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September 27, 2012

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Disclosure of Payments by
Resource Extraction Issuers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled "Disclosure of Payments by Resource Extraction Issuers" (RIN: 3235-AK85). We received the rule on August 23, 2012. It was published in the *Federal Register* as a final rule on September 12, 2012, with an effective date of November 13, 2012. 77 Fed. Reg. 56,365.

The final rule and amendment to a new form is adopted pursuant to section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers. Section 1504 added section 13(q) to the Securities Exchange Act of 1934 ("Exchange Act"), which requires the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires a resource extraction issuer to provide information about the type and total amount of such payments made for each project related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q)

requires a resource extraction issuer to provide information regarding those payments in an interactive data format.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS"
(RIN: 0938-AK85)

(i) Cost-benefit analysis

The Commission considered the costs and benefits imposed by the rule and form amendments it is adopting, as well as their effects on efficiency, competition, and capital formation. The Commission states that many of the economic effects of the rules stem from the statutory mandate, while others are affected by the discretion it exercised in implementing the congressional mandates. The Commission addresses the costs and benefits resulting from both the statute and its exercise of discretion, and the comments it received about these matters. In addition, the Commission recognizes that the rules will impose a burden on competition, but believes that any such burden that may result is necessary in furtherance of the purposes of Exchange Act section 13(q).

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The final rules will affect small entities that are required to file an annual report with the Commission under section 13(a) or section 15(d) of the Exchange Act, and are engaged in the commercial development of oil, natural gas, or minerals. Exchange Act Rule 0–10(a) defines an issuer to be a “small business” or “small organization” for purposes of the Regulatory Flexibility Act if it had total assets of \$5 million or less on the last day of its most recent fiscal year. The Commission believes that the final rules will affect some small entities that meet the definition of resource extraction issuer under section 13(q). Based on a review of total assets for Exchange Act registrants filing under certain Standard Industry Classification codes, the Commission estimates that approximately 196 oil, natural gas, and mining companies are resource extraction issuers and that may be considered small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 15, 2010, the Commission proposed rule and form amendments under the Exchange Act to implement section 13(q). 75 Fed. Reg. 80,978. The Commission received over 150 unique comment letters on the proposal as well as over 149,000 form letters (including a petition with 143,000 signatures) from corporations in the resource extraction industries, industry and professional associations, United States and foreign government officials, non-governmental organizations, law firms, pension and other investment funds, academics, investors, a labor union and other employee groups, and other interested parties. The Commission reviewed and considered all of the comments that it received, and the rules it is adopting reflect changes made in response to many of the comments.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission states that certain provisions of the final rules contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA). According to the Commission, the total estimated compliance cost for PRA purposes is \$234,829,000 ([332,164 hrs * \$400/hr] + \$101,963,400). The Commission states that compliance costs for PRA purposes would be encompassed in the total estimated compliance costs for issuers. The Commission’s PRA estimate includes costs related to tracking and collecting information about different types of payments across projects, governments, countries, subsidiaries, and other controlled entities.

Statutory authorization for the rule

The final rule is authorized by sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of the Order.