



April 16, 2012

Mary L. Schapiro, Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Issuance of Final Rule Implementing Section 1504 of Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chairman Schapiro:

On behalf of our client, Oxfam America, we write to call on you to schedule a vote forthwith on a Final Rule implementing the extractive payments disclosure provisions of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Please be advised that Oxfam America will file suit to compel issuance of a Final Rule if the Securities and Exchange Commission (hereinafter "the Commission") does not issue a Final Rule within thirty days of the date of this letter.

As you know, Section 1504 of the Dodd-Frank Act was enacted on July 21, 2010.¹ Section 1504 amends Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. § 78m, requiring issuers in the extractive industries to periodically disclose information pertaining to certain categories of payments made to the governments of the countries in which they operate.

Oxfam America, both separately and in conjunction with other members of the Publish What You Pay US coalition ("PWYP"), has from the outset been an active participant in the Commission's rulemaking process under Section 1504. Oxfam America and other PWYP members have submitted numerous comments and met repeatedly with Commissioners and Commission staff in connection with Section 1504. Oxfam America's consistent goal has been to further the effective and timely implementation of the statute in a manner faithful to Congressional intent.

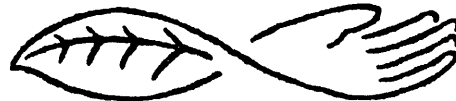
The Commission's continuing failure to issue a Final Rule frustrates the achievement of the robust extractive payments disclosure regime intended by Congress. This delay also places the Commission in violation of Section 1504 itself. Section 1504 instructs the Commission to

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act § 1504(2)(A) (amending Section 13 of the Securities Exchange Act of 1934), *codified at* 15 U.S.C. 78m(q)(2)(A).

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promulgate a Final Rule on extractive payments disclosure “not later than 270 days after” the enactment of Dodd-Frank. Congress’ explicit statutory deadline expired on April 17, 2011. As of this letter, the Commission has missed the deadline to issue a Final Rule implementing Section 1504 by 365 days. Indeed, a full year after the expiration of Congress’ 270-day deadline, the Commission has not even agreed on a date to vote on a Final Rule.

The Commission’s failure to issue a Final Rule also places the Commission in violation of the Administrative Procedure Act (“APA”). *See* 5 U.S.C. § 555(b) (requiring agencies to conclude matters presented to them “with due regard for the convenience and necessity of the parties . . . and in a reasonable time . . . [.]”). This lapse constitutes unreasonable delay and unlawful withholding of agency action actionable under Section 706(1) of the APA.²

Our client does not resort to litigation lightly. Unfortunately, the Commission’s serial abandonment of projected dates for the issuance of a Final Rule leaves Oxfam America with no confidence in the Commission’s commitment to compliance with Section 1504.

The Commission first signaled that it would not meet Congress’ statutory deadline on November 3, 2010, when it posted a notice on its website indicating that a Section 1504 Final Rule would be issued between April and June 2011.³ On April 15, 2011, Senators Benjamin Cardin and Richard Lugar, the co-sponsors of Section 1504, wrote to the Commission, inquiring as to the status of the Rule. On April 27, 2011, the Commission updated its website with new information suggesting that a Final Rule would be issued between August and December 2011.⁴ The Commission’s Office of Legislative Affairs responded to the Senators the following day with a letter that gave conflicting information. The letter claimed that Section 1504 was a “new area” for the Commission, that more time was needed to develop “thoughtful recommendations that implement the provisions consistent with congressional intent,” and that the Commission hoped to approve a Final Rule “in August [of 2011], if not earlier.” In any event, neither prediction came true. A Final Rule was not issued by December, let alone by August of 2011. Instead, on February 28, 2012, the Commission again updated its website, indicating that a Final Rule would be released between January and July of this year.⁵

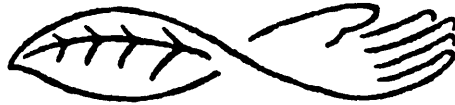
The above-cited communications are not the Commission’s only broken promises regarding issuance of a Final Rule. Since the beginning of the rulemaking process, Oxfam America and

² 5 U.S.C. § 706(1).

³ *See* Securities and Exchange Commission, Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act — Upcoming Activity, at <http://web.archive.org/web/20101105081512/http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml> (website version archived November 5, 2010).

⁴ *See* Securities and Exchange Commission, Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act — Upcoming Activity, at <http://web.archive.org/web/20110428174443/http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml> (website version archived April 28, 2011).

⁵ *See* Securities and Exchange Commission, Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act — Upcoming Activity, at <http://sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml> (last visited April 4, 2012).



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other PWYP members have met repeatedly with all three Commissioners not recused from voting on the Final Rule, and Commission staff from the Corporate Finance Division; PWYP has also met with the Chairman's office. Over the past two years, Commission representatives have repeatedly assured Oxfam America and its partners that a Final Rule was imminent. Finally, on March 6, 2012, you testified at a House Appropriations Subcommittee on Financial Services hearing that the "other specialized disclosure rules [i.e. extractives revenue disclosure and conflict minerals] should be done by the middle of the year . . . [.]"⁶

The record is replete with hard evidence and analysis on all aspects of the Commission's Proposed Rule.⁷ The only remaining step is for the Commission to promulgate a Final Rule that executes the unambiguously expressed will of Congress. Yet the only conclusion to be drawn from the Commission's vague predictions and repeated delays is that the Commission has no idea when it will comply with Congress' mandate to issue a Final Rule implementing Section 1504. We are not assured that, absent court compulsion, the Commission will do so by July. Indeed, we note that in your recent congressional testimony, you used the term "should" rather than "will," apparently avoiding a binding commitment.

Oxfam America has appreciated the opportunity to participate in the notice and comment process and has done its utmost to work constructively with the Commission. However, the Commission's unreasonable and unlawful delay in issuing a Final Rule prejudices Oxfam America, both in Oxfam America's capacity as an investor in numerous U.S. extractives issuers and in its mission to assist communities in resource-rich countries in holding their governments accountable for the management of oil, gas, and mining revenues.

We therefore call upon you to schedule a vote, so that the Commission may adopt a Final Rule implementing Section 1504. If the Commission fails to do so within thirty days of the date of this letter (i.e. by May 16, 2012), Oxfam America will take legal action to compel the Commission's issuance of such a Final Rule.

Please do not hesitate to contact Jonathan Kaufman at 202-466-5188 x113, or jonathan@earthrights.org, with any questions, or to discuss this matter further.

Yours sincerely,

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⁶ *The Budget for the Securities and Exchange Commission: Hearing Before the Fin. Serv. & Gen. Gov't Subcomm. of the H. Appropriations Comm.*, 112th Cong. (2012) (statement of Mary Schapiro, Chairman, Sec. & Exch. Comm'n), *video recording available at* <http://thomas.loc.gov/video/house-committee/hsap/20922069>.

⁷ "Disclosure of Payments by Resource Extraction Issuers," 75 Fed. Reg. 80,978 (Dec. 23, 2010) ("Proposed Rule").