



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

February 16, 2016

Dear Secretary Fields,

**Comment on Proposed Rule Requiring Disclosure of Payments by Resource Extraction Issuers, File No. S7-25-15; Release No. 34-76620**

We welcome the opportunity to provide comments to the Securities and Exchange Commission (the "Commission") on proposed Rule 13q-1 and amendment to Form SD implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504) requiring payment disclosure by resource extraction issuers.

The Natural Resource Governance Institute (NRGI), an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy. NRGI is recognized for its technical expertise, and has been involved in the development of mandatory reporting requirements for the extractive industries in the United States, European Union and Canada. We have also contributed extensively to the development of the Extractive Industries Transparency Initiative (EITI), including serving on the initiative's board since its inception and contributing to the revised version of the EITI Standard adopted in 2013.

In this submission we urge the Commission to **require disclosure of payments to governments related to physical commodity trading of oil, gas and minerals.**

- First, we demonstrate the scale of these payments to governments and how they are prone to corruption.
- Second, we demonstrate how the statutory language under Section 13(q) of the Exchange Act added by Section 1504 clearly allows for the inclusion of such payments within the Commission's final rule.
- Third, we show how trading payments are a commonly recognized revenue stream related to the commercial development of oil, natural gas and minerals, and show growing international attention around their transparency (including from the EITI).

This submission relates to the following sections and questions contained in the proposed rule and request for comment:

- Section I.E.1: *The U.S. Government's Foreign Policy Interest in Reducing Corruption in Resource-Rich Countries*
- Section 2.B: *Definition of "Commercial Development of Oil, Natural Gas, or Minerals"* (particularly questions 6, 9 and 12)
- Section 2.C.1: *Definition of "Payment" / Types of Payment* (particularly question 13)
- Associated instructions on proposed Item 2.01 of Form SD (particularly Items 2.01(c)(2), 2.01(c)(4) and 2.01(c)(9)(iii).

**1. Payments to government related to physical commodity trading of oil, gas and minerals are economically important, seldom disclosed, and prone to corruption.**

The Commission has made clear that it sees Section 13(q) and the rules required thereunder as “intended to advance the important U.S. foreign policy objective of combatting global corruption and, in so doing, to potentially improve accountability and governance in resource-rich countries around the world.”<sup>1</sup> In order for Section 13(q) to be comprehensive and contribute to combatting corruption across all major payment transactions, it is essential that trading-related payments are included in the final rules.

In most oil producing countries, the state receives a share of production, which is typically then sold by the national oil company. In addition to this share of production, national oil companies also develop their own resources independently and sell those resources on the international market if they are not destined for local consumption. While most common in oil producing countries, some state-owned mining companies make similar commodity sales.

As a major stream of government revenue, the proceeds from the sale of state-owned commodities should be used for public benefit. In many countries, in fact, payments received from the sale of oil or gas represent the country’s largest revenue stream. From 2011 to 2013, the total value of sales by the national oil companies of Africa’s 10 top oil producers equaled 56% of their combined government revenues (and more than 10 times international aid to these countries).<sup>2</sup> In countries like Iraq, Nigeria, Libya and Angola, the majority of *total* government revenues come from crude oil sales by the national oil company. For example, Nigeria’s state-owned national oil company, the Nigerian National Petroleum Corporation (NNPC), sells around one million barrels of oil a day, or almost half of the country’s total production. In 2013, NNPC oil was worth an estimated \$41 billion which equalled 61% of government revenues.<sup>3</sup> The tax and other royalty payments to the Nigerian state (the payments already clearly accommodated under Section 13(q)) totaled significantly less than this amount.

Despite their size, these payments to governments are seldom disclosed, due in part because physical commodity trading has received less external scrutiny than other parts of the extractive sector value chain. There are numerous examples of how this secrecy has been abused. Corruption can occur in the sale transactions themselves, as they did perhaps most famously in the Iraq Oil-for-Food scandal.<sup>4</sup> For example, Republic of Congo’s state-owned oil company reportedly sold oil at a favorable price to a Geneva-based trading company, reportedly close to the Congolese President’s son— resulting in lost funds that should have entered the treasury.<sup>5</sup> Corrupt oil sale deals signed by the previous Nigerian government lost the country as much as \$16 per barrel, and have since been

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<sup>1</sup> SEC, *Disclosure of Payments by Resource Extraction Issuers*, Proposed Rule, 80 Fed. Reg. at 80,063

<sup>2</sup> Natural Resource Governance Institute, Swissaid and Berne Declaration, *Big Spenders – Swiss Trading Companies, African Oil and the Risks of Opacity*, 2014. Also see Annex 4.

[http://www.resourcegovernance.org/sites/default/files/BigSpenders\\_20141014.pdf](http://www.resourcegovernance.org/sites/default/files/BigSpenders_20141014.pdf)

<sup>3</sup> Natural Resource Governance Institute, *Inside NNPC Oil Sales: A Case for Reform*, August 2015, p. 2. Available at [http://www.resourcegovernance.org/sites/default/files/NRGI\\_InsideNNPCOilSales\\_MainReport.pdf](http://www.resourcegovernance.org/sites/default/files/NRGI_InsideNNPCOilSales_MainReport.pdf).

<sup>4</sup> Report of the Independent Inquiry into the UN Oil-for-Food Program, 2005.

<https://web.archive.org/web/20130823070841/http://www.iic-offp.org/documents/IIC%20Final%20Report%2027Oct2005.pdf>

<sup>5</sup> Berne Declaration, “Philia’s refined ventures in Brazzaville – how Swiss traders misappropriate Congolese oil rents”, 2014, [https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/BD-2015-Investigation-Philia\\_s\\_refined\\_ventures.pdf](https://www.bernedeclaration.ch/fileadmin/files/documents/Rohstoffe/BD-2015-Investigation-Philia_s_refined_ventures.pdf).

cancelled by the new administration of President Buhari.<sup>6</sup> Secrecy in oil sales also allows governments to hide how much revenue they receive. In Angola, for instance, the IMF revealed that the national oil company had illegally and secretly spent \$32 billion in oil sale revenues in 2007 to 2010 – funds that should have entered the public budget.<sup>7</sup>

These corruption risks have been widely acknowledged but insufficiently addressed. For example, the Organization for Economic Co-operation and Development's (OECD) Policy Dialogue on Natural Resource-based Development has developed a typology on corruption risks in extractives where commodity trading features prominently. A 2015 report from the Policy Dialogue noted the "corruption risk in commodity trading which represents a potentially huge loss of revenues for producing countries considering the financial volumes involved in the commodity trading sector."<sup>8</sup>

The Swiss government has recognized the reputational risk posed by being the world's largest commodity trading center, noting that "the commodities industry is...associated with...challenges that must be taken seriously, including the need to respect human rights and environmental standards in resource-exporting countries and the problem of governance deficiencies in many of those countries. These challenges may also bring with them reputational risks both for individual companies and for Switzerland."<sup>9</sup>

The U.S. has a great interest in ensuring that payments related to trading are disclosed in a consistent and timely fashion. Two countries of great interest to U.S. foreign policy, Iraq and Iran, demonstrate this clearly. In Iraq, payments made by international buyers for the state's share of crude oil (crude oil export sales) amounted to approximately \$80 billion in 2013, an amount which constituted most of Iraq's federal budget and foreign exchange earnings for that year. These payments which were made to the state-owned Iraqi Oil Marketing Company (SOMO) by 42 companies, included the following SEC issuers: BP, Chevron, ENI, ExxonMobil, Phillips 66, Royal Dutch Shell, Total and Valero.<sup>10</sup>

In Iran, with the lifting of international sanctions, major commodity traders have started to buy Iranian crude oil. On 14 February 2016, the National Iranian Oil Company confirmed that SEC issuer Total was due to receive 2 million barrels of crude oil.<sup>11</sup> In order to deter corruption in oil sales, it is essential that the SEC ensure disclosure of payments made by SEC issuers to Iran for the purchase of oil.

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<sup>6</sup> NRGI, *Inside NNPC Oil Sales: A Case for Reform in Nigeria*, August 2015.

<http://www.resourcegovernance.org/publications/inside-nnpc-oil-sales>

<sup>7</sup> IMF, *Angola - Fifth Review under the Stand-By Arrangement*, 2011.

<https://www.imf.org/external/pubs/ft/scr/2011/cr11346.pdf>

<sup>8</sup> OECD, Policy Dialogue on Natural Resource-based Development - Summary Report of meeting on 2-4 December 2015, p. 10, [http://www.oecd.org/dev/Summary\\_report\\_Fifth\\_Meeting-Policy\\_Dialogue\\_Natural\\_Resource.pdf](http://www.oecd.org/dev/Summary_report_Fifth_Meeting-Policy_Dialogue_Natural_Resource.pdf)

<sup>9</sup> Swiss Federal Department of Foreign Affairs, *Background Report: Commodities*, March 2013, p. 42, <http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf>

<sup>10</sup> Iraq EITI report for 2013 (published Dec. 2015) pp. 39-40. Available at: [https://eiti.org/files/ieiti\\_2013\\_final\\_report\\_-\\_v2\\_5\\_0.pdf](https://eiti.org/files/ieiti_2013_final_report_-_v2_5_0.pdf). Also see annex.

<sup>11</sup> National Iranian Oil Company, February 14, 2016:

<http://en.nioc.ir/Portal/Home/ShowPage.aspx?Object=NEWS&ID=c5cedc38-de24-44c3-87f3-d70255f15b3e&WebPartID=32c9a857-c7f1-42bd-9206-732bb331277c&CategoryID=24c6268f-87ee-4fc0-b389-76d84b6b0f22>

**2. The Commission has discretionary authority under Section 13(q) to include payments to governments related to physical commodity trading of oil, gas and minerals.**

We demonstrate below how the Commission has authority under Section 13(q) to include payments to governments related to the physical commodity trading of oil, gas and minerals; and recommend how the Commission could modify its rule under Section 13(q) to account for this. As we make clear in this submission, the Commission should not disregard this important payment stream; indeed, to do so would undermine the intent of the statute.

Section 13(q) gives the Commission authority to include trading as an activity under its definition of “Commercial Development of Oil, Natural Gas, or Minerals” and as a specific payment type under the definition of “payment”. It is essential that trading as a *type of activity* and trading-related payments as a *payment type* are both integrated into the final rules.

In terms of “Commercial Development of Oil, Natural Gas, or Minerals”, we believe that a modification to the Commission’s definition of “export” presents a simple and internally consistent means to ensure that trading-related activity is included in the final rules. We would recommend that proposed Item 2.01(c)(4) of Form SD is amended as follows:

(4) *Export* means the movement of a resource across an international border from the host country to another country by a company with an ownership interest in the resource. ***This includes trading activities where payments are made by an issuer for the purchase of oil, natural gas or minerals from a government (including a state-owned company).*** Cross-border transportation activities by an issuer that is functioning solely as a service provider, with no ownership interest in the resource being transported, would not be considered to be export.

The revision proposed above would explicitly include trading-related payments in the Commission’s definition of “export.” The majority of commodity sale transactions between governments and SEC issuers are export transactions, in which governments receive financial payments in exchange for raw materials which are then exported across international borders.

However, we note that the Commission also has the discretion to include any “other significant actions relating to oil, natural gas, or minerals” within the scope of “commercial development of oil, natural gas, or minerals”. For a significant number of resource rich countries, trading-related activities are among *the most financially significant actions* undertaken. Were the Commission to decide to include a further action within its definition of “commercial development”, we would propose the following modifications to Item 2.01(c)(2) of Form SD as follows:

(2) *Commercial development of oil, natural gas, or minerals means exploration, extraction, processing, ~~and~~ export, and physical trading of oil, natural gas, or minerals, or the acquisition of a license for any such activity.*

In terms of types of payment, Section 13(q) clearly provides for the inclusion of “other material benefits” subject to the requirement that they are “part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.” According to Section 13(q), these “other material benefits” must be consistent with the EITI’s guidelines “to the extent practicable.”<sup>12</sup> As we have demonstrated, trading-related payments are often *the most material* benefit which a government receives in relation to the commercial development of oil, natural gas,

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<sup>12</sup> 15 U.S.C. 78m(q)(1)(C)(ii).

or minerals. We also demonstrate in section 3 below that these payments are now considered a commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals, including within the EITI standard.

We therefore recommend an additional payment type is added to Item 2.01(c)(9)(iii) of Form SD as follows:

***Payments, including payments in-kind, relating to trading activities where an issuer purchases oil, natural gas or minerals from a government (including a state-owned company).***

In most cases, the payments involve a company paying for commodities with money. There are exceptions, however, which the rules should clearly mention as in-scope. These include oil, natural gas or minerals that are exchanged for other commodities. For instance, in 2010 to 2014, Nigeria exchanged \$35 billion worth of crude oil (around 210,000 barrels per day) for petroleum products such as gasoline and diesel, and these “swap” deals featured a range of serious governance problems. The exceptions also include commodity-backed loans, through which governments repay financing obligations with raw materials, and deals that see oil or minerals exchanged for the construction of infrastructure.

The final rules should also define the requisite level of granularity. As with other forms of payment, providing information broken down by contract (in line with the Commission’s proposed approach to project definition) will help to increase accountability and avoid obscuring important information not visible at a more aggregated level.

### **3. Trading-related payments to governments are now commonly recognized as a revenue stream from the commercial development of oil, natural gas, or minerals.**

Finally, we wish to demonstrate how payments to governments related to physical trading of oil, gas and minerals are now a commonly recognized revenue stream, and how the reporting of these payments is growing. Moreover, we explain how including trading-related payments within the final rules would enable the Commission to leverage international action in this area. In this way, the final rules would contribute to the Commission’s statutory mandate that “[t]o the extent practicable, the rules . . . shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.”<sup>13</sup>

Since 2013, the EITI has included trading-related payments within its reporting requirements. In terms of U.S. foreign policy, we note that a U.S. government representative was on the EITI International Board which agreed this requirement in 2013.<sup>14</sup> Requirement 4.1.c of the EITI Standard reads as follows:

***Sale of the state’s share of production or other revenues collected in-kind:***

*Where the sale of the state’s share of production or other revenues collected in-kind is material, the government, including state owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated to levels*

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<sup>13</sup> Section 13(q)(2)(E).

<sup>14</sup> EITI International Board 2011-2013. Available at [https://eiti.org/files/22\\_10\\_2012\\_%20EITI%20Board%202011-2013\\_0.pdf](https://eiti.org/files/22_10_2012_%20EITI%20Board%202011-2013_0.pdf)

*commensurate with the reporting of other payments and revenue streams (Requirement 5.2.e).*

Requirement 4.1.c will result in reporting on commodity sale payments in around seventeen EITI member countries.<sup>15</sup> These are the EITI countries where state-owned oil or mining companies sell commodities on the government's behalf. Already, the requirement has triggered the publication of oil sales payment data in countries including Albania, Ghana, Iraq, Nigeria, Norway and the Republic of Congo.<sup>16</sup> In Iraq, for example, each buying company reported how much it paid to the government, the government reported how much it received, and these two figures were reconciled (see excerpt in Annex 1).

Given its voluntary nature, EITI is unable at present to bring transparency to trading-related payments for stakeholders in non-member countries such as Iran, Libya, Angola or Equatorial Guinea. Even in EITI implementing countries, the information disclosed tends to be delayed which has an impact on efforts to deter corruption and engender accountability; for example, the most recent EITI trading data for Iraq and Nigeria covers only 2013 and 2012 respectively.

Prompted by the EITI's action in this area, Swiss-based trading company Trafigura (the world's third largest oil trading company) chose to voluntarily publish its trading-related payments to governments in 2015. Trafigura's report, limited to EITI implementing countries, again demonstrates the magnitude of these revenue streams to governments. Trafigura disclosed a total of \$4.3 billion in payments to the national oil companies of Colombia, Ghana, Nigeria, Norway, Peru and Trinidad and Tobago.<sup>17</sup> The report also suggests the feasibility of this kind of reporting for companies, and Trafigura has heralded the value of this transparency in their relations with the public, investors and creditors.

Several actors have noted the need for home country governments, such as the U.S., to move on this issue. The Africa Progress Panel, chaired by former UN Secretary-General Kofi Annan, has called for the inclusion of commodity trading within the scope of Section 13(q) and the EU Directives.<sup>18</sup> Speaking in terms of the need to improve governance of trading, the EITI International Secretariat has noted in its own brief that efforts in major trading hubs such as the U.S., Switzerland and U.K are important: "disclosure requirements in the home jurisdictions of trading companies may contribute."<sup>19</sup>

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<sup>15</sup> The 17 countries are Albania, Azerbaijan, Cameroon, Chad, Colombia, Côte d'Ivoire, Ghana, Indonesia, Iraq, Mauritania, Mozambique, Myanmar, Nigeria, Norway, Republic of the Congo, Trinidad and Tobago and Yemen. EITI, *The EITI, NOCs and the First Trade*, March 2015. Available at [https://eiti.org/files/EITI\\_Brief\\_NOC\\_FirstTrade\\_March2015.pdf](https://eiti.org/files/EITI_Brief_NOC_FirstTrade_March2015.pdf)

<sup>16</sup> For more on implementing country reporting, see: EITI, *The EITI, NOCs and the First Trade*, March 2015.

<sup>17</sup> Trafigura, 2015 Responsibility Report, p. 17. Available at: <http://www.trafigura.com/media/3250/trafigura-2015-responsibility-report-en.pdf>. Also see Annex.

<sup>18</sup> Africa Progress Panel, *Equity in Extractives*, 2013, p. 97: "All countries should adopt and enforce the project-by-project disclosure standards of the US Dodd-Frank Act and comparable EU legislation, applying them to all extractive industry companies listed on their stock exchanges. **These standards should also include commodity trading.**" [emphasis added] Available at: [http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013\\_APR\\_Equity\\_in\\_Extractives\\_25062013\\_ENG\\_HR.pdf](http://app-cdn.acwupload.co.uk/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf).

<sup>19</sup> EITI, *The EITI, NOCs and the First Trade*, March 2015, p. 4.

Responding to these developments, Switzerland (a leading commodity trading hub) has signalled that it would include a requirement to disclose trading-related payments as part of its upcoming extractives transparency law as part of an “internationally agreed process”:<sup>20</sup>

### ***Transparency in the commodities sector***

*In addition, the Federal Council wishes to make financial flows within the commodities sector more transparent, and thus promote responsible action on the part of companies...As proposed in the consultation draft, the Federal Council is to have the power to extend these transparency provisions to companies trading in commodities, as part of an internationally agreed process.*<sup>21</sup>

If the Commission clearly included commodity trading payments in its final rules, it would strongly encourage other jurisdictions to move in the same direction.

The International Monetary Fund has recognized trading-related payments to governments in its new Fiscal Transparency Code which features a Resource Revenue Management pillar, currently in draft form.<sup>22</sup> The draft Resource Revenue Management pillar explicitly includes trading in resource revenue reporting, noting that: “governments and resource companies should provide comprehensive, timely, and reliable reports on holdings of natural resource rights, on extraction and *trading activities*, and on collections and payments of resource revenue.” It also recommends that resource companies publicly report on their payments to and from governments that relate to trading activities (Section 4.2.2).

This section has illustrated the increasingly widespread recognition that commodity trading payments need the same kind of public scrutiny and accountability as other forms of payment in the oil, gas and mining sectors.

## **Conclusion**

Revenues accrue to resource rich countries through multiple types of payments. The Commission has identified many of the most common payment types. However, especially for many oil producing countries around the world, payments arising from the sale of crude oil constitute the largest revenue stream from the commercial development of oil, gas and minerals.

In order to avoid a substantial gap in the reporting of payments, the Commission should clearly include the payments that issuers make when purchasing oil, gas or minerals from governments, including state-owned companies in its final rules. As described above, the size of these payments and the associated corruption risks render such reporting an essential part of this type of

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<sup>20</sup> Swiss Federal Council, “Company law to be modernised”, 28 November 2014. Available at:

<http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2014/2014-11-28.html>;

Swiss Federal Council, “Federal Council determines basis for new company law”, 4 December 2015,

<http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2015/2015-12-04.html>.

<sup>21</sup> Ibid.

<sup>22</sup> The draft Resource Revenue Management Pillar of the IMF’s Fiscal Transparency Code is available at:

<http://www.imf.org/external/np/exr/consult/2014/ftc/pdf/121814.pdf>

Section 4.22 reads “ADVANCED PRACTICE: Project-level information is annually published by resource companies on domestic natural resource extraction and **trading activity**, and by domestically domiciled or listed resource companies on their worldwide natural resource extraction and trading activity, including **payments to and from governments**, and the pricing schemes for commodities sold.”

transparency – something that has already been recognized and acted upon by the EITI and acknowledged by several other international bodies.

We appreciate the opportunity to submit this comment and would welcome the opportunity to discuss our submission with you in further detail. Please do not hesitate to contact us with any questions.

Sincerely,

Dr Alexandra Gillies  
Director of Governance Programs  
Natural Resource Governance Institute



Joseph Williams  
Senior Advocacy Officer  
Natural Resource Governance Institute



**ANNEXES:**

ANNEX 1: Excerpt of Iraq 2013 EITI report breaking down trading payments and receipts by buying company

ANNEX 2: Excerpt and translation of trading transparency provisions in Swiss preliminary draft law and accompany report

ANNEX 3: Excerpt of Trafigura's trading related payment disclosures

ANNEX 4: Excerpt from NRGi, Swissaid and Berne Declaration report *Big Spenders – Swiss Trading Companies, African Oil and the Risks of Opacity*, 2014, p. 7 showing national oil company oil sales relative to overall government revenues, 2011–2013.

**ANNEX 1: Excerpt of Iraq 2013 EITI report breaking down trading payments and receipts by buying company**

**3.5 Exported Crude Oil reconciliation by shipments, invoices and payments, between SOMO and buyers for the year 2013**

Company Name	SOMO USD	Buyer USD	Variance USD	Note
1 ApiOil Limited	383,354,077.89	383,606,897.25	(252,819.36)	A
2 Bharat Oman Refineries Limited	155,957,147.28	155,957,147.28	-	
3 Bharat Petroleum Corporation LTD.	421,695,226.32	421,989,140.00	(293,913.68)	B
4 BP OIL INTERNATIONAL LIMITED	4,463,948,161.53	4,250,654,412.63	213,293,748.90	C
5 CEPSA TRADING SAU	503,924,107.96	562,903,433.21	(58,979,325.26)	D
6 Chevron Products Co. A Division Of Chevron U.S.A. Inc.	3,065,819,660.63	3,069,006,793.27	(3,187,132.64)	E
7 China National United Oil Corporation	1,365,805,406.80	1,334,323,956.35	31,481,450.45	F
8 China Offshore Oil (Singapore) International Pte Ltd	2,435,488,390.23	2,436,907,499.51	(1,419,109.28)	G
9 China ZhenHua Oil Co.Ltd - Main/ (North Petroleum)	821,613,560.36	822,757,794.77	(1,144,234.41)	H
10 ENI Trading & Shipping SPA	369,734,573.63	370,149,333.06	(414,759.43)	I
11 ERG Supply & Trading S.P.A	979,910,492.16	-	(979,910,492)	J
12 Exxonmobil Sales and Supply LLC. U.S.A	3,332,657,312.98	3,535,739,092.00	(3,081,779.02)	K
13 GS Caltex Corporation	3,799,035,351.22	3,696,657,756.04	102,377,595.18	L
14 GUNVOR SA	208,455,167.83	208,455,167.83	-	
15 Hindustan Petroleum Corporation Ltd. - India	2,226,456,449.43	2,003,496,469.14	222,959,980.29	M
16 Indian Oil Corporation Limited - India	9,302,454,281.66	9,287,510,236.89	14,944,044.77	N
17 IPLOM INTERNATIONAL SA	728,821,777.67	729,380,693.33	(558,915.66)	O
18 JX Nippon Oil & Energy Corporation	1,800,195,271.75	1,801,164,799.55	(969,527.80)	P
19 Koch Supply & Trading, LP	505,867,460.16	301,205,982.77	204,661,477.39	Q
20 LITASCO MIDDLE EAST DMCC	761,363,398.01	761,986,468.22	(623,070.21)	R
21 MOTOR OIL HELLAS CORINTH REFINERIES S.A	1,789,063,942.33	1,789,063,942.33	-	
23 PETCO Trading Labuan Company Limited (PTLCL) / Petronas	572,269,593.85	572,586,504.70	(316,910.85)	S
24 PETROVIETNAM Petro Diamond Company limited / Care of Mitsubishi Corporation	812,251,078.84	812,251,078.84	-	
25 REPSOL Petrobras Global Trading B.V.	695,609,911.31	695,609,911.31	-	
26 PETROGAL S.A.	301,157,605.67	302,064,872.91	(907,267.24)	T
27 Phillips 66 International Trading Pte. Ltd.	4,025,066,442.79	4,027,728,018.34	(2,661,575.55)	U
28 REPSOL TRADING, S.A.	1,785,522,919.46	1,790,244,465.05	(4,721,545.59)	V
29 SARAS S.P.A.	775,968,128.45	776,066,740.51	(98,612.06)	W
30 SHELL INTERNATIONAL EASTERN TRADING COMPANY	2,287,498,213.24	2,010,059,695.93	277,438,517.31	X
31 Sinochem International Oil (London) Co. LTD	4,957,330,635.32	4,964,207,033.74	(6,876,418.42)	Y

32 SK Energy Co., Ltd	1,288,858,069.85	1,290,057,810.32	(1,199,740.47)	Z
33 SOCAR TRADING SA	498,025,197.08	335,775,336.68	162,249,860.40	AA
34 SOCIETE ANONYME MAROCAINE DE L'INDUSTRIE DU RAFFINAGE (SAMIR)	58,085,698.22	58,085,698.22	-	
35 TOTSATOTAL OIL TRADING SA	3,989,783,745.08	4,202,976,364.30	(213,192,619.22)	AB
36 Toyota Tsusho Corporation	1,938,991,362.53	1,941,333,883.20	(2,342,520.67)	AC
37 TURKISH PETROLEUM REFINERIES CORP.(TUPRAS)	2,510,227,821.22	2,510,227,821.24	-	
38 Unipac Asia Co. Ltd / China International -Main	9,791,254,269.50	9,735,418,693.23	55,835,576.27	AD
39 Valero Marketing & Supply Co.	2,636,560,879.92	2,723,254,880.04	(86,694,000.12)	AE
40 VITOL REFINING SA	391,314,870.90	391,550,740.91	(235,870.01)	AF
41 Korea National Oil Corporation (KNOC)	1,567,570,690.39	1,568,526,322.84	(955,632.45)	AG
42 Jordan Petroleum Refinery CO.Ltd	298,554,500.51	323,554,500.52	(25,000,000.01)	AH
<b>Total</b>	<b>80,803,522,851.94</b>	<b>78,954,497,408.27</b>	<b>1,849,025,443.67</b>	

Source: Iraq EITI report for 2013 (published Dec. 2015) pp. 39-40. Available at: [https://eiti.org/files/eiti\\_2013\\_final\\_report\\_-\\_v2\\_5\\_0.pdf](https://eiti.org/files/eiti_2013_final_report_-_v2_5_0.pdf)

## **ANNEX 2: Excerpt and unofficial translation of trading transparency provisions in Swiss preliminary draft law and accompany report**

### **Preliminary draft law, article 964f (original)**

#### *Art. 964f*

F. Extension du champ d'application

Dans le cadre d'une procédure harmonisée à l'échelle internationale, le Conseil fédéral peut prescrire que les obligations visées aux articles 964a à 964e sont également applicables aux entreprises actives dans le négoce de matières premières.

### **Preliminary draft law, article 964f (unofficial translation)**

*Article 964f: F: Extension of scope*

*As part of an internationally agreed process, the [Federal] Council can prescribe that companies which are active in commodity trading are equally subjected to all obligations of articles 964a-964e.*

<http://www.ejpd.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/aktienrechtsrevision14/vorentw-f.pdf> (p. 56)

### **Report accompanying preliminary draft law (original)**

#### *Art. 964f      Extension du champ d'application*

Cette norme de délégation habilite le Conseil fédéral à prescrire par voie d'ordonnance, dans le cadre d'une procédure harmonisée à l'échelle internationale, que les obligations visées aux art. 964a ss AP-CO sont également applicables aux entreprises actives dans le négoce de matières premières et à fixer les critères déterminant quelles entreprises sont concrètement concernés. Le Conseil fédéral peut ainsi adapter la réglementation avec rapidité et souplesse. Il y a procédure harmonisée à l'échelle internationale si plusieurs places importantes de négoce de matières premières appliquent les dispositions relatives à la transparence aussi aux négociants de matières premières. L'extension du champ d'application permet notamment de soumettre aux dispositions sur la transparence les prestations en espèces ou en nature versées aux autorisés.

### **Report accompanying preliminary draft law (unofficial translation)**

*Article 964f: Extension of scope*

*This delegation authority allows the Federal Council to prescribe by order, as part of an internationally agreed process, that the obligations referred to in art. 964a ss AP-CO also apply to companies active in commodities trading and to agree the criteria determining which specific companies are concerned. The Federal Council can therefore adapt the regulation quickly and flexibly. There is an internationally agreed process in place if several important commodity trading centers apply the transparency provisions to commodity traders. The extension of the scope would allow for transparency in payments, in cash or in kind, made to governments authorities.*

<http://www.ejpd.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/aktienrechtsrevision14/vn-ber-f.pdf> (p. 169)

### ANNEX 3: Excerpt of Trafigura's trading related payment disclosures

#### 2013 AGGREGATE FIRST PURCHASES OF PHYSICAL CRUDE, REFINED PRODUCTS AND GAS BY TRAFIGURA FROM NOCS IN EITI COUNTRIES WHERE THE INITIAL LOAD-PORT IS IN THE EITI IMPLEMENTING NOC HOME COUNTRY

Parcel load port country	National Oil Company	Selling entity	Product purchased	Volume in BBLs	Value (USD)
Colombia	Ecopetrol SA	Ecopetrol SA	Crude oil	1,523,808.00	159,087,546.46
Colombia	Ecopetrol SA	Ecopetrol SA	Refined products	694,951.00	63,067,490.83
Ghana	Ghana National Petroleum Corporation	Ghana National Petroleum Corporation	Crude oil	898,338.00	94,720,758.72
Norway	Statoil ASA*	Statoil ASA	Crude oil	1,834,972.00	198,830,444.70
Norway	Statoil ASA	Statoil ASA	Refined products	5,974,501.20	684,756,855.59
Norway	Statoil ASA	Statoil Marketing & Trading (US) Inc	Refined products	652,441.85	76,334,834.32
Peru	Petróleos del Perú S.A. (Petroperú)	Petróleos del Perú S.A. (Petroperú)	Refined products	212,029.00	24,687,808.64
Trinidad and Tobago	Petroleum Company of Trinidad and Tobago Ltd	Petroleum Company of Trinidad and Tobago Ltd	Refined products	3,881,758.00	370,199,389.05
Trinidad and Tobago	National Gas Company of Trinidad and Tobago Ltd	Trinidad and Tobago LNG Ltd	Gas	1,737,897.59**	132,958,594.58
<b>TOTAL</b>				<b>17,410,696.64</b>	<b>1,804,643,722.89</b>

\*Statoil ASA is a public limited company listed on the stock exchanges in Oslo (OSE) and New York (NYSE). With the Norwegian State being its largest shareholder with 67% of the shares, it is considered a National Oil Company for the purpose of this disclosure.

\*\*Equivalent to 100,798,060 therms

#### 2013 AGGREGATE SWAP OF CRUDE OIL AND CORRESPONDING DELIVERY OF REFINED PRODUCTS FROM AND TO NOCS IN EITI COUNTRIES WHERE THE LOAD-PORT IS IN THE EITI IMPLEMENTING NOC HOME COUNTRY

Parcel load port country	National Oil Company	Selling entity	Product purchased	Volume in BBLs	Value USD	Product Exchanged	Quantity BBLs	Value (USD)
Nigeria	Nigerian National Petroleum Corporation	Pipelines & Products Marketing Company	Crude oil	24,220,212.00	2,702,258,246.43	Refined products	18,558,813.05	2,495,650,427.48

2013 GRAND TOTAL OIL PAYMENTS TO EITI CANDIDATE AND COMPLIANT COUNTRIES

USD4,300,294,150.37

Trafigura, 2015 Responsibility Report, p. 17. Available at:

<http://www.trafigura.com/media/3250/trafigura-2015-responsibility-report-en.pdf>

## ANNEX 4: National oil company oil sales relative to overall government revenues, 2011–2013

Table 1: Value of NOC oil sales relative to government revenues, 2011–2013

Country	Year	Estimated volume of NOC sales '000 barrels*	Estimated value of NOC sales** \$ million	Total government revenues† \$ million	Value of NOC sales relative to government revenues
<b>Top ten sub-Saharan African oil exporters</b>					
Angola	2011	317,070	35,277	50,845	69%
	2012	313,737	35,022	52,937	66%
	2013	283,413	30,767	46,361	66%
Cameroon	2011	13,851	673	4,773	14%
	2012	6,340	708	4,754	15%
	2013	11,200	1,216	5,248	23%
Chad	2011	0	0	2,920	0%
	2012	1,900	212	3,022	7%
	2013	3,800	413	2,526	16%
Republic of Congo‡	2011	55,115	6,132	6,138	100%
	2012	45,990	5,134	5,832	88%
	2013	13,860	1,504	6,752	22%
Côte d'Ivoire	2011	4,319	481	4,881	10%
	2012	no data			
	2013	no data			
Equatorial Guinea	2011	34,000	3,783	6,038	63%
	2012	32,900	3,673	6,258	59%
	2013	22,850	2,481	5,411	46%
Gabon	2011	16,580	1,845	5,273	35%
	2012	10,745	1,199	5,173	23%
	2013	4,550	494	5,441	9%
Ghana	2011	3,930	437	7,412	6%
	2012	4,931	550	7,708	7%
	2013	6,697	727	7,982	9%
Nigeria	2011	386,504	43,002	74,183	58%
	2012	380,626	42,489	66,881	64%
	2013	301,786	32,762	54,143	61%
South Sudan	2011	17,400	1,936	4,426	44%
	2012	7,300	815	1,894	43%
	2013	3,800	413	2,569	16%
<b>Total</b>		<b>2,305,194</b>	<b>254,145</b>	<b>457,781</b>	<b>56%</b>
<b>Other countries discussed in this report</b>					
Libya	2011	no data			
	2012	130,740	14,595	58,650	25%
	2013	no data			
Azerbaijan	2011	181,122	20,152	29,512	68%
	2012	160,800	17,950	27,791	65%
	2013	58,982	11,785	29,047	41%
Yemen	2011	58,500	6,509	8,291	79%
	2012	31,350	3,500	10,586	33%
	2013	44,750	4,858	9,624	51%

\* This table shows the best available estimates of the total amount of oil sold by NOCs. When available, we used official government or NOC reports. These appear in the orange cells. When no official data was available, we totaled the identified NOC sales data gathered for this report from market sources. Sources of official data are: EITI reports for the Republic of Congo 2011–2012, Côte d'Ivoire 2011, Azerbaijan 2011–2012, and Ghana 2011; the Public Interest and Accountability Commission report for Ghana in 2012; the NNPC Statistical Bulletins for Nigeria 2011–2012; and, ministry of finance reports (<http://www.mof.gov.ve/comtc/>) for Yemen.

\*\* As explained in the text, we use the dated Brent annual average to estimate the value of volumes sold. Therefore the figures here are indicative estimates not actual receipts. The Brent benchmark prices used are \$111.26 in 2011, \$111.63 in 2012, and \$108.56 in 2013 (Source: OPEC).

† Source: 2014 IMF World Economic Outlook.

‡ The total volumes sold by the Republic of Congo's NOC, when valued using the Brent annual average, equal approximately 100 percent of the IMF's account of total government revenues in 2011. Possible explanations for this include that SNPC retains some of the sales revenues, and that SNPC did not receive that high a price for all its sales, such as those to domestic refineries.

Source: Natural Resource Governance Institute, Swissaid and Berne Declaration, *Big Spenders – Swiss Trading Companies, African Oil and the Risks of Opacity*, 2014, p. 7

[http://www.resourcegovernance.org/sites/default/files/BigSpenders\\_20141014.pdf](http://www.resourcegovernance.org/sites/default/files/BigSpenders_20141014.pdf)