



March 8, 2016

Brent J. Fields, Secretary  
U.S. Securities and Exchange Commission  
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Re: Disclosure of Payments by Resource Extraction Issuers  
Release No. 34-76620  
File No. S7-25-15

The enclosed comments are submitted on behalf of Exxon Mobil Corporation (“ExxonMobil” or the “Company”) with respect to certain comment letters posted on or prior to February 16, 2016 referencing the new proposed rule 13q-1 (the “Proposed Rule”) and related release approved by the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) on December 11, 2015. ExxonMobil has been deeply involved in issues surrounding Dodd-Frank Section 1504 and its implementing rule since the adoption of that statute in 2010.

This letter will be limited to responding to recommendations raised by other commenters which, if ultimately included in the final rule, would only reduce the chance the rule will satisfy its intended purpose. Such an approach would also result in a rule that far exceeds the Commission’s statutory mandate and squander the Commission’s opportunity to forge a balanced and workable worldwide payment transparency standard. In addition, we support the additional comments provided by the American Petroleum Institute in its March 8, 2016 letter to the SEC.

In the Commission’s own words, the intended purpose of 13q-1 is “to empower citizens of... resource producing countries to hold their governments accountable for the wealth generated by those resources,” a goal ExxonMobil has long supported. Deviating from that simple principle by including arbitrary and detailed reporting requirements and disclosures which go beyond those specified in Dodd-Frank Section 1504 would not only significantly increase costs to issuers and harm shareholders, but it would also fail to fulfill this intended purpose. Instead, it would sow confusion with the very users who are seeking a tool they can understand and use and who could otherwise benefit from a well-crafted rule.

## **Background**

As we noted in our previous comment letter, for the SEC to comply with its mandate, the Commission must adopt a rule that is consistent with EITI Principles and that can help the cause of transparency succeed on a global scale. The EITI requires all extractive companies in participating countries to report their payments to governments. Payments are to be publicly disclosed on a project basis consistent with SEC and/or EU rules. The Proposed Rule and certain commenters imply that the EU standards for project-level reporting have already become a global norm and that it is, in effect, too late for the SEC to take a different course. **This is not the case.** Reporting under the EU transparency and accounting directives has not yet begun. Even where initial legislation is complete, the first reports have not yet been published. In addition, EU directives contemplate that the reporting approach initially taken will be reviewed after the first filing years to determine whether the rules are effective for their intended purpose; to assess how the rules are affecting reporting issuers; and to compare the EU approach to other transparency reporting regimes that may have been developed. Finally, the EITI contemplates that member country reporting could be accomplished consistent with either the EU rule or the final SEC rule, even if the SEC rule takes a somewhat different (and in our view, far more effective) approach to defining specific disclosure requirements.

It is not too late for the SEC to regain a leadership position in the transparency arena by adopting an approach to transparency reporting along the lines outlined in our previous letter; such an approach would be superior from the standpoint of accomplishing the fundamental government accountability objective of resource transparency while also significantly mitigating the potential for such disclosure to harm reporting companies and their shareholders. We firmly believe that reports filed under the EU rules, due to the inability for users to effectively compile project level data in any standardized way, will be distressingly inadequate to those who expect this to provide a means to advance government accountability. Alternatively, if the Commission were to take the approach we have described in our prior comment letters, it would readily become clear as SEC-compliant reports begin to be filed that the SEC approach is superior and would create substantial momentum for the EU and other jurisdictions to modify their approaches to follow the SEC's leadership.

With this background in mind, we point out below the most obvious flaws in the proposals or commentary introduced in the first comment period on the Proposed Rule.

## **Definition of Control**

As indicated in our previous comment letter, ExxonMobil does not support the Commission's adoption of a definition of "control" that would require non-operating working interest owners in a joint development to report their respective shares of an otherwise reportable payment made by the operator. We provide the following in response to feedback from other commenters:

- Certain commenters appear to be confusing the concept of principal/agent with the concept of operator/non-operator in oil and gas operations. When an operator of an oil and gas industry joint operation makes a payment to the government, it is NOT making such a payment as an “agent” for any non-operators. Instead, the operator is typically directly responsible to a government entity for that payment, and the operator separately has an arrangement with any non-operators to bill them for their respective share of the payment. To the extent a payment is missing or is otherwise incorrect, the government looks directly to the operator for resolution, not to the non-operator working interest owners. Furthermore, from the government’s perspective and in its records, it attributes payments to the party that actually makes the payment, not some other group of non-operators.
- Contrary to the contention of certain commenters, reporting of individual companies’ respective proportionate share of payments made by an operator is NOT required under either the EU Directive or the Extractive Sector Transparency Measures Act (“ESTMA”) in Canada, and in no way is this approach a “global standard.”
- In contrast to certain commenters’ views that non-operator reporting of the proportionate share of payments will not generate significant additional compliance costs, we can affirm that such an approach will indeed require extensive modification of existing contractual language, inter-company billing practices and financial systems to enable capture of the detailed data required. Please see our previous comment letter for further discussion of the complexities and significant potential for investor harm that could result from attempting to implement this approach. Finally, these same complexities exist if issuers are required to report their respective share of payments made by entities accounted for under the equity method of accounting. Simply having “significant influence” over an entity (one of the criteria for using the equity method of accounting) does NOT provide a company the unilateral right to require the equity company to make available detailed, payment-level financial information to its investors.
- Lastly, the XBRL dataset integrity would be greatly harmed, if not destroyed, should the “proportionate share” approach be implemented. Different assumptions and approaches to data disclosure by non-operating issuers would likely lead to both redundancy and omissions. Further, interest owners who are not issuers would not report at all.

### **Definition of “Project”**

We previously expressed our disappointment that the Proposed Rule takes the same path as the current EU and Canadian rules by essentially defining “project” based on individual contracts. As we have noted, this definition carries maximum potential for competitive harm to companies by allowing competitors – including national oil companies that control the majority of the world’s hydrocarbon resources and in many cases will not be subject to such disclosures under SEC, EU or other rules – to obtain access to a company’s highly sensitive and proprietary commercial information. We provide the following in response to feedback from other commenters.

- Certain commenters have suggested requiring companies to disclose an ever-expanding laundry list of detailed information related to “projects” such as the names of the associated agreements, the latitude and longitude, and even the altitude. Somehow lost in those

commenters' discussions is the fact that simple, standardized, widely-available parameters that describe a project, as proposed by the API in its previous letters to the Commission, are much more effective at allowing simple compilation and analysis of submitted data. Under the API approach, users can instantaneously see and understand the geographic location of a project, based on the API's proposed inclusion of the sub-national political subdivision, defined by an existing, standardized ISO code. Combining this level of geographic specificity with a government payee-by-government payee, payment-type by payment-type listing of industry payments gives citizens a simple, readily available tool that is far more effective than alternative approaches advocated by certain other commenters.

- The advocates of the overly-detailed project definition approach described above argue that this exhaustive (contract names, longitude, latitude, altitude, etc.) information is necessary for users to assess whether or not the agreements have substantially similar terms and should indeed be aggregated as a "project." Other purported uses for detailed, project level data include calculation of project net present values, analysis of industry cost curves, calculating riskiness, modeling cash flows, and contract "fairness" assessment. Those suggested uses not only go far beyond the clear statutory purpose of Dodd-Frank Section 1504, as we and others have pointed out in several previous letters to the Commission, but also would significantly further increase the potential for 1504 disclosures to result in competitive harm to companies and their shareholders. The Commission is already well-acquainted with the effects that can result from disclosure of contract terms since it has long experience successfully administering provisions for the protection of contracts and other information from public disclosure under the Freedom of Information Act including under Exemption 4.

### **SEC Compilation**

The Commission has suggested, and certain commenters have agreed, that the Commission's obligation under Dodd-Frank 1504 to provide a compilation of disclosures is satisfied by making each issuer's disclosures available on EDGAR in XBRL format. **We strongly disagree.**

- Dodd-Frank Section 1504 states in pertinent part: "To the extent practicable, the **Commission** shall make available online, to the public, a compilation of the information required to be submitted" [emphasis added] by issuers. It is the Commission's mandate under this provision to make available a compilation, not simply to provide data in a form that might allow members of the public to create their own compilations. In fact the court found in *API vs. SEC* that a compilation of payment data was the *only* information Section 1504 obligates the Commission to make available to the public. Should the Commission issue final rules that define "project" along the standardized lines suggested by the API, the availability of payment data by country, by project, by payment type, and by government will make it simple and practicable for the Commission to make public a compilation of the information submitted to it.
- This set of compiled data will be very powerful for the citizens of resource-rich countries in creating accountability for government revenues. Ironically, the very type of overly-detailed and costly project-level parameters that opposing commentators suggest including in disclosure requirements make it significantly more difficult, if not impossible, for the Commission to

satisfy its statutory obligation, since that approach relies on qualitative, issuer-by-issuer judgments which, by definition, cannot be mechanically compiled.

### **Definition of Commercial Development of Oil, Natural Gas, and Minerals**

We generally support the Commission's definition of "commercial development of oil, natural gas, and minerals" as specified in the Proposed Rule, and provide the following in response to feedback by other commenters:

- Though we believe it to be reasonable, the Commission's definition is in fact NOT aligned with other international transparency regulations. Instead, it defines an expanded scope that includes "export" activities and a much broader definition of "processing" which is not typical of similar rules elsewhere.
- We further oppose expanding the scope of covered activities as suggested by some commenters to include "trading-related" activities. The current definition of "payment" already includes the government's share of production. Attempts to gather "trading-related" payments therefore will cause inconsistencies and in some cases, double-counting of this portion of the government's revenue stream.

### **Disclosure of Payments**

Certain commenters have suggested in their letters that the Commission should expand the requirement for payment data beyond what Dodd-Frank Section 1504 requires.

- Reporting of the fair market value of in-kind payment types is sufficient. Reporting a volume along with a value is unnecessary for realizing Section 1504's government accountability purpose and carries significant competitive concerns by virtue of the effective disclosure of contractual selling prices. We urge the Commission to issue rules that respect the plain wording of the law and refrain from layering additional, costly and likely harmful requirements on issuers.
- The suggestion to define "business segment" as the name of the subsidiary or entity making the payment by certain commenters, is outside the scope of Dodd-Frank 1504, and provides another example of how some are seeking to exploit the statute well beyond its intent to simply support government accountability; it would provide no corresponding benefits in that regard.

### **Conflict with Laws**

As we noted in our previous comment letter, we are modestly pleased the Proposed Rule's reference to the potential that disclosure could be held in confidence via an exemption request in cases where the disclosure would cause a company to violate host country law. In response to certain other commenters, however, we note the following:

- Regardless of the experience thus far of companies that may have disclosed certain payment data in specific countries, we stand by our previous comments that detailed disclosure of payment information under 13q-1 could be viewed as a violation of host country law.
- The Commission should indeed consider the potential costs for issuers of being forced to halt operations in a country because of a conflict of laws situation. Such a situation could force a company to suffer a total loss of its local operations – which could be worth tens of billions of dollars as previously indicated – with no basis for offsetting compensation.
- Considering disclosure exemption requests by means of a public hearing, as suggested by some commenters, could frustrate the very purpose of the request and bring about the very harm to companies and shareholders such an exemption would be intended to prevent.

### **Summary**

The purpose of Section 1504 is to enable citizens to hold governments more accountable for the revenues the respective governments receive. For this purpose – as the court found in *API vs. SEC* – it is not necessary for individual company payment information to be made public, nor the wish-list of detailed information advocated by certain commenters to be disclosed at all.

As we stated in our prior comment letter, Section 1504 is a *revenue* transparency statute, not a *contract* transparency statute. The SEC rule implementing the statute must – like the API model – be tailored to achieve the specific statutory objective of revenue transparency.

The Commission has chosen in the Proposed Rule to pursue a contract-based definition of project, apparently disregarding both the court ruling in *API v. SEC* and the many comments, concerns, and good-faith proposals for alternative approaches put forward by industry in its many engagements with the Commissioners and staff over the past two years. Further expansion of disclosures along the lines of those suggested by certain commenters would move the Commission even further afield of the court ruling and the SEC’s statutory mandate.

It is not too late for the Commission to establish a superior, more effective approach to transparency. Claims by certain commenters that a “global standard” currently exists are greatly exaggerated. By adhering to the original intent of revenue transparency and thoughtfully considering the benefits of the approach advocated by the API, the Commission has an opportunity to influence the future development of transparency disclosures around the world while also protecting investors – which is the Commission’s core mission.

We would be pleased to meet with the Commissioners or staff to provide additional information and answer any questions to help make that better path a reality.

Sincerely,

