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By E-Mail:
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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20459-1090

Re: Dodd-Frank Section 1504 Rule and International Transparency Efforts

Dear Chair and Commissioners:

We urge the Commission to swiftly reissue a strong rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 78m(q), "Section 1504"). Such a rule should require disclosure of project-level payments without country-level exemptions and should make such disclosures available to the public. A strong disclosure rule is necessary to provide investors important information required to assess and mitigate risk; to combat and deter resource-related corruption; and to enable transparency advocates to hold both governments and companies accountable for how they manage resource wealth. Furthermore, such a rule will ensure that the disclosure requirements for companies subject to US securities regulations are consistent with international transparency regimes.[1] Anything less will encourage a continuation of current practices, with the concomitant risk of public exposure and major reputational damage for companies, and in worst cases, significant legal penalties and even loss of assets.

Global Witness is a non-profit organization dedicated to preventing natural resource-related conflict and corruption and associated environmental and human rights abuses. Our mission is to expose and end the brutality and injustice resulting from fights to access and control

[1] 15 U.S.C. § 78m(q)(2)(E): "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."

natural resource wealth. Using first hand documentary evidence from field investigations, we seek accountability for those who exploit government failure and disorder. Global Witness strives to break the links between natural resource exploitation, human rights abuses, and corruption. We have played a leading role in developing and implementing international transparency and natural resource governance mechanisms, including the Kimberley Process rough diamond certification scheme, the Extractive Industries Transparency Initiative ("EITI"), on which we serve as a board member, and the Publish What You Pay ("PWYP") campaign, which we conceived and co-launched in 2002, now a global coalition of over 750 civil society organizations in more than 60 countries.

In support of a strong rule, this letter augments the existing record with recent advances in global extractive transparency completed since the Commission finalized the rule in September 2012 (77 Fed. Reg. 56365, "2012 Rule") and since the District Court for the District of Columbia vacated that rule in July 2013.[2] The court decision leaves the Commission free to re-issue a substantively identical rule, so long as it better justifies that rule as an exercise of the expertise and discretion that Congress granted the Commission.[3] We urge the Commission to re-issue the same rule, updated for consistency with international advances. Inspired by Congress's enactment of Section 1504 and the 2012 Rule, these advances have dramatically changed the global regulatory landscape in favor of greater transparency and they reinforce the rationale for a strong disclosure rule.

I. The Commission's Longstanding Leading Role In Fostering Transparency

We commend the Commission for its strong stand in support of transparency in extractive industries. This position accords with a long tradition of the Commission's leadership on enhancing transparency and combatting corporate corruption and malfeasance. The Commission's report to Congress on "questionable and illegal corporate payments and practices" played a crucial role in the enactment of the Foreign Corrupt Practices Act ("FCPA") in 1977.[4] At stake in Section 1504 rulemaking is the realization of a genuine global extractive transparency standard, and the reputation of the United States as the nation at the forefront of anti-corruption and accountability standards worldwide that dates back to the enactment of the FCPA. Just as the FCPA is a pioneering antidote to the scourge of corruption, Section 1504 is a critical preventative complement to the FCPA. Section 1504, if properly implemented, will also assist the Commission in its efforts to enforce the FCPA. The Commission's strong stand against illicit payments under both of these statutes furthers its core mission of protecting investors;

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[2] *American Petroleum Institute v. SEC*, 2013 U.S. Dist. LEXIS 92280, 2013 WL 3307114 (D.D.C. 2013) (hereafter, "slip opinion").

[3] Courts have set aside regulations where the issuing agency mistakenly believed it had no discretion and subsequently upheld the same regulation reissued accompanied by a detailed explanation. See, e.g., *Coalition for Common Sense in Government Procurement v. U.S.*, 707 F.3d 311 (D.C. Cir. 2013) (upholding a Department of Defense regulation that had previously been vacated because the agency misconstrued its discretion); *PDK Laboratories, Inc. v. U.S. Drug Enforcement Administration*, 438 F.3d 1184 (D.C. Cir. 2006) (same outcome for administrative action by the Drug Enforcement Agency).

[4] http://www.sec.gov/spotlight/fcpa/sec-report-questionable-illegal-corporate-payments-practices-1976.pdf.

maintaining fair, orderly, and efficient markets; and facilitating capital formation. Experts have rightly observed that the securities laws are appropriate for compelling human rights disclosure, advancing sustainability and addressing broader public policy issues.[5]

While Section 1504 will bring important benefits for impoverished citizens of resource-cursed countries, with effective implementation, it will also serve investor interests. Strong transparency standards for extractive industries are important for, and favored by, investors, as expressed by numerous investors' submissions during the rulemaking process that led to the 2012 Rule. More recently, investors representing over $5.6 trillion in assets under management have reiterated their substantial interest and support for a strong rule.[6] Globally, investors commanding more than $34 trillion in market capital (or over 15% of the world's investable assets) have expressed their support for responsible and transparent investment by signing onto international principled investing standards.[7]

The global tide of socially responsible investment is on the rise. More generally, the issues raised by this rule are of concern to all categories of investors. Investors have been the primary users of extractive data disclosed under other regimes, such as EITI and Norwegian Petroleum Directorate, relying on this information for their decision-making and due diligence.[8] All investors desire to be protected from legal liability and reputational and financial risks associated with illicit payments, and it is the Commission's role to assist them. The transparency embodied by a strong rule implementing Section 1504 is the foundation upon which such protection can arise. From Global Witness' work investigating and documenting numerous instances of corruption in the extractive sectors, we believe that investors have the right to know about such risks and that a strong SEC disclosure requirement is the proper way to enable investors to evaluate those risks.[9]

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[5] Cynthia A Williams, "The Securities and Exchange Commission and Corporate Social Transparency," 112 *Harvard Law Review* 1197 (1999). Prof. Williams has endorsed a recent report on the Commission's role in compelling human rights disclosure. International Corporate Accountability Roundtable, *Knowing and Showing: Using U.S. Securities Laws to Compel Human Rights Disclosure* (October 9, 2013), http://accountabilityroundtable.org/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report4.pdf. *See also* Cary Krosinsky, "Sustainability and Systemic Risk: What's the SEC's Role?," *The Guardian* blog (October 23, 2013), http://www.theguardian.com/sustainable-business/sustainability-risk-investors-sec.

[6] Letter to Chairman Mary Jo White (August 14, 2013), http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-3.pdf.

[7] PRI Fact Sheet, UN Principles for Responsible Investment (May 2013), http://www.unpri.org/news/pri-fact-sheet.

[8] Anders Tunold Kråkenes, "Extractives transparency and its beneficiaries," EITI blog (December 2, 2013), http://eiti.org/blog/extractives-transparency-and-its-beneficiaries.

[9] Part V below goes into greater depth regarding the significance of risks created by a lack of transparency in extractive industries for investors and the benefits investors will reap from the deterrent effects of a strong transparency standard.

II. Update on Recent International Transparency Efforts

In recent months, major advances have occurred in several international transparency initiatives. These developments were finalized too late to be considered by the District Court and by the Commission (before it finalized the 2012 Rule in August 2012). We believe that these advances in international transparency efforts are material considerations that support reissuance of a strong rule by the Commission. These "international transparency efforts" are relevant not only in light of the explicit statutory reference to them in 15 U.S.C. § 78m(q)(2)(E), but also for the Commission's independent evaluation of whether the disclosures should be made public, whether to allow exemptions, and how to minimize the costs of the new rule. These issues are explained in greater detail in Parts III-V below.

Notable recent developments that have advanced international transparency for extractive industries are:

- **G8** leaders agreed at the Lough Erne summit in June 2013 to make progress toward establishing a common global reporting standard for the extractive industries explicitly citing the 2012 Rule.[10] The G8 position is supported by the US government and global industry groups including the International Council on Mining and Metals.[11]

- **The European Union** ("EU") has adopted new laws requiring annual disclosure of payments made by extractive and forestry companies.[12] Those disclosure requirements do not include any exemptions, and govern all companies that are registered in the EU (Accounting Directive adopted on June 26, 2013) as well as those that issue securities on regulated markets in the EU (Transparency Directive adopted on October 17, 2013). EU Members States are obliged to transpose these Directives into national law within 24 months without changing their substance.[13] The EU Accounting Directive applies to EU-registered subsidiaries of major US

[10] Lough Erne Communique, para. 36-39, pp. 9-10 (June 18, 2013), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf.

[11] http://www.icmm.com/page/95730/icmm-supports-g8-position-on-transparency.

[12] The new disclosure rules form Chapter 10 "Report on payments to governments" of the EU Accounting Directive and Article 6 "Report on payments to governments" of the revised EU Transparency Directive. EU member states are obliged to transpose the Accounting Directive by July 20, 2015 and the Transparency Directive by November 27 2015. A fact sheet summarizing these new EU rules prepared by Publish What You Pay is available (as of November 6, 2013): http://publishwhatyoupay.org/resources/fact-sheet-%E2%80%93-eu-rules-disclosure-payments-governments-extractive-companies.

[13] K.P.E. Lasok QC of Monckton Chambers, Opinion in the matter of Directive 2013/34/EU and in the matter of project-by-project payment reporting obligations affecting EU subsidiaries of US companies (September 13, 2013).

companies (including ExxonMobil and Chevron) that will be required to publicly disclose their project-level payments to governments without exemption.[14]

- **The United Kingdom** committed at the Lough Erne summit, together with other EU members of the G8, to "quickly implement" the EU Accounting Directive, and has announced on October 31, 2013 that it will do so in 2014.[15]

- **Canada** is moving quickly to introduce mandatory disclosure legislation comparable to Section 1504 in furtherance of its G8 commitment at Lough Erne. In June 2013, the Canadian government announced its intention to introduce new legislation requiring the disclosure of payments made by Canadian extractive resource companies to governments, and shortly thereafter, a multi-stakeholder working group released a recommended framework which proposed mandatory disclosure for Canadian mining companies.[16] This was followed by a round of consultations in July 2013 between the government, extractive industry companies and civil society organizations, explicitly seeking to align Canada's approach with other international processes.[17] The developments in Canada are of particular global significance because Canada is a mining giant: 57% of the public mining companies in the world are listed on Canadian exchanges, raising 70% of the total global equity capital for mining.[18]

- **Switzerland** is developing its own revenue transparency law. The Swiss parliament passed a motion on June 11, 2013 requesting the Federal Council to examine a draft transparency law, including the entire Swiss commodity sector (both listed and non-listed companies, extractive and trading activities), and to examine how Switzerland could support a global transparency standard, with specific references to Section 1504 and EU Directives.[19] Switzerland is the world's leading commodities trading hub, accounting for about 35% of global crude oil trade and 60% of trade in metals and minerals.[20]

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[14] *Id.* A limited search by Global Witness of European subsidiaries of US extractive companies shows that subsidiaries owned by ExxonMobil, Chevron, ConocoPhilipps, Marathon, Anadarko and Apache are covered by this EU Directive.

[15] The UK Government made its commitment at the Open Government Partnership meeting in London, October 31, 2013 in its UK Government National Action Plan, p. 49, Commitment 21, http://data.gov.uk/sites/default/files/library/20131031_ogp_uknationalactionplan.pdf. Global Witness, *UK lead on oil and mining transparency law sends strong signal to U.S.* (October 31, 2013), http://www.globalwitness.org/library/uk-lead-oil-and-mining-transparency-law-sends-strong-signal-us.

[16] "Canada commits to enhancing transparency in the extractive sector," (June 12, 2013), http://pm.gc.ca/eng/news/2013/06/12/canada-commits-enhancing-transparency-extractive-sector. For details on the work of the transparency working group, see http://www.pwyp.ca/en/issues/transparency-working-group.

[17] http://www.pwyp.ca/en/issues/mandatory-disclosure.

[18] http://www.tmx.com/en/pdf/Mining_Sector_Sheet.pdf.

[19] http://www.parlament.ch/e/suche/pages/geschaefte.aspx?gesch_id=20133365.

- **Norway** has approved mandatory project-level payment reporting for extractive and forestry sectors with no country-level exemptions on December 5, 2013, to be effective from January 1, 2014.[21]

- **Hong Kong** has adopted new stock exchange listing rules mandating country-by-country disclosure of payments by newly-listed extractive companies to host country governments in respect of tax, royalties and other significant payments (effective June 3, 2010).[22] These requirements were added in part at the request of investor groups which voiced their support in a 2010 public consultation on new rules.[23]

- **EITI** has agreed a new standard in May 2013 requiring public, project-level reporting, to be consistent with Section 1504 and new EU requirements. Multi-stakeholder groups in EITI member countries and candidate countries (including the US) are working to implement this standard. See Appendix A for details on the compliance status of EITI-implementing and candidate countries and references to all reports published to date. While the EITI represents an important step towards increasing extractive transparency, it is not sufficient.[24] The District Court agreed and pointed out Congress was "[u]nsatisfied with the EITI regime alone" and clearly intended to augment it through Section 1504.[25] The Commission should again look to the EITI as setting a minimum reporting standard that Section 1504 is intended to meet and surpass.[26]

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[20] *Report of the interdepartemental plattform [sic] on commodities to the Federal Council* (March 27, 2013), p. 11, http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf.

[21] http://pwyp.no/en/press-statement-fight-against-capital-flight-continues. Original Norwegian text is at http://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2013-2014/inns-201314-004/30.

[22] These rules apply to new applicant mineral companies with major activity (25 per cent or more of assets, revenue or operating expenses) that involve the exploration for and/or extraction of natural resources as well as a listed issuer that engages in major acquisitions of mineral or petroleum assets. See Rules Governing the List of Securities on the Stock Exchange of Hong Kong Limited, Chapter 18, http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_18.pdf.

[23] Hong Kong Exchanges and Clearing Limited, *Consultation Conclusions on New Listing Rules for Mineral Companies* (May 2010), https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp200909mcc.pdf.

[24] We have argued this in our previously submitted comment (Feb. 25, 2011), pp. 4-5, http://www.sec.gov/comments/s7-42-10/s74210-34.pdf.

[25] Slip opinion, p. 3. Former Shell executive Alan Detheridge agrees: "EITI is unable to provide information in countries which are unwilling to sign up to the initiative, which is why regulation is needed." http://www.theguardian.com/commentisfree/2013/feb/07/oil-industry-transparency-europe.

[26] The 2012 Rule was right to follow the EITI except for where the language or approach of Section 1504 clearly deviates from it. 77 Fed. Reg. at 56403.

Table 1. International extractive transparency efforts at a glance

	2012 Rule	EU	HKEx	Canada (proposed)	Norway	EITI
Mandatory	✓	✓	✓	✓	✓	*
Project-level reporting required	✓	✓	**	✓	✓	✓ ***
No exemptions for any countries	✓	✓	✓	✓	✓	N/A
Public disclosure requirement	✓	✓	✓	✓	✓	✓
Annual reporting	✓	✓		✓	✓	✓

* EITI is a voluntary initiative in the sense that is implemented by countries whose governments sign-up to do so, but full reporting is mandated by law in all EITI-implementing countries.

****** Certain companies listed in Hong Kong have made project-level disclosures of payments to governments (as described on pp. 15-16 below).

*******EITI has agreed a new standard in May 2013 requiring project-level reporting, to be consistent with Section 1504 and new EU requirements.

III. Full Public Project-Level Disclosure Is Essential and Practicable

Any rule reissued under Section 1504 should include detailed public project-level disclosure. The District Court held that the meaning of "compilation" is ambiguous and that Congress intended to commit the term's interpretation to the Commission's significant expertise and judgment. In exercising this judgment, the Commission should justify detailed public disclosure by looking to the needs of the users of this data, including those of both investors and transparency advocates.

The Commission should therefore reject suggestions of some industry commentators for companies to submit the required payment information confidentially, with the Commission making public only an incomplete selection of that information. The District Court decision suggests that a rule that provides for extremely limited public disclosure in the compilation might be an unreasonable interpretation of Section 1504 under *Chevron* step two analysis.[27] Unlike the examples, cited by the American Petroleum Institute (API), of other agencies that receive data and then publish only a selection of it,[28] the Commission has no use for the data disclosed

[27] Slip opinion, n. 5, p. 20.

pursuant to Section 1504 beyond its responsibility "to evaluate it to determine the extent to which disclosing it (in a compilation) would be 'practicable,' and then use it to make such a compilation."[29] The District Court held that Congress decided to allow the Commission to determine whether competitive harm or some other basis would make disclosure of all reported data impracticable. But because there is no evidence of such impracticality, the proper exercise of the Commission's judgment requires it to interpret the term "compilation" consistent with the 2012 Rule, as meaning a compilation that "like those of judicial opinions or Shakespeare's sonnets, pull[s] together the items compiled without editing them. . . ."[30] Such an interpretation is sound because API has presented no evidence of any impracticality, while there is ample evidence of its practicality, both in terms of low compliance costs and fictitious competitive harm (as discussed below on pp. 21-24 under "Costs" and "Competitiveness"). This evidence is so clear that the Commission can and should exercise its (*Chevron* step 2) discretion to make an ex-ante determination that full project disclosure is practicable.[31]

We also urge the Commission to adopt a definition of "project" equivalent to that adopted by the EU, which was itself inspired by the Commission's 2012 Rule: "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government."[32] The EU definition provides that "multiple such agreements" that are "substantially interconnected" will also be considered a single project.[33] "Substantially interconnected" legal agreements mean "a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with the government" and "give rise to payment liabilities."[34] Such multiple agreements "can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement."[35]

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[28] Comment submitted by American Petroleum Institute (November 7, 2013), n. 3, p. 2, http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-12.pdf. Unlike the Commission's responsibilities with respect to Section 1504, the agencies referenced by API have statutory responsibilities that the reported data help those agencies to fulfill. Similarly, the example of reports by institutional investment managers under Section 13(f) of the Exchange Act cited by the District Court (slip opinion, pp. 13-14) is also inapplicable here. Section 13(f) clearly tasks the Commission with "[tabulating] the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public." 15 U.S.C. § 78m(f)(4). But in Section 1504, Congress gave no such clear mandate and left the interpretation up to the Commission.

[29] Slip opinion, p. 20.

[30] *Id.*, p. 17.

[31] Any practicability issues are so extremely rare and minor that they can and should be addressed via individual issuer requests pursuant to 15 U.S.C. 78l(h) rather than by undermining the entire rule. We believe that any such requests should require a high burden of proof on the requesting issuer.

[32] Article 41(4) of Accounting Directive, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF.

[33] *Id.*

[34] Recital 45 of Accounting Directive, *supra*.

[35] *Id.*

Investors as well as anti-corruption advocates need access to the full project-level disclosure and API's proposal (dated November 7, 2013) would not meet their needs. From the perspective of investor protection, investors cannot evaluate the risks of corruption specific to individual issuers without access to project-level disclosure that includes the identity of the disclosing company. Investors have been vocal that "the availability of entity level, project-by-project payment information provided without exemptions for reporting in particular countries is critical to ensure the disclosures required by Section 1504 are of use to investors."[36] From the perspective of transparency advocates, public project-level disclosure by companies is absolutely critical to hold both governments and companies accountable for the resource revenues for each project at the community level.

Additionally, publication of all disclosed information is needed for consistency with "international transparency efforts" (15 U.S.C. § 78m(q)(2)(E)). In particular, the EU Accounting and Transparency Directives both make it clear that the disclosed information will be made public. Article 42(1) of the Accounting Directive provides that "Member States shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and *make public* a report on payments made to governments on an annual basis" (emphasis added).[37] Similarly, Article 6 of the Transparency Directive provides that "The report shall be *made public* at the latest six months after the end of each financial year and shall *remain publicly available* for at least ten years" (emphasis added).[38] In addition, the EITI standard requires full public reporting, which is particularly significant in light of the statutory reference to EITI (15 U.S.C. § 78m(q)(1)(C)(ii)).

The recent international transparency initiatives demonstrate that making the required project-level disclosure public is practicable, contrary to some industry commentators' insinuations of costly compliance and competitive harm. In adopting the two recent Directives, the European Parliament has determined that it is practicable for extractive companies to make public the required disclosure. Project definition was extensively considered in the lead up to the two EU directives at a series of roundtable discussions organized by the UK Government Department of Business Innovation and Skills that took place over several months. These discussions included government experts, company representatives and civil society (including Global Witness) and helped form the basis for the UK position on the two directives, including how project should be defined. The UK strongly supported and championed project level reporting and fully endorsed the final EU definition. The EU explicitly concluded that this reporting will be practicable: "The reporting on a project basis will be possible on the basis of companies' current reporting structures: the definition of project covers the operational activities governed by a single contract (or similar legal agreements) that form the basis for payment

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[36] Comment submitted by SNS Asset Management (July 31, 2013), http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-1.pdf.

[37] Article 45(1) of the Accounting Directive confirms that "The report referred to in Article 42 and the consolidated report referred to in Article 44 on payments to governments ***shall be published*** as laid down by the laws of each Member State …" (emphasis added).

[38] http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2013:294:FULL&from=EN.

liabilities with a government."[39] As a result, all extractive companies that are registered in the EU as well as issuers whose securities trade on EU-regulated markets will be required to make public their payment disclosures.

API's argument that project-level disclosure is impracticable because it will allegedly reveal sensitive commercial information, thereby causing competitive harm, is pure fiction. There is no need for the Commission to diminish the valuable benefits of project-level transparency in order to mitigate the non-existent "risk that company payment data can be used by competitors to the detriment of SEC-registered resource extraction issuers and their shareholders."[40] To begin with, contract terms relating to reserves and production volumes are impossible to infer from payments as a general matter (as discussed below on p. 14). As we have previously argued, payment information is not commercially sensitive and cannot be used to deduce a company's contract terms, operating costs, or future plans without access to additional information.[41] Even in the extremely unlikely event that any contract terms are revealed as a result of Section 1504 disclosure, such terms are either generally already known to actors within the industry, or are of such minimal competitive value that they are unlikely to cause substantial harm to an issuer's competitive position.[42] Moreover, the rising international norm of contract transparency means that extractive contracts are already publicly disclosed in full in an increasing number of countries.[43]

Therefore, any argument that publishing disclosures of project-level payments is "impracticable" for any reason is now moot and should not be entertained by the Commission.

IV. Exemptions for Any Countries Are Unnecessary and Dangerous

We urge the Commission not to allow exemptions for any countries whose laws allegedly conflict with Section 1504.[44] Apart from the fact that the Commission already possesses the

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[39] European Commission, "New disclosure requirements for the extractive industry and loggers of primary forests in the Accounting (and Transparency) Directives (Country by Country Reporting) – frequently asked questions," MEMO/13/541 (June 12, 2013), http://europa.eu/rapid/press-release_MEMO-13-541_en.htm.

[40] Comment submitted by American Petroleum Institute (November 7, 2013), n. 3, p. 2, http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-12.pdf.

[41] Comment submitted by Global Witness (February 24, 2012), p. 8, http://www.sec.gov/comments/s7-42-10/s74210-200.pdf.

[42] Peter Rosenblum & Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (2009), p. 39, http://www.revenuewatch.org/publications/contracts-confidential-ending-secret-deals-extractive-industries.

[43] Global Witness, *Copper Bottomed* (November 2012), p. 20, http://www.globalwitness.org/sites/default/files/library/Copper%20Bottomed.pdf.

[44] We have argued this in our previously submitted comment (February 25, 2011), pp. 8-10, http://www.sec.gov/comments/s7-42-10/s74210-34.pdf.

discretionary authority to offer exemptions "upon application" pursuant to 15 U.S.C. 78*l*(h)[45], the following points illustrate why it is unnecessary as well as dangerous for exemptions to be included in the rule. The EU Parliament, the European Commission and Council of the European Union considered exemptions at length and ultimately rejected them in all forms. The Commission should again reject exemptions in all their forms. An exemption-free rule is a policy imperative. As we have argued and as the Commission recognized previously, allowing a general exemption for payments made to any country that prohibits disclosure would risk creating a "tyrant's charter": a massive loophole that encourages corrupt governments to pass new secrecy laws.[46] Contrary to API's suggestion, the fact that no country has adopted a new secrecy law since the enactment of Section 1504 is insufficient to justify a general exemption, and only confirms the wisdom of the Commission's decision to deny exemptions which reduced the incentives for countries to pass secrecy laws.[47]

A general exemption would be dangerous and unnecessary: it would come at a huge cost to transparency policy and investor protection while benefiting only those who wish to continue to engage in secret and corrupt deals. It is unnecessary because there is no compelling evidence of legal or contractual prohibitions on disclosing payment data.[48] Insinuations of competitive harm and risk of revealing proprietary commercial terms are entirely unfounded. In contrast to payment information, information about reserves is frequently protected as confidential, and thus the Commission's Modernization of Oil and Gas Reporting regulations appropriately included an exemption for host countries that prohibit reserve disclosure.[49] No such exemption is needed in the case of payment disclosure, where no comparable confidentiality problems are posed.

Apart from these policy and legal considerations that support rejection of any general exemption, the Commission should also address and explicitly reject the possibility suggested in the District Court's decision that exemptions could be limited to the four countries purportedly prohibiting disclosure.[50] As we have argued in our previous submissions, API has not advanced any compelling evidence that any of these countries prohibit disclosure either as a matter of law

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[45] Whenever the Commission grants an exemption to an individual issuer in the case of a host country prohibition on disclosure pursuant to 15 U.S.C. 78l(h), the issuer should be required to disclose the relevant project and country and to articulate why the payment information has not been disclosed.

[46] 77 Fed. Reg. at 56373.

[47] Comment submitted by American Petroleum Institute (November 7, 2013), p. 9, http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-12.pdf.

[48] Rosenblum & Maples (2009); Comment submitted by Susan Maples (March 2, 2011), http://www.sec.gov/comments/s7-42-10/s74210-52.pdf.

[49] Modernization of Oil and Gas Reporting, Securities Act Release No. 8995, Exchange Act Release No. 59,192, 74 Fed. Reg. 2158 at 2187 (January 14, 2009).

[50] The District Court pointed out that "The Commission could have limited the exemption to the four countries cited by the commentators or to all countries that prohibited disclosure as of a certain date, fully addressing this concern." Slip opinion, p. 26; see also p. 27 n.9.

or practice[51], and this conclusion is strengthened by our latest analysis. Therefore, the Commission should not grandfather an exemption for any of these countries into the rule. We urge the Commission to make this rationale more explicit, and we offer an expanded analysis below to support a detailed and reasoned rejection of exemptions in each of the four countries.

Angola does not need to be the subject of an exemption from Section 1504 reporting. As we have previously pointed out, Angola is already unilaterally disclosing information similar to that called for by Section 1504.[52] The fact that the reliability of this data has been called into question highlights the need for payment disclosure from companies. Moreover, Angolan oil contracts for over three decades have included a standard exception from confidentiality "to the extent required by any applicable Law, Decree or regulation (including, without limitation, any requirement or rule of any regulatory agency, securities commission or securities exchange on which the securities of such Party may be listed)."[53]

Oil companies have succeeded in operating transparently in Angola: for example, Norwegian oil company Statoil reported country-level revenue payments made to the Angolan government, including taxes, signature bonuses and production entitlements, without suffering any repercussions.[54] In fact, Statoil, one of the most proactively transparent companies, has won major oil concessions in Angola in the most recent bidding round in December 2011 and is planning to increase its holdings in future bidding rounds.[55] Global Witness has also received confirmation from Chinese state oil company Sinopec that they are prepared to disclose information about payments made to relevant resource-exporting countries in their 2012 annual report, including with respect to their operations in Angola (see Appendix B for translation from original Chinese).

Allowing an exemption for Angola is unnecessary and would harm desperately needed anti-corruption efforts. In fact, Angola is among the worst candidates for creating an individual

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[51] Comment submitted by Global Witness (Feb. 25, 2011), pp. 9-10, http://www.sec.gov/comments/s7-42-10/s74210-34.pdf. Comment submitted by Global Witness (Feb. 24, 2012), pp. 3-4, http://www.sec.gov/comments/s7-42-10/s74210-200.pdf. See also Comment submitted by Publish What You Pay USA (December 20, 2011), http://www.sec.gov/comments/s7-42-10/s74210-118.pdf.

[52] Global Witness & Open Society Initiative for Southern Africa-Angola, *Oil Revenues in Angola: Much More Information but not Enough Transparency* (2010), http://www.globalwitness.org/sites/default/files/library/Oil%20Revenues%20in%20Angola_1.pdf.

[53] Rosenblum & Maples, p. 30 (quoting article 40(c) of the Production Sharing Agreements for Angolan state oil company Sonangol).

[54] Statoil, Annual Report 2012, Payments to governments, http://www.statoil.com/annualreport2012/en/sustainability/ourperformance/economicperformance/pages/paymentstogovernments.aspx.

[55] Statoil currently has stakes in 10 oil blocks in Angola, most recently winning roles in 5 blocks in December 2011. http://www.statoil.com/en/about/worldwide/angola/pages/default.aspx. The next round is to be held in Q1 2014 and Statoil is aiming to increase its Angola holdings then. Mikael Holter, "Statoil to Be Selective in Picking Exploration Targets," *Bloomberg* (November 25, 2013), http://www.bloomberg.com/news/2013-11-25/statoil-to-be-selective-in-picking-exploration-targets.html.

country exemption from Section 1504 reporting. Over the years, Global Witness has exposed the complicity of oil and banking industries in the plundering of state assets during Angola's 40-year civil war, starting from our 1999 report *A Crude Awakening* and following with our 2002 report *All the Presidents' Men* which concluded with a public call on the oil companies operating in Angola to "Publish What You Pay!"[56] Under this rallying call, Global Witness conceived and then co-launched the PWYP campaign in mid-2002. PWYP is now an international coalition of over 750 civil society organizations in over 60 countries.[57]

A series of recent cases that have come to the Commission's attention highlight that there continue to be genuine and extreme corruption risks in Angola. These include the Commission's recent settlement of FCPA charges against Weatherford and its ongoing investigation of Cobalt for FCPA violations.[58] Global Witness has also raised as-yet unanswered questions about the destination of payments of hundreds of millions of dollars made by US-listed BP and Cobalt related to another oil block in Angola.[59] Without detailed and systematic project-level disclosure of such payments, there is no means for investors to protect themselves from liability and risks to their investments.

Cameroon is inappropriate for an exemption from Section 1504 reporting given its recently confirmed status as an EITI-compliant country. This means that all extractive companies operating in Cameroon are cooperating with EITI in the production of annual EITI country reports by reporting the payments they make to the government.[60] In Cameroon, public EITI reports disaggregate payments by company and by revenue type, and will also disaggregate by project going forward, all without offending Cameroonian confidentiality laws. Preliminary research by Global Witness indicates that out of 20 companies whose payment data was published in the most recent EITI report for Cameroon, at least eight are covered by Section 1504.[61]

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[56] Global Witness, *A Crude Awakening: The Role of the Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets* (December 1, 1999), http://www.globalwitness.org/library/crude-awakening; and Global Witness, *All the Presidents' Men* (March 2002), http://www.globalwitness.org/library/all-presidents-men.

[57] See Mabel van Oranje & Henry Parham, *Publishing What We Learned: An Assessment of the Publish What You Pay Coalition* (2009), 2.7 "Why was Angola such a key factor?" at pp. 31-34, http://www.publishwhatyoupay.org/resources/publishing-what-we-learned.

[58] SEC Charges Weatherford International With FCPA Violations (November 26, 2013), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540415694. Tom Burgis, "Cobalt's returns from Angolan venture raise wider concerns," *Financial Times* (November 20, 2013).

[59] Global Witness, *BP makes opaque payments for Angola oil block as petro-lobby seeks weak transparency rules* (February 21, 2012), http://www.globalwitness.org/library/bp-makes-opaque-payments-angola-oil-block-petro-lobby-seeks-weak-transparency-rules.

[60] The 2011 EITI Cameroon report was published in August 2013: http://eiti.org/report/cameroon/2011.

[61] These include local subsidiaries of Exxon, Kosmos, Murphy Oil, Noble Energy, and Sinopec. Notably, this does not include the company that objected to disclosing their payments in Cameroon, Shell, which no longer has operations or assets in Cameroon.

Additionally, it is highly questionable whether the relevant payments are covered by the Cameroonian Confidentiality Decree at all. Even if they are, Article 110 of that Decree expressly excludes disclosures that are required by law, so Section 1504 disclosures will qualify for this statutory exclusion from confidentiality.[62] Moreover, these disclosures will also qualify for a contractual exclusion: the standard oil agreement in Cameroon includes a confidentiality clause that specifically excludes disclosure "to the extent required by laws or regulations, or rules or requirements of a stock exchange."[63]

China has never criminalized disclosure of extractive payments under its secrecy laws. In fact, China criminalizes the bribery of foreign government officials in a manner similar to the FCPA.[64] There is no reason for the Commission to give in to unfounded fears that China might change its position.

The legal argument presented by one of the commentators, Royal Dutch Shell plc, that extractive payments might be considered secrets under Chinese law rests on two faulty assumptions with respect to oil reserves and production volumes. First of these assumptions is that "the information of such Payment [sic] may be used to figure out the production volume of petroleum resources, the reserve of petroleum resources, the discovery of new petroleum resources and other information of the petroleum resources in China."[65] This is not correct and misunderstands the nature of payments to governments under production sharing contracts.[66] Government revenue from resource extraction is commonly a combination of (i) bonuses, paid on signature and then upon specified production milestones; (ii) royalties, payable as an escalating percentage of production value, (iii) the production share received by the government and (iv) state participation, in which a national oil company takes a further share of production

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62 The exclusion in Article 110 of the Confidentiality Decree is worded broadly enough to cover foreign as well as Cameroonian laws and regulations. "The confidentiality undertaking pursuant to the present Section shall not be applicable to any item of information in so far as that item of information has to be disclosed in accordance with legislative or regulatory provisions in force or with a ruling of a competent court." Decree No. 2000/465 of June 30, 2000, translation of original French from Comment submitted by Shell (May 17, 2011), p. 5 http://www.sec.gov/comments/s7-42-10/s74210-90.pdf.

63 Rosenblum & Maples, p. 70.

64 Eric Carlson, Ellen Eliasoph, & Tim Stratford, "China Amends Criminal Law to Cover Foreign Bribery: Bribery of Non-PRC Government Officials Criminalized," *Financial Fraud Law Report* 3:6 517 (June 2011). China has also imposed remarkably strict penalties on domestic corruption, including in the oil sector – for example the former chairman of Sinopec was sentenced to death in 2009 for taking over $28 million in bribes. Zhu Zhe and Cui Xiaohuo, "Corrupt Sinopec ex-chairman convicted," *China Daily* (July 16, 2009), http://www.chinadaily.com.cn/bizchina/2009-07/16/content_8436271.htm.

65 Appendix C in comment submitted by Shell (May 17, 2011), http://www.sec.gov/comments/s7-42-10/s74210-90.pdf.

66 Production sharing contracts are widely used throughout the world, including in China: see for example Shell's Changbei gas development, http://www.shell.com.cn/en/aboutshell/our-business-tpkg/china.html.

alongside the companies, (plus any corporate taxes which apply).[67] Clearly, these payments are contingent on production levels: they are entirely unrelated to reserves and thus cannot be used to calculate the allegedly secret information about reserves and discoveries. As a result, the possible status of reserves as secrets under Chinese law – whether they are disclosed under the US oil and gas reserve reporting rules or not – is irrelevant to Section 1504.

Indeed, even translating extractives payments into production or discovery data is impossible without access to the confidential contract terms to which the payments relate.[68] In any event, production volumes are not treated as a state or business secret in China. They are already disclosed by Chinese state oil companies as well as foreign companies with operations in China under the Commission's oil and gas reporting rules.[69] Moreover, one of these issuers, Royal Dutch Shell plc, is in fact taking a position in its disclosure with the Commission that China does not prohibit disclosure of gas production volumes.[70] The fact that this information has been regularly disclosed without repercussion from Chinese authorities strongly indicates that it is not considered a state secret. This completely undermines the second assumption in Shell's Chinese legal opinion, one that even its author phrases speculatively: "Considering petroleum industry is a very important and sensitive industry and is strictly supervised and controlled in China, the Chinese government *may* be unwilling to disclose such information [about reserves and volumes] to other countries for protection of state safety and interests" (emphasis added).[71]

In sum, the high degree of confidence expressed in Shell's Chinese legal opinion that "it will be *very possible* that the information of such Payment is deemed as information affecting safety and interests of China and constituting state secret" (emphasis added) is neither

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[67] For example, see the World Bank Institute, "Guide to the Extractive Industries Documents – Oil and Gas", (Allen & Overy January 2013), pp. 9-10, http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/World%20Bank%20Extractive%20Industries%20Programme%20-%20Oil%20&%20Gas%20Guide.pdf. On China, see David Blumental, Tju Liang Chua and Ashleigh Au, "Upstream Oil and Gas in China," Chapter 3, especially V-3.25 – V-3.27 in *Doing Business in China* (2009), http://www.velaw.com/uploadedFiles/VEsite/Resources/20-Vol3SecVCh3UpstreamOilandGas.pdf.

[68] In practice, other confidential operational information would also likely be required, such as details of any production allocated to reimbursement of the companies' costs.

[69] Shell's annual report gives disclosure by country under the Commission's oil and gas reporting rules on p. 33: http://s01.static-shell.com/content/dam/shell-new/local/corporate/corporate/downloads/pdf/investor/reports/2012/20f/2012-annual-report20fsec.pdf. PetroChina and CNOOC both disclose their oil and gas production in China by region, see p.24, http://www.petrochina.com.cn/resource/EngPdf/annual/20-f_2012.pdf and p. 3 of http://www.cnoocltd.com/encnoocltd/tzzgx/dqbd/nianbao/images/2013481075.pdf.

[70] *Id.* Not only does Shell disclose information about their gas production in China (131 mil SCF/d) but China is listed apart from the category of "other" which is defined in footnote B as "countries where specific disclosures are prohibited" (or where production is below a certain minimum). The separate presentation of China means that according to Shell, China is not one of those "other" countries, and that Shell doesn't really think that China prohibits disclosure.

[71] Appendix C in comment submitted by Shell (May 17, 2011), http://www.sec.gov/comments/s7-42-10/s74210-90.pdf.

supportable by the faulty assumptions on which this opinion is constructed nor by the actions of the company that commissioned this legal opinion. Shell itself is in fact taking a contrary position in its US disclosure, that China does not prohibit this type of disclosure (see fn 69).

The possibility that China might criminalize – let alone actually prosecute – payment disclosure by Western oil companies is far too speculative to influence Commission rule-making. The Chinese authorities have never expressed any disapproval of payment disclosure. The fact that Chinese extractive industry companies already disclose payments to governments in at least 13 countries that are EITI members (and will be required to disclose on a project basis going forward) is also strong evidence that China is not opposed to transparency of extractive payments.[72] Further undermining the argument that China is opposed to stock exchange disclosure of extractive revenues is the fact that the Hong Kong Stock Exchange (HKEx) has instituted its own payment disclosure requirements and that at least nine large extractive companies have listed on the HKEx since these requirements came into effect in 2010 including mainland Chinese companies. Although the HKEx listing rules only require country-level disclosure, in at least two cases, HKEx-listed Chinese companies have in fact disclosed in their listing documents project-level information on revenue payments made to the Chinese government.[73] Thus, disclosure of detailed payment information is not prohibited by Chinese law, but is in fact made in compliance with the HKEx listing rules, including when the projects are in China. This information is published in companies' listing documents: far from being a state secret, therefore, it is regarded as a vital part of what investors need to know.

Section 1504 captures all three major Chinese state-owned oil companies, because all three of them have shares listed on the NYSE: Sinopec, the China National Offshore Oil Corporation (CNOOC) and PetroChina (the principal holding company of CNPC). None of these companies has requested an exemption for China, nor are there any signs that they are concerned that their Section 1504 reporting might violate secrecy laws. Global Witness has obtained a written statement from Sinopec that they were prepared to incorporate Section 1504 disclosure in their 2012 annual report (see Appendix B). As an issuer that is cross-listed in London, Sinopec will be required to report payments it makes to governments worldwide without exemptions in order to comply with the EU Transparency Directive.

Qatar, likewise, should not be the subject of an exemption because it follows the industry standard practice on confidentiality in its joint venture and production sharing agreements. Those agreements provide exceptions where disclosure is required by law. This is

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[72] Global Witness, *Transparency Matters: Disclosure of Payments to Governments by Chinese Extractive Companies* (January 2013), http://www.globalwitness.org/transparencymatters. Table 1 (p. 9) provides a selection of 26 Chinese companies contributing payment data to reports in 13 countries as part of the EITI process.

[73] MIE Holding Corp is an oil and gas company that operates three oil fields in North East China, and has disclosed royalties paid to the Chinese government for its Daan project in North East China for 2007-2009. http://www.hkexnews.hk/listedco/listconews/SEHK/2010/1214/LTN20101214332.pdf. CITIC Dameng Holdings is the largest producer of manganese in China, operating two mines in Guanxi Province, South China, and has provided project-level disclosures of non-income taxes, royalties and other governmental charges for its Daxin and Tiandeng mines for 2008-2010. http://www.hkexnews.hk/listedco/listconews/SEHK/2010/1118/LTN20101118272.pdf.

apparent from the sole item of evidence submitted in support of the case for an exemption for Qatar.[74] Additionally, the Qatari government appears concerned primarily about "commercially sensitive information"[75], which may include reserves but is unlikely to include payments, for reasons similar to those discussed above with respect to China.

Exemptions for any of these four countries are unnecessary for three reasons. First, the evidence for the existence of any laws purportedly prohibiting disclosure is weak, even under the most generous legal interpretation. Second, any such laws have to be interpreted together with the relevant contractual language and industry practice. In oil contracts, industry standard is for confidentiality clauses to include carve-outs for compliance with relevant laws, as evidenced by the model confidentiality agreement form produced by the Association of International Petroleum Negotiators (AIPN), the professional association of attorneys handling oil industry negotiations.[76] Such disclosure authorizations are a long-standing practice in the oil industry, going back at least twenty years, in light of equivalent provisions included in the 1999 and 1991 versions of the same AIPN model contract. The finding is confirmed in a 2009 study by Revenue Watch Institute and Columbia Law School, which canvassed 150 extractive industry contracts around the world and found that disclosure to stock exchanges was a standard exception to confidentiality obligations, and has been for decades.[77]

Third, even assuming there were certain laws or contractual provisions prohibiting disclosure, there is no evidence that they have been or will be enforced in practice. This may be attributable to a combination of contractual confidentiality exception provisions and international transparency efforts described above. Global Witness closely tracks natural resource-related corruption and we are not aware of any cases where extractive companies faced legal liability for disclosing payments. To the contrary, there are numerous instances of extractive industry companies facing liability for secret and corrupt payments around the world, including examples from countries proffered for exemptions. We describe some of these examples below (pp. 19-20).

In sum, the extremely remote possibility that a government might suddenly change course and decide to prohibit extractive payments and then enforce that prohibition is more appropriately treated on a case-by-case basis pursuant to the individual issuer exemption procedure provided in 15 U.S.C. § 78*l*(h). It does not require any country exemption.

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[74] Comment submitted by ExxonMobil (March 15, 2011), http://www.sec.gov/comments/s7-42-10/s74210-73.pdf.

[75] *Id.*

[76] AIPN's "Model Form Confidentiality Agreement" authorizes the disclosure of otherwise confidential information that is required "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, Appendix A to the comment submitted by Oxfam (March 20, 2012), http://www.sec.gov/comments/s7-42-10/s74210-294.pdf.

[77] Rosenblum & Maples, pp. 26-27.

V. Maximizing Benefits and Minimizing Costs

Benefits. Extractive transparency produces valuable benefits that accrue to all stakeholders, including not only the societies where the extraction takes place but also the investors and companies involved in the resource extraction. The list of these benefits is long and includes: political risk mitigation, credibility and reputational assurance for companies, corruption deterrence (including reducing costs resulting from FCPA violations), increased foreign direct investment and improved development outcomes.

A. Social License to Operate

If business can publicly demonstrate its contribution to the national economy (by disclosing payments by country) and to local community (by disclosing payments by project), this will improve relationships with host governments and local communities and reduce the likelihood of resentment, protest and conflict. While opaque governance increases political instability and investment risk, openness around the extractive industry and its value creation leads to more stable markets and more stable social and political development. For example, it is for this reason that the World Gold Council recently highlighted the contributions of the gold sector to government revenues in each gold-producing country.[78]

Beyond country-by-country disclosure, project-level disclosure of extractive payments is even more beneficial because it strengthens the companies' social license to operate at the local level by showing host communities the financial contribution of extractive companies to local revenues. Local unrest can have severe adverse impacts on the reputation, operations, finances, and growth of extractive companies. Interviews with industry insiders confirm that costs arising from lost productivity due to delays in production could cost a major mining project $20 million per week.[79] In rare cases where detailed revenue information is available either through EITI or as a result of contract transparency, civil society has performed an important monitoring function. For example, in the Democratic Republic of Congo, civil society is tracking the payment and use of social development funds at a copper and cobalt mine and finding that the funds have been spent on tangible projects, such as schools, bridges and wells, benefitting the local community.[80] This type of local-level benefits would be lost under any proposal that does not provide for full public project-level reporting. Mandatory disclosure under Section 1504 will dramatically increase the number of such positive examples in places where contracts are not fully transparent and will strengthen monitoring by civil society even where contract terms are disclosed.

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[78] World Gold Council, *Responsible Gold Mining and Value Distribution* (October 31, 2013), http://www.gold.org/about_gold/sustainability/socio-economic/responsible_mining_value_distribution.

[79] Rachel Davis & Daniel M. Franks, "The costs of conflict with local communities in the extractive industry," Chapter 6 in *First International Seminar on Social Responsibility in Mining* (October 2011), https://www.csrm.uq.edu.au/Portals/0/11srm_cap06_p88.pdf.

[80] Patrick Heller, *Putting Contract Transparency to Work: Civil Society Monitoring Compliance With Legal Obligations in African Mining Projects* (November 14, 2013), http://www.revenuewatch.org/news/blog/putting-contract-transparency-work-civil-society-monitoring-compliance-legal-obligations-a.

B. Anti-corruption

A mandatory disclosure regime that requires project-level reporting will enable companies to refuse bribery demands and deter them from making illicit payments in resource-rich but governance-deficient countries. In such countries, companies are routinely put in situations where an illicit payment, that may or may not be illegal, and that the company may or may not be aware of, is sought as standard practice for access to concessions. Insufficient detail to project-level disclosure would come at the expense of anti-corruption benefits, and would instead further entrench such corruption, sustaining significant risks for investors and companies, and undermining the Commission's FCPA enforcement capabilities. This would be particularly regrettable given the US' leadership role in the global fight against corruption.

For example, in Global Witness' opinion, had the 2012 Rule requiring disclosure of project-level payments been in place by April 2011, it is not credible to believe that Shell and Eni would have proceeded to acquire their lucrative Nigerian off-shore oil block, OPL245, along the lines of the deal they eventually concluded. Both Shell and Eni have denied they paid any money to Malabu Oil and Gas Ltd ("Malabu"), the company that controlled the block until the point of the deal. However, High Court proceedings and other evidence seen by Global Witness show that in paying $1.1 billion to the Nigerian government to acquire the block, the companies did so in the knowledge and agreement that these funds would subsequently be transferred to Malabu. In 2013, a UK court found that Dan Etete, a convicted money-launderer who was Nigerian oil minister during the dictatorship of Sani Abacha, had been a beneficial owner of Malabu "at all material times."[81] Given that Etete awarded OPL245 to Malabu when he was Minister, in effect he had awarded himself the block. Thus the payments made by Shell and Eni to acquire the block, effectively monetized an asset that was obtained under questionable and possibly illegal circumstances.[82] The OPL245 deal is known to be the subject of investigations by law enforcement authorities in the United Kingdom and Nigeria[83]

A strong Section 1504 rule will also benefit investors by improving investment risk assessments and mitigating companies' legal and reputational risks associated with corruption and conflict. Many risky transactions would be deterred by a strong implementing rule under Section 1504. For example, with respect to Cobalt's transactions in Angola currently under investigation in the US, a strong disclosure rule would have avoided the staggering loss of well over US$1 billion that was wiped off Cobalt's market value shortly after the US investigations

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[81] *Energy Venture Partners Ltd. v. Malabu Oil & Gas Ltd*, [2013] EWHC 2118 (Comm). The case was brought by a broker who alleged that Etete failed to pay him for work he had done in obtaining a buyer for OPL245. Shell and Eni were not party to these proceedings.

[82] Global Witness, *The curious case of Nigerian oil block – OPL245* (June 13, 2013), http://www.globalwitness.org/sites/default/files/library/The%20case%20of%20Nigerian%20oil%20block%20OPL245_0.pdf. See also "Safe sex in Nigeria," *The Economist* (June 15, 2013), http://www.economist.com/news/business/21579469-court-documents-shed-light-manoeuvrings-shell-and-eni-win-huge-nigerian-oil-block.

[83] Tim Cocks, "UK police probing Shell, ENI Nigerian oil block deal," *Reuters* (July 24, 2013), http://www.reuters.com/article/2013/07/24/uk-shell-eni-nigeria-idUKBRE96N0L020130724; "Nigeria: Malabu Deal - EFCC Closes in on Beneficiaries, Banks" *Leadership* (Nigeria) (May 26, 2012), http://allafrica.com/stories/201205270168.html.

became public.[84] In another recent case involving corruption in Angola, Congo and Algeria, the Commission has charged Weatherford, a New York-listed oil services company, with FCPA violations, and the company has agreed to pay over $250 million to settle the case, one of the largest FCPA settlements to date.[85] The resulting stock drop has harmed investors. In some egregious cases, the risks to business go beyond legal liability and up to possible loss of the entire investment. In November 2013, Mongolian government revoked 106 mining licenses over corruption concerns.[86] Revocation is also a serious risk in the OPL245 case, after a draft report by the Nigerian House of Representatives recommended that the Nigerian government cancel the entire suspect transaction and censure the two companies involved, Shell and Eni, for lack of transparency.[87] This case illustrates how an opaque business environment can put significant investments at risk: in the OPL245 case, over $1 billion is at stake, not to mention the potential loss of expected revenues and bookable reserves should the block actually end up being revoked.

If the 2012 Rule had been implemented, it is hard to overstate the deterrent impact it would have had. The Commission's issuance of a strong Section 1504 rule will be a game-changer helping deal participants to avoid what for many countries that we have investigated over the past fifteen years amount to routine illicit and often legally questionable practices. The current opacity around such deal-making ensures that such practices remain in the dark, their exposure only coming forth by accident, or through significant investigatory effort. Significantly, this deterrent benefit would be eliminated if the Commission follows API's proposals. Far from bringing essential transparency and accountability into extractive industry deal making, these proposals would ensure continued opacity – the conditions essential to aiding and abetting corrupt transactions and other illicit activities associated with natural resource deals. For example, these proposals would have deprived the Nigerian citizens of the opportunity to follow the money from the OPL245 transaction, because the suggested designation "Oil/Offshore/Nigeria/Delta" would be inadequate to identify and investigate this individual transaction. This also holds for all of the individual transactions in Angola described above. This is precisely why anti-corruption activists from resource-rich countries favor strong project-level disclosure.

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[84] Clifford Chance, *Cross-border M&A: Perspectives on a changing world: Highlights for the Oil & Gas Sector* (2012), p. 5, http://globalmandatoolkit.cliffordchance.com/downloads/CC-EIU-Report-Oil-and-Gas-Extract.pdf.

[85] *SEC Charges Weatherford International With FCPA Violations* (November 26, 2013), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540415694. Notably, most of the relevant payments were made through agents and joint ventures, so this case of pervasive corruption would not have been disclosed and deterred by a Section 1504 rule that adopts a definition of "control" requested by the American Petroleum Institute in its submission dated November 7, 2013, pages 9-10. For this reason, we continue to support the 2012 Rule's approach which adopted a facts and circumstances test of "control."

[86] Reuters, "Foreign investors cry foul as Mongolia revokes mine licenses" (November 7, 2013), http://www.reuters.com/article/2013/11/07/mongolia-mining-licenses-idUSL3N0IS33820131107.

[87] Adesuwa Tsan, "Nigeria: Malabu Oil Deal – Reps Report Indicts Adoke, Shell, Agip," *Leadership* (July 15, 2013), http://allafrica.com/stories/201307150502.html?viewall=1.

C. Improving Governance and Increasing Investment

Extractive transparency benefits both investors and host countries by improving governance and increasing aid as well as foreign direct investment (FDI). Recent research shows that countries gain access to increased aid the further they progress through the EITI implementation process, and that EITI implementation has a measurable impact on reducing corruption.[88] Another recent study of 81 countries has found that joining the EITI increases a country's ratio of FDI inflows to GDP on average by around two percentage points, a remarkable increase given that the average ratio of FDI inflows to GDP in the sample was five percent.[89] This shows that investors view extractive transparency as an important investment consideration and that improving transparency through initiatives such as EITI and strengthening it with mandatory disclosure through Section 1504 will bring considerable benefits to investors and to citizens of resource-rich countries.

Costs. While the benefits of transparency in extractive industries pursuant to Section 1504 are vast, they are more challenging to quantify in monetary terms than costs. Yet cost estimates provided by some industry commentators are wildly overstated. The bulk of these cost estimates relates to spurious claims of competitive harm in countries that allegedly prohibit disclosure, but this should be dismissed given that no such prohibiting laws exist, as discussed above in Part IV. Compliance costs have also been overstated: companies are already keeping track of their payments to governments, both as a matter of good business practice, and to comply with anti-corruption laws or other relevant legal regimes. Former Shell executive Alan Detheridge has pointed out that the EU definition is practicable and has the "advantage of not imposing an undue burden on reporting companies since the relevant payments are already recorded in subsidiary companies' books of account."[90] Because this is something the companies do already, any added compliance cost for making this information public pursuant to Section 1504 will be negligible.

To minimize additional reporting burdens and compliance costs on the industry, the rule implementing Section 1504 should be equivalent to the strong requirements under EU law. If the European Commission determines that Section 1504 is "equivalent" to the EU Directives, then US-listed companies will be exempt from the additional EU reporting requirements. Ensuring that the Section 1504 rule satisfies the equivalence criteria listed in Article 46 of the EU Directive would relieve many multinational companies of a double reporting burden.[91] The following highlights three of the equivalence criteria listed in Article 46:

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[88] Liz David-Barrett & Ken Okamura, "The Transparency Paradox: Why Do Corrupt Countries Join EITI?" European Research Centre for Anti-Corruption and State-Building, Working Paper No. 38 (November 2013), http://www.againstcorruption.eu/wp-content/uploads/2013/11/WP-38-The-Transparency-Paradox.-Why-do-Corrupt-Countries-Join-EITI1.pdf.

[89] Maya Schmaljohann, "Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI," University of Heidelberg Department of Economics, Discussion Paper Series No. 538 (January 2013), http://eiti.org/files/Schmaljohann_2013_dp538.pdf.

[90] "The oil industry wants to water down transparency rules – Europe must resist," *Guardian* (February 7, 2013), http://www.theguardian.com/commentisfree/2013/feb/07/oil-industry-transparency-europe.

- "payments captured" (Article 46.3(a)(iii)): the US rule will not be equivalent to the EU Directive if it exempts payments to any countries;
- "breakdown of payments captured" (Article 46.3.(a)(v)): the US rule will not be equivalent to the EU Directive if it does not mandate project-level reporting with an equivalent definition of project; and
- "reporting medium" (Article 46.3.(a)(vii)): the US rule will not be equivalent to the EU Directive if it does not ensure that all the reported information is made publicly available.

A consistent global transparency standard that aligns reporting burdens and keeps disclosed information consistent and comparable across jurisdictions is clearly in the interests of all stakeholders, and numerous companies recognize this. The CEO of Rio Tinto openly endorsed such a standard in his recent speech at the G8 summit.[92] In the words of former Newmont executive Chris Anderson, "No longer can companies and governments hide in a mutually exclusive, mutually beneficial relationship while other stakeholders – local communities and civil society – are locked out by a 'We know best', 'Trust us and we'll do the right thing' attitude."[93]

VI. Competitiveness: Leveling the Playing Field

The recent major strides toward a global extractive transparency standard create a level global playing field and render moot concerns about burdening competition raised by some companies. In its careful consideration of these concerns in creation of the 2012 Rule, the Commission observed that "the competitive impact may be reduced to the extent that other jurisdictions, such as the EU, adopt laws to require disclosure similar to the disclosure required by [Section 1504]."[94] This observation is true – and prescient – in at least two different ways. First, a weakened US standard would create an uneven playing field among US companies by disadvantaging those that are dual-listed in the EU and the US and thus have to report to both EU and US standards while advantaging those companies who would only have to report to a weakened US standard. Second, the new reporting requirements in the EU drastically reduce the likelihood of competitive disadvantage suffered by US-listed issuers as a result of a strong Section 1504 disclosure rule. Taking the US and EU laws together, it is inconceivable that any individual resource-rich country could choose to expel all European and US-listed companies simply because they are subject to these new disclosure requirements. In this new global landscape, the fears that a US issuer may be forced to cease operations in a certain country or be excluded from future projects are pure fiction. The costs of any such decision would be too

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[91] Additionally, consistency of Section 1504 rule with the EITI standard is desirable because it will reduce reporting costs for companies with respect to EITI implementing countries.

[92] http://www.riotinto.com/documents/G8_event_Closing_plenary-Sam_Walsh_Rio_Tinto.pdf.

[93] Statements of Dr Chris Anderson (Newmont Ghana Gold Limited), "The experience of Newmont Ghana in EITI," 5th EITI Global Conference, Paris (March 2, 2011), http://goxi.org/profiles/blogs/newmont-eiti-and-the.

[94] 77 Fed. Reg. at 56402.

devastating for any resource-rich country, likely precipitating a serious international diplomatic response.

Even apart from the benefits of a level global playing field, there is no evidence that transparency weighs heavily on competition. Some industry commentators have claimed that extractive transparency in the US and the EU will make it harder for oil companies bound by these laws to win deals against competitors that are not. The evidence to date suggests that this fear is unfounded. Since Section 1504 was enacted in July 2010, and since the EU Directives were adopted earlier this year, it has been public knowledge that US- and EU-listed companies will have to report their revenue payments to governments. When we reviewed bidding rounds for oil exploitation rights after the Commission finalized the 2012 rule, we found not a single report of any company being excluded because of concerns about transparency. Rather, there were numerous examples of oil companies that will be subject to mandatory payment disclosure under Section 1504 and/or the EU Directives winning such rights on five continents, for example:

- Gabon, October 2013: Ophir Energy (UK), Exxon Mobil (US), Eni (Italy), Marathon (US) among others[95];
- Myanmar, October 2013: Eni (Italy) and CAOG Sarl (Luxembourg)[96];
- Malaysia, December 2012: ConocoPhillips (US) and Shell (US/EU)[97];
- Brazil, May 2013: Chariot Oil & Gas Ltd (UK)[98] and Premier Oil (UK)[99]; and
- Egypt, November 2012: Edison (Italy), BP (UK), Petroceltic (Ireland)[100].

In summary, oil companies which will have to disclose payments under the new US and EU regimes have bid for, or expressed interest in, numerous assets around the world. Mandatory revenue transparency has had no effect on their ability to compete for these assets.

Even ahead of the US and EU laws mandating disclosure, some extractive companies are taking the lead on transparency and providing voluntary disclosures. For example, a

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95 Jean Rovys Dabany, "Gabon awards oil blocks; says can double production," *Reuters* (October 29, 2013), http://www.reuters.com/article/2013/10/29/gabon-oil-blocks-idUSL5N0IJ39S20131029.

96 Simon Lewis & San Yamin Aung, "Burma Awards Onshore Oil and Gas Blocks to International Firms," *Irrawaddy* (October 11, 2013), http://www.irrawaddy.org/burma/burma-awards-onshore-oil-gas-blocks-international-firms.html.

97 "Petronas Awards Block SB311 to ConocoPhillips, Shell and Petronas Carigali" (December 13, 2012), http://www.petronas.com.my/media-relations/media-releases/Pages/article/PETRONAS-AWARDS-BLOCK-SB311-TO-CONOCOPHILLIPS,-SHELL-AND-PETRONAS-CARIGALI.aspx.

98 "Successful bids for Exploration Blocks in Brazil" (May 15, 2013), http://www.investegate.co.uk/chariot-oil---38--gas-ld--char-/rns/successful-bids-for-exploration-blocks-in-brazil/201305150700067199E.

99 "Award of three blocks in Brazil's 11th Round" (May 16, 2013), http://www.premier-oil.com/premieroil/media/press/award-of-three-blocks-in-brazils-11th-round.

100 "Egypt awards oil and gas blocks as part of 2012 International Bid Round" (April 16, 2013), http://www.energy-pedia.com/news/egypt/new-154259.

representative of Tullow Oil has recently said that Tullow is considering disclosing payments starting in 2014 on a project level in every country of operation, ahead of the EU laws implementing mandatory disclosure.[101] API's position should not be taken as representative of industry views. [102] Statoil, an API member, has publicly distanced itself from API's legal challenge to the 2012 Rule.[103] Rather than being a disadvantage, Statoil views transparency as a competitive advantage: "We believe that such reporting is not an impediment for doing business, but has been a competitive advantage for Statoil."[104] Statoil and other highly transparent companies have suffered no adverse consequences but have continued to win extractive contracts. That transparency does not cause a competitive disadvantage is evident from the success of companies with voluntary disclosure practices such as Statoil (Norway),[105] Newmont Mining (US)[106], Kosmos Energy (US)[107], Talisman Energy (Canada)[108], BHP Billiton (Australia)[109] and Anglo Gold Ashanti (South Africa)[110] that disclose payments on a country-by-country basis for all countries of operation – as well as Rio Tinto (UK-Australia)[111] and

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[101] Statements of Lesley Coldham, Tullow Group Public Policy Manager (August 1, 2013), http://politicsofpoverty.oxfamamerica.org/2013/08/21/in-ghana-government-welcomes-us-eu-transparency-laws.

[102] For example, former Shell executive Alan Detheridge supports mandatory project-level disclosure without any exemptions and has criticized API for its campaign. http://www.theguardian.com/commentisfree/2013/feb/07/oil-industry-transparency-europe.

[103] Global Witness, "Norway's national oil company Statoil withholds support from US anti-transparency lawsuit" (February 8, 2013), http://www.globalwitness.org/library/norway%E2%80%99s-national-oil-company-statoil-withholds-support-us-anti-transparency-lawsuit.

[104] *Id.*

[105] Statoil, Annual Report 2012, Payments to governments, http://www.statoil.com/annualreport2012/en/sustainability/ourperformance/economicperformance/pages/paymentstogovernments.aspx.

[106] http://www.beyondthemine.com/2012/corporate_governance/revenue_transparency/revenue_data. Newmont has long supported and practiced extractive transparency: for example, it has published its payments to Indonesian government since 1999, without any cost to its success in the country. Statements of Dr Chris Anderson (Newmont Ghana Gold Limited), "The experience of Newmont Ghana in EITI," 5th EITI Global Conference, Paris (March 2, 2011), http://goxi.org/profiles/blogs/newmont-eiti-and-the. See also Comment submitted by Newmont Mining Corporation (December 11, 2013), http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-20.pdf.

[107] http://www.kosmosenergy.com/pdfs/Kosmos-Corporate-Responsibility-Report-2012.pdf, p. 29. See also James Osborne, "Kosmos Energy: Driller with depth," *Dallas News* (November 29, 2013), http://www.dallasnews.com/business/energy/20131129-kosmos-energy-driller-with-depth.ece.

[108] http://www.talisman-energy.com/upload/media_element/20130724223845/Key%20Numbers%202012.pdf, p. 6.

[109] BHP Billiton Sustainability Report (2013), p.44, http://www.bhpbilliton.com/home/aboutus/sustainability/reports/Documents/2013/BHPBillitonSustainabilityReport2013_Interactive.pdf.

[110] http://www.aga-reports.com/12/os/performance/adding-value#value-added-statement.

AngloAmerican (UK)[112] that disclose payments in a selection of countries where they operate. Rather than non-transparency, it is the fiscal terms offered, technological capacity, and capital available that are much more decisive in a company's success in winning a bid.

Conversely, it is the lack of transparency that illegitimately favors unethical companies. As the State Department pointed out, "[b]ribery and corruption tilt the playing field and create unfair advantages for those willing to engage in unethical or illegal behavior."[113] It was Congress's intent to end these unfair competitive advantages, and it is up to the Commission to carry out that intent.

VII. Conclusion

The Commission remains under a Congressional duty to implement Section 1504 and we have no doubt that the Commission will do so in a timely and complete manner. We agree with API that the Commission should move ahead with new rulemaking as early as practicable in 2014. We continue to support all of the substance of the Commission's previous rule and we understand such a rule, if properly justified, to be fully consistent with the District Court's opinion. We therefore urge the Commission to:

- Ensure that the disclosed data is publicly available;
- Require detailed project-level disclosure;
- Not allow any exemptions for any countries;
- Retain the definition of control from Exchange Act Rule 12b-2; and
- Define a "project" to be consistent with the EU definition.

Global Witness appreciates this opportunity to provide written comments to the Commission and welcomes the opportunity to meet with you to clarify any of our comments and recommendations.

Sincerely,

Corinna Gilfillan
Global Witness
Head of the U.S. Office

Simon Taylor
Global Witness
Director

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111 http://www.riotinto.com/ourcommitment/our-tax-payments-in-2012-4768.aspx.

112 http://www.angloamerican.com/~/media/Files/A/Anglo-American-Plc/reports/AA-SDR-2012.pdf.

113 U.S. Dept. of State, *Fighting Global Corruption: Business Risk Management*, at 11-12 (May 2001), http://1997-2001.state.gov/www/global/narcotics_law/global_corruption/corruption.html.

APPENDIX A: EITI Reporting

In May 2013 the EITI Board adopted a new EITI standard, significantly expanding the scope of data and other information on the oil, gas and mining sector that must be disclosed as part of the EITI process. A central component of the new standard is that data must be broken down by individual company, government entity and revenue stream. The new standard requires project level reporting "consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements."[114] There is significant amount of data already disclosed by EITI implementing countries: 35 EITI implementing countries have produced EITI reports disclosing a total of over $1,056 billion in government revenue.[115] Detailed information related to payment disclosures by member countries can be found at: http://eiti.org/countries/reports. Below are links to all of the EITI reports that are publicly available in all of the EITI compliant and implementing countries. Information is also provided on countries that have made a commitment to join the EITI.

[114] EITI Standard, p. 31, http://eiti.org/document/standard.

[115] http://eiti.org/countries.

Country	Membership Status & Date	Information Disaggregated by	Report History
1. Cameroon	Compliant 2013/10	Revenue Stream/Company	http://eiti.org/files/Cameroon-2011-EITI-Report-English.pdf
2. Iraq	Compliant 2012/12	Revenue Stream/Company	http://eiti.org/files/IEITI%202010%20English%20Final%20Report%20%2815%20May%202013%29.pdf
3. Kyrgyz Republic	Compliant 2011/03	Revenue Stream/Company	http://eiti.org/files/Kyrgyzstan-2011-EITI-Report-2.pdf
4. Mauritania	Compliant 2012/02	Revenue Stream/Company	http://eiti.org/files/Mauritania-2011-EITI-Report.pdf
5. Mozambique	Compliant 2012/10	Revenue Stream/Company	http://eiti.org/files/Mozambique-2010-EITI-Report.pdf
6. Nigeria	Compliant 2011/03	Revenue Stream/Company	http://eiti.org/files/NEITI-EITI-Core-Audit-Report-Oil-Gas-2009-2011-310113-New_4.pdf
7. Peru	Compliant 2012/02	Revenue Stream/Company	http://eiti.org/files/Peru%202008-2010%20EITI%20Report_1.pdf
8. Togo	Compliant 2013/05	Revenue Stream/Company	http://eiti.org/files/Togo-2011-EITI-Report-FR.pdf
9. Zambia	Compliant 2012/09	Revenue Stream/Company	http://eiti.org/files/Zambia-2010-EITI-Report.pdf
10. Burkina Faso	Compliant 2013/02	Revenue Stream/Company	http://eiti.org/files/Burkina-Faso-2010-EITI-Report.pdf
11. Ghana	Compliant 2010/10	Revenue Stream/Company	http://eiti.org/files/Ghana-2010-2011-EITI-Report_0.pdf
12. Kazakhstan	Compliant 2013/10	Revenue Stream/Company	http://eiti.org/files/Kazakhstan-2011-EITI-Report.pdf
13. Liberia	Compliant 2009/10	Revenue Stream/Company	http://eiti.org/files/Liberia-2011-EITI-Report.pdf
14. Mali	Compliant 2011/08	Revenue Stream/Company	http://eiti.org/files/Mali-2010-EITI-Report.pdf
15. Mongolia	Compliant 2010/10	Revenue Stream/Company	http://eiti.org/files/Mongolia-2011-EITI-Report-PartI.pdf
16. Niger	Compliant 2011/03	Revenue Stream/Company	http://eiti.org/files/Niger-2010-EITI-Report.pdf
17. Norway	Compliant 2011/03	Revenue Stream/Company	http://eiti.org/files/Norway-2011-EITI-Report-Norwegian.pdf
18. Republic of the Congo	Compliant 2013/02	Revenue Stream/Company	http://eiti.org/files/Congo-Rep-2011-EITI-Report-2.pdf
19. Tanzania	Compliant 2012/12	Revenue Stream/Company	http://eiti.org/files/Tanzania-2011-EITI-Report.pdf
20. Timor-Leste	Compliant 2010/07	Revenue Stream/Company	http://eiti.org/files/Timor-Leste-2011-EITI-Report.pdf
21. Yemen	Compliant 2011/03	Revenue Stream/Company	http://eiti.org/files/Yemen-2008-2009-2010-EITI-Report.pdf
22. Albania	Compliant 2013/05	Revenue Stream	http://eiti.org/files/Albania-2010-EITI-Report.pdf

23. Côte d'Ivoire	Compliant 2013/05	Revenue Stream	http://eiti.org/files/Cote-dIvoire-2011-EITI-Report-FR.pdf
24. Azerbaijan	Compliant 2009/02	Revenue Stream	http://eiti.org/files/Azerbaijan-2012-EITI-Report.pdf
25. Guatemala	Candidate 2011/03	Revenue Stream	http://eiti.org/files/Guatemala-2010-2011-EITI-Report.pdf
26. Afghanistan	Candidate 2010/02	Revenue Stream/Company	http://eiti.org/files/Afghanistan-2010-2011-EITI-Report.pdf
27. Guinea	Candidate 2007/09	Revenue Stream/Company	http://eiti.org/files/Guinea-2010-EITI-Report.pdf
28. Chad	Candidate 2010/04	Revenue Stream/Company	http://eiti.org/files/Chad-2011-EITI-Report.pdf
29. Trinidad & Tobago	Candidate 2011/03	Revenue Stream/Company	http://eiti.org/files/FINAL-TTEITI-reconciliation-report-2011.pdf
30. Indonesia	Candidate 2010/10	Revenue Stream/ Company/Projects	http://eiti.org/files/Indonesia_2009_EITI_Report.pdf
31. Honduras	Candidate 2013/05	Will implement new EITI Standard	N/A-Candidate status as of May 2013
32. São Tomé & Príncipe	Candidate 2012/10	Will implement new EITI Standard	N/A-Candidate status as of October 2012
33. Tajikistan	Candidate 2013/02	Will implement new EITI Standard	N/A-Candidate status as of February 2013
34. The Philippines	Candidate 2013/05	Will implement new EITI Standard	N/A-Candidate status as of May 2013
35. Ukraine	Candidate 2013/07	Will implement new EITI Standard	N/A-Candidate status as of October 2013
36. Senegal	Candidate 2013/10	Will implement new EITI Standard	N/A-Candidate status as of October 2013
37. Solomon Islands	Candidate 2012/06	Will implement new EITI Standard	N/A-Candidate status as of June 2012
38. Democratic Republic of Congo	Suspended	Revenue Stream/Company	http://eiti.org/files/Congo-DRC-2010-EITI-Report-ENG_0.pdf
39. Central African Republic	Suspended	Revenue Stream/Company	http://eiti.org/files/Central-African-Republic-2010-EITI-Report.pdf
40. Madagascar	Suspended	Revenue Stream/Company	http://eiti.org/files/Madagascar-2010-EITI-Report.pdf
41. Sierra Leone	Suspended	Revenue Stream/Company	http://eiti.org/files/Sierra-Leone-2008-2010-EITI-Report.pdf

APPENDIX B: Letter from Sinopec dated November 20, 2012

From: [Sinopec official – name and address redacted for privacy]
Sent: 20 November 2012 09:11
To: [SynTao – name and address redacted for privacy]
Cc: [Global Witness – name and address redacted for privacy]
Subject: reply from Sinopec Corp.

[Name redacted]：

您好！11月13日的来信已收悉。根据信中所提问题，我们的答复如下：

中国石油化工股份有限公司（China Petroleum and Chemical Corporation, 简称Sinopec Corp.）作为四地（上海，香港，美国及伦敦）上市的公司，在公开披露方面一贯严格遵守各个上市地的监管要求并力求披露一致。我们注意到了美国证券交易委员会于2012年8月针对资源采掘类发行人新制定的披露要求。由于该新要求适用于各相关发行人的年报披露，我们已经研究相应的规定并准备按照该规定在2012年的年报中做出相关对资源出口国政府支付资金的披露。
我公司在国内以及安哥拉18区块有勘探开采作业，所以按监管规定需要披露相关信息。我公司在加蓬以及阿塞拜疆无上游资产，如果贵组织所获信息准确的话，有可能是我们母公司-中国石油化工集团公司（China Petrochemical Corporation, 简称Sinopec Group）的业务。

感谢您与我们沟通并提供了众多有帮助的信息。

[name redacted]
中国石化董事会秘书局投资者关系处

UNOFFICIAL TRANSLATION

Dear [name redacted],

We have received your letter of 13 November, and provide the following answers in response to the questions raised.

China Petroleum and Chemical Corporation (Sinopec Corp.) is listed on stock markets in Shanghai, Hong Kong, London and New York, and has been consistent in its strict adherence to the disclosure requirements of the regulators of each market. We have noted the U.S. Securities and Exchange Commission's new disclosure rules for resource extraction issuers of August 2012. As this new requirement applies to annual reports, we have examined the rules and are preparing to make the required disclosure of payments to resource-exporting governments in our 2012 annual report.

Sinopec Corp. has prospecting and extracting operations within China and in Block 18, Angola, and is required to make relevant disclosures under the regulations. Our company has no upstream assets in Gabon or Azerbaijan. If the information your organisation has acquired is correct, these may be operations of Sinopec Corp's parent company, China Petrochemical Corporation (Sinopec Group).

Thank you for communicating with us and providing much useful information.

[Name redacted]
Investor Relations Office
Secretariat to the Board of Directors
Sinopec