

March 20, 2012

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

**Subject: Proposed Rules for Disclosure of Payments by Resource Extraction Issuers,
File S7-42-10**

Dear Secretary Murphy:

As the Commission works to quickly complete and issue the final rule for “Disclosure of Payments by Resource Extraction Issuers”, I am writing to draw the Commission’s attention to the model confidentiality agreement form produced by the Association of International Petroleum Negotiators (AIPN). As shown below, the standard terms of this form produced by the pre-eminent association of lawyers involved in petroleum negotiations (e.g. for agreements or contracts between international oil companies and host governments), *explicitly authorize disclosure of confidential information by the company or sovereign party to a petroleum agreement (contract) whenever disclosure is required by a stock exchange, government regulator, government order, decree, regulation or rule.* This supports the argument made by Oxfam America during the public comment period for the proposed rule for implementation of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹

AIPN describes itself as “an independent not-for-profit professional membership association that supports international energy negotiators around the world and enhances their effectiveness and professionalism in the international energy community.”² AIPN is supported by a wide variety of oil companies such as ExxonMobil, Shell, BP, ConocoPhillips and Marathon, as well as prominent law firms such as Latham and Watkins, Dewey and LeBouef, and Baker and McKenzie.

While some industry commenters have argued that contract confidentiality clauses may prevent companies from disclosing information required to be made public under Section 1504 of the

¹ Oxfam America submission to SEC on Section 1504, Page 17, February 21, 2011.

<http://www.sec.gov/comments/s7-45-10/s74210-76.pdf>

² <http://aipn.org/Profile.aspx> “The AIPN was founded in 1981 to enhance the professionalism of cross-border energy negotiators throughout the world. It is now composed of more than 3,500 members in more than 90 countries, representing numerous international oil and gas companies, host governments, law firms and academic institutions. AIPN members come from a variety of disciplines: commercial, technical, academic and legal. The association hosts several quality events each year that provide networking opportunities and provide valuable educational programs and tools. In sum, the AIPN aims to help the international energy negotiator be better prepared to meet the challenges of today’s competitive global energy market.”

Dodd-Frank Wall Street Reform Act, Oxfam America, Publish What You Pay and other commenters have shown that extractive contracts typically provide for stock market and other required disclosures notwithstanding general confidentiality obligations.³

This argument is strengthened by the fact that the standard terms in AIPN's "Model Form Confidentiality Agreement" (see Exhibit A attached) authorize the disclosure of otherwise confidential information "under applicable law, including by stock exchange regulations or by a governmental order, decree, regulation or rule" (AIPN Model Form Confidentiality Agreement, Article 4.1, November 2007).

The 1999 and 1991 versions of the same AIPN form contain equivalent language, demonstrating that such disclosure authorizations have been standard in the industry for at least the last 20 years.⁴

AIPN standard forms and agreements are standard throughout the oil and gas industries and the provisions in model forms are very often used as a benchmark in negotiations between companies and host governments.

In evaluating submissions from commenters regarding confidentiality clauses in petroleum contracts, *the SEC should bear in mind that the AIPN industry standard terms already accept disclosure of information required to be disclosed by "governmental order, decree, regulation or rule," such as the Final Rule implementing Dodd Frank Section 1504.*

In light of the AIPN Model Form, an issuer's compliance burden in negotiating with a foreign government will, under an effective Final Rule implementing Section 1504, be greatly minimized by adhering to confidentiality and disclosure provisions already standard in the industry.

Best regards,



Ian Gary
Senior Policy Manager – Extractive Industries

Cc: The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Daniel M. Gallagher, Commissioner

³ See generally Revenue Watch Institute & Columbia Law School, Human Rights Institute, *Extractive Industries Disclosure Act Confidentiality Analysis* (June 8, 2008), available at https://org2.democracyinaction.org/o/5399/images/Karin%20Lissakers_addendum_HR6066.pdf. This point was emphasized in a 2009 Revenue Watch report that characterized disclosure to stock exchanges as a "standard exception" to the otherwise binding confidentiality obligations in extractive industry contracts. PETER ROSENBLUM & SUSAN MAPLES, *CONTRACTS CONFIDENTIAL: ENDING SECRET DEALS IN THE EXTRACTIVE INDUSTRIES 26* (2009), available at <http://www.revenuewatch.org/files/RWI-Contracts-Confidential.pdf>. See also, e.g., Petroleum Agreement among Republic of Ghana, Kosmos Energy, and the E.O. Group, Article 16.5(b)(v).

⁴ The 1999 version of the form says that confidential information may be disclosed without written consent when it is "required to be disclosed under applicable law, stock exchange regulations or by a governmental order, decree, regulation or rule..." The 1991 version of the form says that such information may be disclosed without written consent when it is "required to be disclosed under applicable law or by governmental order, decree, regulation or rule..." See: <http://aipn.org/mcvisitors.aspx>

EXHIBIT A



Association of International Petroleum Negotiators

MODEL FORM CONFIDENTIALITY AGREEMENT©

November 2007

DISCLAIMER

This model form has been prepared only as a suggested guide and may not contain all of the provisions that may be required by the parties to an actual agreement. The provisions of the model form do not necessarily represent the views of the Association of International Petroleum Negotiators (AIPN) or any of its members. Use of this model form or any portion or variation thereof shall be at the sole discretion and risk of the user parties. Users of the model form or any variation thereof are encouraged to seek the advice of qualified legal counsel to ensure that the final document reflects the actual agreement of the parties. The AIPN disclaims all interests or

liability whatsoever for loss or damages that may result from use of this model form or portions or variations thereof. All logos and references to the AIPN must be removed from this model form when used as an actual agreement. © 2007 AIPN

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT ("Agreement") is effective _____, 20____ ("Effective Date") between _____, a company organized and existing under the laws of _____ ("Disclosing Party"), and _____, a company organized and existing under the laws of _____ ("Receiving Party"). These parties may also be referred to individually as "Party" or collectively as "Parties".

ARTICLE 1 DISCLOSURE OF CONFIDENTIAL INFORMATION

In connection with the possible acquisition by Receiving Party of certain rights held by Disclosing Party in the area described in Exhibit A ("Area") under _____, Disclosing Party is willing, in accordance with the terms and conditions of this Agreement, to disclose to Receiving Party certain information relating to the Area which may include geological and geophysical data, maps, models and interpretations, notes, summaries, commercial, contractual and financial information ("Confidential Information"). The Confidential Information is more fully described in Exhibit "B".

ARTICLE 2 UNDERTAKING NOT TO DISCLOSE

In consideration of the disclosure referred to in Article 1, Receiving Party shall not disclose the Confidential Information to anyone without the prior written consent of Disclosing Party, except as provided in this Agreement.

ARTICLE 3 CERTAIN INFORMATION NOT CONFIDENTIAL

The following shall not constitute Confidential Information:

- 3.1** information that is already known to Receiving Party as of the Effective Date;
- 3.2** information that is or becomes available to the public other than through the act or omission of Receiving Party or of any other person to whom Confidential Information is disclosed by the Receiving Party unless public disclosure was made pursuant to Article 4.1;
- 3.3** information that is acquired independently from a third party representing that it has the right to disseminate such information at the time it is acquired by the Receiving Party; or
- 3.4** information that is developed by Receiving Party independently of the Confidential Information received from Disclosing Party.

ARTICLE 4
PERMITTED DISCLOSURE BY RECEIVING PARTY

Receiving Party may disclose Confidential Information without the prior written consent of Disclosing Party:

- 4.1 to the extent the Confidential Information must be disclosed under applicable law, including by stock exchange regulations or by a governmental order, decree, regulation or rule, provided that Receiving Party shall make all reasonable efforts to give prompt written notice to Disclosing Party prior to such disclosure; or
- 4.2 to the following persons to the extent that Receiving Party needs them to evaluate the Area or any transaction between the Parties in relation to the Area:
 - 4.2.1 employees, officers, and directors of Receiving Party;
 - 4.2.2 employees, officers, and directors of an Affiliated Company of Receiving Party ("Affiliated Company" means any company or legal entity that controls, or is controlled by, or that is controlled by an entity that controls, a Party. "Control" means the direct or indirect ownership of more than fifty (50) percent of the voting rights in a company or other legal entity.);
 - 4.2.3 any consultant or agent retained by Receiving Party or its Affiliated Company; or
 - 4.2.4 any bank, financial institution, or entity funding or proposing to fund participation by Receiving Party in the Area, including any consultant retained by such bank, financial institution, or entity.

OPTIONAL PROVISION

Prior to making any disclosures to persons under Article 4.2.3 or Article 4.2.4, however, the Receiving Party shall obtain an undertaking of confidentiality substantially in the same form and content as this Agreement, from each such person; provided, however, that in the case of outside legal counsel, the Receiving Party shall only be required to procure that such legal counsel is bound by an obligation of confidentiality.

ARTICLE 5
OBLIGATION OF RECEIVING PARTY FOR PERMITTED DISCLOSURES

Receiving Party shall be responsible to Disclosing Party for any act or omission of the entities and persons described in Article 4.2 that would have breached this Agreement if the action had been by Receiving Party.

ARTICLE 6
RESTRICTION ON USE OF CONFIDENTIAL INFORMATION

- 6.1** Receiving Party shall only use or permit the use of the Confidential Information to evaluate the Area and to determine whether to enter into negotiations concerning the acquisition of all or part of the rights of Disclosing Party in the Area.
- 6.2** The Parties recognize that persons authorized to review the Confidential Information under Article 4.2 may form mental impressions (*i.e.*, impressions not written or otherwise reduced to a record) regarding the Confidential Information. The use of these mental impressions by those persons shall not be a violation of the restriction contained in Article 6.1.

ARTICLE 7
DAMAGES

The liability of the Parties to each other for breach of this Agreement shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived except such equitable relief as may be granted under Article 12. In no event shall the Parties be liable to each other for any other damages, including loss of profits or incidental, consequential, special, or punitive damages, regardless of negligence or fault.

ARTICLE 8
RETURN OF CONFIDENTIAL INFORMATION

- 8.1** Receiving Party shall acquire no proprietary interest in or right to the Confidential Information.
- 8.2** Disclosing Party may demand the return of the Confidential Information at any time upon giving written notice to Receiving Party. Within thirty (30) days of receipt of such notice, Receiving Party shall return all of the original Confidential Information and shall destroy or cause to be destroyed all copies in its possession and in the possession of persons to whom it was disclosed pursuant to this Agreement.
- 8.3** The provisions of Article 8.2 do not apply to the following:
- 8.3.1** Confidential Information that is retained in the computer backup system of Receiving Party or a person to whom it was disclosed under Article 4.2 if the Confidential Information will be destroyed in accordance with the regular ongoing records retention process of Receiving Party or such person and if the Confidential Information is not used prior to its destruction; and
- 8.3.2** Confidential Information that must be retained under applicable law, including by stock exchange regulations or by governmental order, decree, regulation or rule.

ARTICLE 9
EVALUATION MATERIAL

- 9.1** Information generated by Receiving Party or by a person described in Article 4.2 that is derived in whole or in part from Confidential Information is “Evaluation Material.” Evaluation Material includes models, analyses, estimates of reserves, interpretations, presentations for management, and economic evaluations.
- 9.2** During the term of this Agreement, Receiving Party shall not disclose Evaluation Material to anyone other than the persons described under Article 4 without the prior written consent of Disclosing Party.

ARTICLE 10 TERM

ALTERNATIVE PROVISION 1

This Agreement shall terminate on _____ .

ALTERNATIVE PROVISION 2

This Agreement shall terminate on the later of: _____ ; the date on which disclosure is no longer restricted by the law applicable to the Area; or the date on which disclosure is no longer restricted by the terms of the concession, license, contract or permit currently covering the Area.

OPTIONAL PROVISION

Notwithstanding the prior provisions of this Article 10, this Agreement shall terminate upon return of Confidential Information and destruction of copies of Confidential Information by Receiving Party under Article 8.2.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

Disclosing Party represents and warrants that it has the right and authority to disclose the Confidential Information to Receiving Party. Disclosing Party, however, makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information, and Receiving Party expressly acknowledges the inherent risk of error in the acquisition, processing, and interpretation of geological and geophysical data. Disclosing Party, its Affiliated Companies, their officers, directors and employees shall have no liability whatsoever regarding the use of or reliance upon the Confidential Information by Receiving Party.

ARTICLE 12 GOVERNING LAW AND DISPUTE RESOLUTION

- 12.1** This Agreement shall be governed by and interpreted in accordance with the substantive laws of _____ excluding any choice of law rules which would refer the matter to the laws of another jurisdiction.
- 12.2** Any dispute arising out of, relating to, or in connection with this Agreement, including any question regarding its existence, validity, or termination shall be settled before a sole

arbitrator in accordance with the Arbitration Rules of _____ in _____
. The proceedings shall be in the English language. The resulting arbitral award shall be final and binding without right of appeal, and judgment upon such award may be entered in any court having jurisdiction thereof. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. Receiving Party acknowledges that remedies at law may be inadequate to protect against breach of this Agreement; accordingly, the arbitrator may award both monetary and equitable relief, including injunctive relief and specific performance. A Disclosing Party may apply to any competent judicial authority for interim or conservatory relief; an application for such measures or an application for the enforcement of such measures ordered by the arbitrator shall not be deemed an infringement or waiver of the Agreement to arbitrate and shall not affect the powers of the arbitrator. Any monetary award issued by the arbitrator shall be payable in U.S. dollars. Each Party waives any right to damages other than those provided in Article 7, and the arbitrator shall certify in the decision that only those damages authorized by Article 7 were awarded.

ARTICLE 13 NONEXCLUSIVE DISCLOSURE OF CONFIDENTIAL INFORMATION

The disclosure of Confidential Information to Receiving Party is nonexclusive, and Disclosing Party may disclose the Confidential Information to others at any time.

ARTICLE 14 NO RIGHTS IN THE AREA

Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the discussions of the Parties are subject to all necessary management and government approvals and may be withdrawn by either Party for any reason or for no reason at any time. Nothing contained herein is intended to confer upon Receiving Party any right whatsoever to the interest of Disclosing Party in the Area.

ARTICLE 15 GENERAL PROVISIONS

15.1 No Waiver

No waiver by either Party of any one or more breaches of this Agreement by the other Party shall operate or be construed as a waiver of any future default or defaults by the same Party. Neither Party shall be deemed to have waived, released, or modified any of its rights under this Agreement unless such Party has expressly stated, in writing, that it does waive, release or modify such rights.

15.2 Modification

This Agreement may not be modified except by written consent of the Parties.

15.3 Interpretation

15.3.1 Headings

The topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular article or provision.

15.3.2. Singular and Plural.

Reference to the singular includes a reference to the plural and vice versa.

15.3.3. Article or Exhibit

Unless otherwise provided, reference to any article or an exhibit means an article or exhibit of this Agreement.

15.3.4. Include.

The words "include" and "including" have an inclusive meaning, are used in an illustrative sense and not a limiting sense, and are not intended to limit the generality of the description preceding or following such term.

15.4 Counterpart Execution.

This Agreement may be executed in counterparts and each counterpart shall be deemed an original Agreement for all purposes; provided that neither Party shall be bound to this Agreement until both parties have executed a counterpart. For purposes of assembling the counterparts into one document, Disclosing Party is authorized to detach the signature page from one counterpart and, after signature thereof by Receiving Party, attach each signed signature page to a counterpart.

15.5 Entirety.

This Agreement comprises the full and complete agreement of the Parties regarding the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings, and agreements between the Parties relating to the Confidential Information, whether written or oral, expressed or implied.

15.6 No Third Party Beneficiaries

The interpretation of this Agreement shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract.

ARTICLE 16 NOTICES

All notices authorized or required between the Parties by any of the provisions of this Agreement shall be in written English, properly addressed to the other Party as shown below, and delivered in person, by courier, or by any electronic means of transmitting written communications that provides written confirmation of complete transmission. Oral communication and e-mails do not constitute notice for purposes of this Agreement. A notice given under any provision of this Agreement shall be deemed delivered only when received by the Party to whom the notice is

directed. "Received" for purposes of this article means actual delivery of the notice to the address or facsimile address of the Party shown below.

(DISCLOSING PARTY)

Address:

Attention:

Facsimile:

(RECEIVING PARTY)

Address:

Attention:

Facsimile:

=====

ARTICLE 17 ASSIGNMENT OF THIS AGREEMENT

The Receiving Party may assign this Agreement to an Affiliated Company; provided, however, the Receiving Party shall remain liable for all obligations under this Agreement. Receiving Party may assign this Agreement to a person or entity that is not an Affiliated Company only with the prior written approval of Disclosing Party. Any attempted assignment by Receiving Party to a person or entity that is not an Affiliated Company without the prior written approval of Disclosing Party shall be void. Without limiting the prior provisions of this Article 17, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

IN WITNESS of their agreement each Party has caused its duly authorized representative to sign this instrument effective on the date first written above.

Signed:

_____ (DISCLOSING PARTY)

By: _____

Printed Name: _____

Title: _____

Signed:

_____ (RECEIVING PARTY)

By: _____

Printed Name: _____

Title: _____

EXHIBIT "A"
CONFIDENTIALITY AGREEMENT

AREA

EXHIBIT "B"
CONFIDENTIALITY AGREEMENT
CONFIDENTIAL INFORMATION