



The Forum for Sustainable and Responsible Investment

June 17, 2020

Ms. Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Comments on SEC Release No. 34–87783—Disclosure of Payments by Resource  
Extraction Issuers (File No. S7–24-19)

Dear Ms. Countryman:

US SIF: The Forum for Sustainable and Responsible Investment is pleased to submit these comments on the Disclosure of Payments by Resource Extraction Issuers (File No. S7–24-19) proposed rule (the “Release”). The Securities and Exchange Commission (“SEC”) first adopted this rule in 2012 pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Sec. 1504”), which was vacated by the US District Court for the District of Columbia. Subsequently, the SEC issued a new rule that was voided by Congress under the Congressional Review Act (CRA).

US SIF is the leading voice advancing sustainable, responsible and impact investing across all asset classes. Our mission is to rapidly shift investment practices toward sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. Our members, comprised of investment management and advisory firms, mutual fund companies, asset owners, research firms, financial planners, advisors and broker-dealers, represent more than \$3 trillion in assets under management or advisement. US SIF members integrate environmental, social, and governance factors (“ESG”) into their investment decisions and take their shareowner responsibilities seriously, including voting proxies and engaging with companies.

Investor interest in ensuring that companies have good ESG practices has never been higher. There has been significant growth in investor interest in and assets deployed using ESG criteria. Since 1995, when the US SIF Foundation first measured the size of the US sustainable and responsible investment universe at \$639 billion, assets have increased more than 18-fold to \$12 trillion in 2018, a compound annual growth rate of 13.6 percent.<sup>1</sup> Investors consider ESG issues both when they make decisions about their portfolios and when they engage in the shareholder process. Disclosure of uniform, comprehensive, and comparable information is essential to the investment process.

The Release is a response to the statutory requirement under Sec. 1504 which requires the SEC to rewrite the rule despite the District Court decision and Congress’ CRA rejection referenced above. The Release requires issuers to disclose payments, including from subsidiaries, made to a foreign government if they engage in the commercial development of oil, natural gas or minerals and furnish annual reports to the SEC.

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<sup>1</sup> Report on US Sustainable, Responsible and Impact Investing Trends 2018: <http://www.ussif.org/trends>.

Our comments focus on two provisions in the Release which will adversely affect investors and their access to information. These provisions are:

- Aggregation of payments to be disclosed; and
- The revision of the definition of “not de minimis.”

## **Background**

In order to fully assess the political risks that companies in extractive industries face, investors need to understand the financial relationship between these companies and the governments of the countries where they operate.

Without reliable, consistent information regarding taxes, royalties, signature bonuses and similar benefit streams, investors may struggle to foresee and account for the often unpredictable changes in host government policies and international operating conditions.

The payment disclosures required by Section 1504 are essential to investors’ consideration of the social, regulatory and taxation risks that oil, gas and mining companies face, particularly when they venture into countries with poor governance, weak rule of law, and high levels of corruption.

### **Aggregation of payments does not provide useful disclosure to investors**

The Release allows an issuer to report payments in aggregate at the country and subnational level with no reference to specific project contracts or licenses. Aggregation and the resulting anonymization make it harder for investors to gather company-specific information. This deprives investors of decision-useful data to differentiate companies and the risks associated with payments. It also inhibits investors from holding corporations accountable for the decisions they make about foreign payments.

Investors are not well served by data that obfuscates important issues like inappropriate financial relationships with foreign governments and the companies’ ability to develop resources efficiently.

### **Revised definition of “Not De Minimis” is too high**

In our March 2, 2011 comment letter<sup>2</sup> on the Sec. 1504 rulemaking, we stated that the definition of a *de minimis* payment threshold should be consistent with the one already in use by the London Stock Exchange (“LSE”)’s Alternative Investment Market (“AIM”)<sup>3</sup>. Payments equal to or greater than £10,000 made to any government or regulatory body by an oil, gas or mining company registrant triggers disclosure for registrants. We believed a simplified, consistent

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<sup>2</sup> US SIF comment letter to File Number S7-42-10, March 2, 2011  
[https://www.ussif.org/files/Public\\_Policy/Comment\\_Letters/LettertoSEConExtractionIssuerPaymentstoGo vts.pdf](https://www.ussif.org/files/Public_Policy/Comment_Letters/LettertoSEConExtractionIssuerPaymentstoGo vts.pdf)

<sup>3</sup> London Stock Exchange Alternative Investment Market. “AIM Note for Mining, Oil and Gas Companies.” June 2009. Page 4. <http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf>

threshold globally best serves investors' interests. The 2016 rule adopted by the SEC ultimately set the definition of *de minimis* at \$100,000.

The Release far exceeds the LSE and the 2016 levels. It sets a new two-pronged approach by defining the reporting threshold at the project level to be \$750,000 and, once that is met, then only payments of \$150,000 or greater are required to be reported. The consequence of this excessive threshold will allow two opportunities for registrants' payments to go unreported. It will also require companies to follow two reporting standards: one for the LSE and one for the SEC.

US SIF appreciates the opportunity to submit these comments to inform the Commission's deliberations on the rules for disclosure of payments by resource extraction issuers.

Sincerely,

A handwritten signature in black ink that reads "Lisa N. Woll". The signature is written in a cursive, flowing style.

Lisa Woll  
CEO