Public Statement

Statement at Open Meeting on Disclosure of Payments by Resource Extraction Issuers

Commissioner Hester M. Peirce

Dec. 16, 2020

Thank you, Mr. Chairman, and thank you, Betsy [Murphy], Elliott [Staffin], and S.P. [Kothari]. Resource extraction rulemaking is somewhat of a holiday tradition at the SEC; the Commission voted on its first proposal ten years ago almost to the day on December 15, 2010.[1] Last December, I likened our experience with this rulemaking to the classic Dickens novel "A Christmas Carol." Having spent two consecutive holiday seasons immersed in the nuances of Section 1504 of the Dodd-Frank Act, I think the more apt comparison is Tim Burton's contemporary story: "The Nightmare Before Christmas," a movie that I would prefer not to watch, let alone play a part in.

I support today's rulemaking for one simple reason: the law requires us to act, and we are taking a reasonable approach to fulfilling our Congressional mandate to issue rules requiring resource extraction issuers to disclose information relating to payments made to governments for the purpose of the commercial development of oil, natural gas, or minerals. In 2013, the U.S. District Court for the District of Columbia vacated our first attempt at issuing rules complying with this mandate.[2] In 2017, Congress, in a rare exercise of its Congressional Review Act powers, disapproved our second attempt, but did not repeal the original legislation.[3] The statutory mandate therefore remains in effect, and we may not reissue a rule that is substantially the same as the disapproved rule.

The Commission's failure to chart a viable course forward until today, while lamentable, is not altogether surprising considering that the subject matter is unrelated to our tripartite mission. We maintain a corporate disclosure framework rooted in the concept of materiality. It elicits information that a reasonable investor would consider important in deciding how to vote or to make an investment decision. Yet today's release unequivocally states, "we do not believe that the purpose of the required disclosures is to provide material information to investors."[4] These are chilling words to read in a rulemaking issued by the Commission. New Rule 13q-1 will lead to the publication of payment information of interest to individuals and organizations focused on holding governments accountable in

connection with the commercial development of oil, natural gas, and minerals. As important as that job is, most of those people are not investors.

Crafting disclosures for non-investors is not our forte. It takes a lot of staff time and resources that otherwise would be spent doing things that are in our standard portfolio. Working on rules that are not about investor protection, market function, or capital formation inevitably brings division. Hence, our history of considering this rule is littered with divided votes. Aside from the initial proposal from which two commissioners recused themselves, every substantive vote on this rule has been divided.[5] I hope that our decade-long struggle to implement these rules will serve as a cautionary tale for those that would lead us down similar paths to regulate issues of societal, but not investor, import in the years to come. An issue that is important to society is not necessarily material from a securities law perspective.

These rules satisfy our Congressional mandate in a measured, reasonable manner. Today's rulemaking is not the anonymized, aggregated disclosure approach I would have preferred. Under this alternative approach, issuers would have been required to submit the payment information non-publicly for the Commission to publish in an anonymized compilation. Despite this missed opportunity, I welcome the modified project definition that requires disclosure at the national and major subnational political jurisdiction, the exemption for smaller reporting companies and emerging growth companies, and the conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure. I also am pleased that we are issuing an order recognizing a number of alternative reporting regimes that satisfy the objectives of our rule, which will reduce unnecessary compliance costs for companies that operate in different jurisdictions.

Thank you to the extremely longsuffering, persevering, and hardworking staff in the Divisions of Corporation Finance and Economic and Risk Analysis and the Office of General Counsel. I have appreciated our many spirited conversations on this topic over the years. Nevertheless, I sincerely hope that our resource extraction holiday tradition is one that we will jettison in favor of some in-person holiday parties next year.

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[1] *See* Release No. 34-63549 (Dec. 15, 2010).

[2] *See* API v. SEC, 953 F. Supp. 2d 5 (D.D.C. July 2, 2013).

[3] *See* H.R.J. Res. 41, 115th Cong. (2017) (enacted).

[4] *See* Section II.A.1 of today's adopting release.

[5] In 2010, the Commission voted 3-0 to propose the rule. *See* Release No. 34-63549 (Dec. 15, 2010). In 2012, the Commission voted 2-1 to adopt the rule. *See* Release No. 34-67717 (Aug. 22, 2012). In 2015, the Commission voted 3-1 to propose the rule. *See* Release No. 34-76620 (Dec. 11, 2015). In 2016, the Commission voted 2-1 to adopt the rule. *See* Release No. 34-78167 (June 27, 2016). In 2019, the Commission voted 3-2 to propose the rule. *See* Release No. 34-87783 (Dec. 18, 2019). Commission vote records are available at https://www.sec.gov/about/commission-votes.shtml and https://www.sec.gov/foia/foia-votes.shtml.