Calvert
INVESTMENTS

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March 1, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Murphy,

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

We are writing to share our comments regarding the proposed rules for Disclosure of Payments by Resource Extraction Issuers issued on December 15, 2010. Our comments follow a previous submission to the Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") rulemaking process made to the Commission in coordination with the Social Investment Forum (SIF) on November 15, 2010[1] and a meeting with several members of the Division of Corporation Finance at the Commission's offices in Washington, DC on September 23, 2010[2]. Our November 15, 2010 submission is included with this comment for reference as Exhibit A.

Calvert Asset Management Company, Inc. is a diversified financial services company with more than $14.8 billion in assets under management as of February 28, 2011 that offers one of the largest families of sustainable and responsible mutual funds in the U.S. Calvert has been a strong advocate for the amendments to the Securities Exchange Act of 1934 ("Exchange Act") mandated by Section 1504 of the Dodd-Frank Act, since they were first introduced in the House of Representatives Financial Services Committee as the Extractive Industries Transparency and Disclosure Act (H.R. 6066) in September 2008. Since that time, Calvert has taken a leading role in engaging Congress, other investors, industry representatives, and the Publish What You Pay coalition in building the case for greater disclosure of extractive industries payments to governments of domicile countries. In April 2010, Calvert released a briefing paper[3] regarding the materiality of the disclosure required by Energy Security through Transparency Act (S. 1700) – ESTT, the most recent predecessor to Section 1504. The briefing paper is included with this submission for reference as Exhibit B.

While Calvert is impressed with the proposed rules' overall fidelity to the text of Section 1504 and its clear legislative intent, we provide the following comments which are intended to optimize the benefit investors should realize from this critical amendment to the Exchange Act.

Calvert's comments are confined to the questions of greatest salience to the interests of investors and where we believe our views would be of value. Calvert's responses are guided by our well-documented position that investors do not have access to the sufficiently detailed, reliable, consistent, and comparable data regarding host government payments, such as taxes,

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11 Letter to Meredith Cross Director Division of Corporate Finance Securities and Exchange Commission. Calvert Asset Management Company, Inc. and Social Investment Forum. Re: Specialized Disclosures: Title XV Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. November 15, 2010. http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-49.pdf.

22 Memorandum of Division of Corporation Finance U.S. Securities and Exchange Commission. September 23, 2010. http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-24.pdf.

33 Bugala, Paul. "Materiality of Disclosure Required by the Energy Security Through Transparency Act." April 2010. http://www.calvert.com/NRC/literature/documents/10003.pdf.

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royalties and bonuses to account for the distinct material social, political and regulatory risks confronted by resource extraction issuers.

As noted above, our November 15, 2010 letter to the Commission and April 2010 briefing paper have been included with this submission as references and to provide further context and substantiation for our following answers.

Exemptions for Small Entities, Foreign and Asset-Backed Issuers
Comments regarding questions 1 to 5 and 54 to 60

Drawing on our belief in the necessity of investment information that is as consistent and comparable as possible and the legislative intent that the disclosure mandated by Section 13(q) be as broad as possible[4], Calvert suggests that great caution be exercised when considering providing exemptions to smaller reporting companies, foreign private issuers or asset-backed issuers. The proposed rule currently does not provide any reporting exemptions for issuers in any of these circumstances and this choice should enhance the consistency and comparability of the data yielded by Section 13(q).

Small reporting companies and foreign private issuers are exposed to significant political and regulatory risks and their exclusion from the disclosure requirements would undermine the value of this reform to investors. For example, according to the Metals Economics Group, junior mining companies (with annual revenues of less than $50 million) accounted for more than half of worldwide mining exploration budgets from 2002 to 2008[5]. The exploration phase of a mining project often includes high-risk engagement with host governments on financial and contract considerations and demanding human rights circumstances such as resettlement. Without Section 13(q) disclosures, investors will not the have sufficient information to assess these risks fully. Further, junior mining companies that would approach a small reporting company or smaller entity exemption's parameters are likely to be engaged in operations in only one country, which would require fairly simple disclosure of what should be routinely audited payments.

Many smaller reporting companies and smaller entities are already compelled to make disclosures similar to those mandated by Section 13(q). For example, mineral leaseholders operating on federal land in the United States are required to report royalty and related production information to the Department of the Interior using Form: MMS-2014[6]. Calvert notes that the American Petroleum Institute (API) also indicates its support for required Section 13(q) compliance of "all registrants with (American Depository Receipts)" in its January 28, 2011 submission to the Commission[7].

Calvert believes asset-backed issuers do not differ sufficiently in their reporting relationship to the Commission or in their reporting requirements to merit the omission of the proposed

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[4] Statement of Senator Cardin in support of Amendment No. 3732 to Restoring American Financial Stability Act (S3217), 111 Cong. Rec. S3316 (daily ed. May 6, 2010).
Floor statement of Senator Lugar during Senate debate of the Restoring American Financial Stability Act. May 17, 2010. At 4:51:35. http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598156901.
SEC. 15 U.S.C. § 78m(q)(1)(C).
[5] Metal Economics Group. "World Exploration Trends." (2010) Page 4. http://www.metalseconomics.com/pdf/WET%202010%20(English).pdf.
[6] 30 CFR § 210.10.
[7] Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission. American Petroleum Institute (API). Re: Proposed Rule: [DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS. RELEASE NO. 34-63549; FILE NO. S7-42-10.] January 28, 2011. http://www.sec.gov/comments/s7-42-10/s74210-10.pdf.

resource extraction payment disclosure in their annual reports on Form 10-K. Further, lack of accountability for asset-backed issuers would run completely contrary to the spirit of the Dodd-Frank Act itself.

Overall, the Commission's own calculations of the estimated changes in the annual compliance burden represented by the collection of information for Exchange Act annual reports as a result of Section 13(q) indicate only a 0.33% increase in professional costs over the current estimate of the costs associated with compliance using forms 10-K, 20-F and 40-F[8]. Calvert believes this is a very modest increase relative to the benefits acknowledged by investors, industry representatives, and other stakeholders with an interest in the optimal implementation of Section 13(q). During Newmont Mining's third quarter earnings call on July 27, 2010, Chief Financial Office Russell Ball responded to a question about the impact of Section 13(q) on his company by saying: "There's nothing in that legislation we don't do today. So for our impact, it's really *de minimis*. . . . We already essentially publish what we pay so we actually welcome it, the transparency. So in this case, we're forcing more legislation, quite frankly [9]." In fact, Newmont has been a longtime supporter of the type of mandatory disclosure required by Section 13(q). When the standalone legislation that was the basis for Section 13(q) was introduced in the Senate on September 23, 2009, Dave Baker, Vice President and Chief Sustainability Officer for Newmont Mining Company, provided the following statement of support, "The responsible development of mineral resources can bring great benefit to a country and its people, but only when good governance is in place to monitor the distribution of those benefits. By introducing greater transparency into the process, we believe this legislation can help promote increased accountability which is in everyone's best interests[10]."

Definition of "Commercial Development of Oil, Natural Gas, or Minerals"
Comments regarding questions 6 to 11

As set forth in the Calvert/SIF submission to the Commission on November 15, Calvert understands "commercial development" to include upstream activities involved in the exploration and production of resources, midstream activities involved in the trading and transport of resources, and, downstream activities involved in the refining, ore processing and marketing of resources. A definition that includes all of the significant operations of a company with a given country should yield payment information that can be used to accurately assess political, regulatory and tax risks on a project and country level. However, Calvert agrees with the Commission that a definition of commercial development need not include activities such as the manufacturer of a product used in the commercial development of oil, natural gas, or minerals.

Definition of "Payment"
Comments regarding questions 12 to 38

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[8] Calculation based on Commission estimates included in the proposal. $11,857,600 (Increase in Professional Costs) / $3,629,681,080 (Proposed Professional Costs)=0.33%. Proposed Rule: [Disclosure of Payments by Resource Extraction Issuers. Release No. 34-63549; FILE NO. S7-42-10.] U.S. Securities and Exchange Commission. December 15, 2010. http://www.sec.gov/rules/proposed/2010/34-63549.pdf.
[9] Newmont Mining Q2 2010 Earnings Call Transcript. July 29, 2010. http://seekingalpha.com/article/217215-newmont-mining-q2-2010-earnings-call-transcript?part=qanda.
[10] Press Release. "Bipartisan bill proposes simple SEC rule change to help stabilize U.S. energy sources and raw materials." Publish What You Pay US. September 23, 200. http://www.publishwhatyoupay.org/en/resources/bipartisan-bill-proposes-simple-sec-rule-change-help-stabilize-us-energy-sources-and-raw-m.

Calvert agrees with the Commission's proposed definition of payment and the list of payment types. Information regarding company payments of royalties, taxes and production entitlements on a project level may be used to model and benchmark a company's relative exposure to specific risks including political risks, such as those associated with production disruptions due to conflict and the expropriation of assets or economic risks involving changes in exchange rates and inflation. Further information regarding the size and timing of payments, such as signature bonuses, provides insight into whether and how these payments will influence development costs or operating cash flow[11].

Tax information disclosure not only provides investors with an understanding of relative exposure to internal risk, but also provides evidence to shareholders that issuers have an efficient capital structure and that the company is doing all it can to provide an attractive return on investment, as noted in Xtrata's supplementary tax disclosures[12]. Anglo American has also recognized the value of tax payment disclosure with some similarity to what is called for by Section 13(q), as the company provides country-level tax payment disclosures intended to demonstrate the company is "maintain(ing) constructive partnerships with tax authorities as this can result in the more timely resolution of any disputes and, in some cases, prevent disputes arising in the first place[13]." Rio Tinto also provides supplementary tax disclosures to reflect the company's total tax contribution, a significant portion of which is paid to local and regional governments, as these exceed the tax amounts shown in its financial statements which include only taxes on profits, principally corporate income tax[14].

PricewaterhouseCoopers (PwC) has developed a practice called Total Tax Contribution, in which it advises clients to disclose their payments to host governments to enhance their own accounting and to validate the contributions made in the domicile country to regulators and the general population. PwC literature regarding the practice emphasizes the following points.

> Having a clear understanding of its total tax contribution can enable a business to make better informed decisions, demonstrate its wider social and economic impact and better monitor and manage tax risk.
> . . .
> In PwC's view, every mining company needs to have this on a regular basis for all its operating markets. It is essential management information and may also be helpful to inform communication and engagement with government and other key stakeholders[15].

In *Total Tax Contribution: What is your company's overall tax contribution?*, PwC alludes to the growing list of regulations and laws intended to ensure that companies make adequate contributions to public finances by curtailing activities such as tax avoidance. PwC points out that the negative perceptions that lead to such laws are aggravated by the lack of information in the public domain about precisely what taxes and how much tax companies pay.

Calvert also believes disclosure of in-kind payments and similar production-based benefits streams may be reported in terms of volumes with a note about associated prices based on the

[11] International Accounting Standards Board. "Discussion Paper on Extractive Activities." April 10, 2010. http://www.iasb.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A10D62EB5DDB99/0/DPExtractiveActivitiesApr10.pdf.
[12] "Sustainability Report 2009." Xtrata. 2010. http://www.xstrata.com/assets/pdf/x_sustainability_2009.pdf.
[13] "Report to Society 2009 ." Anglo American. 2010. http://www.angloamerican.com/aal/siteware/docs/sd_report_2009.pdf.
[14] Rio Tinto Web Site. "Socioeconomic development." Accessed February 23, 2011. http://www.riotinto.com/ourapproach/17213_socioeconomic_development_17363.asp.
[15] "Total Tax Contribution: What is your company's overall tax contribution?. "PricewaterhouseCoopers. Accessed February 23, 2011. http://www.pwc.co.uk/pdf/TTCframework.pdf.

average of prices of the relevant resource at the beginning of each month in the 12-month period prior to the end of the reporting period, similar to the Commission's recommended valuation calculation described in "Modernization of Oil and Gas Reporting; Final Rule[16]."

Relating to questions 27 to 38, Calvert believes the term "not *de minimis*" should not be equated with material. *De mininis* 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[17]." In contrast, the concepts of materiality outlined by the Commission's Staff Accounting Bulletin No. 99, U.S. Supreme Court case TSC Industries v. Northway, Inc., and FASB Concepts Statement No. 2, 125 clearly indicate a threshold that is notably higher than a quantity that is so small as to be 'administratively impracticable.'

Calvert also believes that reporting of payments on both an accrual and cash basis would enable filers to make disclosures consistent with U.S. GAAP, while providing disclosure that stakeholders may more easily compare with corresponding government receipts. Consolidated financial statements already include examples of accruals and cash basis reporting, such as the reporting of tax changes in the income statement on an accrual basis and the reporting of cash tax paid in the cash flow statement on a cash basis.

Definition of "Project"
Comments regarding questions 39 to 48

In a comment letter submitted on December 1, 2010, Senator Benjamin Cardin (D-Md.) affirmed that Section 13(q) "purposefully requires reporting at the project level, disaggregated by payment stream[18]." Calvert believes the term "project" should be clearly defined, so as to yield consistent and comparable disclosure. The definition should be linked to issuer payments as defined previously and as required by the relevant contract or license. Our concept of project does not entail the disclosure of the commercial terms of a contract, but only the payments related to a contract, as defined in the statute. Calvert is aware that this degree of disclosure raises concerns regarding competitive disadvantage among some stakeholders, but the competitors of a covered issuer would not be able to discern the terms of a contract or license without addition information regarding production, abatements, the terms of tax holidays, and other special considerations.

In our November 15, 2010 comment letter, Calvert/SIF suggested a broader definition of a project as any oil, natural gas or mineral exploration, development, production, transport, refining or marketing activity from which payments above the *de minimis* threshold originate at the lease or license level, except where these payments originate from the entity level. It is important that the project definition include the full extent of relevant payments made by a company in a particular country. As outlined in our submission to the Commission, the information disclosed pursuant to Section 13(q) is used in equity valuation that involves assessment of an entire entity and not just its upstream or exploration and production operations, relevant payments related to a resource extraction company's entire operations are a necessary element of meaningful disclosure.

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[16] U.S. Securities and Exchange Commission. 17 CFR Parts 210, 211 et al. "Modernization of Oil and Gas Reporting," Final Rule. www.sec.gov/rules/final/2009/33-8995fr.pdf.
[17] 26 USC § 132(e)1.
[18] Letter to Mary Shapiro, Chairman, U.S. Securities and Exchange Commission. Benjamin Cardin, U.S. Senator, Maryland. December 1, 2010. http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-94.pdf.

Calvert believes there are some very useful similarities between its assessment of the project definition and that suggested by the American Petroleum Institute (API) in its submission to the Commission on December 9, 2010[19]. However, Calvert is particularly concerned that the API's reference to "resource basin" may be interpreted to include payments to several different countries or licensing jurisdictions if mineral trends such as those cross several countries in Central America, for example, are consider resource basins. For this reason, Calvert believes that associating the project definition with a particular lease or license is optimal, this methodology should also clarify which and what type of payments should be associated with a particular project. The definition of a project that is associated with a particular lease or license need not require well-by-well or mine-by-mine disclosure. In most jurisdictions, a lease or license is tied to a concession that may be associated with a number of wells or mines. Calvert is also concerned that the activities indicated in the API definition seem to be exclusively associated with the upstream phase of resource development, which we believe is inconsistent with the statute's definition of "commercial development" that includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas or minerals, or the acquisition of a license for such activity, as determined by the Commission."

Definition of "Foreign Government"
Comments related to questions 61 to 67

Calvert agrees with the Commission's proposal to define the term "foreign government" consistent with the statute and to specifically include foreign subnational governments in the definition. We agree with the Commission that this definition was intended to capture payments to subnational foreign governments. As noted above, in its supplementary tax payment disclosure, the mining company Rio Tinto indicates that a significant proportion of taxes are paid to local and regional governments[20]. In its supplementary reporting, Xstrata also indicates it pays "taxes and royalties . . . to local, regional and national governments" and "some of (the company's) operations have profit-sharing or other financial agreements with local communities[21]." It follows that issuers with similar international operations are also likely to make significant payments to foreign subnational governments. We also agree with the Commission's assessment that the statute's reference to "Federal Government" refers to payments make to the U.S. Federal Government.

Form and Location of Disclosures
Comments related to questions 68 and 86

Senators Benjamin Cardin (D-Md.)[22] and Richard Lugar (R-In.)[23] have indicated in floor statements that the Congressional intent for Section 13(q) was to achieve disclosure that was as consistent and comparable as possible. It follows that the reference in Section 13(q) 2A that

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[19] API suggested defining project to mean "technical and commercial activities carried out within a particular geological basin or province to explore for, develop and produce oil, natural gas or minerals. These activities include, but are not limited to, acreage acquisition, exploration studies, seismic data acquisition, exploration drilling, reservoir engineering studies, facilities engineering design studies, commercial evaluation studies, development drilling, facilities construction, production operations, and abandonment. A project may consist of multiple phases or stages." Letters from American Petroleum Institute (December 9, 2010). Letter to Kathleen Casey, Commissioner, Securities and Exchange Commission. American Petroleum Institute (API). December 9, 2010. http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-105.pdf.
[20] Rio Tinto Web Site. "Socioeconomic development." Accessed February 23, 2011. http://www.riotinto.com/ourapproach/17213_socioeconomic_development_17363.asp.
[21] "Sustainability Report 2009." Xtrata. 2010. http://www.xstrata.com/assets/pdf/x_sustainability_2009.pdf.
[22] Statement of Senator Cardin in support of Amendment No. 3732 to Restoring American Financial Stability Act (S3217), 111 Cong. Rec. S3316 (daily ed. May 6, 2010).
[23] Floor statement of Senator Lugar during Senate debate of the Restoring American Financial Stability Act. May 17, 2010. At 4:51:35 http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598156901.

“the Commission shall issue rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer . . .” should refer to the comprehensive summary of a registered issuer’s annual operations provided in Forms 10-K, 20-F, 40-F, and other annual Exchange Act reports.

The text of Section 13(q) provides several further indications that the intended location of the required disclosure is Forms 10-K, 20-F, 40-F, and other annual Exchange Act reports. For example, Section 13(q) 2d(i) also requires that “The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in *the* (emphasis added) annual report of a resource extraction issuer.” As of June 15, 2011, all issuers filing an annual report must employ the Interactive Data Format, only Forms 10-K, 20-F and 40-F enable an issuer to meet this requirement[24]. Further, both the preceding excerpt from Section 13(q) and Section 13(q)2d plainly state that the mandated disclosures are to be made in “*the* (emphasis added) annual report of a resource extraction issuer.” These references clearly indicate that Congress did, in fact, specify that the disclosures required by Section 13(q) should be filed using the issuers annual report using Forms 10-K, 20-F and 40-F.

However, for those registrants with Over-The-Counter American Depository Receipts (OTC ADRs) or that are required to furnish an annual report pursuant to Section 12g3-2(b), it may be expedient to require Section 13(q) disclosures through Form 6-K in the interest of ensuring the data provided to investors is as comprehensive and consistent as possible. Such disclosure is consistent with the American Petroleum Institute’s and ExxonMobil’s responses to Question 72 in their individual January 31, 2011 submissions, which advise the Commission to issue final rules "Requiring all registrants with [ADRs]...to comply with Section 13(q)[25].

Permitting resource extraction issuers to file an amendment to the annual report within a specified period of time subsequent to the due date of the report or file a separate report entirely would likely increase the burden on companies in terms of professional hours dedicated to Section 13(q) disclosures and increase the confusion of investors who would expect such routine and material financial disclosures to appear among the primary documents of an issuers annual Exchange Act report.

Finally, it bears noting that the Commission’s “compilation” of disclosures made pursuant to Section 13(q) as outlined in paragraph 3(A) is in no way intended to take the place of disclosures by individual resource extraction issuers in the annual reports they file with the Commission, stated very clearly in paragraphs 2(A) and 3(B) of Section 13(q). The statute also does not indicate that the compilation of Section 13(q) disclosures should involve aggregation of the associated data in terms of payment type or other parameters.

“Filed” Versus “Furnished”

Comments related to questions 87 to 91

The plain language of Section 13(q) includes no indication that disclosures made pursuant to this statute should be “furnished” to the Commission, rather than “filed.” In fact, the regulations

[24] SEC. 15 U.S.C. § 78m(q)(1)(C).
Securities and Exchange Commission. —Final Rule: Interactive Data to Improve Financial Reporting. February 9, 2009. See: http://www.sec.gov/rules/final/2009/33-9002fr.pdf.

[25] Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission. American Petroleum Institute (API). January 28, 2011. http://www.sec.gov/comments/s7-42-10/s74210-10.pdf.

indicate “a ‘resource extraction issuer’ means an issuer that is required to file an annual report with the Commission.” Calvert believes the Section 13(q) disclosures should be filed as exhibits and incorporated by reference into any filing under the Securities Act or the Exchange Act, which would create liability under Exchange Act Section 18, Securities Act Section 11, and related regulations. We take this view because of reliance as investors on sufficiently reliable and comparable financial information that requires the application of an appropriately rigorous standard.

The disclosures required by Section 13(q) are qualitatively different from the documents furnished to the Commission and referenced in the proposed rule, such as the certifications required to be submitted as Exhibit 32 to Exchange Act documents under Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, the Audit Committee Report required by Item 407(d) of Regulation S-K and the Compensation Committee Report required by Item 407(e)(5) of Regulation S-K[26]. Instead, the Section 13(q) disclosures materially and substantially improve investment decision making[27]. The materiality of the Section 13(q) disclosures and their role in investment decision making were substantiated through the legislative process, emphasized in statements of the Congressional intent[28], and exemplified through Calvert’s very specific discussion of its investment methodology in the November 15 submission that included specific detail regarding the process of developing political and regulatory risk-adjusted equity valuations of resource extraction issues[29].

The Section 13(q) disclosures are similar to those required pursuant to the SEC Final Rule on Modernization of Oil and Gas Reporting, which were “designed to modernize and update the oil and gas disclosure requirements to align them with current practices and changes in technology[30].” This rule was necessary to provide a meaningful and comprehensive understanding of oil and gas reserves, including bitumen extracted from oil sands and oil and gas extracted from coal and shale using new technologies, and to facilitate comparisons between companies. Similarly, Section 13(q) disclosures are necessary to provide risk-adjusted estimates of production that reflect the new realities of natural resource development that often takes place in environments where political, regulatory and tax risks are material[31].

Contrary to the suggestion of question 90, Calvert does not believe Form 8-K is an appropriate location for the disclosures required by Section 13(q) as clearly indicated by the Congressional intent and materiality of these disclosures as referenced above. Form 8-K is the venue for time-sensitive disclosures of unique changes to a company, such as mergers or acquisitions, name or address change, bankruptcy proceedings, and lawsuits. The Section 13(q) outputs are standard, material financial disclosures that should be included in the primary documents filed in the Exchange Act annual report.

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[26] Proposed Rule: Disclosure of Payments by Resource Extraction Issuers. Release No. 34-63549; File No. S7-42-10. U.S. Securities and Exchange Commission. December 15, 2010. http://www.sec.gov/rules/proposed/2010/34-63549.pdf

[27] Bugala, Paul. “Materiality of Disclosure Required by the Energy Security Through Transparency Act.” April 2010. http://www.calvert.com/NRC/literature/documents/10003.pdf.

[28] Statement of Senator Cardin in support of Amendment No. 3732 to Restoring American Financial Stability Act (S3217), 111 Cong. Rec. S3316 (daily ed. May 6, 2010).

[29] Letter to Meredith Cross Director Division of Corporate Finance Securities and Exchange Commission. Calvert Asset Management Company, Inc. and Social Investment Forum. November 15, 2010. http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-49.pdf.

[30] Final rule: MODERNIZATION OF OIL AND GAS REPORTING. Release Nos. 33-8995; 34-59192; FR-78; File No. S7-15-08. U.S. Securities and Exchange Commission. December 31, 2001. http://www.sec.gov/rules/final/2008/33-8995.pdf

[31] Bugala, Paul. “Materiality of Disclosure Required by the Energy Security Through Transparency Act.” April 2010. http://www.calvert.com/NRC/literature/documents/10003.pdf.

Conclusion

Calvert would like to reiterate our appreciation for the opportunity to comment on this critical rulemaking process and look forward to the announcement of the Commission's final rules. Please do not hesitate to contact us should you have questions or would like to discuss these comments.

Sincerely,

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November 12, 2010 **Exhibit A**

Meredith Cross
Director
Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")

Dear Ms. Cross:

We are writing to provide further perspective on our views as investors regarding the rulemaking process for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), following our meeting with your colleagues at the Commission's offices in Washington, DC on September 23, 2010[1]. The following comments are submitted by Calvert Asset Management Company, Inc. in coordination with the Social Investment Forum (SIF). Calvert is a diversified financial services company with more than $14.7 billion in assets under management that offers one of the largest families of sustainable and responsible mutual funds in the U.S. SIF is the US membership association for professionals, firms, institutions and organizations engaged in socially responsible and sustainable investing. SIF and its members advance investment practices that consider environmental, social and corporate governance criteria to generate long-term competitive financial returns and positive societal impact.

Calvert and the members of SIF have been strong advocates for the amendments to the Securities Exchange Act of 1934 ("Exchange Act") mandated by Section 1504 of the Dodd-Frank Act, since they were first introduced in the House of Representatives Financial Services Committee as the Extractive Industries Transparency and Disclosure Act (H.R. 6066) in September 2008. Since that time, Calvert has taken a leading role in engaging Congress, other investors, industry representatives, and allies in the Publish What You Pay coalition in building the case for greater disclosure of extractive industries payments to governments of domicile countries. In April 2010, Calvert released a briefing paper[2] regarding the materiality of the disclosure required by Energy Security through Transparency Act (S. 1700) – ESTT, the most recent predecessor to Section 1504.

In brief, the paper (which is submitted with this letter) points out that the world's exploitable conventional energy sources are receding further into areas where large-scale resource extraction has not taken place recently or in a comparable manner. Unfortunately, many of these resource-producing operating environments pose regulatory, taxation, political, and reputational risks that current reporting required of resource extraction issuers does not address adequately. These concerns extend to the operations of resource extraction issuers in relatively stable developed countries as well, because financial risks associated with unanticipated natural resource tax and permitting policy changes up to and including resource nationalization persist. Although some companies have taken productive voluntary steps to improve disclosures similar to those required by Section 1504, investors do not have access to the sufficiently detailed, audited, consistent, and comparable data regarding host government payments, such as taxes, royalties and bonuses to account for these risks mentioned above and outlined in the attached briefing paper that this important provision of the Dodd-Frank Act provides.

Materiality of Disclosures Required by Section 1504

[1] http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-24.pdf
[2] Bugala, Paul. "Materiality of Disclosure Required by the Energy Security Through Transparency Act." Calvert Investments. April 2010. http://www.calvert.com/NRC/literature/documents/10003.pdf.

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During the last two years, the launch of the Calvert Large Cap Value Fund[3] and Calvert's broadening integration of sustainability and traditional equity analysis in select internally-managed portfolios have intensified our need for the information necessary to assess the material political and regulatory risks that are prevalent in the extractive industries.

The following is one example of how the data disclosed pursuant to Section 1504 may be used in Calvert's investment decision-making:

When undertaking equity valuations of extractive industries issues using a discounted cash flow model, Calvert may discount future production of a company's projects using a combination of indicators of a domicile country's relative economic dependence on its extractive industries sector. These indicators may include fuel exports as a percentage of merchandise exports and the extractive industries relative contribution to gross domestic product, political and social risk benchmarking data from Transparency International's Corruption Perception Index[4], Freedom House's Freedom in the World Index[5], and the World Bank's Rule of Law and Political Stability and Absence of Violence Rankings. Once a domicile country's relative exposure of social, political and regulatory risks related to the extractive industries is determined, it is compared to historical data of worst-case downside scenarios related to social, political or regulatory instability or capriciousness prompted or abetted by government corruption or a lack of resource revenue transparency. The resulting data is used to discount future production, which is often provided by management, at comparable projects within a particular domicile country.

The calculations and assumptions made in this process, especially those regarding a particular project's exposure to political and other transparency-related risks, would be enhanced greatly with the specific data provided by Section 1504 as it is written. The usefulness of this data is certainly not limited to the above example. For instance, the specific data provided by Section 1504 would also be very useful in the accurate calculation of cost curves that determine whether and for how long a project may remain economic.

Shortcomings of Currently Available Data
The government payment information available through Extractive Industries Transparency Initiative (EITI) disclosures sets a useful but limited precedent for the type of disclosure necessary for investors to access and account for the risks described above. Unfortunately, only five countries (Azerbaijan, Ghana, Mongolia, Liberia, and Timor-Leste) have been judged fully compliant with EITI standards and the disclosure resulting from the initiative is not intended for the use of investors and other capital providers. As a result, this information is of limited use in equity valuation, as it is often dated, available at staggered and often delayed intervals, sometimes insufficiently disaggregated, inconsistent from one reporting country to another, and not consistently audited to international standards. The July 2009 World Bank report "Toward Strengthening EITI Reporting" points out that the variable quality and consistency of EITI reporting may be detrimental to the initiative's credibility as a reporting standard[6]. As will be noted later in this letter, Section 1504 implementation should have the positive follow-on effect of strengthening EITI reporting quality and extending the initiative's reach.

The public reporting of payments to the governments currently required by the Commission also supplies investors with information that is insufficient to fully assess and account for all political and regulatory risks. Currently, companies are required to comply with the Federal Accounting Standards Board (FASB) Standard 69, paragraph 12, which requires that: "The results of operations for oil and gas producing activities shall be disclosed for the year. That information shall be disclosed in the aggregate and for each geographic area for which reserve quantities are disclosed[7]."

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[3] The holdings of which include the issues of several leading extractive industries companies.
[4] http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table
[5] http://www.freedomhouse.org/uploads/fiw10/FIW_2010_Tables_and_Graphs.pdf
[6] http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266963339030/eifd14_strengthening_eiti.pdf,
[7] Statement of Financial Accounting Standards No. 69. Disclosures about Oil and Gas Producing Activities. Financial Accounting Standards Board. http://www.fasb.org/pdf/fas69.pdf.

Companies may comply with this standard by reporting their payments to domicile governments, such as taxes, royalties and bonuses, in aggregated categories such as "production costs excluding taxes" and "taxes other than income." These payments are reported on a country-level where a company's operations are very substantial, but otherwise they are further aggregated on a geographic basis that is often at a continental or broader level. The resulting disclosure is not very useful in determining the extent of a company's operations in, or its ongoing financial arrangements with, a given country. This inadequate disclosure makes it difficult to determine reputational, regulatory or tax risk.

Other U.S. GAAP-mandated measures of an extractive industries entities' operations in a particular country of domicile, such as the disclosure of revenues and long-lived assets through ASC 280 or Regulation S-K Item 101, 102, 303, and 1204, provide information that is either insufficiently quantified, consistent or specific to determine an entities exposure to reputational, regulatory and taxation risks as described above.

Accurate, Consistent and Comprehensive Disclosure from Covered Entities:

In order to generate disclosure of sufficient detail and consistency, Calvert and SIF recommend that the Commission consider the following when interpreting the Congressional intent of Section 1504 as it is written.

Form and Reliability of Reporting

- Section 1504 requires "each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer." Section 1504 defines 'resource extraction issuer' as an issuer that "is required to file an annual report with the Commission" and "is engaged in the commercial development of oil, natural gas, or minerals."

  Therefore, disclosure should be required of those entities that file an annual report using forms 10-K, 20-F or 40-F as well as entities with Over-The-Counter American Depository Receipts (OTC ADRs) that file an annual report with the Commission uses the form Annual Report to Security Holders (ARSs), such as Lukoil Company[8], or any other resource extraction issuers that are required to furnish an annual report pursuant to Section 12g3-2(b) of the Exchange Act.

- Calvert and SIF suggest that a distinct section of the consolidated financial statement that is subject to Sarbanes-Oxley Section 404 controls may be the most useful location for the disclosures required by Section 1504 and that these disclosures be made on both an accruals and cash basis to address both the public interest and investors need for this information, as the Commission is compelled to do pursuant to Section 3(f) of the Exchange Act.

- Calvert and SIF believe that due to the lack of applicable precedent regarding the de minimis concept featured in Section 1504, a rule-based definition including a particular payment threshold is needed to clarify the reference to the disclosure of payments that are "not de minimis."

  The Commission may set this de minimis threshold at a level similar to the one used by the London Stock Exchange (LSE)'s Alternative Investment Market (AIM) of £10,000 (or about $15,000) for disclosure of any payment "made to any government or regulatory authority" by an oil, gas or mining company registrant[9].

[8] Lukoil Company. "Form ARS - Annual Report to Security Holders." Filed June 25, 2008. U.S. Securities and Exchange Commission. http://www.sec.gov/Archives/edgar/data/940173/999999999708029670/9999999997-08-029670-index.htm
[9] AIM Note for Mining, Oil and Gas Companies (June 2009), at 4 [hereinafter "AIM Note"], at http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf.

- The Commission is called to make determinations of materiality in several references in Section 1504.

  As the concept of materiality is open to such broad interpretation it seems appropriate to provide a specific, rules-based definition of a materiality, based on relevant precedent such as the Commission Staff Accounting Bulletin No. 99. It is also worth noting that a company's exposure to many of the risks referenced in this letter is not necessary correlated to the scale of the entity's investment or revenue or other similar quantitative measure in a domicile country. Therefore, Calvert and SIF suggest that consistent and comparable disclosure of the payments required by the ESTT should include all of a company's operating countries regardless of whether they are considered material by quantitative measures[10].

  Scope of Reporting

- Section 1504 identifies the "(c)ommercial development of oil, natural gas, or minerals" as the "exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the (Commission)."

  In order to provide data necessary for investment analysis, the above may be understood to include all qualifying payments related to the operation of any entity compelled to make disclosure according to this mandate. Specifically, this would include payments related to the upstream activities involved in the exploration and production of resources, midstream activities involved in the trading and transport of resources, and, downstream activities involved in the refining, ore processing and marketing of resources. Because the country-level risk discounting involved in the equity valuation such as what is described above involves assessment of an entire entity and not just its upstream or exploration and production operations, payments related to a resource extraction company's entire operations are a necessary element of meaningful disclosure. The Commission's January 9, 2010 Modernization of Oil and Gas Reporting final rule interpretation requires disclosure of reserves by final product rather than the pre-processed resource extracted from the ground, because "the economics of the processing plant are critical to the registrant's evaluation of the economic producibility of the resources[11]." Similarly, the economics of the processing plant and other downstream operations are also significantly influenced by the risks associated with resource revenue disclosure as required by Section 1504, which should prompt similar treatment of downstream disclosures.

- Section 1504 requires payment disclosure "made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals."

  The Commission's definition of a development project from Regulation S-X 4-1 (a)(6) may be too exclusively focused on the payments associated with resource development. Calvert and SIF suggest a broader definition of a project as any oil, natural gas or mineral exploration, development, production, transport, refining or marketing activity from which payments above the de minimis threshold originate, as defined later in this letter, at the lease or license level, except where these payments originate from the entity level. Among the strengths of this definition is that it ensures consistent treatment of oil, gas and mining issuers in the implementation of Section 1504.

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[11] U.S. Securities and Exchange Commission. 17 CFR Parts 210, 211 et al. "Modernization of Oil and Gas Reporting," Final Rule. www.sec.gov/rules/final/2009/33-8995fr.pdf

- Section 1504 guides the Commission to require disclosure of payments that "include taxes, royalties[12], fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for commercial development of oil, natural gas, or mineral."

  Calvert and SIF trust the Commission will consider the necessity of comprehensive and comparable data for effective investment analysis in its interpretation of the payments to be disclosed and whether and to what extent exemptions to the payment reporting requirements of Section 1504 may be issued through Section 36 of the Exchange Act or other related provisions. In making determinations regarding exemptions based on conflicts with domicile government disclosure prohibitions, the Commission should also bear in mind the prevalence of clauses in resource development contracts that allow companies to comply with home-country regulations such as the Dodd-Frank Act, the openness to disclosure in domicile countries that have or are in the process of implementing EITI, and voluntary disclosure undertaken by governments themselves in countries such as Angola and Brazil. All of these factors greatly reduce the likelihood that any natural resource development project would need to be abandoned in order for a company to comply with Section 1504.

Implementation of Section 1504 Will Strengthen EITI
The Extractive Industries Transparency Initiative (EITI) is the single most important global platform for addressing the core governance, rule of law and corruption issues through revenue transparency. Although the potential political and regulatory stability achieved through EITI is beneficial to investors, as noted above, the disclosure required through the initiative has significant shortcomings as an input for an investor's analysis of political, regulatory and other related risks, as it is not designed or implemented for the benefit of investors and therefore lacks the necessary depth, breadth and comparability. The EITI is a global, voluntary framework through which governments and extractive industries companies disclose their reciprocal payments, which in turn they reconcile with the active involvement of local civil society. Implementation of Section 1504 consistent with Congressional intent should bolster and expand the impact of EITI, as this critical initiative continues to wrestle with the challenges of government, company and community collaboration. In particular, the reach and consistency of reporting pursuant to Section 1504 will provide a robust source of information for this initiative and an example of best practice in many respects to inspire and guide EITI implementation.

Benefits of Risk Management Outweigh the Costs of Section 1504
Section 1504 creates substantial value as a means of risk recognition and mitigation for both investors as well as resource extraction issuers registered with the Commission. The disclosure of the data required pursuant to Section 1504 should enable investors to have enhanced confidence in management's guidance regarding future production and should attract assets from long-term equity investors to compliant issuers, which should provide greater stability to an issuer's asset base and enable management to make forward-thinking decisions in the interest of investors with the confidence that the outcomes of those decisions will be judged over long-term investment horizons.

There is increasing pressure on companies to be more transparent about their tax policies, positions and tax data generally, independent of Section 1504 and EITI. For example the professional services firm PricewaterhouseCoopers (PwC) has developed a practice called Total Tax Contribution, in which it advises clients to disclose their payments to host governments to enhance their own accounting and to validate the contributions made in the domicile country to regulators and the general population. PwC literature regarding the practice emphasizes the following points.

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[12] Calvert and SIF suggest that royalties-in-kind and similar production-based benefits streams may be reported in terms of volumes with a note about associated prices based on the average of prices of the relevant resource at the beginning of each month in the 12-month period prior to the end of the reporting period, similar to the valuation calculation described in "Modernization of Oil and Gas Reporting; Final Rule." (U.S. Securities and Exchange Commission. 17 CFR Parts 210, 211 et al. "Modernization of Oil and Gas Reporting," Final Rule. www.sec.gov/rules/final/2009/33-8995fr.pdf)

> Having a clear understanding of its total tax contribution can enable a business to make better informed decisions, demonstrate its wider social and economic impact and better monitor and manage tax risk.
> . . .
> In PwC's view, every mining company needs to have this on a regular basis for all its operating markets. It is essential management information and may also be helpful to inform communication and engagement with government and other key stakeholders[13].

In *Total Tax Contribution: What is your company's overall tax contribution?*, PwC alludes to the growing list of regulations and laws intended to ensure that companies make adequate contributions to public finances by curtailing activities such as tax avoidance. PwC points out that the negative perceptions that lead to such laws are aggravated by the lack of information in the public domain about precisely what taxes and how much tax companies pay. Section 1504 will advance the enhancement of accounting and auditing in line with the advice of PwC on this matter and yield the same benefits.

Issuers required to make disclosures pursuant to Section 1504 have themselves embraced the benefits of not only the voluntary reporting mentioned in this letter and outlined in the accompanying briefing paper, but also mandatory disclosure as detailed in Section 1504's predecessor, the ESTT. In a statement issued on the day of ESTT's introduction on September 23, 2009, Dave Baker, Vice President and Chief Sustainability Officer for Newmont Mining Company, said, "The responsible development of mineral resources can bring great benefit to a country and its people, but only when good governance is in place to monitor the distribution of those benefits. By introducing greater transparency into the process, we believe this legislation can help promote increased accountability which is in everyone's best interests[14]."

The benefits mentioned about above and many others are balanced with the costs associated with the accounting and audit adjustments necessary to comply with Section 1504. While the implementation of any regulation requires changes to existing systems, Calvert and SIF agree that disclosure using the eXtensible Business Reporting Language or (XBRL), a variant of eXtensible Markup Language (XML), should simplify compliance over time and diminish associated costs after initial reporting, as the Commission found in its final rule on the interactive data standard[15].

While XML itself is a great start, as it allows data to be tagged and easily identified by users, XBRL provides even greater capabilities to investors, issuers and regulators in defining the meaning of data and text associated with business reporting. XML and XBRL share several important capabilities, as they both enable organizations to exchange data easily independent of the technology platforms that each uses, and both also reduce barriers to businesses reporting continuously. However, XBRL offers at least two other significant benefits to investors, issuers and regulators, such as the Commission. First, it reduces the costs for investors associated with obtaining and assimilating information from issuers, and, at the same time, reduces the costs to issuers submitting data to regulators. Second, XBRL allows far more standardization and harmonization of international business reporting standards, thereby lowering the costs of compliance and reporting for issuers, while making the information far more valuable and easily interpreted and analyzed by investors.

Calvert and SIF would like to reiterate our appreciation for the opportunity to provide input in this critical rulemaking process and look forward to the announcement of the Commission's proposed rules. Please do not hesitate to contact us should you have questions or would like to discuss these comments.

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[13] PricewaterhouseCoopers. Total Tax Contribution: What is your company's overall tax contribution?. http://www.pwc.co.uk/pdf/TTCframework.pdf

[14] http://www.publishwhatyoupay.org/en/resources/bipartisan-bill-proposes-simple-sec-rule-change-help-stabilize-us-energy-sources-and-raw-m

[15] Securities and Exchange Commission. "Final Rule: Interactive Data to Improve Financial Reporting." February 9, 2009. http://www.sec.gov/rules/final/2009/33-9002fr.pdf

Sincerely,

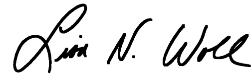

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Exhibit B

Materiality of disclosure required by the Energy Security through Transparency Act

The extractive industries have unique exposure to material country-specific, tax/regulatory, and reputational risks. Exposure to these risks is heightened by the massive capital employed in the extractive industries and the importance of natural resource access and management to the national security and strategic objectives of the United States and other major energy consumers. Despite capital providers' increasing demands for information that would enable a fuller assessment of these risks, current disclosure requirements are inadequate. The Energy Security Through Transparency Act (ESTTA) (S. 1700) would require additional disclosures that would help capital providers to better account for these unique risks in making investment decisions. The disclosures required by the ESTTA could be used by investors to account for material[1] country-specific, tax/regulatory, and reputational risks and would substantially improve investment decision making regarding the extractive industries sector.

Summary of key points:

- ***The extractive industries have unique exposure to material country-specific, reputational, and tax/regulatory risks.*** **(Pages 1 to 4)**

- ***Current disclosure of extractive industries companies' exposure to these risks is inadequate.*** **(Pages 4 to 7)**

- ***The Energy Security Through Transparency Act (ESTTA) (S. 1700) requires disclosure that would help capital providers account for these risks in their investment decisions.*** **(Pages 8 and 9)**

Materiality of Country-Specific Risks

Information regarding company payments of royalties, taxes and production entitlements on a country level may be used to model and benchmark a company's relative exposure to country-specific risks including political risks, such as the production disruptions due to conflict and the expropriation of assets or economic risks involving changes in exchange rates and inflation. Further information regarding the size and timing of payments, such as signature bonuses, provides insight into whether and how these payments will influence development costs or operating cash flow[2].

Shell's experience in Nigeria illustrates this point. The oil and gas output of Shell's subsidiary in Nigeria, the country's largest producer, dropped by 65 percent from 1.05 million barrels per day in 2005[3] to

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[1] Materiality is defined by the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information as:
". . . the magnitude of an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement."

[2] International Accounting Standards Board. "Discussion Paper on Extractive Activities." April 10, 2010. http://www.iasb.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A1-0D62EB5DDB99/0/DPExtractiveActivitiesApr10.pdf

[3] Akwani, Obi. "Shell Cuts Nigerian Jobs by 43 Percent." *IMDiversity*. April 28, 2008. http://www.imdiversity.com/villages/global/business_finance/GlobalBusiness-ShellCutsJobs.asp

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360,000 barrels per day in 2008[4] due to shutdowns caused by conflict in the Niger River Delta. Lost production due to the conflict caused Nigeria to fall behind Angola as Africa's largest crude oil producer in 2009[5] and Shell has made it clear that Nigeria is no longer viewed as of source of growth[6]. The full impact of the Shell's drop in production in Nigeria between 2005 and 2008 and its plans for the country cannot be modeled completely without information regarding the related tax, royalty and other obligations disclosed through the ESTTA. With this information, an investment analyst could adjust his or her production projections for the company and make a more informed decision about the company's future cash flows.

Information disclosed through the ESTTA may also be used to forecast the potential financial implications of disruptions in production, such as those in Nigeria in April 2008. As the market adjusts for the possibility of production disruptions using data provided by the ESTTA and other sources, the likelihood of oil prices shocks, such as those seen in 2008, would decrease as less investment capital flowed to companies with operations in countries where the risk of production disruptions was relatively high.

Materiality of Tax and Regulatory Risks

Understanding a company's taxation, royalty and other related obligations is particularly important in the extractive industries. First, these rates are often higher and subject to more complex and dynamic regulation depending on the country of operation than those of other sectors. Second, analysts evaluating extractive industries companies try to understand how much money has been spent to acquire reserves and to allocate those expenses to production of the resource or company cash flows. Without a country-level appreciation of the tax regime and how the company manages these obligations, analysts may have difficulty judging a company's relative performance and forecasting the cost curves necessary to estimate when the extraction of a resource will become uneconomical and an operation may close.

When a company's operations are in a country where government mismanagement or corruption are prevalent or industry regulations involving taxes and licensing may otherwise be subject to unexpected, unilateral change, disclosures of taxes, royalties and other obligations are particularly important in assessing the quantitative impact of these changes to a particular company's operations. For example, in 2006 the government of Venezuela abruptly raised royalty rates in the country's Orinoco fields from 1 percent to 16.67 percent. With the royalty data provided by the ESTTA, an investment analyst would be able to adjust his or her models to reflect these royalty changes and also may have been able to anticipate that the government of Venezuela would at some point raise its royalty rates from levels that were far below international averages.

There is increasing pressure on companies to be more transparent about their tax policies, positions and tax data generally, independent of this proposed legislation. For example the professional services firm PricewaterhouseCoopers (PwC) has developed a practice called Total Tax Contribution, through which it advises clients to disclose their payments to host governments on a country-by-country basis. The firm's literature regarding the practice includes the following points.

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[4] Mbachu, Dulue and Kwiatkowski, Alexander. "Shell's Nigerian Exports Face 5th Month of Disruption." Bloomberg. June 17, 2009. http://www.bloomberg.com/apps/news?pid=20601085&sid=a__xSA7yEMDA

[5] U.S. Energy Information Administration. "Nigeria Country Analysis Brief." Accessed on March 3, 2010. http://www.eia.doe.gov/emeu/cabs/Nigeria/Oil.html

[6] Herron, James. Dow Jones Newswires. "Shell Sells 3 Nigeria Oil Blocks To Local Companies." January 29, 2010. http://online.wsj.com/article/BT-CO-20100129-713410.html

> Having a clear understanding of its total tax contribution can enable a business to make better-informed decisions, demonstrate its wider social and economic impact and better monitor and manage tax risk.
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> . . .
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> In PwC's view, every mining company needs to have this on a regular basis for all its operating markets. It is essential management information and may also be helpful to inform communication and engagement with government and other key stakeholders. [7]

In *Total Tax Contribution: What is your company's overall tax contribution?*, PwC alludes to the growing list of regulations and laws intended to ensure that companies make adequate contributions to public finances by curtailing activities such as tax avoidance[8]. PwC points out that the negative perceptions that lead to such laws are aggravated by the lack of information in the public domain about precisely what taxes and how much tax companies pay.

Materiality of Reputational Risks

A company's reputation and financial prospects can be harmed if it is perceived as 'not paying its fair share' to a host government or through association with corrupt government practices. Reputational damage may lead to liabilities for external costs associated with a company's operations, greater difficulty in permitting that could lead to project delays or cancelation or the loss of favorable tax status or other forms of government financial assistance[9].

In 2003, the Canadian gold mining company Glamis Gold managed to get the tax status of a maquila or manufacturer in Guatemala[10][11]. As a result of this classification, Montana Explorado, Glamis' local operating company, was exempt from import, value added and corporate taxes. In 2006, following intense global criticism that Montana's operations were not making a sufficient contribution to the economy of Guatemala, Glamis, which acquired by Goldcorp later that year, vacated their maquila status and began paying import, value added and corporate taxes as a mining company was required[12].

It is also worth noting that a company's exposure to reputational risk is not necessary correlated to the scale of the entity's investment in a particular country. This is among the reasons why consistent and

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[7] PricewaterhouseCoopers. *Total Tax Contribution: What is your company's overall tax contribution?*. http://www.pwc.co.uk/pdf/TTCframework.pdf

[8] For example, Section 835 of the Homeland Security Act of 2002 (Public Law 107-296,6 U.S.C 395 prohibits the Department of Homeland Security from contracting with certain US companies who have reincorporated overseas (corporate inversions). The US House of Representatives recently passed legislation (HR 4567) that includes a provision to expand this prohibition. The US congress is also considering legislation (HR 4520 and S1637) that includes a provision to modify the tax treatment of US companies that reincorporate overseas. The US congress has also considered legislation regarding US companies moving business operation overseas (offshore outsourcing). The US Senate has passed legislation (S1637) that includes a provision to prohibit offshore performance of government contracts.

[9] International Accounting Standards Board. "Discussion Paper on Extractive Activities." April 10, 2010. http://www.iasb.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A1-0D62EB5DDB99/0/DPExtractiveActivitiesApr10.pdf

[10] Infopress. "Que hay detrás de las exenciones a Montana?" April 28, 2006.

[11] Kumar, Claire. "Undermining the Poor: Mineral Taxation Reforms in Latin America." Christian Aid. August 2009. http://www.christianaid.org.uk/Images/undermining-the-poor.pdf

[12] Glamis Gold Ltd. Press Release. "Glamis Reaches Tax Agreement with Guatemala." July 18, 2006. http://www.goldcorp.com/_resources/glamis/pressreleases/2006/jul18-06.pdf

comparable disclosure of the payments required by the ESTTA should include all of the countries in which a company operates, regardless of whether any particular country operation is considered material by quantitative measures. Such a determination is consistent with the guidance of SEC Staff Accounting Bulletin No. 99 on Materiality[13].

Investment Environment Stability

The disclosure of payments required by ESTTA would provide a new stream of reliable information in many countries lacking in freedom of information and with weak governments. As a result, this information could help to improve governance structures and stability within extractive industries operating countries. This would help capital providers make better long-term assumptions about the evolution and implementation of regulatory policies within a given country.

Shortcomings of Current SEC Disclosure Requirements

The public reporting currently required by the Securities and Exchange Commission supplies capital providers with very little of the information necessary to fully assess and account for the country-specific, tax/regulatory or reputational risks, outlined above. Currently, companies are required to comply with the Federal Accounting Standards Board (FASB) Standard 69, paragraph 12, which requires that: "The results of operations for oil and gas producing activities shall be disclosed for the year. That information shall be disclosed in the aggregate and for each geographic area for which reserve quantities are disclosed[14]."

Companies comply with this standard by reporting their payments to host governments; such as taxes, royalties and bonuses; in aggregated categories such as "production costs excluding taxes" and "taxes other than income." These payments are reported on a country-level where a company's operations are very substantial, but otherwise they are further aggregated on a geographic basis that is often at a continental or broader level. The resulting disclosure is not very useful in determining the extent of a company's operations in or its ongoing financial arrangements with a given country. This makes it difficult to determine reputational, regulatory or tax risk.

The Extractive Industries Transparency Initiative (EITI)

Seeking to ground post-9/11 energy security in political stability and good governance, UK Prime Minister Tony Blair proposed the Extractive Industries Transparency Initiative (EITI) in 2002. The initiative was launched in 2006 with a sophisticated multi-stakeholder governance and accountability structure. The EITI is a global, voluntary framework through which governments and extractive industries companies disclose their reciprocal payments, which in turn they reconcile with the active involvement of local civil society.

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[13] The staff reminds registrants and the auditors of their financial statements that exclusive reliance on this (a 5 percent threshold) or any percentage or numerical threshold (for materiality) has no basis in the accounting literature or the law .

The Financial Accounting Standards Board (FASB) makes a similar determination in its Concepts Statement No. 2.

[M]agnitude by itself, without regard to the nature of the item and the circumstances in which the judgment has to be made, will not generally be a sufficient basis for a materiality judgment .

The SEC, FASB and the Supreme Court, in TSC Industries v. Northway, Inc. (1976) , also instruct that qualitative measures, such as reputational risk, may also be used in assessing materiality.

[14] Statement of Financial Accounting Standards No. 69. Disclosures about Oil and Gas Producing Activities. Financial Accounting Standards Board. http://www.fasb.org/pdf/fas69.pdf.

To date, 29 resource-exporting countries have begun implementing the EITI, two countries have completed implementation, and 46 of the world's largest oil, gas and mining companies have committed to support the initiative[15]. However, many governments whose countries could benefit from revenue transparency have declined to join the EITI, which after all remains a voluntary initiative. Moreover, the revenue data collected under the auspices of the EITI is often aggregated to a degree that diminishes its value, especially to civil society and capital providers. Further, the EITI reporting requirements have been interpreted differently in various implementing countries.

The result is that EITI produces data that maybe useful within a specific country, but is much less useful for the sort of country-by-country comparison and benchmarking of companies that the uniform ESTTA disclosures would make possible. The ESTTA will be a complement to EITI, and in fact, the reporting requirements of the bill are modeled after those of the EITI. In particular, the ESTTA mandatory disclosure would provide the consistent and timely data necessary to support fundamental investment analysis, which can be challenging using the outputs of the EITI process.

In March 2010, EITI Secretariat announced 20 of the 22 implementing countries missed the first-ever validation deadline[16], which represents a major challenge to a voluntary initiative such as this. Passage of the ESTTA into law would be a much need vote of confidence for the EITI process, which has been one of the best if not only chances for civil society in resource-rich developing countries to promote revenue transparency and accountable governance as the best means of lifting or avoiding the resource curse[17].

Voluntary Disclosure in Corporate Sustainability Reports

Several extractive industries companies including the U.S.-based gold miner Newmont Mining, the Norwegian oil and gas company StatoilHydro and Canadian oil and gas company Talisman have reported their royalties, tax and other host government benefit streams on a country-by-country basis for several years. While these voluntary disclosures are exemplary, the inconsistent auditing of the data and the irregular intervals and forms in which the disclosures are made are arguments for making these laudable efforts mandatory through legislation such as the ESTTA.

[15] Extractive Industries Transparency Initiative Web site. Accessed on March 3, 2010. http://www.eitransparency.org/candidatecountries

[16] Extractive Industries Transparency Initiative Press Statement. "Decisive period for the first wave of countries implementing the EITI. March 17, 2010. http://eiti.org/blog/decisive-period-first-wave-countries-implementing-eiti

[17] Critical Resource. "'No easy wins for responsible investors' – Interview with Bennett Freeman." March 2010. http://www.c-resource.com/UserFiles/Bennett%20Freeman%20Q&A(2).pdf

Newmont Mining Voluntary Country-By-Country Royalty and Tax Disclosure, CY2008[18]

Royalties and Taxes by Country for 2008 (Millions USD)				
	Government Royalties	Taxes	Total	Percent of Total
Australia	35.1	2.2	37.3	6%
Bolivia	5.3	1.1	6.4	1%
Ghana	13.5	0.1	13.6	2%
Indonesia	12.3	271.4	283.7	38%
New Zealand	0.8	4.3	5.1	1%
Peru	0.1	207.6	207.7	29%
USA	0.0	166.5	166.5	23%
Total	**67.1**	**653.2**	**720.3**	**100%**

[18] Newmont Mining. "Beyond the Mine 2008." Accessed on March 3, 2010. http://www.beyondthemine.com/2008/?l=2&pid=4&parent=17&id=143

StatoilHydro Voluntary Tax, In-Kind Profit, and Bonus Disclosure, CY2008[19]

	Twelve months ended 31 December									
	Indirect taxes paid (4)		Direct taxes paid (5)		Profit oil In kind (6)		Social investments (7)		Signature bonuses (8)	
Overview of activities by country (in NOK million)	2008	2007	2008	2007	2008	2007	2008	2007 (3)	2008	2007
Algeria	2	5	1,459	752	3,990	1,140	14	15	-	-
Angola	2	-	10,094	4,412	17,881	10,598	33	17	-	-
Azerbaijan	0	-	1,952	1,167	1,914	1,022	15	12	-	-
Brazil	35	29	69	-	-	-	3	1	151	-
Canada	1,120	2	93	-	-	-	3	-	-	-
China	-	2	11	-	-	-	0	0	-	-
Denmark(1)	4,977	4,829	122	265	-	-	-	-	-	-
Egypt	-	-	-	-	-	-	1	-	-	47
Estonia	546	456	-	-	-	-	-	-	-	-
France	-	-	-	-	-	-	0	-	-	-
Georgia	-	-	-	-	-	-	5	1	-	-
Germany	1	-	116	105	-	-	3	3	-	-
Indonesia	9	-	-	-	-	-	-	-	-	38
Iran	45	63	-	-	-	-	0	-	-	-
Ireland	7	-	2	(14)	-	-	1	-	-	-
Latvia	1,138	946	34	15	-	-	-	-	-	-
Libya	241	168	-	61	-	529	-	-	-	-
Lithuania	738	606	22	4	-	-	-	-	-	-
Mozambique	1	-	0	0	-	-	-	-	-	-
The Netherlands	89	-	5	38	-	-	-	-	-	-
Nigeria	1	1	-	-	-	-	3	1	-	-
Norway(2)	10,024	9,182	124,251	94,149	-	-	122	142	-	-
Poland	154	121	-	37	-	-	-	-	-	-
Russia	84	56	-	153	-	54	12	-	-	-
Sweden	13,151	12,972	197	(17)	-	-	-	-	-	-
Tanzania	0	0	-	-	-	-	-	-	-	-
United Kingdom	30	32	271	140	-	-	3	3	-	-
USA	352	35	423	37	-	-	2	-	2,197*	0
Venezuela	8	26	483	1,047	-	-	13	45	-	-
Rest of the world	-	-	-	71	-	-	-	-	-	-
Total	32,757	29,530	139,604	102,422	23,785	133,43	233	241	2,348	85

[19] StatoilHyrdo. "Annual and Sustainability Report 2008." Accessed on March 3, 2010. http://www.statoil.com/AnnualReport2008/en/Finance/SpinOffs/Pages/4-4-1_OverviewOfActivitiesByCountry.aspx

Disclosure Requirements of the Energy Security through Transparency Act
The Energy Security through Transparency Act (S. 1700), introduced by Sens. Richard Lugar (R-IN) and Ben Cardin (D-MD) in September 2009, would fill the information gaps described above by requiring companies to disaggregate host government payment information and report it in a consistent manner and at reliable intervals. Payment disclosure on a country-by-country basis would give capital providers more useful data for estimating future cash flows adjusted for the types of country-specific risks mentioned above. This information may be used to make investment decisions, and its omission could reasonably be expected to make a difference in an investor's actions.

Specifically, the ESTTA would amend Section 13 of the Securities Exchange Act of 1934 13 (15 U.S.C. 78m) to require disclosure of payments by "resource extraction issuers" to "a foreign government for the purpose of the commercial development of oil, natural gas, or minerals" in the issuer's annual report filed with the SEC. The payments are to include "taxes, royalties, fees, licenses, production entitlements, bonuses, and other material benefits, as determined by the (SEC) [20]." The legislation also includes a "sense of Congress" that the U.S. should become an Extractive Industries Transparency Initiative (EITI) candidate.

The disclosures required under the ESTTA would provide material information to investors that would enable them to better evaluate actual or potential investments in extractive industries companies. A key aspect of investment evaluation is the adjustment for the specific risks presented by a particular investment. As this memo outlines, the ESTTA would provide data that is particularly useful for assessing country-specific, tax/regulatory, and reputational risks.

Increasing Prevalence of ESG Data in Financial Reporting
Demand for the data necessary to assess the impact of corporate policies and programs regarding environmental, social and governance (ESG) issues is increasing. One indication is the United Nations Environment Program's Principles for Responsible Investment through which approximately 300 financial institutions representing a total of over $12 trillion in assets under management have called for disclosure of information such as that required by the ESTTA due to its importance in their investment analysis and decision-making processes[21]. In addition, the International Accounting Standards Board (IASB) is considering an International Financial Reporting Standard (IFRS) requiring country-by-country royalty and tax reporting by companies in the extractive industries. The April 2010 IASB discussion paper regarding this proposed IFRS states the following.

> The project team's research found that the disclosure of payments made to governments provides information that would be of use to capital providers in making their investment and lending decisions[22].

The IASB working group's preliminary findings also indicate that geographical disaggregation of reserve volumes at a country level would provide relevant information due to the significance and prevalence of

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[20] Publish What You Pay US Web Site. Accessed on March 3, 2010.
https://org2.democracyinaction.org/o/5399/images/ESTT.pdf
[21] United Nations Principles for Responsible Investment Web Site. http://www.unpri.org/
[22] International Accounting Standards Board. "Discussion Paper on Extractive Activities." April 10, 2010.
http://www.iasb.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A1-0D62EB5DDB99/0/DPExtractiveActivitiesApr10.pdf

the country-specific risks referenced above (e.g. taxation regime, legal and regulatory framework, and governmental/sovereign risk)[23].

Conclusion

The world's exploitable conventional energy sources are receding further into areas where large-scale resource extraction has not taken place before. Unfortunately, many of these resource-producing operating environments pose reputational, regulatory and taxation risks that current reporting required of SEC-registered companies does not address adequately. Although some companies have taken productive voluntary steps to improve their disclosure, capital providers need the audited, consistent and comparable data regarding host government payments, such as taxes, royalties and bonuses that the Energy Security through Transparency Act (S. 1700) would provide. Consequently, the disclosure required by this legislation is material in that it includes information that could reasonably be expected to be used by capital providers to make investment decisions.

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[23] ibid.