

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

OXFAM AMERICA, INC.,

Plaintiff,

v.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION

Defendant

COMPLAINT

Civil Action No. 14-cv-13648

I. INTRODUCTION

1. This is a civil action brought under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1), to compel the U.S. Securities and Exchange Commission (“SEC”) to promulgate a final Extractive Payments Disclosure Rule (“Final Rule”) implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 2220-22 (“Section 1504” and “Dodd-Frank”).

2. Section 1504 amends Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. § 78m (“Exchange Act”), to require that “resource extraction issuers”—publicly traded oil, gas, and mining companies—disclose, in annual reports to the SEC, payments made to a foreign government or to the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.

3. Dodd-Frank became law on July 21, 2010. Section 1504 required the SEC to promulgate a Final Rule “[n]ot later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.” That statutory deadline expired on April 17, 2011.

4. The SEC often indicated publicly its expected timeline for proposing and promulgating rules. Most rulemaking actions are generally listed on the Unified Regulatory Agenda. For rules promulgated under the Dodd-Frank Act, the SEC created a special website to indicate its projected timelines. Between November 2010 and August 2012, the SEC repeatedly posted projected dates for promulgating a Final Rule for Section 1504, only to revise and push back those dates at least three times.

5. Following the SEC's repeated failures to meet publicly announced dates for promulgating the Final Rule, both before and after the expiration of the April 17, 2011 statutory deadline, on May 16, 2012, Plaintiff Oxfam America, Inc. ("Oxfam America") filed suit against the SEC in the U.S. District Court for the District of Massachusetts alleging that the SEC's failure to promulgate a rule constituted agency action unduly delayed and unlawfully withheld. Oxfam America requested relief under the APA, 5 U.S.C. § 706(1), to compel the SEC to promulgate a Final Rule. *See Oxfam America v. SEC*, No. 1:12-cv-10878-DJC (D. Mass 2012) [*"Oxfam America I"*].

6. On August 22, 2012, seven days after Oxfam America moved for summary judgment on its APA claim, the SEC voted to adopt a Final Rule implementing Section 1504. *See Disclosure of Payments by Resource Extraction Issuers (Final Rule)*, Release No. 34-67717, 77 FR 56,365 (Sept. 12, 2012) ("2012 Final Rule"). The 2012 Final Rule was published in the Federal Register on September 12, 2012, and took effect on November 13, 2012. *Id.*

7. Oxfam America filed a stipulation of dismissal on December 3, 2012, *see Oxfam America I*, Dkt. 28 (D. Mass. Dec. 3, 2012), and the case was closed on December 4, 2012.

8. On October 10, 2012, the American Petroleum Institute ("API") and others filed suit against the SEC seeking to vacate the 2012 Final Rule in its entirety. *See API et al. v. SEC*,

953 F. Supp. 2d 5 (D.D.C. 2013). Oxfam America intervened in the lawsuit on behalf of the SEC to defend the 2012 Final Rule. On July 2, 2013, the U.S. District Court for the District of Columbia (“D.C. District Court”) issued a judgment vacating the 2012 Final Rule and remanding to the SEC for further proceedings. *Id.* The SEC chose not to appeal and Oxfam America was not permitted to appeal alone.

9. As of this date the SEC has neither promulgated a new Final Rule, nor even issued a new *proposed* rule. More than one year and two months have passed since the D.C. District Court remanded the 2012 Final Rule to the SEC, during which time the SEC has failed to initiate the new rulemaking process. The SEC has indicated on its published Unified Regulatory Agenda that it *may* issue a new proposed rule by March 2015.

10. By vacating and remanding the 2012 Final Rule to the SEC, the District Court restored the status quo before the 2012 Final Rule took effect. *See Sierra Club v. EPA*, 850 F. Supp. 2d 300, 303 (D.D.C. 2012). Thus, the SEC is once again in violation of its nondiscretionary duty to issue a Final Rule implementing Section 1504 no later than April 17, 2011.

11. As of the filing of this Complaint, the SEC has been in violation of Section 1504 for more than three years.

II. JURISDICTION AND VENUE

12. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 702-706, and, in the alternative, pursuant to 28 U.S.C. § 1361. Venue is properly within this Court because Plaintiff, a Massachusetts nonprofit corporation, maintains its principal place of business at 226 Causeway Street, Boston, Massachusetts. Therefore, venue in this Court is proper under 28 U.S.C. § 1391(e)(1)(c).

III. PARTIES

13. Plaintiff Oxfam America is a nonprofit international development and relief organization dedicated to finding lasting solutions to poverty and related injustice. A core mission of Oxfam America is to advance resource revenue accountability around the world, engaging with resource extraction issuers, governments and international organizations, as well as with local communities and civil society organizations to promote responsible and accountable stewardship of revenues from extractive resources. This mission reflects Oxfam America's core values and is integral to its activities and work around the world.

14. Oxfam America engages in a variety of activities designed to advance resource revenue accountability in thirteen countries across Africa, Asia, and Latin America, including countries where extractive resource revenues are often corruptly diverted from poverty reduction and economic development. In many such countries, little or no information is available regarding the payments that oil, gas, and mining companies make in connection with the commercial development of natural resources.

15. Timely implementation of Section 1504's disclosure requirements is crucial to advancing Oxfam America's mission of ensuring that government revenues from the extraction of natural resources are managed accountably, transparently, and in the public interest. Oxfam America would rely heavily upon the disclosures mandated by Section 1504 to advance its work in this area.

16. Oxfam America devotes substantial resources to promoting accountable stewardship of extractive resource revenues in developing countries. This includes pursuing alternative sources of information concerning payments to governments made by oil, gas, and mining companies, information that Section 1504 mandates that these companies affirmatively

disclose. It also includes spending resources addressing the consequences of the resource curse that results in part from the secrecy associated with these transactions. A Final Rule that complies with Section 1504 would allow Oxfam America to devote these resources to other aspects of its mission.

17. Oxfam America also owns securities of several resource extraction issuers that would be subject to a Final Rule implementing Section 1504. These resource extraction issuers include: Kosmos Energy Ltd. (U.S./Bermuda), AngloGold Ashanti Ltd. (South Africa), CNOOC Ltd. (China), Chevron Corp. (U.S.), Anadarko Petroleum Corp. (U.S.), ConocoPhillips (U.S.), Tahoe Resources (Canada), and Newmont Mining Corp. (U.S.). Access to the disclosures mandated by Section 1504 would allow Oxfam America to better assess investment risks associated with extractive industry payments to governments.

18. Oxfam America is an engaged and active shareholder. Information disclosed pursuant to Section 1504 would significantly inform Oxfam America's participation in the governance of the resource extraction issuers of which it is a shareholder.

19. Oxfam America has been an active participant in the Section 1504 rulemaking process since 2010. Oxfam America submitted comments in response to the SEC's Proposed Rule to implement Section 1504. *See* Disclosure of Payments by Resource Extraction Issuers, 75 Fed. Reg. 80,978 (Dec. 23, 2010) (to be codified at 7 C.F.R. pts. 229, 249) ("Proposed Rule"). Oxfam America has also previously sued the SEC under the Administrative Procedures Act to compel the SEC to issue a Final Rule implementing Section 1504. *Oxfam America I*, No. 1:12-cv-10878 (filed May 16, 2012, D. Mass.). Oxfam America has submitted additional comments to the SEC since the 2012 Final Rule was vacated and remanded to the SEC.

20. Oxfam America actively participated in defending the 2012 Final Rule, and intervened on behalf of the SEC to defend the Rule against legal challenge. *See API v. SEC*, 953 F. Supp. 2d 5 (D.D.C. 2013).

21. Defendant SEC is the federal agency that Congress instructed to promulgate regulations implementing the provisions of Section 1504 by April 17, 2011.

IV. BACKGROUND

A. **Section 1504 Mandates That The SEC Publish Rules Requiring Resource Extraction Issuers To Disclose Payments Made To Foreign Governments And The Federal Government.**

22. Section 1504 amends Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. § 78m (“Exchange Act”), to require that “resource extraction issuers” disclose payments to a foreign government or to the Federal Government in annual reports to the SEC.¹

23. Specifically, Section 1504 requires that:

Not later than **270 days after the date of enactment** of the Dodd-Frank Wall Street Reform and Consumer Protection Act, **the Commission shall issue final 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, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including (i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and (ii) the type and total amount of such payments made to each government.

124 Stat. at 2220-21 (emphasis added).

¹ Section 1504 defines “resource extraction issuer” to mean an issuer that “(i) is required to file an annual report with the [SEC] . . . and (ii) engages in the commercial development of oil, natural gas, or minerals.” 124 Stat. at 2220.

B. Congress Enacted Section 1504 To Make More Data Available To Investors And To Address The “Resource Curse” That Plagues Resource-Dependent States.

24. Section 1504, like other disclosure provisions of the Exchange Act, informs and protects investors in certain securities. Section 1504 also embodies “the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.” 124 Stat. at 2221.

25. In passing Section 1504, Congress recognized that investors in resource extraction issuers are particularly exposed to expropriation and other political risks—in addition to unique legal and reputational risks—because resource extraction issuers frequently operate in autocratic and unstable jurisdictions. As Senator Benjamin Cardin, presenting the legislative amendment that became Section 1504, explained:

[I]nvestors have a right to know. If you are going to invest in an oil company, you have a right to know where they are doing business, where they are making payments. . . . [T]his is information that may affect your decision as to whether you want to take this risk in investing in that company. So this amendment provides greater disclosure for investors to be able to make intelligent decisions as to whether to invest in an oil or gas or mineral company.

156 Cong. Rec. S5870-02 (daily ed. July 15, 2010) (statement of Sen. Cardin); *see also* Statement of Sen. Cardin in support of Amendment No. 3732 to the Restoring American Financial Stability Act (S3217), 156 Cong. Rec. S3316 (daily ed. May 6, 2010) (“Secrecy of payments carries real bottom-line risks for investors Investors should be able to know how much money is being invested up front in oil, gas, and mining projects.”).

26. During the initial rulemaking, investors collectively managing assets worth over \$1 trillion wrote to the SEC noting the material importance of this information to shareholders. *See API v. SEC*, No. 1:12-cv-01668-JDB, Oxfam America’s Opp. to Plfs. Motion for Summary

Judgment and Cross Motion for Summary Judgment, Dkt. 37 at 8, n.5 & n.6 (filed May 17, 2013, D.D.C.) (collecting investor comments).

27. Since the D.C. District Court remanded the rule to the SEC, Members of Congress have repeatedly emphasized the importance of promptly issuing a new rule in order to protect and benefit investors. *See e.g.* Letter from Senator Benjamin L. Cardin et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 2 (Aug. 2, 2013) (emphasizing the importance of ensuring a new rule is “issued promptly in order to protect investors.”); Letter from Senator Benjamin L. Cardin et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 1 (May 1, 2014) (“Investors stand to benefit from greater transparency of payments that oil, gas and mining companies make to governments for the right to extract natural resources... The SEC’s mandate requires it to act to protect investors, and it should do so promptly.”); *Id.* at 2 (“Prompt enactment of a robust rule will help protect U.S. investors[.]”); Letter from Rep. Maxine Waters et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 2 (June 11, 2014) (“The implementation of Section 1504 is critical. Resource revenue transparency allows shareholders to make better-informed assessments of risks and opportunity costs, threats to corporate reputation, and the long-term prospects of the companies in which they invest.”).

28. On August 13, 2013, investors representing more than \$5.6 trillion in assets under management wrote to the SEC Chairman Mary Jo White. *See* Letter from Steve Berexa, Managing Director, Allianz Global Investors et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n (Aug. 13, 2013). The letter noted the investor benefits of Section 1504 and emphasized that the 2012 Final Rule had been “carefully considered and reflected investors’ substantial interest in oil, gas, and mining industry payment transparency.” *Id.* at 1. The investors called on the SEC to reissue a strong rule “as early as possible[.]” *Id.*

29. On April 28, 2014, investors collectively managing assets totaling more than \$6.4 trillion wrote a letter to SEC Chairman Mary Jo White. *See* Letter from Steve Berexa, Managing Director, Allianz Global Investors, et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, (Apr. 28, 2014). The letter emphasized that Section 1504 is “very much in the interests of investors” and included a detailed list of the numerous investor benefits provided by Section 1504. *Id.* at 3-5. In a different letter sent to SEC Chairman Mary Jo White the same day, investors representing more than \$2.85 trillion in assets under management wrote that implementation of Section 1504 “would protect investors and promote efficient capital markets by providing investors with valuable factual information on risk profiles and company performance.” *See* Letter from Peter Lundkvist, Senior Strategist & Head of Corporate Governance, AP3-Tredje AP-Fonden (Third Swedish National Pension fund) et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 1 (Apr. 28, 2014). The letter advised the SEC that “[d]elay in implementation of these rules or their significant revision would continue to deny investors this valuable information.” *Id.*

30. Section 1504 also represents Congress’s strategy for addressing the “resource curse” that plagues many developing economies dependent on resource extraction. Ironically, many resource-rich developing economies experience lower growth and far greater poverty than their resource-rich neighbors. Profits from resource extraction are easily captured and often flow directly into the hands of corrupt governments. Therefore, the most resource-rich countries are often the least likely to successfully translate oil and mineral reserves into roads, schools, clinics, or improved living standards. Instead, societies heavily dependent upon resource extraction usually have exceptionally low standards of living and unusually high rates of corruption, authoritarian government, ineffective governance, ethnic violence, and civil war. *See generally*

Michael Ross, Oxfam America, *Extractive Sectors and the Poor*(2001),available at <http://www.oxfamamerica.org/files/extractive-sectors-and-the-poor.pdf>. Overwhelmingly, “oil and mineral dependence are linked to heightened levels of poverty and immiseration.” *Id.* at 16.

31. The disclosures mandated by Congress under Section 1504 are intended, among other things, to contribute to ending the resource curse by empowering citizens to hold governments accountable for revenue received from resource extraction issuers. As Senator Richard Lugar, one of Section 1504’s principal sponsors, stated: “We cannot force foreign governments to treat citizens as we would hope, but [Section 1504] would make it much more difficult to hide the truth.” 156 Cong. Rec. S3816 (daily ed. July 15, 2010) (statement of Sen. Lugar). Thus, in enacting Section 1504, the United States is “not only protecting investors and helping in energy security, we are helping to alleviate poverty internationally by allowing the people of the countries that have mineral wealth to hold their officials accountable, to use those payments to help the people of that nation.” 156 Cong. Rec. S5870-02 (daily ed. May 17, 2010) (statement of Sen. Lugar). *See also, e.g.* Letter from Rep. Waters et al. to Mary Jo White, Chairman, Sec. & Exch. Comm’n, at 2 (June 11, 2014) (noting that public reporting under Section 1504 is “fundamental to improving governance, curbing corruption, improving revenue management, and allowing citizens to demand greater accountability from their governments for spending that serves the public interest.”).

32. The SEC’s unlawful failure to promulgate a Final Rule within Section 1504’s 270-day deadline frustrates both of Congress’s objectives. It simultaneously denies investors valuable information critical for assessing investment risk and impedes Congress’s plan to empower individuals in resource-rich countries to hold their governments accountable for the management of extractive resource revenues. Oxfam America is thus doubly injured, both as an

investor and as an organization that would rely heavily upon information disclosed under a Final Rule in its work to promote transparency and accountability in the management of extractive resource revenues around the world.

C. Congress Enacted Section 1504 To Make The United States The Global Leader In The Field Of Extractive Payments Disclosure.

33. In enacting Section 1504, Congress also sought to have the United States set the “global standard” in the field of extractive industries payment disclosure. *See* 156 Cong. Rec. S3316 (daily ed. May 6, 2010) (statement of Sen. Cardin). Congress intended for the standard set by the United States in this field to be the model for other jurisdictions’ extractive payments disclosure regulations.

34. A short statutory deadline for promulgating a Final Rule was therefore essential to Congress’s objective that the United States set the “global standard” in extractive payments disclosure and play a leadership role in this area.

35. The 2012 Final Rule made a substantial contribution to the development of a global standard. Since that time, other jurisdictions have made significant progress in passing transparency laws modeled on the SEC’s 2012 Final Rule. On June 12, 2013, the European Union adopted new transparency requirements for extractive companies that were expressly based on the 2012 Final Rule. EU Member States are obliged to transpose these requirements into national law within 24 months. The United Kingdom committed to early transposition of the EU requirements, and a bill has already been drafted that will be presented to Parliament and is expected to be enacted by the end of October 2014. Prime Minister David Cameron has publicly called on the U.S. to follow suit. Norway has also adopted mandatory disclosure laws that parallel the 2012 Final Rule, and Canada has committed to pass similar legislation by early 2015.

36. Shortly after the 2012 Final Rule was vacated and remanded, Senator Cardin and retired Senator Lugar wrote to SEC Chair Mary Jo White emphasizing that “prompt revision” was needed to “ensure that implementation of the law stays on track and that the United States will retain its leadership role in this important anti-corruption and anti-tax evasion effort.” *See* Letter from Sen. Benjamin L. Cardin, et al. to Mary Jo White, Chairman, Sec. & Exch. Comm’n, at 1 (Aug. 2, 2013).

37. If the SEC does not promptly issue a Final Rule, Congress’s intent that the United States play a leadership role in this area will be frustrated. Failure to promptly reissue a Final Rule also threatens to undermine progress towards a global transparency standard. For example, the Extractive Industries Transparency Initiative (EITI), a voluntary initiative whereby extractive companies and participating governments undergo a public audit of extractive revenues, has adopted a new project-level disclosure standard that expressly refers to the Section 1504 rules. Until those rules are enacted, the EITI cannot develop a uniform global standard for project-level reporting.

38. The SEC’s continued failure to promulgate a Final Rule is irreconcilable with Congress’s determination that the United States’ extractive payments disclosure regime should set the global standard for regulation in this area.

D. The SEC Has Failed To Issue A Final Rule By The Statutory Deadline.

39. Section 1504 requires the SEC to promulgate a Final Rule on extractive payments disclosure no later than April 17, 2011. As of filing, the SEC has missed Section 1504’s statutory deadline by more than three years. Moreover, four hundred and forty-one days have passed since the District Court vacated the 2012 Final Rule and remanded to the SEC. The SEC’s continuing

failure to issue a Final Rule constitutes *per se* “agency action unlawfully withheld or unreasonably delayed.” *See* 5 U.S.C. § 706(1).

40. The SEC’s failure to comply with Section 1504’s statutory deadline reflects a pattern of unlawful delay and postponement.

41. On November 3, 2010, the SEC initially projected the release of a Final Rule in April–July 2010. The SEC then published its Proposed Rule on December 23, 2010.

42. Two days before Section 1504’s deadline expired, Senators Cardin and Lugar called upon the SEC to timely implement Section 1504 and warned that “[t]he law clearly states that final rules must be issued within 270 days from final passage.” *See* Letter from Senators Benjamin L. Cardin and Richard G. Lugar to Mary L. Schapiro, Chairman, Sec. & Exch. Comm’n (Apr. 15, 2011).

43. On April 27, 2011, ten days after missing Section 1504’s statutory deadline, the SEC projected the promulgation of a Final Rule no earlier than “August–December 2011.”

44. On April 28, 2011, the SEC’s Office of Legislative and Governmental Affairs responded to the April 15, 2011 letter from Senators Cardin and Lugar, acknowledging that the SEC had recently updated its website to reflect a new projected timeframe for issuance of a Final Rule. *See* Letter from Eric J. Spittler, Dir., Office of Legislative and Intergovernmental Affairs, to Senator Benjamin L. Cardin (Apr. 28, 2011). The SEC indicated its intent “to approve final rules in August [2011], if not earlier.” *Id.*

45. The SEC failed to issue a Final Rule in August 2011.

46. On April 16, 2012, counsel for Plaintiff Oxfam America wrote to SEC Chairman Mary L. Schapiro. *See* Letter from Richard L. Herz, Jonathan G. Kaufman, & Marco B. Simons to Mary L. Schapiro, Chairman, Sec. & Exch. Comm’n (Apr. 16, 2012). Oxfam America’s April

16, 2012 letter noted that the SEC's failure to issue a Final Rule placed the SEC "in violation of Section 1504 itself[.]" and advised that Oxfam America would "file suit to compel issuance of a Final Rule" if the SEC did not comply with Section 1504's rulemaking mandate within thirty days. *See id.*

47. The SEC failed to issue a Final Rule within thirty days.

48. On May 16, 2012, Oxfam America filed suit against the SEC requesting relief under the Administrative Procedure Act for the SEC's unjustified delay in enacting a Final Rule. *See Oxfam America I*, No. 1:12-cv-10878-DJC (D. Mass 2012).

49. On August 15, 2012, Oxfam America filed a motion for summary judgment on its Administrative Procedure Act claim. *See Oxfam America I*, No: 1:12-cv-10878-DJC, Dkt. 18 (D. Mass 2012).

50. On August 22, 2012, the SEC voted to approve a Final Rule implementing Section 1504, and on September 12, 2012, the 2012 Final Rule was published in the Federal Register. *See Disclosure of Payments by Resource Extraction Issuers (Final Rule)*, Release No. 34-67717, 77 FR 56,365 (Sept. 12, 2012).

51. On October 10, 2012, API filed suit against the SEC seeking to vacate the 2012 Final Rule. Oxfam America intervened on behalf of the SEC to defend the 2012 Final Rule.

52. On July 2, 2013, the D.C. District Court vacated the 2012 Final Rule and remanded to the SEC for further proceedings. *API v. SEC*, 953 F. Supp. 2d 6 (D.D.C. 2013). The SEC chose not to appeal and Oxfam America was not permitted to appeal alone.

53. Following the D.C. District Court's July 2, 2013 order vacating the 2012 Final Rule and remanding to the SEC, the SEC was once again in violation of Section 1504's statutory deadline.

54. Since the remand, civil society organizations, Members of Congress, investors, and industry associations have all repeatedly written to the SEC, requesting swift promulgation of rules to implement Section 1504. *See, e.g.*, Letter from Senator Cardin, et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 1 (Aug. 2, 2013); Letter from Steve Berexa, Managing Director, Allianz Global Investors, et al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 1 (Aug. 13, 2013); Letter from Raymond C. Offenheiser, President, Oxfam America, Jonathan Kaufman & Howard Crystal to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 2 (Sept. 26, 2013); Letter from Patrick T. Mulva, Chairman, API General Finance Committee & Stephen Comstock, Director Tax & Accounting Policy, API to Elizabeth M. Murphy, Secretary, Sec. & Exch. Comm'n, at 10 (Nov. 7, 2013); Letter from Jana L. Morgan, National Coordinator, Publish What You Pay – US to Mary Jo White, Chairman, Sec. & Exch. Comm'n, et al. at 1 (Mar. 14, 2014); Letter from Patrick T. Mulva, Chairman, General Finance Committee, API and Stephen Comstock, Director of Tax and Accounting Policy, API to Elizabeth M. Murphy, Office of the Secretary, Sec. & Exch. Comm'n (Apr. 15, 2014); Letter from Peter Lundkvist, Senior Strategist & Head of Corporate Governance, AP3-Tredje AP-Fonden (Third Swedish National Pension fund) et al. to Mary Jo White, Chair, Sec. & Exch. Comm'n, at 1 (Apr. 28, 2014); Letter from Senator Benjamin L. Cardin, et. al. to Mary Jo White, Chairman, Sec. & Exch. Comm'n, at 1 (May 1, 2014).

55. In December 2013, the SEC issued its Rulemaking Agenda for 2014. Section 1504 was not included. The SEC did not add Section 1504 to its rulemaking agenda until May 2014, 10 months after the District Court's order vacating the rule. In its revised Spring 2014 Agency Rule List, the SEC indicated it did not intend to issue a new notice of proposed

rulemaking until at least March 2015. The SEC made no mention of when it expected to promulgate a new Final Rule.

56. The new agenda does not commit the SEC to issuing a new proposed rule by March 2015. It provides only that the Division of Corporate Finance “is considering recommending that the Commission propose rules to implement Section 1504[.]” The preamble to the SEC’s Regulatory Flexibility Agenda further notes that the SEC is “not required to consider or act on any matter that is included in the agenda.”

57. The SEC’s Spring 2014 Agency Rule List indicates that the SEC plans to take action on numerous other “nonsignificant” items that are either not statutorily mandated or have no statutory deadline before initiating Section 1504 rulemaking.

58. On June 11, 2014, 58 Members of Congress responded to the SEC’s revised rulemaking agenda in a letter to SEC Chairman Mary Jo White. *See* Letter from Rep. Maxine Waters, et al to Mary Jo White, Chairman, Sec. & Exch. Comm’n (June 11, 2014). The letter advised that “rulemaking for Section 1504 should be on a swifter, more definite time line[]” than what was reflected in the rulemaking agenda and “strongly urg[ed]” the SEC “to issue a proposed rule for public comment no later than the end of this year[,]” and set out a fixed timeline for implementation.*Id.* at 1.

59. On July 14 2014, Plaintiff Oxfam America again wrote to the SEC, noting that 1,453 days had passed since July 21, 2010, and over a year since the D.C. District Court’s ruling vacating the 2012 Final Rule. *See* Letter from Raymond Offenheiser, President, Oxfam America to Anne K. Small, General Counsel, Sec. & Exch. Comm’n, at 2 (July 14, 2014). Plaintiff Oxfam America called on the SEC to commit to enact a final rule implementing Section 1504 by December 31, 2014. *Id.* at 3. The letter advised that if, by August 1, 2014, the SEC did not

commit to finalize the rule by the end of the year, or agree to the terms of a Consent Decree, Plaintiff Oxfam America would “promptly return to court to enforce the Commission’s legal obligations.” *Id.*

60. On July 29, 2014, counsel for Plaintiff Oxfam America asked the SEC when it intended to respond to Oxfam America’s letter. The SEC’s counsel responded that “[i]f there is anything to report” the SEC would let Oxfam America know “before August 1st.”

61. The SEC did not respond on August 1, 2014.

62. On August 4, 2014, counsel for Plaintiff Oxfam America asked the SEC whether it intended to respond to its July 14, 2014 letter. The SEC’s counsel informed Plaintiff Oxfam America that it had “no response” at that time.

63. To this day, the SEC has made no commitment to issue a revised rule under any timeline, nor has it given any other indication of its plan to fulfill its obligation to promulgate a Final Rule since the D.C. District Court remanded the 2012 Final Rule to the SEC more than one year and two months ago.

64. The extractive payment disclosures that Congress mandated nearly four years ago will not take place unless and until the SEC issues a Final Rule. The SEC’s pattern of delay gives no assurance that it will promulgate a Final Rule, nor even a proposed rule, without the involvement of this Court.

E. Oxfam America Is Directly Injured By The SEC’s Unlawful Failure To Issue A Final Rule By The Statutory Deadline.

65. Oxfam America is directly injured by the SEC’s failure to issue a Final Rule by the statutory deadline. The information that would be disclosed pursuant to Section 1504 would be of direct value to Oxfam America, both as a shareholder and as an organization with a mission to advance accountability in the management of extractive resource revenues around the world.

66. Oxfam America, as noted, is a shareholder in numerous extractive resource issuers that would be subject to a Final Rule. As an investor, Oxfam America would carefully review disclosures by such issuers for indications of investment risk reflected in otherwise undisclosed patterns of payments. Oxfam America would also rely upon disclosures made pursuant to Section 1504 to inform its participation in the governance of the resource extraction issuers of which it is a shareholder. Finally, Oxfam America would use these disclosures to advance and inform its mission of promoting resource revenue accountability, including through actions taken to advance that mission in its capacity as a shareholder. Such actions could include, without limitation, introduction of shareholder resolutions by Oxfam America, as well as votes cast as a shareholder.

67. Furthermore, the disclosures mandated by Congress in Section 1504 are critical to Oxfam America's work to end the resource curse through advocacy for the responsible and accountable management of extractive resource revenues worldwide. Oxfam American has spent significant resources addressing the consequences of the resource curse that it would not otherwise have had to spend if the secrecy surrounding extractive resource transactions was lifted. A Final Rule that complies with Section 1504 would allow Oxfam America to devote these resources to other aspects of its mission.

68. Oxfam America advocated for passage of Section 1504 and promulgation of the 2012 Final Rule, litigated to defend the 2012 Final Rule, and intends to make heavy use of the disclosures it requires once a Final Rule is in place. Oxfam America would, without limitation, use these disclosures to inform, educate, and train stakeholders from government, the private sector, civil society and communities affected by extractive resource development in the

transparent and accountable management of extractive resource revenues derived from projects in their countries and communities.

69. Without these disclosures, Oxfam America's work to promote accountable stewardship of extractive resource revenues in developing countries is vastly more difficult than it would be had the SEC complied with Section 1504's statutory deadline. It is difficult to promote accountable management of extractive resource revenues in the absence of reliable information about such revenues.

70. Oxfam America has also been obliged to divert significant resources to efforts to hold the SEC to its obligations under Section 1504, including without limitation, broad-based media and lobbying efforts as well as litigation to compel the SEC to promulgate a Final Rule. Since the District Court vacated the 2012 Final Rule, Oxfam America has been obliged again to divert significant resources to efforts to hold the SEC to its obligations under Section 1504.

71. If the SEC had complied with its statutory obligation to promulgate a Final Rule, Oxfam America would be able to put these resources toward engaging with, educating, and training government, private sector, civil society and community stakeholders to advance transparent and accountable management of extractive resource revenues. Equally, Oxfam America could use the resources diverted on account of the SEC's failure to issue a Final Rule to prepare and advance shareholder initiatives in furtherance of both its economic interests and its extractive resource accountability mission.

72. Oxfam America's inability to access information that would otherwise be disclosed pursuant to Section 1504 is directly traceable to the SEC's unlawful failure to issue a Final Rule by the statutory deadline. Oxfam America's injury can only be redressed by an Order

from this Court compelling the SEC's prompt performance of its obligation to issue a Final Rule pursuant to Section 1504.

V. CLAIM FOR RELIEF

73. The allegations contained in paragraphs 1-72 are re-alleged and incorporated by reference.

74. The Administrative Procedure Act provides a remedy to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

75. In addition, the federal mandamus statute, 28 U.S.C. § 1361, gives a federal district court jurisdiction to compel an agency of the United States to perform a nondiscretionary duty owed to a plaintiff as a matter of law.

76. The SEC has failed to comply with Section 1504's statutory deadline for issuance of a Final Rule. Accordingly, the SEC has unlawfully withheld and unreasonably delayed action on a Final Rule within the meaning of 5 U.S.C. § 706(1).

77. The SEC has likewise failed to perform its nondiscretionary duty owed to Plaintiff to issue a Final Rule within the statutory deadline set by Section 1504.

78. Plaintiff has no administrative remedies to pursue under the Exchange Act or other applicable provisions of law. A proceeding under 5 U.S.C. § 706(1), or in the alternative, 28 U.S.C. § 1361, is the only available means to compel the SEC's compliance with Section 1504.

79. The SEC's demonstrated unwillingness to act on Section 1504's straightforward statutory mandate and the urgency of the disclosures that Section 1504 is intended to compel both before and after the 2012 Final Rule was vacated mean that only injunctive relief pursuant to 5 U.S.C. § 706(1), or a writ of mandamus, will be effective in this case.

WHEREFORE, Plaintiff prays that the Court:

- (1) Declare the SEC in violation of the APA and the Mandamus Act;
- (2) Issue an order or writ of mandamus to compel the SEC to act promptly to issue a Proposed Rule, and a Final Rule, as required by Section 1504, within a reasonable time thereafter;
- (3) Award Plaintiff its attorneys' fees and costs pursuant to 28 U.S.C. § 2412; and
- (4) Grant such other and further relief as this Court deems proper.

Respectfully submitted,

OXFAM AMERICA, INC.

By its attorneys,

/s/ Derek B. Domian

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