Congress of the United States
Washington, DC 20515

February 15, 2012

The Honorable Mary L. Schapiro
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
The Honorable Daniel M. Gallagher
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Commissioners:

We are writing as Members of the U.S. House of Representatives who support the extractive industry revenue transparency provision (section 1504) of the Wall Street Reform and Consumer Protection Act. Some of us were cosponsors of the original legislation, some served as conferees on negotiations that facilitated its inclusion in Public Law 111-203, and all of us support its intent and promulgation as the global standard of extractives transparency.

We would like to express our appreciation for the hard work you and your staff are doing to implement the Wall Street Reform and Consumer Protection Act, under enormous financial constraints. While we are sympathetic to the challenges the SEC faces due to capacity constraints, we are also concerned that the Commission is far behind in meeting the statutory deadline of April 17, 2011 to adopt a final rule on section 1504. Moreover, we are aware of efforts by industry to press the SEC to throw out a year and half of important work and start the rulemaking process anew, or to release a watered down rule that does not reflect the statutory language as well as the legislative intent of Section 1504. We urge you to resist this pressure and promptly release a strong and effective final rule.

Project-level Reporting

While Congress has entrusted the SEC to find the best fitting technical definition of 'project,' we want to clarify that we consider a 'project' not equivalent to a country, and not an aggregate of all activities in a country or a geologic basin.

We strongly disagree with the suggestion by some who have commented on the draft rule that a project could be defined in the same way as country for payment reporting purposes. The statute requires companies to report "the type and total amount of such payments made for each project" as well as "the type and total amount of such payments made to each government." This language clearly intends for "project" and "government" to represent different levels of payment reporting, which means "payment" cannot be considered synonymous with "government" or "country." Therefore, payments should not be allowed to be reported only at an aggregate, country level.

We also view the suggestion that "project" could be defined by the SEC as all activities in a "geologic basin" to be deeply misguided. Multiple companies often conduct activities in a single geologic basin, but the statute requires disclosure by "each resource extraction issuer" and does

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not allow aggregation of payments by multiple companies. In addition, geologic basins may span more than one country, and in such cases, reporting at a geologic basin level would violate both the clear and separate company-by-company and the country-by-country requirements of Section 1504.

We believe any project definition should require the disclosure of payments on the level at which rights and fiscal obligations are assigned, which we understand to be the lease or license in the case of many payment streams. We support the Department of Interior's request in its letter of August 4, 2011, which asks that the SEC to support a project definition that is tied to a specific lease -- which is the norm here in the United States.

Question of materiality/Definition of de minimis

The rule should also define the terms "project" and "payment" in ways that do not create reporting loopholes, particularly with regard to the threshold amount for reporting. The statute is clear in requiring "any" payment to be disclosed as part of country and project-level disclosures, except if it is "de minimis." We note that the statute does not reference "materiality" in regards to which payments or projects are to be disclosed. Congress knows how to impose a materiality requirement when it wants to: the Exchange Act contains numerous instances where Congress chose to qualify an otherwise required disclosure by the term "material," and we did not do so here. We believe that any inclusion of "materiality" to limit payments or projects to be disclosed would be in violation of the statute.

On the definition of "de minimis," if the SEC were to provide a specific monetary threshold below which payments are not required to be reported, it would be very important not to set this threshold too high, as that would leave important payment streams undisclosed as well as encourage companies and governments to structure payments in future contracts in a way that would avoid the disclosure requirement.

Exemptions

We strongly urge the SEC to make section 1504 requirements applicable to all companies that raise capital in U.S. markets and report to the SEC, with no exemptions. In particular, companies should not be exempted from the reporting requirements by virtue of their status as foreign companies, nor should contractual provisions or foreign legal prohibitions be allowed to preempt US law. This would ensure fairness to all and show that U.S. laws are not to be superseded by foreign laws, particularly laws instituted by undemocratic regimes in other countries to avoid accountability.

Furthermore, we note that even though Section 1504 is not under implementation yet, some large corporations— like Rio Tinto, Statoil and Newmont Mining, among others— already disclose payments in every country of operation, and as reported by some of these companies that are already disclosing, there does not appear to be any compelling evidence that companies will face major obstacles by government that are not otherwise transparent.

Finally, we believe extractive industry revenue transparency will be of great value to investors as they assess the commercial, political and reputational risk faced by companies in often volatile locations. This kind of mandatory disclosure can help diminish the political instability caused by opaque governments, which is a clear threat to investment. In addition, since extractive industries are capital-intensive and dependent on long-term stability to generate returns,

transparency of payments made to a government can help mitigate political and reputational risks and also allow shareholders to make better-informed assessments of opportunity costs, threats to corporate reputation, and a company's dependence on such ventures.

Public disclosure of extractive industry revenues and how they flow from industry to governments is also fundamental to improving governance, curbing corruption, improving revenue management, and allowing greater accountability from governments for spending that serves the public interest.

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