



**PUBLISH WHAT
YOU PAY**

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Commissioner Kara M. Stein
Commissioner Robert J. Jackson, Jr.
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U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Re: Disclosure of Payments by Resource Extraction Issuers

Dear Chair and Commissioners:

The Global Council of Publish What You Pay (PWYP)¹ represents a large international coalition of civil society organizations united in their call for an open and accountable extractive sector, so that, when oil, gas, and solid minerals are extracted, revenues improve the lives of citizens in resource-rich countries. We write to urge that the Securities and Exchange Commission issue an implementing rule for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 that aligns with the existing project-level reporting requirements for oil, gas, and mining companies that are incorporated and publicly listed on stock exchanges in European Union member states, Canada, and Norway.

The PWYP coalition includes hundreds of organizations spread across resource-rich countries throughout the world, including human rights, faith-based, transparency, and anti-corruption groups. Our members are uniquely positioned to understand how mismanagement and poor governance of the natural resource extraction sector can devastate communities. Greater transparency from this sector can empower citizens to hold their leaders accountable for the revenues generated from their non-renewable natural resources.

¹ <http://www.publishwhatyoupay.org/>; <http://www.publishwhatyoupay.org/global-council/>

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We commend the Commission for its work to promulgate rules to implement the landmark Cardin-Lugar provision (Section 1504) of the 2010 Dodd-Frank Act. The Cardin-Lugar provision endeavors to pull back the curtain on a sector long shrouded in secrecy and to help mitigate the negative outcomes faced by resource-rich countries with poor governance. The Commission's 2012 implementing rule catalyzed equivalent reporting requirements in the European Union, Canada, and Norway, and it influenced the way the Extractive Industries Transparency Initiative (EITI) reporting Standard has been developed and strengthened since 2013.

Thanks to the implementation of mandatory reporting in Europe and Canada, and to the improved EITI Standard, we now have access to several years of granular project-level reporting from some of the world's largest oil, gas, and mining companies. These include comprehensive mandatory public reports on project-level payments to governments in every country of operation from BP, Total, Royal Dutch Shell, Rio Tinto, BHP Billiton, Total, Eni and such Russian and Chinese companies as Gazprom and CNOOC. Many of the companies currently reporting have also called for a globally consistent disclosure standard.

Citizens have been using revenue data from the oil, gas, and mining sector for many years. Prior to disclosures made available through European and Canadian reporting requirements, citizens had already been poring over information released through EITI reports and voluntary disclosures from several more progressive companies. In the years since, as more reports have been made public under the mandatory requirements, and EITI disclosures have become more detailed and comprehensive, use of payment data has expanded and flourished. Project-level payment data are being actively analyzed by civil society and citizens in numerous countries, North and South.

In Nigeria, Africa's leading oil exporter Royal Dutch Shell's 2017 report on payments to governments was covered by many Nigerian press outlets.² A report by PWYP and other leading civil society organizations on lost revenues from Areva's mining in Niger would not have been possible without access to payments to governments reports.³ PWYP Global Council member and UK national coordinator Miles Litvinoff shared many such examples in a submission to the Commission earlier this year.⁴

A large proportion of the world's natural resource extraction companies are reporting, but there is still a major gap. United States-based supermajors like ExxonMobil and Chevron, and many other U.S. extractive companies, have significant global operations but, with their only listing in the U.S., are not required to report their payments comprehensively in any other jurisdiction. Citizens in resource-rich countries can see what BP, BHP Billiton, Shell, Total, and other large and medium-sized extractive companies are paying for access to their natural resources. But, without a similar U.S. payments disclosure rule, those citizens remain in the dark about payments from ExxonMobil, Chevron, and other U.S. companies that are not cross-listed in Europe or Canada.

It is critical that the Commission's forthcoming rule require public reporting disaggregated at the project-level consistent with the contract-based definition used in the rules in force in the

² <https://resourcegovernance.org/blog/shell-published-its-payments-governments-nigeria-has-taken-notice>

³ https://www.oxfamfrance.org/sites/default/files/file_attachments/beyondtransparency.pdf

⁴ <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cl16-3418967-162183.pdf>

European Union, Canada, Norway, and the EITI. Anonymized disclosure, or a higher level of aggregation at the provincial, national, or regional level, would be insufficient to meet the current international standard.

The U.S. Congress intended Section 1504 to advance international transparency efforts in the sector. A rule that does not match the current oil, gas, and mining project-level disclosure standard would not produce results comparable to the existing set of data and would be of far less use to citizens. An inconsistent U.S. rule could also threaten to reverse the significant global progress made to date in transparency and accountability in oil, gas, and mining.

U.S. and European institutional investors collectively representing nearly \$10 trillion in assets under management are on record as strongly supporting mandatory project-level reporting by resource extraction issuers. See, for example, the following:

Norges Bank Investment Management (managing Norway's \$1 trillion sovereign wealth fund) (2018)

"From an investment decision standpoint, transparency on payments to governments on a country-by-country basis increases our understanding of a company's access to markets, risk profile and cost of resources, and improves evaluation of companies' use of funds for investment ...

"The reporting requirements ... could be expanded to include payments that companies make to governments for the purchase of crude oil and minerals. Such payments are currently non-transparent to investors. However, they may be economically significant and – without transparency – can present the same corruption risk as other types of payments to governments."⁵

Alliance Trust PLC (October 2015)

"The introduction of a robust rule to implement Section 1504 would help deter corruption in the extractive sectors, reduce business risk, and enhance companies' social license to operate. In turn, this would foster a more stable investment climate and help to improve the long-term commercial prospects of the extractive companies we invest in ... [Investors] can use project-level information to better understand the impact of effective tax and royalty rates on individual projects and apply this information to make stronger investment decisions."⁶

Allianz Global Investors, Aviva Investors, Swedish National Pension Funds, BNP Investment Partners, State of Connecticut, F&C Management, Henderson Global Investors, Hermes Equity Ownership Services, Local Authority Pension Fund Forum, Royal London Asset Management, and others (April 2014)

⁵ Norges Bank Investment Management, response to European Commission, Fitness check on the EU framework for public reporting by companies, March-July 2018, <https://ec.europa.eu/eusurvey/publication/finance-2018-companies-public-reporting?surveylanguage=en>, response to question 51.

⁶ Quoted in Calvert Investment Management, compilation of investor comments, Letter to SEC Chair Mary Jo White, Commissioner Michael Piwowar and Commissioner Kara Stein, February 2016, <https://www.sec.gov/comments/s7-25-15/s72515-39.pdf>

“We regard the United States' decision as instrumental in establishing the de facto global standard for transparency in the extractives sector, and see the steady progress being made as a critical factor in helping to reduce volatility in the oil and other vital hard commodity markets, with beneficial impacts on global financial markets and the real economy ... [W]e highlight that our portfolios have substantial exposure to the global extractives sector, through both equity and fixed income instruments, and that many of the undersigned also invest actively in the sovereign debt of resource-dependent emerging nations whose fiscal governance has a direct bearing on the quality of the credits they hold. It is therefore specifically with a view to safeguarding and enhancing our clients' portfolio returns that we contribute the following comments ...

“Section 1504, in line with the broader purpose of the Dodd Frank Act, i.e. mitigating systemic financial market risk, plays an essential role in containing behaviours related to extractive sector activity that contribute to damaging levels of financial and economic instability ... It is precisely because of its role in helping to counteract these damaging pressures that we regard Section 1504 as very much in the interests of investors, and consistent with the basic mission of the SEC.”⁷

Boston Common Asset Management, California Public Employees' Retirement System, Calvert Investment Management, Christian Brothers Investment Services, Colorado Sustainable Financial Planning, Domini Social Investments, Trillium Asset Management, Walden Asset Management, and others (August 2013)

“Payment disclosure regulations, such as Section 1504 and the European Union Transparency Directive, play a critical role in encouraging greater stability in resource-rich countries, which benefits both the citizens of those countries and investors. ... [D]isclosure requirements ... protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”⁸

We hope that the Commission will publish a rule that aligns with the international standard of full public project-level payment disclosure, and we look forward to the Commission's new rulemaking with much interest.

Sincerely



Suneeta Kaimal
Chair, Publish What You Pay Global Council

⁷ Quoted *ibid.*

⁸ Investor letter to SEC Chair Mary Jo White, August 2013, <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf>