SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

March 4, 2011

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Schapiro:

Sections 1502, 1503 and 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (PL 111-203) direct the U.S. Securities and Exchange Commission (SEC or Commission) to promulgate new disclosure rules relating to conflict minerals, mine safety, and other resource extraction issues. I am writing to express particular concerns about Section 1504, which requires disclosure of payments to sovereign governments made for the purpose of commercial development of oil, natural gas, or minerals.

As you may know, the extractive industries provisions were inserted into the Act very late during the Dodd-Frank conference, without due legislative consideration by the committees of jurisdiction. While the underlying goals of the section are laudable, the statutory language of Section 1504 is highly problematic and almost certainly would not have survived in its enacted form through regular-order consideration in either body. If not implemented properly, Section 1504 could have negative consequences for the global competitiveness of a broad range of U.S. companies. This provision could result in companies abandoning new projects, or cancelling existing projects, which will further constrain U.S. job creation and undermine economic growth. Accordingly, the rules to implement Section 1504 must be narrowly tailored to prevent a competitive imbalance for those SEC-registered companies which make payments to governments for the privilege of extracting natural resources.

The SEC should use its discretion to implement Section 1504 in a way that minimizes the harm to U.S. companies. Section 1504 (q)(2)(A)(i) requires disclosure to the public of "the type and total amount of [such] payments made for each project." If interpreted too broadly, Section 1504 (q)(2)(A)(i) could force companies to disclose vital trade secrets. To limit the potential harm, the SEC could define the terms "type," "total," and "project" in Section 1504 (q)(2)(A)(i) so that compliance with the rule would not impede the ability of U.S. companies to compete for extractive industry contracts. Similarly, the term "payment" in Section 1504(q)(1)(C), while already defined, could also be refined to ensure it does not adversely affect U.S. firms. Furthermore, the SEC should, using its general exemptive authority in Section 36 of the Exchange Act, provide an exemption for reporting payments when a disclosure would cause a company to violate foreign laws.

The SEC's mission is to protect investors; ensure fair, orderly and transparent markets; and facilitate capital formation. To that end, the Commission must consider the impact that any rule to implement Section 1504 may have on the health of the U.S. economy and the competitiveness of U.S. companies.

Thank you for your consideration of this request.

Sincerely,

SPENCER BACHUS
Chairman

GARY MILLER
Chairman
Subcommittee on International
Monetary Policy