



November 5, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E., Room 10905
Washington, D.C. 20549

VIA E-MAIL AND POST

Re: File No.: S7-42-10 - *Disclosure of Payments by Resource Extraction Issuers*
77 Fed. Reg. 56,365 (Sept. 12, 2012)

Dear Ms. Murphy;

I am writing to urge the Securities and Exchange Commission (SEC) to: (i) deny the Motion to Stay¹ filed by the American Petroleum Institute (API) *et al*² and maintain the effective date of the rule issued on August 22, 2012 to implement the Cardin-Lugar Amendment, or Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, now contained in Section 13(q) of the Securities Exchange Act of 1934, pending the outcome of a judicial process; and (ii) to mount a robust defense to uphold this rule against the legal challenge instigated by the same parties in the D.C. District Court³ and the U.S. Court of Appeals for the D.C. Circuit.⁴

On behalf of The ONE Campaign,⁵ I thank and congratulate the Commission for releasing a rule to implement Section 1504 to provide data that will help:

- Increase U.S. energy security
- Provide information to U.S. investors that will allow them to better assess investment risks
- Fight corruption and the resource-curse in developing countries to the tune of billions of U.S. dollars by enabling communities to hold governments accountable for revenues from the highly lucrative extractives sector
- Place the U.S. firmly in the leadership role of setting a new global standard for extractives transparency and disclosures

As a non-profit organization dedicated to fighting global poverty, transparency and accountability are critical to achieving our development goals. We do this by working to increase:

- Aid transparency in donor countries
- Budget transparency in developing countries
- Global extractives transparency (including building capacity of local civil society organizations in developing countries to use these new disclosures to advocate for better public services and to promote investments in health, agriculture and infrastructure, etc.)

Therefore, ONE needs the data that will be provided by resource extraction issuers under the newly mandated disclosure rule. Every day that the disclosures are delayed adversely affects our ability to deliver on our advocacy objective of fighting corruption, to save lives and reduce poverty in Africa.

¹ Motion for Stay of Rule 13q-1 and Related Amendments to New Form SD by API *et al*

² Plaintiffs in the lawsuits referenced below, against the Commission, are the American Petroleum Institute, the U.S. Chamber of Commerce, the Independent Petroleum Association of America and the National Foreign Trade Council.

³ D.C. District Court Case 12-1668

⁴ U.S. Court of Appeals for the D.C. Circuit Case No. 12-1398

⁵ The ONE Campaign is a global advocacy organization of 3 million people dedicated to preventing deaths from extreme poverty and preventable disease, and promoting development, particularly in Africa. ONE is a member of the Public What You Pay (PWYP) Coalition, and endorses the PWYP submission of October 26, 2012, in opposition to API *et al* Motion to Stay the Section 1504 rule.

The congruence of ONE's advocacy objectives for Section 1504 with SEC's responsibility to develop regulations that serve both the interest of the public and financial sectors can be clearly understood by reading Secretary of State Hillary Rodham Clinton's October 12, 2012 speech entitled, *'Energy Diplomacy in the 21st Century.'* In this speech Secretary Clinton stated that "... every day, in many parts of the world, our diplomats are out there fighting on behalf of American businesses and workers, taking aim at economic barriers and unfair practices." She did not consider Section 1504 disclosures as an unfair practice to U.S. businesses, as implied by the petitioners throughout the rule making and now judicial process. Rather, she did the opposite. In this same speech where she explained the imperative behind the creation of the U.S. Department of State's new Bureau of Energy Resources and its global energy strategy, Secretary Clinton included the Cardin-Lugar Amendment, which was originally introduced in the U.S. Senate as the 'U.S. Energy Security Through Transparency' Act. She also illustrated why helping the 1.3 billion energy-poor people in the world (the same people that live on less than \$1.25 a day and are the targeted beneficiaries of ONE's advocacy in its entirety) is part of the calculus of pursuing America's economic and national security interests, which additionally includes creating access and opportunities for U.S. companies and new markets and newly prosperous trading partners and individual consumers for American goods and services. In the excerpt below, she stated that:

"Energy cuts across the entirety of U.S. foreign policy. It's a matter of national security and global stability. It's at the heart of the global economy.....Energy matters to America's foreign policy for three fundamental reasons. First, it rests at the core of geopolitics, because fundamentally, energy is an issue of wealth and power, which means it can be both a source of conflict and cooperation. The United States has an interest in ... keeping energy supplies and markets stable through all manner of global crises....., energy is key to economic development and political stability. And we have an interest in helping the 1.3 billion people worldwide who don't have access to energy. We believe the more they can access power, the better their chances of starting businesses, educating their children, increasing their incomes, joining the global economy – all of which is good for them and for us. And because corruption is often a factor in energy poverty as well as political instability, we have an interest in supporting leaders who invest their nations' energy wealth back into their economies instead of hoarding it for themselves... It's not just a matter of economic competition, as important as that is. It's also a matter of national and international security....Security is also at the heart of perhaps the most important energy diplomacy we have conducted in the Obama Administration.

And finally, we're focused on a key factor in both energy poverty and political instability – poor governance. History tells a frustrating tale. Countries that are rich with energy resources often have less democracy, more economic instability, more frequent civil wars. They are far more likely to be ruled by dictators, and oil can embolden those dictators to start conflicts with other countries. It's often called the resource curse. But the resources aren't the problem. It's greed. The resources can be used to transform a country's future for the better, but only if they're used the right way for the right purposes. So we need to work to undo the resource curse, especially now as demand for energy guarantees that more developing countries will become oil exporters. Some countries that recently discovered oil reserves are Liberia, Sierra Leone, Mozambique. Not long ago, they were all embroiled in deadly conflicts. Their political situations are still fragile, so they need support to ensure that their energy resources don't end up causing more suffering and trouble than good.

We're also increasing our support for the Extractive Industries Transparency Initiative... And through the Cardin-Lugar amendment, the United States is now the first country in the world to require that our extractive industries companies disclose any payments they make to any government worldwide, an important step in the fight against corruption.

The United States is convinced that energy in all its complexity will continue to be one of the defining issues of the 21st century. And we are reshaping our foreign policy to reflect that...The future security and

*prosperity of our nation and the rest of the world hangs in the balance. And all of us, especially all of you here today, have a stake in the outcome.*⁶

As an interested party in these proceedings, we respectfully request as follows:

I) Request on Motion to Stay the Section 1504 Rule Filed by API et al

ONE requests that you deny this petition for the following reasons:

- The request for response within a week is unreasonable and deprives other stakeholders in the Section 1504 rule of adequate time to comment on the request.
- All parties were given the opportunity to be heard and provide input in the crafting of the statute. Similarly, the Commission can attest that all parties were given ample opportunity to comment and make their case to the Commission. API members failed to make a convincing case for immediate and irreparable harm to their business interests during the comment period, and they cannot make one now.
- ONE does not believe that the petitioners have met the four-part test⁷ applied by the Commission to requests made under Section 25(c)(2) of the Securities and Exchange Act of 1934, which permits the granting of a stay of the rule pending the outcome of a judicial challenge if “justice so requires.” With respect to these criteria, contrary to API *et al*'s legal complaint, the Government Accountability Office's Report No. B-323907 on Section 1504 found that “*the Commission complied with the applicable requirements in promulgating the rule,*” and there is no foundation for the Commission to believe that the plaintiffs are likely to win their case; API *et al* have not demonstrated that they will suffer irreparable harm to their businesses; that other parties would be harmed without a stay; or that a stay would serve the public interest.

In making your determination on API's petition for a stay of the Section 1504 rule, ONE urges you to take the only reasonable and fair course action by denying this request and upholding the requirement to comply with the rule, starting September 30, 2013.

II) The Legal Challenge Instigated by API et al to overturn the SEC's rule on Section 1504

ONE requests that the Commission utilize all available resources to uphold the Section 1504 rule, for the same reasons that we oppose the Motion to Stay the Section 1504 rule. Beyond the raw data produced, the congressional intent and advocacy goals were for the United States to lay the foundations for a new standard of extractives transparency. As Congress directed, “*To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.*” Following the release of the rule, the U.S. Department of State committed to take up the mandate, declaring that, “*We look forward to working through our Embassies around the world to disseminate information about the new rules and to encourage other governments and regional organizations to adopt similar transparency standards.*”⁸ This is a clear demonstration of the inclusion of the Section 1504 rule in U.S. foreign policy.

Overseas, where ONE and our PWYP partners have dedicated significant resources to promulgating Section 1504 since passage of the statute, the three branches of the twenty-seven

⁶ Full text of Secretary of State Hillary Rodham Clinton's speech 'Energy Diplomacy in the 21st Century,' delivered at Georgetown University, Washington D.C. on October 18, 2012., is available at www.state.gov/secretary/rm/2012/10/199330.htm

⁷ The four criteria used by the Commission to determine whether to grant requests for stay of a rule are: (1) whether the petitioner has shown a strong likelihood that it will prevail on the merits; (2) whether the petitioner has shown that, without a stay, it will suffer irreparable injury; (3) whether there should be substantial harm to other parties if stay were granted; and (4) whether the issuance of a stay would likely serve the public interest. See *In re William Timpinaro, et al.*, 1991 SEC LEXIS 2544 (1991); *In Re Christian Klein & Cogburn, Inc. et al.*, 1994 SEC LEXIS 16 (1994).

⁸ Full text is available at <http://www.state.gov/r/pa/prs/ps/2012/08/196882.htm>

member European Union (EU)⁹ have been considering amendments to its Accounting and Transparency Directives to adopt similar measures. Following the release of the U.S. rule, the Legal Affairs (JURI) Committee of the EU Parliament amended and adopted¹⁰ a proposal that now matches the Section 1504 rule on the key issues of exemptions, project-definition and *de minimus* threshold. The proposal will be voted on by the full parliament and followed by a Triilogue in November. France's Foreign Minister Pascal Canfin recently remarked, "*We are very committed with the Nordic countries to these directives; they are our red line We want them to be as strong as US standards.*"¹¹ Prime Minister David Cameron of Great Britain indicated a similar policy objective in an opinion editorial: "*The U.S. has introduced legally binding measures to require oil, gas and mining companies to publish key financial information for each country and project they work on. And I want Europe to do the same.*"¹² ONE and our PWYP Coalition partners therefore expect the final EU law to at least match the U.S rule. These EU actions and high-level policy statements demonstrate clear progress towards multilateralizing and eventually universalizing these disclosures. This deeply undercuts the already disputed claim of API's individual and collective members that Section 1504 will cause them competitive disadvantage vis-à-vis non U.S.-listed resource extraction issuers.

Suspension of our own law, and anything less than a robust legal defense of and victory for the Section 1504 rule, would undermine the U.S. commitment to global leadership on extractives transparency. This is not in the public or national security interests of the United States, and compromising our ability to pursue our national security interests would not advance our national economic interests.

In conclusion, the Section 1504 rule has received support from the following stakeholders: investors who eagerly anticipate this data to better assess risk to their clients' investments; the public, as demonstrated by the 143,000¹³ petitions for the release of the rule; civil society, as shown by the record of comments relating to the rule; dozens of Members of the U.S. Congress, through enactment of the statute and correspondence during the notice and comment period and in response to the Motion to Stay; the U.S. Department of State, as shown by its foreign policy statements; and by foreign governments, who have demonstrated their intent to emulate the rule in their own countries. ONE requests that the Commission take seriously the public interest promoted by swift implementation of Section 1504, the significant national and international support for the statute, the US foreign policy imperatives the statute promotes, and the energy and economic security needs it safeguards. The Commission should deny the Motion to Stay the Section 1504 rule and fight to uphold it in against all legal challenges.

Thank you for your consideration of this important matter.

Sincerely;



Michael Elliott
President & CEO, ONE

⁹ List of EU member states that would be covered by mandatory reporting requirements is available at http://europa.eu/about-eu/member-countries/index_en.htm.

¹⁰ Full text is available at www.europarl.europa.eu/document/activities/cont/201210/20121024ATT54414/20121024ATT54414EN.pdf

¹¹ Full text is available at www.guardian.co.uk/global-development/poverty-matters/2012/oct/17/france-eu-transparency-resource-curse

¹² Full text is available at <http://online.wsj.com/article/SB10001424052970204712904578090571423009066.html>

¹³ Page 11 of SEC final rule. See <http://www.sec.gov/rules/final/2012/34-67717.pdf>