TRANSPARENCY INTERNATIONAL
the global coalition against corruption

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By email to rule-comments@sec.gov

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

Re: Proposed rule, Disclosure of Payments by Resource Extraction Issuer, Release No. 34-87783; File No. S7-24-19

Dear Secretary Countryman:

The U.S. office of Transparency International appreciates the opportunity to provide comments on the Securities and Exchange Commission's proposed rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] Regrettably, the proposed rule falls far below the global transparency standards that have been effectively implemented by some 30 countries, and far below the intent of the enacting legislation. The proposed rule must be strengthened in its final form to meaningfully deter corruption. In addition, given its distance from both existing and emerging global transparency standards, it's highly likely that the proposed rule will need to be rewritten in the very near future. For these reasons, we urge the Securities and Exchange Commission (the "Commission") to delay the implementation of Section 1504 until it can draft a new rule that is, at the least, equivalent to existing global standards.

Transparency International U.S. is part of the largest global coalition dedicated to fighting corruption. With over 100 national chapters around the world, Transparency International ("TI") partners with businesses, government, and citizens to promote transparency and curb the abuse of power in both the public and private sectors. TI helped drive the landmark European Union ("EU") measure requiring extractive companies to publish their payments to governments, and TI chapters across the globe are involved in efforts to promote transparency in the extractive industry as a means to increasing government integrity and accountability.

The U.S. government's commitment to ferreting out corruption was most recently renewed just three months ago, when it approved the United States-Mexico-Canada Agreement ("USMCA"). The Agreement states in relevant part:

> Each Party shall take appropriate measures...to promote the active participation of individuals and groups outside the public sector, such as

[1] 15 U.S.C. §78m(q) ("Section 1504").

> enterprises...in preventing and combatting corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes, and gravity of corruption, and the threat posed by it.[2]

As many developing countries rely on revenues from oil, gas, mining, and forestry to lift their citizens out of poverty, it is imperative that governments that commit to pursuing substantive anti-corruption measures, including the U.S. government, ensure that these types of revenues are not being siphoned off through corruption. Requiring the disclosure of payments made by extractive companies to governments is thus a *prerequisite* to any meaningful anti-corruption measures. When payments remain secret, the intended beneficiaries of a country's natural resources—its citizens—are instead the first casualties of corruption.

Unfortunately, though Section 1504 requires extractive companies to disclose payments made to governments, the Commission's proposed rule fails to require meaningful reporting of such payments by (1) only requiring that companies disclose payments at the national and major subnational level, as opposed to the *individual* project or contract level; (2) exempting situations in which a foreign law, or a pre-existing contract, prohibits such disclosure; and (3) exempting smaller and emerging growth companies altogether. **These limitations not only severely handicap the rule's potential impact, but threaten to enshrine into American law an incentive for foreign governments to proactively *eliminate* their own transparency laws.**

The EU law,[3] adopted in 2013, provides a clear and compelling global standard. Some 30 countries have since adopted similar laws, with similar measures currently being considered in Australia, Ukraine, and Switzerland. We urge the Commission to adopt a rule equivalent to the EU standards in implementing Section 1504.

Broadly speaking, the EU law requires all oil, gas, mining, and logging companies listed and registered in the EU to disclose, on a country-by-country and a project-by-project basis, all payments above €100,000 ($112,000 USD at the time of this writing) to governments around the world. Reporting under the law began in 2016. Two years later, having analyzed the reported data, the TI's EU office released a comprehensive report detailing the effects, benefits, and shortcomings of the disclosure requirements.[4] The report focused on project-level payments to governments by oil, gas, and mining companies in four countries: Repsol in Bolivia; Tullow Oil in Equatorial Guinea; Vedanta in India; and a joint venture between Statoil, British Petroleum, and Ente Nazionale Idrocarburi (with ExxonMobil as the operator) in Angola.

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[2] United States-Mexico-Canada Agreement ch. 27.5(1)(d).

[3] Chapter 10, Accounting Directive 2013/34/EU and Article 6, Transparency Directive 2004/109/EC introduced by Directive 2013/50/EU.

[4] *See* Transparency International EU, "Under the Surface: Looking into payments by oil, gas and mining companies to governments" (2018), available at http://transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf.

As related in its July 2019 letter to the Commission,[5] this report reached a number of powerful conclusions. These included:

- The EU law increased the amount of information available to citizens of impacted countries, helping them hold governments and companies to account for public revenue derived from natural resource extraction.
- The EU requirements did not reduce competitiveness in the extractives sector. TI-EU's research found no correlation between public country-by-country reporting or public subsidiary-by-subsidiary reporting rules, and standard measures of competitiveness. In conducting its research, TI-EU also interviewed a number of impacted companies; not a single company raised the reporting requirements as a factor or detractor of performance.[6]

The TI-EU report illustrates how the EU's model reporting standards have enhanced transparency and empowered citizen oversight without burdening company competitiveness. We strongly urge the Commission to write a new implementing rule in its image.

For additional information on TI's work in this regard, or for any assistance, please contact Scott Greytak, Advocacy Director for TI-U.S., at sgreytak@transparency.org or 614-668-0258.

Thank you for the opportunity to present these comments.

Respectfully submitted,

Gary Kalman
Director

Scott Greytak
Advocacy Director

[5] *See* Letter from Transparency International EU to the Securities and Exchange Commission, July 16, 2019, available at https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cll6-6028279-191210.pdf.

[6] If anything, inconsistent requirements across jurisdictions would only complicate reporting, as many extractive companies operate in multiple jurisdictions. As one part of a global network, our organization is particularly cognizant of the importance of consistency across borders.