

MEMORANDUM

TO: File No. S7-42-10

FROM: Giles T. Cohen
Office of Commissioner Luis A. Aguilar

DATE: May 8, 2015

SUBJECT: Meeting with Representatives of Publish What You Pay (PWYP)

On May 6, 2015, Paul Gumagay, Counsel to Commissioner Aguilar, and Giles T. Cohen, Counsel to Commissioner Aguilar, met with Jana Morgan, Director, Publish What You Pay (PWYP), and David Garcia, Policy Advisor, PWYP.

The participants discussed issues relating to the rulemaking regarding payment disclosures by resource extraction issuers required by Section 1504 of the Dodd Frank Wall Street Reform and Consumer Protection Act.

Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies

Updated: February 2015

Publish What You Pay – United States sought to gauge the reach of groundbreaking transparency measures in the United States, the European Union, Norway, and Canada. To do so, we assessed how many of the world's 100 largest oil and gas, and 100 largest mining companies (by market capitalization) would be covered by payment disclosure requirements in each of these jurisdictions.¹ Here are the results.²

OIL AND GAS COMPANIES:

- **The United States:** Of the world's 100 largest oil and gas companies, 68 are listed on a U.S. exchange, and thus captured by Section 1504 of the Dodd-Frank Act.³
- **The European Union:** Of the world's 100 largest oil and gas companies, 24 are listed on a EU-regulated exchange or incorporated in a EU-member country and are therefore captured by the EU Transparency and Accounting Directives.⁴
- **Norway:** Effective January 2014, Norway mandated that extractive companies disclose payments to governments at the project level. Among the world's 100 largest oil and gas companies, two are listed on the Oslo Stock Exchange and thus subject to Norway's new disclosure requirements. First reports are due in March 2015.
- **Canada:** In December 2014, the Canadian Parliament passed mandatory reporting legislation in line with the existing international standard. 14 of the world's 100 largest oil and gas companies are listed on the Toronto Stock Exchange and will therefore be required to publically disclose their payments on a project-by-project basis.

Clearly, with 68 of the world's 100 largest oil and gas companies listed on a U.S. exchange, the implementation of Section 1504 of the Dodd-Frank Act would go a long way toward advancing transparency in the extractive industries. Yet if companies covered by laws in the EU and Norway are added to the total, the number of top-100 oil and gas companies captured by mandatory disclosure provisions rises to 81. With the passage of mandatory disclosure legislation in Canada, the number increases to 84. This represents a nearly 25 percent increase in the number of top-100 oil and gas companies captured by mandatory disclosure provisions, above what is captured by Section 1504 alone.

¹ Presently, companies listed on the Hong Kong Stock Exchange are required to disclose payment information on a one-time basis – upon first listing on the exchange. While HKE was not included in our analysis, data shows that transparency in the extractive industries would be enhanced were HKE disclosing requirements made more robust. Of the world's top 100 oil and gas companies, five are listed on the HKE. And of the top 100 mining companies, 13 are listed on the HKE.

² Market data was collected in March 2014.

³ Of these 68 US-listed oil and gas companies, 22 are cross-listed on either EU, Norwegian, or Canadian exchanges, and are therefore captured by transparency mandates in those jurisdictions.

⁴ Our analysis almost certainly undercounts the extent to which the world's 100 largest oil, gas, and mining companies are subject to the EU Accounting Directive. While we have captured whether parent companies are incorporated in an EU-member country, we have not assessed whether non-EU incorporated parent companies have EU-based subsidiaries large enough to be caught by the Accounting Directive.

The unique impact of transparency initiatives in the U.S., EU, Norway and Canada:

- **The United States:** 68/100 oil and gas companies surveyed in this assessment are listed on a U.S. exchange and subject to Section 1504 of the Dodd Frank Act.
- **The United States + the European Union:** Of the 24 oil and gas companies listed on a EU exchange or incorporated in a EU-member country, 13 are *exclusively* listed or incorporated. That is, they are not simultaneously listed on a U.S. exchange. Taking into account these 13 unique observations, the implementation of both U.S. and EU transparency initiatives would increase the number of captured top-100 oil and gas companies to 81.
- **The United States + the European Union + Norway:** Two top-100 oil and gas companies are listed on the Oslo Stock Exchange, yet in both cases the companies are also listed on a U.S. and EU exchange. Total company coverage remains at 81/100.
- **The United States + the European Union + Norway + Canada:** Of the 14 oil and gas companies listed on the Toronto Stock Exchange, three do not appear on a U.S. or EU-regulated exchange, nor do they appear on the Oslo Stock Exchange. Therefore, factoring in transparency initiatives in the U.S., the EU, Norway, and Canada, 84 of the world's 100 largest oil and gas companies would be required to disclose their payments to governments.

Conclusion: Section 1504 of the Dodd-Frank Act, capturing 68 of the world's 100 largest oil and gas companies, represents an enormous step toward bringing about transparency in the oil and gas industry. Yet if transparency initiatives are implemented in each of the four areas surveyed above, the number of top-100 oil and gas companies required to disclose the payments they make to governments rises to 84 – a nearly 25 percent increase.

MINING COMPANIES

Many of the world's largest mining companies by market capitalization will also be subject to mandatory disclosure requirements.

- **The United States:** Of the world's 100 largest mining companies, 40 are listed on a U.S. exchange, and thus captured by Section 1504 of the Dodd-Frank Act.⁵
- **The European Union:** Of the world's 100 largest mining companies, 28 are listed on a EU-regulated exchange or incorporated in a EU-member country and are therefore captured by the EU Transparency and Accounting Directives.
- **Norway:** Among the world's 100 largest mining companies, one is listed on the Oslo Stock Exchange and thus subject to transparency initiatives enacted in Norway.
- **Canada:** In January 2014, Canadian mining associations joined with civil society organizations to produce recommendations mandating public disclosure at the project level. With the passage of

⁵ Of these 40 US-listed mining companies, 25 are cross-listed on either EU, Norwegian, or Canadian exchanges, and thus captured by transparency requirements in those jurisdictions.

Canada's mandatory disclosure legislation in December 2014, 16 of the world's 100 largest mining companies will be required to publically disclose their payments to governments.

Like the world's 100 largest oil and gas companies, many of the world's largest mining companies are listed on a U.S. exchange and thus subject to the mandatory disclosure provision of the Dodd-Frank Act. Yet if companies covered by laws in the EU and Norway are added to the total captured by Section 1504 of the Dodd-Frank Act, the number of top-100 mining companies captured by mandatory disclosure provisions rises from 40 to 57. Adding companies covered by recently-passed Canadian legislation increases the number to 58. Thus, while Section 1504 goes a long way toward bringing about transparency in the mining industry, the number of top-100 mining companies captured by mandatory disclosure provisions rises by 45 percent when initiatives enacted or in the works in other jurisdictions are factored in.

The unique impact of transparency initiatives in the U.S., EU, Norway and Canada:

- **The United States:** 40/100 mining companies surveyed in this assessment are listed on a U.S. exchange and subject to Section 1504 of the Dodd Frank Act.
- **The United States + the European Union:** Of the 28 mining companies listed on a EU-regulated exchange or incorporated in a EU-member country, 17 are *exclusively* listed or incorporated. In other words, they are not simultaneously listed on a U.S. exchange. Taking into account these 17 unique observations, the implementation of both U.S and EU transparency initiatives would increase the number of captured top-100 mining companies to 57.
- **The United States + the European Union + Norway:** One top-100 mining company is listed on the Oslo Stock Exchange, yet the company is simultaneously listed on a EU-regulated exchange. Total company coverage remains at 57/100.
- **The United States + the European Union + Norway + Canada:** Of the 16 mining companies listed on the Toronto Stock Exchange, one does not appear on a U.S. or EU-regulated exchange, nor does it appear on the Oslo Stock Exchange. Therefore, factoring in transparency initiatives in the U.S., the EU, Norway, and Canada, 58 of the world's 100 largest mining companies would be required to disclose their payments to governments.

Conclusion: Section 1504 of the Dodd-Frank Act would require 40 of the world's 100 largest mining companies to disclose the payments they make to governments around the world. Yet taking into account transparency initiatives already implemented or in the works in each of the areas surveyed above, the number of top-100 mining companies subject to mandatory disclosure provisions rises to 58 – a nearly 45 percent increase.

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Are you for Big Oil or Big Data?

<http://publishwhatyoupay.org/newsroom/blog/are-you-big-oil-or-big-data>

March 18, 2015

By Jana Morgan & David Garcia

CSOs Put Limited Data to Good Use, Call for Project-Level Reporting

What most profoundly distinguishes American Petroleum Institute (API) from civil society organizations in resource-rich countries working to make a more transparent and accountable extractives sector?

(Hint: the answer we're looking for is not "the ability to pay for an army of high-priced lawyers" – although that works too.)

Put bluntly, one sees the tragic human consequences of mismanaged natural resource wealth up-close, every day, and is in a position to speak credibly about solutions to the problem. The other, far-removed, is API.

In a series of letters recently submitted to the Securities and Exchange Commission, leaders of civil society organizations from Angola, Indonesia, Sierra Leone, and Zimbabwe speak to the intricacies of their countries' extractives sectors, lay out precisely why API's "good enough" approach to payment disclosure is anything but, and urge the SEC to release a rule for Section 1504 of Dodd-Frank that requires project-level reporting by contract, license, or lease.

Take as one example the letter submitted by Cecilia Mattia of National Advocacy Coalition on Extractives (NACE) in Sierra Leone. As Ms. Mattia explains, her country has a revenue-sharing agreement in place that ensures residents of diamond-producing neighborhoods (in Sierra Leone, a chiefdom) a share of the mining proceeds. The revenue sharing agreement stipulates that a diamond-producing chiefdom is entitled to a distribution of money from the national government, the value of which is determined in part by the number of licenses in the chiefdom. In Sierra Leone, chiefdom represents the third administrative tier below national level, preceded by province and district. Yet, as Ms. Mattia explains, API's "compromise" on project-level reporting is to report at the first tier below national level – or, in the case of Sierra Leone, at the province level. As chiefdom represents the *third* tier below national level, API's proposal would say nothing about the number of licenses in each chiefdom. Thus, residents of diamond-producing neighborhoods would not receive the necessary information to ensure they are receiving their correct share from the national government.

Although letters from Angola, Sierra Leone, and Zimbabwe poignantly reflect on opportunities lost to natural resource wealth mismanagement and lament the dearth of high-quality data needed to make a truly transparent and accountable extractives sector, each nevertheless left us feeling hopeful.

It was inspiring to read about how members of Publish What You Pay – Zimbabwe have worked with limited data to **uncover revenue leakages to the tune of hundreds of millions of dollars**. And how NACE, in Sierra Leone, used EITI data to discover that **the government received just \$10 million for mineral exports valued at \$145 million in 2007** – a much lower return than in comparable countries. Or how in Angola, Open Society Initiative of Southern Africa (OSISA-A) drew on limited data released by the Ministry of Petroleum, Ministry of Finance, and state-owned oil giant Sonangol to reveal staggering discrepancies: **an \$8.55 billion gap in the value of oil said to be sold by Sonangol compared to what was reported by the ministries**; a discrepancy of 87 million barrels of oil claimed to be exported by the Petroleum Ministry versus what was reported by the Finance Ministry; and enormous divergence between what the media claimed was paid to the government in signature bonuses in 2006 (\$3.2 billion) and what was reported by the Finance Ministry (\$998 million). In a small victory, Angola’s president made changes to top-level management at Sonangol after OSISA-A went public with its findings.

While letters from Angola, Sierra Leone, and Zimbabwe shed light on the game-changing work CSOs could perform if project-level data were made available, Maryati Abdullah of Publish What You Pay – Indonesia highlights how her organization has already put project-level data to good use. Companies operating in Indonesia are required to report their payments by project, as mandated by the country’s EITI framework. Indonesia is one of just a handful of countries where project-level data is available. Made available less than two years ago, PWYP – Indonesia has already used project-level data to identify a company operating outside its licensed territory (at a cost of \$1.5 million to the treasury), confirm that the country is receiving the in-kind oil and gas payments it is due, and shed light on two resource-rich district governments that had failed to invest adequately in their populations’ social development.

We hope you will take a few minutes to read each letter in its entirety, and get a sense of what meaningful transparency looks like according to those who know best. In submissions to the SEC, the American Petroleum Institute routinely claims that granular project level data – by contract, license, or lease – would provide citizens of resource-rich countries with *too* much information, overwhelming them and making it *more* difficult to hold their governments accountable. While we appreciate API’s concern, we can’t help but wonder: who have they talked to? Not Maryati Abdullah, Cecilia Mattia, Gilbert Makore, or Elias Isaac. Nor any of the 544 civil society organizations that wrote to the SEC last April. Truth be told, we’re confident most would find API’s diagram of its own reporting proposal, with all the arrows and boxes, far more disorienting.

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