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Date: 25 February, 2011

Ms Elizabeth M Murphy
Secretary US Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090
USA

Dear Ms Murphy

File No. S7-42-10
Release No. 34–63549
Disclosure of Payments by Resource Extraction Issuers

I am writing to comment on behalf of Railpen Investments on the proposed rules for Disclosure of Payments by Resource Extraction Issuers pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

By way of background, Railpen Investments is the investment monitoring arm of the Railways Pension Trustee Company Limited, the corporate trustee of the UK railway pension funds with approximately $30 billion of assets under management and 350,000 beneficiaries. As a major institutional investor, we have a clear interest in better corporate reporting on such payments and welcome this consultation and the action of the US authorities in taking forward mandatory disclosure.

We are a long standing investor supporter of the Extractive Industries Transparency Initiative (EITI) and commend its process to seeking to develop an effective system of disclosure regarding payments in the mining, oil and gas sectors, which is supported by home and host governments, commercial and national companies, and other stakeholders. We consider that the legislative intent of Section 1504 and the spirit of the proposed rules are very much in keeping with the objectives of EITI.

We believe that investors have a strong direct interest in the disclosure of country by country disclosure of material payments to governments, particularly in the case of specific investment decisions in relation to exposure to smaller companies that have concentrated assets in a small number of countries or to sovereign debtors that rely heavily on extractive revenues. However, investors generally also have a strong indirect interest in the general availability of such information to other stakeholders. Such transparency helps to provide reassurance that the business climate in which extractive industries operate in a given country is not overly unattractive, and reduces political and other related risks.

We support the Commission's proposal to require disclosure by all "resource extraction issuers" without exceptions for broad categories of issuers. We believe that Section 1504 should apply to all SEC registrants who are engaged in the extraction of oil and gas or minerals, irrespective of the size of the issuer, or whether the issuer is a US or foreign entity. This would be consistent with the EITI approach, and also with the positions that are likely to be taken by other regulators in other jurisdictions and so will help to create a level playing field.

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In relation to Question 55 in the proposal, we consider that the Commission should not allow exemptions where the laws of the host country prohibit disclosure. We agree with Senator Cardin's well reported comment that an exemption would undermine the original legislative intent.

We also share his view that it is precisely in these countries, which prevent transparency and disclosure of information, where the greatest investment risk lies. Such an exemption would create an incentive for certain countries to create such laws, thereby undermining the purpose and intent of the statute to provide information to investors and promote international transparency. In any event, the creation of reporting exceptions risks creating loopholes that could undermine the rule's creation of a level playing field for all covered issuers.

We understand that such statutory prohibition in foreign law is in fact rare. We note, for example, that Royal Dutch Shell, which has operations in over 90 countries worldwide, has in its recent response to the SEC identified only three jurisdictions in which it operates where disclosure is prohibited under the laws of the host country, namely Cameroon, China and Qatar. This suggests that an outright conflict of law is not likely to occur in practice in much of the world.

We acknowledge that there is a separate issue in respect of the breach of non disclosure clauses in existing agreements which can potentially raise the prospect of damaging litigation under civil law. However, we would expect that many resource extraction agreements have boilerplate legal language to make an explicit exception for information that must be disclosed by law. This should provide significant protection to many reporting companies.

We consider that the broadest possible base of extractive industry companies that are required to report their payments to governments will help deliver more of the benefits envisaged by revenue transparency initiatives. This would go some way towards establishing a level playing field so that the competitive position of extractive industry companies is not impacted by their payment disclosure obligations.

We welcome the initiative taken by the USA in taking this forward which we believe will soon be followed by other governments in the European Union and elsewhere. This will do much to create a level playing field on a global basis. We note in this respect that the French President, M. Nicolas Sarkozy, indicated in a public letter on January 29th, 2011 on his official website that he intends 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[1]. The UK Chancellor of the Exchequer, George Osborne, told his fellow G20 finance ministers in Paris on February 21st that the British government was also keen to support this effort. It now seems quite likely that the European Commission will seek to bring forward some sort of legislation to require disclosure in the near future.

[1] http://www.elysee.fr/president/les-actualites/communiques-de-presse/2011/lettre-adressee-a-bono-en-reponse-de-sa-tribune.10545.html

We therefore encourage the SEC to discuss this matter with other regulators with the intention of agreeing a consistent approach to be adopted by regulators worldwide. This would have significant benefits for regulators, civil society, investors and issuers. A standard approach to reporting will provide users of the information with a definitive version of payment data and avoid the confusion that would be created if the disclosure rules adopted by regulators were different. This would also reduce the potentially major reporting burden for multinational companies with listings and operations in several countries by having to adhere to only one set of rules rather than having to provide multiple sets.

We hope these comments are helpful and please contact me if you require any further elaboration on any aspect. In closing I would add that we have shared this response with other institutional investors in order to seek their comments and to encourage them to submit their views to the Commission.

Yours sincerely

Frank Curtiss
Head of Corporate Governance