TIAA CREF

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March 2, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission 100 F Street, NE
Washington, DC 20549

RE: Disclosure of Payments by Resource Extraction Issuers; File No. S7-42-10

Dear Ms. Murphy,

I am writing on behalf of Teachers Insurance and Annuity Association ("TIAA") and College Retirement Equities Fund ("CREF") (collectively, "TIAA-CREF") to provide comments on the proposed addition of rule 13(q) to the Securities and Exchange Act of 1934, which would implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] TIAA-CREF is a national financial services organization and the leading provider of retirement services in the academic, research, medical and cultural fields, with $451 billion in combined assets under management as of December 31, 2010. CREF, one of the country's largest institutional investors, holds shares in over 7,000 publicly traded companies. As fiduciaries charged with maximizing the collective value of over 3.7 million participants' retirement savings, we have been a leading advocate for more than 30 years on behalf of shareholder rights, good corporate governance, and sustainability.

We commend the Securities and Exchange Commission ("SEC" or "Commission") for its approach to developing these rules, which are informed by the international efforts to minimize investment risk and reduce corruption through the revenue transparency through efforts such as the Extractive Industries Transparency Initiative ("EITI"). TIAA-CREF believes that policies, applied to the broadest possible range of companies, supporting rigorous and

[1] Release No. 34-63549; File No. S7-42-10

consistent disclosures of payments to governments can help to protect investors against company-specific and well as market-wide risk. These risks include expropriation, disruption of operations related to social unrest, pressure from corrupt foreign officials, more routine tax and regulatory risks, or harm to companies' local or global reputation. At the same time, we believe that companies should be allowed sufficient flexibility to implement these rules in a manner appropriate for their unique business and competitive circumstances. We believe the Commission's proposed rules have gone a long way toward ensuring this balance and we submit the following comments to further support this effort.

Exemptions

Question 1-5 ask whether certain categories of issuers, such as small companies or foreign issuers, should be exempt from this rule. The intent of Section 1504 is to ensure industry wide transparency and accountability. Broad exemptions from the rule would undermine the intent and reduce the value of this information to investors. Because investment risks are similar throughout the extractive industries, proper assessment of these risks is possible only if companies are providing consistent information. Consistent treatment of companies will also help to mitigate any concerns about competitive harm to covered companies, though we note that several companies already disclose this information without suffering any apparent disadvantages.

We do not believe that these rules will be excessively burdensome for smaller companies. Companies should already be tracking this information as a part of their internal accounting process, limiting the cost of data collection, though the rule may require an initial investment to bring existing systems in line with reporting requirements. After several years of experience, EITI member companies report little difficulty in disclosing this information.[2] The Commission's own cost estimates predict a relatively minimal overall corporate burden, especially for smaller entities with operations in relatively few countries.

We believe the adoption of Section 1504 may lead to the development of similar rules internationally. Once home country rules requiring disclosure of similar or greater levels of detail are in place, we can imagine grounds for an exemption from 13(q) reporting to avoid duplicative requirements.

Definition of "Payment"

[2] See for example the EITI Company Self-Assessment Forms, found at http://eiti.org/supporters/companies

Questions 12-25 address questions about the definition of "payment" and the scope of payments that should be covered by the rule. As a general principle, TIAA-CREF believes that in order for disclosures to be comprehensive, they must include all contracted payments, including in-kind payments. Limiting disclosure to certain kinds of payments may have the perverse effect of encouraging contracts designed specifically to circumvent disclosure requirements.

The Commission has also asked whether it makes sense to define the term "de minimis" and specifically whether it is the same as "material." De minimis is defined in the U.S. Code as "property or service the value of which is . . . so small as to make accounting for it unreasonable or administratively impracticable." [3] It is our view that depending on the size and complexity of a company's contracts, what constitutes a "de minimis" value may differ widely. Accordingly, we believe that companies should establish and disclose a standard appropriate for their particular business model. The Commission should not impose a specific standard on all companies. Moreover, "de minimis" should not be confused with "materiality."

Definition of "Project"

Questions 39-48 request feedback on the definition and scope of the term "project" for purposes of the rule. As investors, we believe that it would be useful for investors if the rule provided a definition of the term "project," to ensure consistency across companies regarding the scope of activities covered by the rule. We will not offer a specific recommendation regarding definition and scope, but would suggest that the following elements should be incorporated into the rule. First, to ensure that the full scope of payments to governments is fully comprehensive, company disclosures should comprise both upstream and downstream activities, as well as ancillary activities such as infrastructure development.

Second, disclosure requirements should shed light on the financial relationship between companies and host governments by linking the definition of project to the individual contracts between the issuer and host governments. We note that comments from industry sources have suggested aggregating all activities within a geographic area within a single "project." While we support flexibility and simplicity in disclosures, we are concerned that this proposal may undermine the value of the information provided to investors when more than one substantial project is associated with a particular geographical area.

[3] 26 USC § 132(e)1

Filed vs. Furnished

Lastly, we would comment briefly on questions 87 and 88, which ask whether rule 13(q) should require materials to be filed or furnished. We believe that the disclosures will provide investors with meaningful information useful in analyzing country-level risk assessment. Typically, information of this kind is filed as opposed to furnished.

We believe that the higher standard of accountability accorded to information that is filed as a part of the annual report will raise the credibility of the disclosures and provide investors with greater confidence in the use of this information.

Summary and Conclusion

In closing, we thank the SEC for providing the public with the opportunity to respond to the questions outlined in the proposed rule. We commend the Commission for identifying and analyzing the critical issues raised by the statute and support the final adoption of a rule on this topic. If you would like to discuss any of the issues raised in our letter, please contact me at 212-916-4344 or my colleague John Wilson 212-916-4897.

Sincerely,

Jon Feigelson
SVP – General Counsel and Head of Corporate Governance