission, *supra* note 12 at 34 (responding to question 72 of the Proposed Rules).

II. Several recent developments highlight the common recognition that disclosure standardization in line with Section 13(q) of the Exchange Act will deepen investor understanding, promote competition and encourage better analysis of project- and country-specific, regional and sector-wide extractive activities.

In our global advocacy work we interact with a diverse group of extractive sector companies, investors and officials who have publicly voiced support for robust transparency regimes at national and international levels.[42] We would like to draw the Commission's attention to the following recent events and statements, which – in addition to additional existing exchange disclosure requirements and voluntary extractive sector transparency efforts – reflect a widespread and growing recognition of the importance of country- and project-specific disclosures as instruments of investor risk management and analysis:

- A statement from ten international responsible investment organizations with over $20 billion under management was sent to the European Commission on December 21, 2010 in support of the European Commission's Consultation on Financial Reporting on a Country-by-Country Basis by Multinational Corporations. This statement urges the EC to support payment disclosures in order to assist its signatories "in making decisions on the allocation of the capital under [their] management to corporations operating in the world's financial markets."[43] The investment organizations behind the statement are members of a larger group of asset management firms and civil society organizations that support the *New Haven Declaration on Corporate Financial Transparency*, which underscores the importance of "corporate financial reporting disaggregated by country" as a means "to assess the possibility of political, legal and reputational risk"[44] extractive issuers face.

- The Mining Association of Canada recently went on record to state its support for the country- and project-level disclosures required by Section 13(q), noting that "the mining industry welcomes" Section 1504 of the Dodd-Frank Act.[45] This view was also publicly supported by Tony Andrews (Executive Director, Prospectors and Developers Association of Canada) and Gordon R. Peeling (President and Chief Executive Officer, Mining Association of Canada) in an article published on September 1, 2010 in Embassy Magazine. This article stated

[42] RWI is based in New York, with a satellite office in London and regional coordinators based in Azerbaijan, Ghana, Nigeria, Indonesia, Tanzania and Peru. We currently support partners in over 28 other countries. Our advocacy also brings us into regular contact with a variety of government, industry, and civil society stakeholders in producing countries around the world.

[43] See letter to Mr. Jonathan Faull, DG Internal Market and Services, European Commission, dated December 21, 2010, attached here as an annex.

[44] See the New Haven Declaration on Corporate Financial Transparency, attached here as an annex.

[45] See "Canada's Mining Industry: Socially Responsible Global Leader: Bill C-300 Will Hurt Canadian Mining Companies," attached here as an annex.

that "Canada's exploration and mining industry welcomes the disclosure requirements found in the US Wall Street Reform and Consumer Protection Act (HR 4173)," and that its authors "look[ed] forward to working with the US Government and other stakeholders to implement HR 4173 mining transparency provisions."[46] Given the importance of Canadian companies to the global mining sector, we view this as a key industry endorsement of mandatory requirements for country- and project-specific reporting.

- In a press communiqué released on January 29, 2011, French President Nicholas Sarkozy announced his intention to spearhead EU legislation "to compel industries in the extractive sector to disclose their payments to all countries in which they operate."[47]

- Finally, as the Commission is aware, new listing requirements for applicant mineral companies came into effect last year on the Hong Kong Stock Exchange (HKEX). These rules require companies to report certain information related to their business operations, including payments made to host country governments in respect of tax, royalties and other significant payments (on a country-by-country basis), as well as information on project-specific risks. We note here that these requirements were enacted in part at the request of investor groups and pension funds, which voiced their support for disclosure requirements in a 2010 public consultation on the new HKEX. Since these requirements were passed, nine extractive companies – including Russian and Chinese entities – have listed on the HKEX, namely: United Company Rusal Plc., China Gold International Resources Corp. Ltd., the global mining giant Vale S.A., MIE, Enviro Energy International Holdings Ltd., CITIC Dameng Holdings Ltd., IRC Limited, Mongolian Mining Corporation, and SouthGobi Resources Ltd. Given that no foreign extractive industry companies were listed on the exchange before HKEX instituted its new requirements, these listings suggest that these companies see no commercial threat in providing investors with these types of disclosure.

These recent events and statements evidence the momentum behind mandatory payment disclosures and the increasing recognition of their importance to investor risk analyses. They also indicate an understanding that mandatory extractive payment disclosures are not only within the core mission of securities exchange authorities, but also are necessary to achieving a global transparency regime based on the principle of equal treatment of issuers.

---

[46] See Letter by Gordan R. Peeling, Sept 1, 2010, *Embassy Magazine*, available at http://www.embassymag.ca/page/view/letters2-09-01-2010.

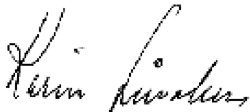
[47] See Sarkozy Letter to Bono, Jan 29, 2011, available at http://www.elysee.fr/president/les-actualites/communiques-de-presse/2011/lettre-adressee-a-bono-en-reponse-de-sa-tribune.10545.html , and included in translation as an annex.

Conclusion

The Proposed Rules largely adhere to the plain language of the Dodd-Frank Act, which, as we stated in our December 6, 2010 letter, is clear and practicable.[48] Where the Commission does have discretion, we urge that it be exercised in a manner that follows Congressional intent to require disclosure of project and country-specific risks, create a level playing field for issuers, and enable, for the first time, a public understanding of what payments are being made by extractive industries to what governments.[49] We believe Congress required the Commission to issue final rules for a clear reason: to utilize its superior subject matter expertise to prevent efforts to avoid reporting as mandated by the Act. We urge the Commission to keep this intent in mind when it reviews submitted comments.

We are grateful to the Commission for its excellent work to date on the rulemaking process pursuant to Section 13(q) of the Exchange Act. We recognize that the Commission has important work ahead to define the full scope of the activities covered by the rules, the payments that are covered and how they will be reported. We would like to offer our assistance to the Commission and its Staff as they implement this crucial piece of legislation, which will influence decision-making in other markets on similar standards. We look forward to working with the Commission as it continues to examine critical issues related to the implementation of Section 13(q), and offer to provide any additional information as needed.

Sincerely,



Karin Lissakers
Executive Director, Revenue Watch Institute

---

[48] See comment letter, Dec 6, 2010, by Karin Lissakers, Executive Director, Revenue Watch Institute, available at http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-98.pdf.

[49] See comment letter, Feb 1, 2011, by Senator Carl Levin, Chairman of the Permanent Subcommittee on Investigations, available at http://sec.gov/comments/s7-42-10/s74210-19.pdf.

December 21, 2010

Mr. Jonathan Faull
DG Internal Market and Services
European Commission
SPA 2, 00/93
1049 Brussels
Belgium

Dear Mr. Faull,

As regards the Consultation on Financial Reporting on a Country-by-Country Basis by Multinational Companies we, the undersigned investment institutions and investment advisers, with over $20 billion under management, and responsible investment organizations have considered the call for the introduction of country-by-country reporting made for the extractive industries by Publish What You Pay, the Tax Justice Network and related organisations.

In our opinion country-by-country reporting, whether in the extractive industries or, preferably, universally would:

1. Enhance the information available to us to assess risk arising within the corporations in which we invest;
2. Provide us with information on the following issues, currently unavailable, but which would impact on our decision making processes if available:
    a. Where corporations trade;
    b. The relevant importance of different jurisdictional markets;
    c. Where they do and do not pay their taxes;
    d. Where they earn their profit;
    e. How they structure their businesses;
    f. How they structure their internal supply chains;
    g. Where they allocate their resources;
    h. Where they expose investors to geo-political risk;
3. Assist us in making decisions on the allocation of the capital under our management to corporations operating in the world's financial markets.

As such, we ask the European Commission to require country-by-country reporting within the annual audited financial statements of all multinational corporations listed on a stock exchange. This would be accomplished either by incorporating country-by-country into International Financial Reporting Standards, into the European Union's 4th and 7th Directives on Accounting or within the European Union Transparency Directive.

Yours,

Bennett Freeman
Senior Vice President
Sustainability Research and Policy
Calvert Asset Management Company, Inc.

(cont.)

Adam M. Kanzer, Esq.
Managing Director & General Counsel
Domini Social Investments LLC

Raymond Baker
Director
Global Financial Integrity

John Harrington
Harrington Investments, Inc.

Laura Berry
Executive Director
Interfaith Center on Corporate Responsibility

Sanford Lewis, Counsel
Investor Environmental Health Network

Thomas E. Ellington, II CFTA
Trust Administrator – Sustainability Group
Loring, Wolcott & Coolidge Trust, LLC

Rev. Séamus P. Finn OMI
Director
JPIC Ministry
Missionary Oblates

Julie Fox Gorte, Ph.D
Senior Vice President for Sustainable Investing
PaxWorld Management LLC

Richard W. Torgerson
President & Director of Research
Progressive Asset Management

Cheryl Smith
President
Trillium Asset Management

New Haven Declaration on
Corporate Financial Transparency

We recognize that although one of the first responsibilities of business to society is to pay its fair share of taxes, aggressive and 'creative' global tax strategies have become commonplace among multinational corporations, resulting in significant tax losses to both developed and developing countries. Some of these strategies involve violations of local law;

We are also aware that approximately $100 billion in tax revenue leaves developing economies each year due to trade related price manipulation by corporations;

We recognize that yearly tax losses due to corporate trade mispricing are equal to annual Official Development Assistance and that these flows aggravate poverty and are a human rights concern of great importance;

We also note with concern the growing research on the annual flow of illicit capital out of developing countries, estimated to be in excess of $1 trillion (including the $100 billion in tax losses noted above). The term illicit capital refers to funds that are illegal in their origin, movement or use and that are solicited, transferred or managed by institutions in western financial centers or in secrecy jurisdictions, often referred to as "tax havens";

We further recognize the linkage between opacity in the global financial system and the facilitating role it plays in allowing politically exposed persons, corrupt dictators and tax evaders to move illicit money around the globe;

We stress that reducing illicit capital flows requires greater financial transparency and that achieving this is a prerequisite to creating an economic framework that is open, accountable, fair, and beneficial for all;

We state that it is unethical, and often illegal, for companies to declare profits in tax havens in order to avoid the payment of taxes in nations where the labor, sales and resources that produced those profits occurred. Current financial reporting requirements allow companies to hide these practices from investors and governments;

We underscore the importance of having corporate financial reporting that is disaggregated by country ("country by country reporting") as a way to assess the possibility of political, legal and reputational risk to the firm, and to provide a better understanding of the corporation's aggregated financial statements;

We strongly urge the G8, G20, WTO, the European Union and other international fora, as well as national governments, world leaders, faith groups, civil society organizations and corporations to recognize the linkage between corporate financial transparency, good corporate governance, social justice and stable markets;

We commit, as organizations concerned about risk mitigation in our investment strategies and long-term, economic growth issues related to poverty alleviation and development, to call on governments and relevant multilateral institutions to establish a country-by-country financial reporting standard for multinational corporations;

We also commit to monitoring corporate activity in this area and raising these concerns with corporate management as part of our investment management practices;

We further pledge to work in the coming months to pursue this agenda and look to add additional voices to this effort:

Signed

Krishen Mehta
Asia Initiatives

William Cunningham
Creative Investment Research, Inc.

Adam M. Kanzer, Esq.
Managing Director & General Counsel
Domini Social Investments LLC

Raymond W. Baker
Global Financial Integrity

John Harrington
Harrington Investments, Inc.

Laura Berry
Interfaith Center on Corporate Responsibility

Rev. Séamus P. Finn OMI
Missionary Oblates

Meg Voorhes
Social Investment Forum

Sanford Lewis
Strategic Counsel on Corporate Accountability

Richard Murphy
Tax Research UK

Cheryl Smith
Trillium Asset Management

Scott Klinger
Wealth for the Common Good

Thomas Pogge
Global Justice Program
Yale University

Convened at Yale University
New Haven, Connecticut

December 8, 2010

Canada's Mining Industry: Socially Responsible Global Leader

Bill C-300 Will Hurt Canadian Mining Companies

CANADA'S MINING INDUSTRY IS A CANADIAN ECONOMIC POWERHOUSE & GLOBAL LEADER

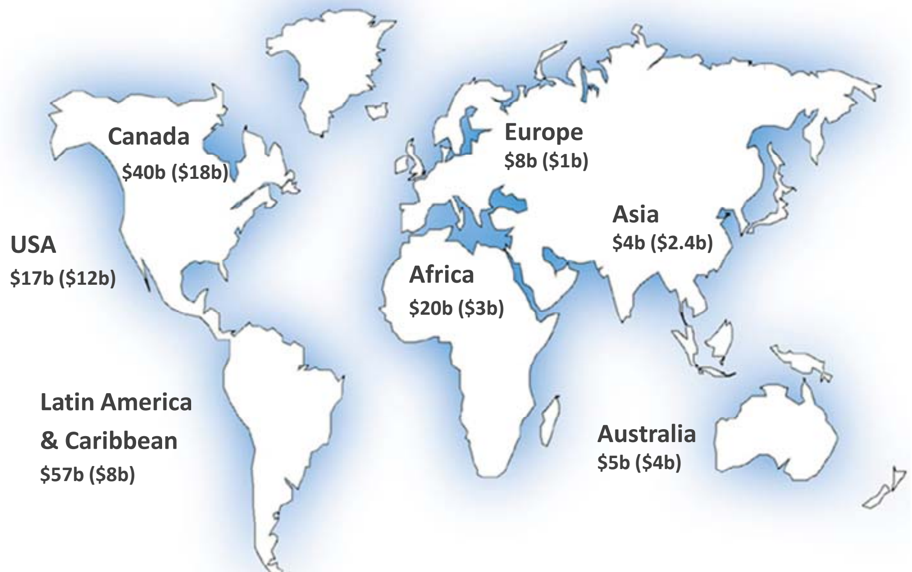
Mining is central to Canada's economic brand and is one of Canada's only true global industries in which our country possesses global leadership.

The Canadian mining industry:

- Employs over 306,000 Canadians in extraction, processing and manufacturing;
- Contributes $39 billion to Canada's GDP in 2009;
- Accounts for $95 billion (19%) of Canada's annual goods exports;
- 75% or 1,800 of the world's exploration and mining companies were located in Canada in 2009;
- Invests in 10,000 projects in over 100 countries; and
- 81% of worldwide mining equity transactions over the past five years were handled by the TSX and its venture exchange.

Canada's Global Presence: Total Mining Assets in 2002 and 2008

2008: $111b (2002: $30b)



Source: Company annual reports, compiled by Natural Resources Canada

CANADIAN MINING COMPANIES PRACTICE CORPORATE SOCIAL RESPONSIBILITY

Canadian exploration and mining industry works continuously to improve its CSR record because it recognizes that good CSR, besides being good business, is the right thing to do. Canadian exploration and mining firms are subject to all in-country laws and are held to high expectations by numerous domestic and international institutions, policies, frameworks, and standards. Through the soon to be operational independent Canadian CSR Counsellor and Canada's well established National OECD Contact Point, there are mechanisms for people to lodge a complaint. The Canadian exploration and mining industry compares favourably with its OECD competitors in the US, the UK and Australia on widely accepted CSR initiatives, which include:

International Standards and Policies

1. **UN Global Compact,** a protocol framework for companies that are committed to sustainability and responsible business practices.
2. **Environmental and Social Standards** created by the International Financial Corp. (IFC) of the World Bank require high standards of the private sector projects it finances in emerging markets.
3. **Compliance Advisor Ombudsman**, created by the World Bank's IFC, as an independent body to address complaints from affected communities through a dispute resolution process.
4. **OECD Guidelines for Multinational Enterprises**, which set out responsible business conduct in areas such as environment, employment and industrial relations.
5. **Equator Principles**, adopted by banks to guide their project financing for extractive projects located in the developing world.
6. **Extractive Industries Transparency Initiative (EITI)**, a global transparency standard.
7. **Global Reporting Initiative (GRI) – Mining Sector Supplement**, the world's most widely used framework for sustainability reporting designed specifically for the mining industry.

8. **Voluntary Principles on Security and Human Rights** are principles jointly developed by NGOs, governments, and the extractive industry to assist companies better manage their CSR practices.
9. **Host Government National and Sub-National Statues and Regulations**.
10. **Acid drainage prevention standards** and an **international cyanide management code**.

Canadian Standards and Policies

11. **Government of Canada's CSR policy**, *Building the Canadian Advantage*, which is the result of an extensive industry and NGO consultation process.
12. **Independent CSR Counsellor** for the extractive sector assists with resolving social and environmental issues involving Canadian companies operating abroad. The industry has actively participated in the Counsellor's consultation process, included a written submission for the Draft Rules of Procedure.
13. **Export Development Canada's** CSR policies must be observed if EDC financing is to be provided.

Industry Created CSR Standards

14. PDAC's ***e3 Plus: A Framework for Responsible Exploration**,* the first comprehensive CSR guidance designed for mineral exploration around the world.
15. **Towards Sustainable Mining,** a CSR standards created by the Mining Association of Canada which is mandatory for its members.
16. **Sustainable Development Framework** commits International Council on Mining and Metals' (ICMM), members to 10 sustainable development principles and requires third-party assurance for compliance.

C-300 Will Damage the Global Competitiveness of the Canadian Mining Industry

Unlike the recently adopted US Wall Street Reform and Consumer Protection Act (H.R. 4173), which the mining industry welcomes and which has been designed with quite different objectives in mind, C-300 ignores the reality that Canada's mining industry is a globally competitive industry with a strong CSR record. No other OECD country imposes such measures on its extractive sector as those proposed by Bill C-300. Instead, Canada's OECD competitors are focused on more constructive approaches, such as the UN-based process led by John Ruggie who will make specific recommendations within the next year.

Your vote against Bill C-300 matters. If Bill C-300 passes the House, it will send a strong message internationally that the Parliament of Canada has lost confidence in Canadian mining companies. This will damage the image and reputation of Canadian mining companies with governments around the world. Canada's competitors will use Bill C-300 as a tool by to undermine the competitiveness of Canadian firms in the highly competitive global extraction industry.

Bill C-300 also undermines Canada's current position as the world's mining finance capital, beating London or New York, with economic consequences in Canada.

C-300 is Bad Law with Unintended Consequences

ROLE OF DFAIT: The Department of Foreign Affairs has neither the capability, nor funds, nor experience to investigate complaints in developing countries and it has testified to this fact before Parliament. Bill C-300 won't work because foreign governments won't cooperate in investigations. Bill C-300 requires every complaint to be investigated by the Minister and every investigation will be made public by the complainant regardless of the merits of the complaint. Bill C-300 is flawed because it concentrates too much discretionary power in the Ministers of Foreign Affairs and International Trade.

INEFFECTIVE: Bill C-300 is impractical because it imposes a one size fits all approach to ground situations that are continuously changing and where the facts are rarely clear-cut.

EXTRATERRITORIALITY: Bill C-300 is effectively an extension of Canadian law into foreign jurisdictions. There has been no consultation with developing country governments. This extraterritorial application of domestic law was the principle that the Canadian Government objected to so strenuously in the 1990's with the passing of the US Helms-Burton legislation, which affected Canadian investments in Cuba.

Your Vote against Bill C-300 Matters. Vote Against C-300.

Dear Bono,

I would like to thank you for the letter you sent me on 26 January to explain the reasons that led you to publish the following day an op-ed in the French press.

I find it normal, healthy and useful that you call upon me so directly about official development assistance at the beginning of the French presidency of the G20 and the G8. This is entirely in keeping with your role, just as I am in keeping with mine in reminding you of the strategy that I have implemented tirelessly since 2007 to help the world's poorest countries, especially in Africa. You and I are thus simply "doing our President's jobs", as befits the beginning of any mandate, even though the importance of the issue we both so care about is such that I don't simply want to give you ready-made answers.

I am familiar with your generosity, but I appreciate your courage and efficiency as well. Ever since our meeting in Heiligendamm in June 2007, we have often spoken to one another about your commitment to the cause that you defend, a cause that unites us, i.e. Africa. It is with my usual honest words that have sometimes surprised you that I wish to give a substantive reply to your comments and proposals.

Bono
Singer of U2 and co-founder of ONE

You invited me to get things done. I suppose that you are referring to the G20 and the G8 presidency, because when it comes to France's ODA levels, our record seems very clear to me.

Since 2007, France's ODA has increased by more than 30% to reach almost 10 billion euros in 2010, or 10% of global ODA. Let me remind you that France, the 5th largest economy in the world, only represent 4% of global GDP. Our ODA contribution went up from 0.4% to 0.5% of GDP in less than 4 years. It is the largest increase of all G8 countries, together with the United Kingdom. I do not wish to overwhelm you with figures but, among G8 countries, France's ODA is the one most focused on Africa, with 60% of the total going to that continent.

My staff will send you a detailed explanation of these figures. I know that you challenge some of those numbers, but just like our partners, we apply the methodology defined by the OECD with the greatest transparency.

Despite the crisis, I did not want France to reduce its aid to the world's poorest. I have pleaded, unceasingly, for the realization of the Millennium Development Goals and to find solutions that benefit developing countries in the fight against climate change. May I remind you that I am the only Head of State or government of the G20 to have participated in all United Nations Development Summits since 2007, and that it was thanks to my initiative that, in Copenhagen, we adopted the "Fast Start" programme with its 30 billion dollars over 3 years in December 2009. Furthermore, that France played a crucial role with the Korean presidency of the G20 to get development onto the forum's agenda.

As to the French presidency of the G20 and the G8 this year, I decided to accord a strong priority to Africa. I have invited 8 African countries, the members of the NEPAD, and the Chairperson of the African Union to meet with the G8 on May 27 in Deauville in order to strengthen our partnership. This partnership must be an honest and open one: how can we achieve our respective commitments? On the G8 side, of

course, and particularly on health and food security, but also on the African side, and when I say this I am referring to governance.

At the G20, we will focus on the fight against hunger and on infrastructure. I decided to go to Addis Ababa on 30 January to explain this agenda to the African Union. But also in order to plead for innovative financing. ODA will not be enough to face and overcome all challenges; we must necessarily have access to additional and stable sources of financing.

I have spoken several times of my preference for a tax on financial transactions. I like the idea of this levy and hope to mobilise as many as possible this year to support it. But I equally acknowledge the strong hostility of a large number of countries. Either way, I will not accept that this year be another year without new innovative financing mechanisms. In addition, I would like us to analyse a “basket of options” so that each G20 country may choose to apply one or several innovative financing mechanisms.

In your article, you bring up the need for transparency in the area of natural resources’ extraction in Africa. I completely agree with you. France is organising an experts’ conference on this issue in March in Paris. As of now, I have decided to ask the European Union to adopt, as speedily as possible, legislation to compel industries in the extractive sector to disclose their payments to all countries in which they operate.

You also bring up health. May I remind you that in Heiligendamm, I told you that I would allocate 1 billion dollars per annum to developing countries; today, France gives 1 billion euros every year to health, more than half of which goes to the fight against the major pandemics. I get your message about financing new vaccination campaigns. The replenishment of the Global Alliance for Vaccination and Immunisation (GAVI) will take place in June. France confirms its commitment towards GAVI, with 25 million euros for 2011, which will progressively increase to

reach 86 million euros in 2026. France will call upon all countries that have the means, to contribute to this replenishment.

Finally, for agriculture, I am glad that you support the work that I have launched on price volatility. Just as you do, I believe that the solution lies also in the increase of agricultural production that will have to be of at least 70% by 2050 in order to feed the world.

The fight for development is a difficult one, especially in times of crisis, but it is vital. You can count on my commitment to it, but I also need you, I need the world's entire civil society, to mobilise all governments. I intend to prioritise Africa. It is my objective, as it has been since 2007.You can be sure that I will spare no effort to implement the most ambitious agenda as the President of the G20 and the G8 this year.

Warm regards,

Nicolas SARKOZY