

February 15, 2016

Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-25-15 - Release No. 34-76620 “Disclosure of Payments by Resource Extraction Issuers”

Dear Secretary Fields:

I would like to take this opportunity to comment on the definition of “commercial development of oil, natural gas, or minerals” as contained in the Commission’s proposed Rule 13q-1 to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers.

Consistent with the statute and the 2012 Rules, the proposed Rule defines “commercial development of oil, natural gas, or minerals”, as to include “exploration, extraction, processing, export and the acquisition of a license for any such activity” (p. 41). The proposed Rule further explains that “export” would mean the “transportation of a resource from its country of origin to another country by an issuer with an ownership interest in the resource”, adding that “this definition of the term “export” reflects the significance of the relationship between upstream activities such as exploration and extraction and the categories of payments to governments identified in the statute” (p. 44).

In light of these explanations, a preliminary point that in my view requires clarification is whether an issuer who merely “exports” oil, natural gas or minerals purchased from a government or from a state-owned company, and who is not engaged in the other activities included in the definition of commercial development (i.e. exploration, extraction, processing), would be subject to payment disclosure under the proposed Rule.

Further, the concept of “export” raises a number of practical questions, particularly in the case of payments for the purchase of crude oil. For instance, if an issuer were to purchase crude oil from a national oil company (“NOC”) while the resource is in storage at the NOC’s export terminal, and then re-sell it to another buyer while it is still at the terminal, would the payment for the purchase from the NOC have to be disclosed under the proposed Rule? Would the definition of “export” under the proposed Rule cover such a payment to the NOC even if the issuer that purchased the resource never physically engaged in exporting activities? For the purpose of the notion of “export” under the proposed Rule, would it make any difference if the storage tank is or is not located in a free zone?

The notion of “export”, unless further clarified, may create uncertainty around the exact scope of the proposed Rule with regard to some of the issuers’ activities and related payments to foreign governments.

Since the U.S. District Court for the District of Columbia’s decision of July 2, 2013, the European Parliament and Council of the European Union have adopted two directives (EU Accounting Directive and the EU Transparency Directive - the “EU directives”) that include payment disclosure rules similar to the 2012 Rules. Notably, however, and contrary to the

proposed Rule, the EU directives do not include “export” among the activities subject to payments disclosure.¹ The proposed Rule makes multiple references to the two directives, sometimes comparing the respective scope of the frameworks. As done for other parts of the proposed Rule, also with regard to “export” it would be helpful to explain to what extent exactly the disclosure and reporting requirements under the proposed Rule go beyond the scope of the EU directives.

Additional guidance on the notion of “export” in the proposed Rule would also be welcome in light of the important developments in the international transparency standards since the 2012 Rules. The 2013 Extractive Industries Transparency Initiative (“EITI”) Standard requires governments, including state-owned enterprises, to disclose the volumes sold and revenues received for the sale of the state’s share of production or other revenues collected in-kind.² The current EITI Standard leaves it to the discretion of the country multi-stakeholder group whether to also require the reporting of payments to governments for the purchase of natural resources by buying companies.³ Nevertheless, the rising relevance of EITI speaks in favor of a clarification of whether, and if so to what extent, resource purchasing issuers would be subject to payment disclosure under the proposed Rule. In this respect, it is worth noting that some EITI reports (e.g. Iraq EITI Report for the years 2011, 2012 and 2013) contain information about payments reported by buyers of exported crude oil. Some of these buyers may be considered “resource extraction issuers” under the proposed Rule.

I believe that clarifying the proposed Rule in relation to the notion of “export”, as illustrated above, would contribute to the creation of a more predictable regulatory framework in which issuers will have to operate. Furthermore, in light of the adoption of transparency legislation in a growing number of countries, additional precision would facilitate the comparability of information, thereby supporting the evolution of national transparency initiatives toward a common standard.

The sale of resources by governments and their national companies, in particular in the case of crude oil, generates a significant portion of public revenues in many resource-endowed countries. Additional guidance on disclosure of payments for the purchase of resources for export would therefore also support the governmental interest of reducing corruption and potentially enhancing governmental accountability that underpins this important legislative amendment.

Sincerely yours,



Pietro Poretti

1 The EU disclosure rules apply to “undertaking[s] active in the extractive industries”, defined as undertakings “with any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2.” The referenced listing of economic activities in Annex I to Regulation (EC) No 1893/2006 includes “mining”, “quarrying” and “extraction” of various minerals and petroleum products.

2 EITI Standard Requirement 4.1.C on the “Sale of the state’s share of production or other revenues collected in-kind”.

3 EITI Standard Requirement 4.1.C on the “Sale of the state’s share of production or other revenues collected in-kind” (last sentence) “*Where practically feasible, the multi-stakeholder group (footnote omitted) is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.*”