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Chair and Commissioners
United States Securities and Exchange Commission
100 F Street, NE Washington DC 20549

Dear Chair and Commissioners:

I am writing to provide comments to the SEC as it moves to reissue a rule to implement Section 1504 of the Dodd-Frank Act.

I am a professor of Political Science at the University of California, Los Angeles (UCLA). Most of my research for the last 15 years has been on the political and economic challenges facing oil, gas, and mineral-exporting countries. My work, including a recent book *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (2012), is widely cited and has received several awards for scholarly achievement. I have also worked as a consultant for a wide range of governments, mineral companies, intergovernmental organizations and non-profits; and served as a member of several advisory groups, including ones constituted by the Central Intelligence Agency, the World Bank, and the United Nations. I am currently a member of the Multi-stakeholder Group for the US Extractive Industries Transparency Initiative (USEITI), which has been organized by the US Interior Department.

In this letter, I will simply make three brief points in response to recent arguments made by the American Petroleum Institute (API).

1. Section 1504 is designed, in part, to protect the interests of US-based investors.

The American Petroleum Institute, in its April 15, 2014 letter to the SEC, states that Section 1504 was “*enacted to promote foreign policy objectives, not to protect investors.*”¹ In fact, it was designed with both objectives in mind, and these objectives are closely intertwined.

US-based firms have approximately **\$1.25 trillion** invested in the oil sectors of foreign countries.² The policies of the host governments will affect the returns that US firms receive

¹ API letter to SEC dated April 15, 2014, page 3.

² As of 2007. Ernst & Young (2007), “Investment and Other Uses of Cash Flow By the

on these investments: the more corrupt that these governments are, the lower the returns that US firms will gain on their investments.³ Section 1504 mandates project-level reporting, and making that disclosure publicly available will likely have an important corruption-reducing effect in these countries, which should help protect the interests of a large number of US-based investors.

2. The Foreign Corrupt Practices Act (FCPA) has not been sufficient to reduce oil sector corruption.

The above-referenced API letter also suggests that the SEC need not worry about project-level reporting because the FCPA has already solved the problem of corrupt payments to foreign officials:

*Some commenters also argue that project-level disclosure would help uncover corrupt payments. However, the Foreign Corrupt Payments Act proscribes illicit payments to foreign officials, not the legitimate payments to foreign governments that would be disclosed under Section 1504.*⁴

In fact, a recent study of SEC and Department of Justice (DOJ) documents identified 39 cases of FCPA violations prosecuted by the DOJ between 1982 and 2012 that involved illicit payments by US-based firms working in the oil and gas sectors of foreign countries.⁵ These oil and gas cases made up about 27 percent of all prosecuted FCPA cases. There is no evidence that the problem is going away: 30 of these 39 cases have been brought since 2007. A table from this study that describes these 39 cases is attached.

Moreover, the FCPA does not even capture all instances of such corruption. In many resource-rich countries, it is difficult to draw a line between what is legally corrupt and what is not. Many industry-wide practices that might not necessarily violate the FCPA are nevertheless illegitimate and violate the spirit, if not the letter of the law.

The April 15 API letter also suggests that company-specific, project-level reporting would give investors little useful information, beyond what they already have access to:

*the commenters who advocate company-specific public payment disclosures bear the heavy burden of showing that investors who are already aware of a company's investment in a foreign county also need to see company-specific payment streams to make an informed investment decision.*⁶

But it is clear that the existing level of public disclosures has been insufficient to reveal, and deter, a large number of corrupt payments by US-listed firms. Surely investors would benefit from disclosures that are sufficiently granular to deter these activities.

Oil Industry, 1992-2006," prepared for the American Petroleum Institute, pp. i-ii.

³ See, for example, Paolo Mauro (2004), "The persistence of corruption and slow economic growth," *IMF Staff Papers*, 51:1; Vito Tanzi (1998), "Corruption Around the World," *IMF Staff Papers* 45:4.

⁴ API letter to SEC dated April 15, 2014, page 8.

⁵ Paasha Mahdavi (2014), "Extortion in the Oil States: Nationalization, Regulatory Structure, and Corruption," UCLA Political Science Department.

⁶ API letter to SEC dated April 15, 2014, page 8.

3. Corruption tends to be unusually severe in the oil and gas sectors

According to the April 15 API letter, there is no reason for the oil and gas industry to be subject to greater disclosures than other industries:

*Were the Commission to conclude that that company-specific payment information is material to investors, the Commission should examine whether such disclosures ought to be required for all industries—including financial, technology, and pharmaceutical companies, among others—via rulemaking under Regulation S-K. If such detailed disclosures are, in fact, material, there is no principled reason why they should be limited to resource extraction companies.*⁷

In fact, there is a good reason why firms working in the extractive sector should be subject to exceptionally detailed disclosure rules. There is ample empirical evidence that the petroleum industry is marked by unusually high corruption levels at a global level, compared to other industries. This conclusion has been found by studies of many specific oil and gas exporting countries,⁸ as well as a voluminous number of global studies.⁹ Even the API's legal advisors have conceded that firms working in the oil sector face an exceptionally high corruption risk.¹⁰ An industry subject to unusually high levels of corruption merits unusually close scrutiny, and unusually detailed disclosure requirements.

In short, I ask the Commission to take into account the special risks that face US-based investors in the oil and gas industries of foreign countries. These investments are enormous, and face unusual corruption risks. Detailed company-level and project-level public disclosures are the best tool available for mitigating these risks.

⁷ Ibid., p. 9.

⁸ Some of the more important recent studies include Caselli, Francesco and Guy Michaels (2013), "Do Oil Windfalls Improve Living Standards? Evidence from Brazil." *American Economic Journal: Applied Economics* 5(1):208–238; Brollo, Fernanda, Tommaso Nannicini, Roberto Perotti and Guido Tabellini (2013), "The Political Resource Curse." *American Economic Review* 103(5):1759–1796; Jones Luong, Pauline and Erika Weinthal (2010), *Oil is not a Curse: Ownership Structure and Institutions in Soviet Successor States*. New York: Cambridge University Press; Vicente, Pedro C. (2010), "Does oil corrupt? Evidence from a natural experiment in West Africa." *Journal of Development Economics* 92(1):28–38.

⁹ Leite, Carlos and Jens Weidmann. 1999. Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth. Technical Report WP/99/85 Washington D.C.; Melhum, Halvor, Karl Moene and Ragnar Torvik (2006), "Institutions and the Resource Curse." *The Economic Journal* 116(1):1–20; Andersen, Jörgen Juel, Niels Johannesen, David Dreyer Lassen and Elena Paltseva (2012), "Petro Rents and Hidden Wealth: Evidence from Bank Deposits in Tax Havens," Working paper; Arezki, Rabah and Markus Brückner (2011), "Oil Rents, Corruption, and State Stability: Evidence from Panel Data Regressions." *European Economic Review* 55(7):955–963; Sala-i Martin, Xavier and Arvind Subramanian (2013), "Addressing the Natural Resource Curse: An Illustration from Nigeria." *Journal of African Economies* 22(4):570–615; Bhattacharya, Sambit and Roland Hodler (2010) "Natural Resources, democracy, and corruption." *European Economic Review* 54:608–621.

¹⁰ See page eight of the Gibson Dunn year end report at <http://www.gibsondunn.com/publications/Documents/2013-Year-End-FCPA-Update.pdf>.

I appreciate the opportunity to submit these comments, and would be happy to provide further information or answer any questions from Commissioners or their staff.

Sincerely,



Professor Michael Ross
UCLA Political Science Department



Attachment: Case descriptions of prosecuted FCPA violations in the oil and gas sectors

Defendant	Year	Countries Involved	Description
ABB Vetco	2004	Nigeria	Bribes paid to NNPC (Nigerian NOC) subsidiaries
Applied PPO	1983	Mexico	Bribes paid to Pemex (Mexican NOC) officials
Baker Hughes Inc.	2007	Kazakhstan, Uzbekistan	Bribes paid to KazakhOil (Kazakh NOC) officials
C.E. Miller Corp	1982	Mexico	Bribes paid to Pemex officials
Chevron Corp.	2007	Iraq	Bribes connected to the Oil-for-Food program
Control Components Inc.	2009	Brazil, China, Indonesia, South Korea, Malaysia, UAE	Bribes paid to multiple NOCs including CNOOC, KHNP, Petronas, NPCC, Petrobras
Crawford Enterprises	1982	Mexico	Bribes paid to Pemex officials
Daniel Ray Rothrock	2001	Russia	Bribes paid to RVO Nesco (former USSR NOC)
El Paso Corp.	2007	Iraq	Bribes connected to the Oil-for-Food program
Fiat S.p.A.	2008	Iraq	Bribes connected to the Oil-for-Food program
Flowsolve Corp.	2008	Iraq	Bribes connected to the Oil-for-Food program
GlobalSanteFe Corp.	2010	Angola, Equatorial Guinea, Gabon, Nigeria	Bribes paid to Sonangol and NNPC, and customs officials in Gabon & Equatorial Guinea
Helmerich & Payne Inc.	2009	Argentina, Venezuela	Bribes to customs officials for importation of oil rigs
Innospec	2010	Iraq	Bribes paid to Ministry of Oil officials, part of Oil-for-Food program
International Harvester	1982	Mexico	Bribes paid to Pemex officials
JGC Corporation	2011	Nigeria	Bribes paid to NNPC and Ministry officials
Kellogg Brown & Root	2011	Nigeria	Halliburton subsidiary. Bribes paid to NNPC and Ministry of Petroleum officials
Marubeni Corporation	2012	Nigeria	Bribes paid to NNPC and Nigeria-LNG officials
Mercator Corporation	2010	Kazakhstan	Bribes paid to Kazakh president and prime minister, former Mobil CEO was involved
Misao Hioki	2008	Argentina, Brazil, Ecuador, Mexico, Venezuela	Bribes to various (unidentified) NOC officials
Noble Corp.	2010	Nigeria	Bribes paid to Nigerian customs officials
Paradigm B.V.	2007	China, Indonesia, Mexico, Kazakhstan, Venezuela	Bribes paid to multiple NOCs including CNOOC, KazMunaiGaz, NNPC, Pemex, Pertamina
Parker Drilling Co.	2013	Nigeria	Bribes paid to Nigerian Ministry of Finance officials
Pride International Inc.	2010	India, Mexico, Venezuela	Bribes paid to PDVSA (Venezuelan NOC), Indian judges, and Mexican customs officials
Royal Dutch/Shell	2010	Nigeria	Bribes paid to NNPC and Ministry of Finance officials
Ruston Gas Turbines	1982	Mexico	Bribes paid to Pemex officials
Siemens	2008	Iraq	Bribes paid to Ministry of Oil officials, part of Oil-for-Food program
Snamprogetti	2011	Nigeria	Bribes paid to NNPC and Ministry officials
Statoil ASA	2009	Iran	Bribes paid to NIOC (Iranian NOC) officials
Technip S.A.	2010	Nigeria	Bribes paid to NNPC and Ministry officials
Tidewater	2010	Azerbaijan, Nigeria, UAE	Bribes paid to Ministry of Finance officials
Total S.A	2013	Iran	Bribes paid to NIOC officials
Transocean Inc.	2010	Nigeria	Bribes paid to Nigerian customs and finance officials
Triton Energy	1997	Indonesia	Bribes paid to Pertamina (Indonesian NOC) officials
Tyco International	2012	Congo, Egypt, Laos, Libya, Madagascar, Mauritania, Niger, Syria, Thailand, Turkey, Vietnam	Over \$26 mn in bribes paid to state officials to secure contracts for piping and flow control (note: this case also includes non-oil contracts)
Tyco VCME	2012	Iran, Saudi Arabia, UAE	Bribes paid to Aramco (Saudi NOC) officials
Vetco Gray Controls	2007	Nigeria	Bribes paid to Ministry of Finance officials
Viktor Kozeny	2005	Azerbaijan	Joint with Frederic Bourke. Bribes paid to SOCAR (Azeri NOC) officials
Willbros Group	2008	Ecuador, Nigeria	Bribes to NNPC and PetroEcuador officials
Williams, James Bryan	2003	Kazakhstan	Senior executive at Mobil; Bribes to Kazakh officials

Table 1: Case descriptions of prosecuted FCPA violations in the oil and gas sectors. Information collected from case documents publicly available from the websites of the Department of Justice (<http://www.justice.gov/criminal/fraud/fcpa>) and Securities and Exchange Commission (<http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>).

Table found in: Mahdavi, Paasha (2014) “Extortion in the Oil States: Nationalization, Regulatory Structure, and Corruption,” Unpublished Manuscript, UCLA.