

May 19, 2011

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Chevron Corporation disclosures and omissions regarding recent \$18 billion judgment on Ecuador pollution case.

Dear Chief Counsel,

We are writing to express our concerns about disclosures and omissions from Chevron Corporation's ("Chevron") recent annual report. Specifically, we request that the staff review whether Chevron has appropriately disclosed to shareholders the scope and magnitude of financial and operational risk from a recent adverse legal judgment in Ecuador. The issues noted below seem to us to have potential to rise to the level of materiality under the securities laws. We respectfully urge your office to review and analyze those disclosures and omissions.

Background

When Chevron acquired Texaco in 2001, Texaco was the subject of a significant controversy surrounding its activities in Ecuador. From 1964 to 1992, Texaco had operated oil extraction facilities in the remote northern region of the Ecuadorian Amazon, known as the *Oriente*, which is home to a number of indigenous peoples. Texaco operated the oil fields on behalf of a business consortium that also included Ecuadorian state-owned oil company Petroecuador.

In 1993 a group of Ecuadorian citizens living around Texaco's production sites filed a class-action lawsuit against Texaco in New York, alleging that the company had knowingly used substandard environmental practices which had led to massive soil and water contamination. Over the ensuing decade, Texaco petitioned to have the case transferred to Ecuador on *forum non conveniens* grounds, a request ultimately granted by U.S. District Court Judge Jed Rakoff on the condition that the company agree to abide by any judgment of the Ecuador courts. The case, *Aguinda v. ChevronTexaco*, was re-filed against Chevron in Ecuador in 2003.

After nearly two decades of litigation, on February 14, 2011, the Ecuadorian Provincial Court issued its final judgment in which it found Chevron liable for just

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over \$18 billion in compensatory and punitive damages.¹ The judgment is now under appeal. This constitutes one of the largest court judgments for environmental damage in history. This judgment is comparable in size only to BP's promised \$20 billion fund to compensate victims of the 2010 Gulf of Mexico oil spill.

Chevron has obtained a preliminary injunction from the United States Second District Court that purports to bar the plaintiffs and their lawyers from seeking enforcement of any judgment of the Ecuadorian court. However, it not clear how this injunction in U.S. court would protect Chevron from enforcement efforts by the plaintiffs aimed at Chevron's assets outside the United States. Moreover, the injunction is subject to appeal.

Chevron's disclosures

In its most recent annual report and 10-K, Chevron has not disclosed one of its own assessments of the severity of risk to its operations posed by the potential enforcement of the Ecuador judgment, specifically the sworn testimony of Deputy Comptroller Rex Mitchell to the U.S. District Court. Chevron also makes statements in its annual report about the Ecuadorian litigation that are a one-sided interpretation of the case and could be misleading to some investors in the absence of additional disclosures.

Has Chevron Disclosed Fully to Shareholders the Financial and Operational Risk From the Ecuador Judgment?

Chevron did not disclose any risk of its liability from the Ecuador litigation in its Annual Report until as late as February 2009. In its most recent Annual Report and 10-K, Chevron discloses the February 2011 Ecuadorian Provincial Court judgment but continues to assert uncertainty as to its ultimate probable financial liability, stating:

"The ultimate outcome of the foregoing matters, including any financial effect on Chevron, remains uncertain. Management does not believe an estimate of a reasonably possible loss (or a range of loss) can be made in this case. ...Moreover, the highly uncertain legal environment surrounding the case provides no basis for management to estimate a reasonably possible loss (or a range of loss)."²

¹ "Summary of Judgment Entered in Aguinda et al v. Chevron Corporation"

<http://chevrontoxico.com/assets/docs/2011-02-14-summary-of-judgment-Aguinda-v-ChevronTexaco.pdf>

² Chevron Corporation, 2010 Annual Report, p. 25

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One of the most notable omissions from Chevron's recent filings is the analysis of the significance, severity and implications of the risks to its operations from any enforcement of the Ecuadorian court judgment. In this regard, it is instructive to contrast Chevron Deputy Comptroller's sworn testimony to Judge Kaplan with what Chevron publicly disclosed at around the same time to its shareholders in its latest annual report.

In its most recent annual report dated February 24, 2011, Chevron does disclose that it expects the Ecuadorian plaintiffs to seek enforcement of any judgment outside Ecuador.

"Because Chevron has no substantial assets in Ecuador, Chevron would expect enforcement actions as a result of this judgment to be brought in other jurisdictions. Chevron expects to contest any such actions."

In notable contrast to this low key reference, over a week before the publication of the annual report, Chevron Deputy Comptroller Rex Mitchell stated in sworn testimony in Chevron's RICO suit that the company faces "irreparable damages" if the Ecuadorian plaintiffs are able to seize or attach Chevron assets in the course of the enforcement of the Ecuadorian judgment. Citing the Ecuadorian plaintiffs' lawyers enforcement plan outlined in the Patton Boggs memo, Mitchell stated:

"The seizure of Chevron assets, such as oil tankers, wells, or pipelines, in any one of these countries, would disrupt Chevron's supply chain and operations; and seizures in multiple jurisdictions would be more disruptive."

"Defendants' campaign to seek seizures anywhere around the world and generate maximum publicity for such acts would cause significant, irreparable damage to Chevron. Unless it is stopped, Defendants' announced plan to cause disruption to Chevron's supply chain is likely to cause **irreparable injury to Chevron's business reputation and business relationships that would not be remediable by money damages.**" [emphasis added]³

Rex Mitchell's sworn testimony is dated on February 15, 2011, more than a week prior to the February 24, 2011, publication date of Chevron's 2010 Annual Report. It seems reasonable to conclude that Mitchell's testimony was prepared much earlier than that date, making it available to be disclosed in the Annual Report. The fact that Chevron did not disclose its own significant assessment of the risk to its operations in its 2010 Annual Report poses the question of whether the company is making the required disclosures to its shareholders. Shareholders reading the annual report

³ Declaration of Chevron Deputy Comptroller Rex Mitchell in support of Chevron Corporation Motion for a Preliminary Injunction, Filed 2/5/11, p. 4

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disclosure could reasonably want to know the Deputy Comptroller's assessment of the potential for irreparable harm to reputation and relationships that would not even be remedied by monetary damages. For those wanting to know how severe the downside risk of recent adverse rulings in Ecuador is, a clarification that "enforcement actions in other jurisdictions" could mean seizure of oil tankers, wells or pipelines, and "irreparable injury to the company's business reputation and relationships" is the kind of information that aids an investor in determining the value of stock and prospects for the company.

Worthy of examination may be whether these omissions in the company's disclosures are material within the meaning of the securities laws. A core inquiry being whether there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 96 S.Ct. 2126, 48 L.Ed. 2d 757 (1976); *Basic Incorporated v. Levinson*, 485 U.S. 224, 108 S.Ct. 978, 99 L.Ed. 2d. 194 (1988) and *Matrixx Initiatives v. Siracusano, Inc.*, No. 09-1156, 563 U.S. _____, Slip Op. (2011).

The company has disclosed that enforcement actions may be anticipated regarding the Ecuador judgment, and that it intends to contest such enforcement actions. However, the company did not disclose management's concern about the potential for apparently severe damage to the company's operations, relationships and reputation indicated in the Comptroller's testimony. Many investors might have reasonably expected the company to have disclosed this additional information regarding magnitude that was known to the company regarding these risks. Although the company has held the immediacy of these potential impacts at bay through a preliminary injunction, the appeal process for the injunction could threaten to reopen such potential risks and impacts.

Have Chevron's Statements to Shareholders About the Court Case Been Misleading?

Chevron's most recent annual report and 10-K include a number of questionable statements about the court case in Ecuador.

Statement 1: "As to matters of law, the company believes first, that the court lacks jurisdiction over Chevron"⁴

While this may be a true statement of the company's opinion, Chevron's statement may be considered misleading since it omits the fact that Texaco agreed to the

⁴ Chevron Corporation, 2010 Annual Report, p. 24

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binding nature of any judgment issued in Ecuador in 2002 before a U.S. federal court as a condition of the case being transferred to Ecuador.⁵

Moreover, in a recent opinion on Chevron's BIT arbitration, the United States Second Circuit noted that in arguing to remove the case from U.S. District Court in the 1990s, "Texaco assured the district court that it would recognize the binding nature of any judgment issued in Ecuador." It goes on to conclude, "As a result, that promise, along with Texaco's more general promises to submit to Ecuadorian jurisdiction, is enforceable against Chevron in this action and any future proceedings between the parties, including enforcement actions, contempt proceedings, and attempts to confirm arbitral awards."⁶

Statement 2: "the claims are barred by the statute of limitations in Ecuador"⁷

This statement fails to mention that Texaco waived its defenses under the statute of limitations when it voluntarily submitted itself to jurisdiction in Ecuador in 2002 before a U.S. federal court as a condition of the case being transferred to Ecuador.⁸

Statement 3: "the lawsuit is also barred by the releases from liability previously given to Texpet by the Republic of Ecuador and Petroecuador and by the pertinent provincial and municipal governments."⁹

This statement may also be considered misleading. Chevron does not disclose that the company was released from *government* claims. Their attempt to apply this release to citizens, in addition to the government, has been met by legal assertions that the citizens never signed off on the release and are therefore not bound by it. Notably, Chevron does not mention that the recent court ruling in Ecuador did not accept Chevron's interpretation of the scope of this release.¹⁰

Chevron is entitled to disagreements with the plaintiffs about points of contention in the lawsuit; indeed, that is why a lawsuit exists. However, some of the preceding statements, taken in aggregate, could create the misleading perception that the Ecuadorian lawsuit is fraudulent and without legal merit. The reality is that these are

⁵ Opinion and Order of U.S. District Court Judge D.J. Rakoff, 30 May 2001, Item 3.

http://www.texaco.com/sitelets/ecuador/docs/aquinda_v_texaco_oao2.pdf

⁶ March 17, 2011 Decision by the United States Court of Appeals, Second Circuit, Republic of Ecuador v. Chevron Corporation, Texaco Petroleum Company, pg. 6

⁷ Chevron Corporation, 2010 Annual Report, p. 24

⁸ United States Court of Appeals, Second Circuit. - 303 F.3d 470, Item. 31

<http://law.justia.com/cases/federal/appellate-courts/F3/303/470/505740/>

⁹ Chevron Corporation, 2010 Annual Report, p. 24

¹⁰ Ruling of Presiding Judge Nicolas Zambrano Lozada, Provincial Court of Sucumbios, 14 February 2011, p.34 and p.176 <http://chevrontoxico.com/assets/docs/2011-02-14-judgment-Aguinda-v-ChevronTexaco.pdf>

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disputed issues on which Chevron holds a position, which is not the same as the position held by the plaintiffs or the Ecuadorian court.

We urge you to analyze these omissions in light of the standards governing materiality, SEC rules and guidance, and any other applicable requirements, and to take any actions the Staff deems appropriate. We would be glad to provide additional documentation on any of the points raised in this letter.

Thank you for your attention to this matter.

Sincerely,



Jonas Kron, Esq.
Vice-President
Trillium Asset Management Corporation



Sanford Lewis, Esq.
Counsel

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