ActionAid International USA
Amnesty International
Bank Information Center
CARE USA
Catholic Relief Services
Columban Center for Advocacy and Outreach
CorpWatch
Crude Accountability
EarthRights International
EARTHWORKS
Environmental Defense Fund
EG Justice
Environmental Defense
Friends of the Earth
Gender Action
Global Financial Integrity
Global Rights
Global Witness
Government Accountability Project
Human Rights Watch
International Budget Project
International Labor Rights Forum
Justice in Nigeria Now
ONE Campaign
Open Society Policy Center
Oxfam America
Pacific Environment
Presbyterian Church USA
Revenue Watch Institute
Robert F. Kennedy Center for Human Rights
Sierra Club
Sustainable Energy & Economy Network

November 22, 2010

Meredith Cross
Director
Division of Corporate Finance
Securities and Exchange Commission
100 F Street NE
Washington DC 20549

Re: Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act")

Dear Ms. Cross:

We are pleased to submit the attached comments of the Publish What You Pay coalition ("PWYP") to the Securities and Exchange Commission (the "Commission") as a contribution to the rulemaking process for Section 1504 of the Dodd-Frank Act.

Please do not hesitate to contact Isabel Munilla, Director of Publish What You Pay U.S. with any questions. We would welcome an opportunity to discuss these recommendations with you.

Sincerely,

Isabel Munilla
Director, Publish What You Pay U.S.

Karin Lissakers
Executive Director, Revenue Watch Institute

Raymond C. Offenheiser
President, Oxfam America

Ken Hackett
President, Catholic Relief Services

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

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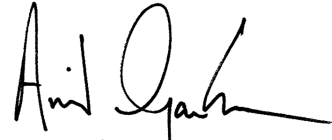
Raymond W. Baker
Director, Global Financial Integrity



Arvind Ganesan
Human Rights Watch

Cc:

Ms. Tamara Brightwell
Mr. David Becker
Mrs. Paula Dubberly
Mr. Roger Schwall
Mr. Elliot Staffin

Publish What You Pay
United States

COMMENTS OF PUBLISH WHAT YOU PAY ON SECTION 1504 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

November 22, 2010

EXECUTIVE SUMMARY

Publish What You Pay ("PWYP") is pleased to submit this paper to the Securities and Exchange Commission ("Commission") as a contribution to the rulemaking process for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Act").

Founded in 2002, Publish What You Pay ("PWYP") is a global civil society coalition of over 600 organizations working in over 55 countries. In the U.S., PWYP comprises 32 members, including development, faith-based, human rights, environmental, financial reform and anti-corruption organizations representing over 2.5 million constituents spread through every state in the nation.

If managed properly, the wealth generated by oil, gas and mining industries can be a pathway to poverty reduction, stable economic growth and development in resource-rich countries. PWYP works to help citizens in these countries hold their governments accountable for channeling these revenues through legitimate budget processes and for effectively managing these resources in the interest of national development.. To do this, PWYP advocates for revenue transparency as a necessary ingredient for accountability. Specifically, PWYP advocates for mandatory disclosure of the payments made by companies to governments, and disclosure of government receipts. PWYP advocates for the inclusion of these disclosure requirements in national laws, stock market listing regulations, accounting standards, and in the lending policies of financial institutions. PWYP also advocates for voluntary initiatives such as the Extractive Industry Transparency Initiative ("EITI") and individual company disclosure policies.

While there has been some success in enacting payment transparency policies and initiatives, many are not permanent and can vary widely in their coverage, consistency and application in resource-rich countries. These gaps present a critical opportunity for the Commission to demonstrate United States leadership by promulgating rules for Section 1504 that advance the development of a global standard for oil, gas and mining payment disclosure.

The intent and language of Section 1504 are largely clear, with several areas in need of additional clarification by the Commission. This paper provides recommendations for the interpretation of the statutory language that would support implementation of Section 1504 in a reasonable, low-cost and effective manner. These recommendations are grouped around the following key areas:

1. **Activities for which payment disclosure should be required**
   PWYP believes the law is clear in its disclosure requirement for payments to governments relating to the exploration, extraction, processing and export of crude oil, natural gas, and ores. Given the potential size of the payments involved, and the capacity of vertically integrated companies to substitute payments to governments at different levels, we urge the Commission to specify that "other significant actions" includes the transport of oil, natural gas or ores, such as in pipelines or other mechanisms. We also urge the Commission to specify that "other significant actions" may

include, but not to be limited to, contracting for services such as security operations that may be necessary to the operation of a particular element of the resource extraction life cycle.

We also welcome proposals from the Commission regarding other activities it deems a "significant action" within the life-cycle of a resource extraction project. The relevant payments may be indicated in a manner consistent with the payment definition in SEC. 15 U.S.C. § 78m(q)(1)(C) and further outlined in section 2 of this document.

2. Payment categories for which disclosure should be required

We urge the Commission to:

(i) Articulate a disclosure exemption for individual *de minimis* payments [where the *de minimus* threshold is defined relative to the size of the project's annual net liabilities].

(ii) Include a quantitative standard in the definition of a *de minimis* payment, which would require disclosure of individual payments if greater than $1,000 or payments in the aggregate if greater than $15,000.

(iii) We also urge the Commission to define "other material benefits" as payments made to a foreign government or the U.S. Federal Government relating to the execution of any aspect of covered operations in the relevant jurisdiction that a reasonable person would find material to the project's net worth, including but not limited to;

a. activities involved in the exploration and production of resources,
b. activities involved in the trading and transport of resources, and
c. activities involved in the refining and marketing of resources.

Disclosure of payments should include, at a minimum:

- Taxes (including value-added tax payments and offsetting value-added tax credits);
- Royalties (in financial form as well as in kind, the latter appropriately distinguished by quality);
- Dividends and profit shares;
- Fees (including license fees, rental fees, entry fees and other considerations for licenses and/or concessions);
- Production entitlements and in-kind payment volumes, appropriately distinguished by quality (including the production share for both nationally state-owned companies and for the host governments);
- Bonuses (including signature bonuses, discovery bonuses, and production bonuses);
- Import and export levies and taxes;
- Pipeline transit fees;
- Customs duties and customs users fees;
- Payments (taxes) in lieu;
- Payments related to pipeline and terminal operations;
- Ancillary payments made pursuant to the investment contract (including personnel training programs, local content, technology transfer and local supply requirements);
- Payments related to any liabilities incurred (including penalties for violations of law or regulation, environmental and remediation liabilities, and bond guaranties entered into with the central banks or similar national or multi-national entities, as well as costs arising in connection with any such bond guarantees); and
- Social payments (in financial form as well as in kind payments).

3. The definition of "project"

We urge the Commission to define "project" in relation to each lease, license and/or other concession-level arrangement entered into by a resource extraction issuer, and to apply this

definition universally for all issuers reporting under Section 1504. Where, with respect to a particular jurisdiction, certain payments are made at an entity level rather than at the lease/license level (e.g., corporate income tax calculated on the basis of all profits on all projects within a jurisdiction), this fact should have no bearing on the definition of "project" but, rather, may give rise to a limited reporting allowance whereby issuers could report at an entity level, rather than project-level, for those specific payments only.

4. The form of disclosure

We urge the Commission to require that the disclosures required by Section 1504 are included in a separate section of Forms 10-K, 20-F and 40-F, or Exchange Act annual reports, and that these disclosures be subject to rigorous audit or review procedures by the company's independent external auditor. These arrangements would provide the most appropriate, practical and useful venue for the required information disclosure.

To address the Congressional intent of improving accountability by governments for revenues received from the oil, gas and mining sectors, issuers should be required to disclose payment data in a manner that allows it to be reconciled with government receipts as recorded in the government's public finance systems. The experience of EITI indicates that many governments account for payments on a cash basis, and therefore, we recommend that the Commission require issuers to report payments on both a cash and accrual basis.

Further, we recommend that the Commission require that the reporting be done in XBRL format, in order to more seamlessly integrate with existing company filings formatted in XBRL, as well as the Commission's existing XBRL reporting platform, and with external XBRL-based databases managed by private sector companies.

5. Issuers that should be required to report

The Congressional intent for Section 1504 was to achieve the broadest possible coverage of both U.S. and foreign issuers. A level playing field is critical to ensure that a global standard for disclosure is achieved, and broad implementation of Section 1504 will significantly advance this objective.

We therefore urge the Commission to define "annual report" as those filed by both U.S. and foreign issuers, on Forms 10-K, 20-F or 40-F, or an Annual Report to Security Holders (ARS), and to promulgate rules that require issuers filing these reports to include payment information required by Section 1504 in such filings. In addition, the Commission is respectfully encouraged to provide disclosure guidance to any foreign extractives resource issuer that is not required to file or furnish reports under section 13(a) or section 15(d) of the 1934 Securities Exchange Act ("Exchange Act"). For example, the disclosure of these entities may be achieved through the online compilation set forth in Section 1504.

Finally, we urge the Commission not to allow exemptions for broad categories of issuers, including those that report in other jurisdictions, as this would undermine the legislative intent of the law to apply a new, global standard and would undermine the principle of equal treatment of issuers.

6. Entities controlled by the issuer that should be subject to the disclosure requirement

Section 1504's language regarding entities "under the control" of an issuer clearly requires issuers, at a minimum, to report payments made by each of their consolidated subsidiaries. In addition, with regard to unconsolidated equity investees and joint ventures, we urge the Commission to require reporting on a proportionate share basis. In the case of unconsolidated joint ventures,

which are considered to be controlled jointly, a proportionate reporting rule would best capture the intent of the legislation and be consistent with oil and gas reserves reporting requirements. In the alternative, if proportionate reporting for unconsolidated equity investees and unincorporated joint ventures is not required, the intent of the legislation would be best served by a "control" definition looking at all facts and circumstances to determine control by an issuer and requiring disclosure of all entity payments (not only proportionate payments) where such control is established.

Congressional intent underlying Section 1504 requires that "control" be defined so as to avoid allowing issuers to make changes in ownership structure to circumvent the statute's reporting requirements. Therefore, control should include the direct or indirect power to significantly influence the management (whether operating or financial) of a person, whether through the ownership of voting securities, by contract or otherwise.

7. The definition of a "company owned by a foreign government"

In some cases, it may be difficult for issuers to determine whether a company to which it is making a payment is owned by a foreign government. For this reason, we urge the Commission to require issuers to engage in an appropriate level of due diligence to determine the identity of their partners, counterparties and associates and to provide guidance to issuers to assist them in conducting this due diligence. Recommendations on factors to be included within the issuer analysis are included in this paper.

In addition, we urge the Commission to promulgate rules specifying that the lack of knowledge of an entity's ownership by a government, without more, is not sufficient to escape liability for failure to report. To determine whether an issuer has complied with the provisions of Section 1504, we urge the Commission to consider whether the issuer knew, or would have had reason to know through the conduct of due diligence, that the company to which it has made a payment was owned by a foreign government as set forth herein.

8. The definition of "compilation"

PWYP urges that the Commission's "compilation" of reported payment information take the form of an online database and summary report. Drawing from the data reported in interactive format by the issuers, the online database should allow users to search by country and company, as well as by year or multiple years of reporting. Users should also be able to view payment data drawn from multiple years of reporting to analyze trends. Search results should provide the users with payment disclosure data in HTML format, XBRL, as well as in spreadsheet format such as CSV or XLS, to allow users to download and manipulate the data.

The summary report should list, for each government to which payments have been made, the total payments by each issuer to that government, and total payments within each payment category. Similarly, the report should list for each issuer, the total payments per project, and project payments within each category (where applicable). In addition, each company's disclosures should be included in full in the summary report as annexes. A sample report format is included in this paper.

I. BACKGROUND

Founded in 2002, Publish What You Pay ("PWYP") is a global civil society coalition of over 600 organizations working in over 55 countries. In the U.S., PWYP comprises 32 development, faith-based, human rights, environmental, financial reform and anti-corruption organizations representing over 2.5 million constituents spread through every state in the nation.

If managed properly, natural resource wealth can be a pathway to poverty reduction, stable economic growth and development in resource-rich countries[1]. PWYP works to help citizens of resource-rich countries hold their governments accountable for the effective management of revenues from the oil, gas and mining industries.[2] Its principal strategy is to advocate for revenue transparency as a necessary ingredient for accountability. Specifically, PWYP advocates for mandatory disclosure of the payments made by companies to governments, and disclosure of government receipts. PWYP advocates for the inclusion of these disclosure requirements in national laws, stock market listing regulations, accounting standards, and in the lending policies of financial institutions. PWYP also advocates for voluntary initiatives such as the Extractive Industry Transparency Initiative ("EITI")[3] and individual company disclosure policies.

The recommendations in this paper draw from the experience of PWYP member organizations in the U.S. and around the world and were developed with the technical assistance of Calvert Asset Management Co., Inc., Duff & Phelps Securities, LLC and other experts. PWYP has drawn, for example, from its experience establishing the EITI, as well as its experience working with companies and governments to develop EITI rules. Individuals from PWYP member organizations in developed and developing countries currently serve as Board Members on the International EITI Board, and comprise the civil society constituency. In this capacity, PWYP coalition members oversee implementation by candidate countries, the application and interpretation of the rules, as well as the operations of the EITI Secretariat. PWYP member organizations work in every EITI candidate country, and many serve on the EITI Multi-Stakeholder Groups ("MSG"), which oversee national implementation processes within these countries. PWYP member organizations have also conducted significant research and advocacy for a number of years on the World Bank Group's revenue and contract transparency policies for its public and private sector clients. This includes participation in the World Bank Extractive Industry Advisory Group and work with Bank Group executive and policy level staff as well as offices of the Executive Directors.

II. POLICY GOAL, ALIGNMENT WITH CONGRESSIONAL INTENT AND INTERNATIONAL REVENUE TRANSPARENCY INITIATIVES

PWYP is principally concerned with the interests of citizens in resource-rich countries and, therefore devotes much of its energies to promoting transparency within those countries. But with many of the companies involved in extraction around the world based in developed countries and traded on major international markets, PWYP has long recognized the importance of the regulatory standards applicable to

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[1] The International Monetary Fund ("IMF") has identified 56 countries as hydrocarbon or mineral rich, meeting either or both of the following criteria: (i) an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25 percent during the period 2000-2005 or (ii) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25 percent during the period 2000-2005. This group of resource-rich countries includes 19 low-income and 18 lower-middle-income countries. See IMF "Guide on Resource Revenue Transparency": http://www.imf.org/external/np/pp/2007/eng/051507g.pdf

[2] According to the Transparency International Bribe Payers Index (2008), the Oil/Gas and Mining industries are ranked 3rd and 5th, respectively, in terms of the likelihood that public officials would demand or accept bribes (e.g. for public tenders, regulation, licensing etc.) in these business sectors. Similarly, the Oil/Gas and Mining industries respectively obtain the 2nd and 3rd worst scores for state capture (meaning that they are more inclined than others to influence the underlying legal or regulatory frameworks through private payments to public officials). See: http://www.transparency.org/news_room/in_focus/2008/bpi_2008

[3] See: www.eiti.org

these companies to its overall objectives. It has also been recognized that there is a natural alignment between the interests of citizens in resource-rich states and the interests of investors in the companies operating in those states, with each group having a fundamental interest in transparency, improved governance and stability. In addition, these interests are aligned with those of the United States, for whom reliability of commodity supplies, energy security and greater stability in the resource-rich regions of the world is a key strategic interest.

This confluence of interests around greater transparency, improved governance and stability has led to the development of a number of global standards and initiatives, as well an increasing incidence of voluntary disclosure by extractive companies. Leading examples include:

Industry adoption of payment disclosure policies. Newmont Mining Company (US)[4], Statoil Hydro (Norway)[5], Talisman Energy (Canada)[6], and Anglo Gold Ashanti (South Africa)[7] publicly disclose payments on a country-by-country basis for all countries of operation. Rio Tinto (United Kingdom-Australia)[8] and AngloAmerican (United Kingdom)[9] disclose payments in a selection of countries where they operate. BHP Billiton committed to publishing its payments to government in each country of operation at its Forum for Corporate Responsibility meeting on May 20 2010.[10]

Stock exchange payment disclosure requirements. The Hong Kong Stock Exchange ("HKEX")[11] and the Alternative Investment Market ("AIM") of the London Stock Exchange ("LSE") have recently adopted listing disclosure requirements for extractive companies that include disclosing payments to host governments.[12]

Expansion of accounting standards to include payment disclosure. The International Accounting Standards Board ("IASB") is considering country-by-country reporting in its current review of the standard for Extractive Activities. The April 2010 Discussion Paper it commissioned to support its review recommends requirements for country-specific reporting of production volumes, costs and reserves.[13]

Policies and guidance of the international financial institutions. The World Bank's International Finance Corporation ("IFC"), the European Bank for Reconstruction and Development ("EBRD") and the Inter-American Development Bank have adopted revenue transparency policies, and the International Monetary

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[4] For sample table, see: http://www.beyondthemine.com/2009/?l=2&pid=4&parent=17&id=148

[5] For sample table, see: http://www.statoil.com/annualreport2009/en/financialperformance/positiveimpacts/pages/overviewofactivitiesbycountry.aspx

[6] For sample, see 2009 Corporate Social Responsibility Report "Fiscal Contributions to Host Governments": http://cr.talisman-energy.com/2009/key-performance-indicators/economic-performance.html

[7] For sample, see page 53 in the report: http://www.anglogold.co.za/subwebs/informationforinvestors/reports09/SustainabilityReview09/f/AGA_SR09.pdf

[8] Rio Tinto published its total tax and royalty payments to each of 13 countries where these payments totaled USD $10 million or more in its 2008 annual CSR report. In 2009 the number of specific country disclosures had increased to 18 out of 29 countries where the company had operations. Rio Tinto asserts that it does not make significant (material) profits in any country that is not specified in the list. For sample, see: http://www.riotinto.com/ourapproach/17213_socioeconomic_development_17363.asp

[9] See: http://www.angloamerican.com/aal/development/economic-value/payments-to-governments/data-and-analysis/

[10] See page 8 of the report: http://www.bhpbilliton.com/bbContentRepository/docs/ourSustainabilityFramework.pdf, which mentions the company's commitment to disclosing payments to government on a regional basis. Also see pages 25-26 of the BHP Sustainability Report: http://www.bhpbilliton.com/bbContentRepository/docs/sustainabilitySupplementaryInformation2010.pdf

[11] HKEX adopted a payment disclosure rule in June 2010 requiring any company with more than 25 percent of its assets in natural resources to disclose the payments it makes to governments at the time of its application to list with HKEX. See: http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb96_miner.pdf

[12] The AIM rules require extractive companies being listed for the first time on AIM to "disclose any payments aggregating over £10,000 made to any government or regulatory authority or similar body made by the applicant or on behalf of it, in regards to the acquisition of, or maintenance of its assets." See page 4 of: http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf

[13] See: http://www.ifrs.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A1-0D62EB5DDB99/0/DPExtractiveActivitiesApr10.pdf

Fund ("IMF") considers revenue payment and contract transparency in the extractive industries a best practice.[14]

Development and expansion of the EITI. Since its founding in 2002, the EITI has grown to include 33 participating countries, five of which have been deemed "compliant", and 28 of which remain "candidate countries".[15]

In the face of these important, but still limited, developments, Section 1504 of the Act embodies a significant contribution to the development of a global standard that will build upon the efforts elsewhere and help address some lingering gaps. For instance, the impact of the EITI process has been constrained by the fact that reporting is limited to a select (but growing) number of countries and that EITI reports from different countries vary greatly in quality, scope, and timeliness. Moreover, the EITI is reliant on support from donors, whose continued support is not guaranteed. We believe that the new standards established by Section 1504 will address some of the information gaps and deepen EITI's impact.

This rulemaking process therefore presents a critical opportunity for the Commission to demonstrate U.S. leadership in the establishment of a global standard for oil, gas and mining payment disclosure. Indeed, this was a critical part of the Congressional intent.[16] It is within this context that PWYP provides the following recommended interpretations of Section 1504.

[14] The IFC includes in its Policy on Social and Environmental Sustainability (2006) a requirement that clients disclose payments to the host government requiring that: "(i) for significant new extractive industries projects, clients publicly disclose their material project payments to the host government (such as royalties, taxes, and profit sharing), and the relevant terms of key agreements that are of public concern, such as host government agreements (HGAs) and intergovernmental agreements (IGAs); and (ii) in addition, from January 1, 2007, clients of all IFC-financed extractive industry projects publicly disclose their material payments from those projects to the host government(s)." The EBRD adopted a payment disclosure requirement for upstream oil and gas projects in its Energy Operations Policy (2006) ("[…] project sponsors will be required to publicly disclose their material project payments to the host government (such as royalties, taxes and profit sharing) as a minimum revenue transparency requirement and, where applicable, to adhere to the process, methodology principles and criteria of the Extractive Industries Transparency Initiative[...]") See: http://www.ebrd.com/downloads/policies/sector/energy_policy.pdf. The Inter-American Development Bank publicly endorsed EITI in 2009 and is promoting greater extractive industry transparency in client countries. See: http://www.iadb.org/news-releases/2009-08/english/idb-backs-extractive-industries-transparency-initiative-5544.html. The IMF considers revenue payment and contract transparency in the extractive industries a best practice in its Guide on Resource Revenue Transparency. See: www.imf.org/external/np/pp/2007/eng/051507g.pdf

[15] The significance of the EITI lies in a number of areas, for example: the production of reports of company payments and government receipts, which may represent the first such disclosures of their kind in many countries; the multi-stakeholder process which developed its rules; the multi-stakeholder International Board which interprets and improves the rules based on practical implementation experience by resource rich countries; and, the establishment of multi-stakeholder groups in implementing countries which may represent the first instance that civil society is able to interact with governments and companies in a space governed by principles and rules of engagement assessed as part of a country's validation.

[16] In floor statements during Senate debate of the Restoring American Financial Stability Act, Senator Dodd stated that the provision "…is designed to impose a new international transparency standard on companies listed and traded on US exchanges who are active in the oil and gas and mining industries." (See: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598157015 at 5:06:25). Senator Cardin stated "This is a bipartisan amendment because Democratic and Republican colleagues both know we are creating a new standard of transparency that will apply to the world's extractive industries and is in the best interest of companies in competing on a level playing field." (See: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598156899 at 4:45:06). Both statements were made on May 17, 2010.

III. RECOMMENDATIONS

The recommendations below cover key issue areas that need particular attention in order to fulfill the Congressional intent underlying Section 1504.

1. Activities for which payment disclosure should be required

Section 1504 defines *"Commercial development of oil, natural gas, or minerals"* to include

> *"exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the" Commission*."

Regulatory Recommendation
PWYP believes the law is clear in its disclosure requirement for payments to governments relating to the exploration, extraction, processing and export of crude oil, natural gas, and ores. Given the potential size of the payments involved, and the capacity of vertically integrated companies to substitute payments to governments at different levels, we urge the Commission to specify that "other significant actions" includes the transport of oil, natural gas or ores, such as in pipelines or other mechanisms. We also urge the Commission to specify that "other significant actions" may include, but not to be limited to, contracting for services such as security operations that may be necessary to the operation of a particular element of the resource extraction life cycle.[17]

We also welcome proposals from the Commission of other activities it deems a "significant action" within the life cycle of a resource extraction project. The relevant payments may be indicated in a manner consistent with the payment definition in SEC. 15 U.S.C. § 78m(q)(1)(C) and further outlined in section 2 of this document.

Support for the Recommendation
The need to include transport as a "significant action" is highlighted by the size of the transport-related payments in the following IFC-financed projects. IFC requires disclosure of tax and royalty payments associated with the Peru LNG project as a condition of a $300 million loan authorized in 2008. The project is comprised of a liquefaction plant and a marine loading terminal on Peru's coast, as well as a new 408-kilometer pipeline connecting the coastal facilities to an existing pipeline network east of the Andes. The IFC believes the project "will generate significant tax and incremental royalty payments to the government, equivalent to over 1.5 percent of current state revenues."[18]

The IFC requires the same disclosures in connection with its $250 million in loans for the Baku-Tbilisi-Ceyhan ("BTC") pipeline. The BTC pipeline is a dedicated crude oil pipeline system, 1760 kilometers long, with a capacity of 1 million barrels per day. The pipeline extends from the ACG field through Azerbaijan and Georgia, to a terminal at Ceyhan on the Mediterranean coast of Turkey. Turkey is expected to earn $1.5 billion from payments related to downstream activities including pipeline and terminal operations, transit fees, and upstream investments. The pipeline transit revenues to Georgia are expected to be approximately

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[17] As is plain in the statutory text, we urge the Commission to clarify that "other significant actions" may include matters that are not considered "material" by an issuer.

[18] *See* Peru LNG Project, IFC website, *available at* http://www.ifc.org/ifcext/plng.nsf. The IFC believes the project, which is scheduled to go into operation in 2010, "will generate significant tax and incremental royalty payments to the government, equivalent to over 1.5 percent of current state revenues."

$500 million over the life of the project.[19] The disclosure of payments in the transport sector is also important because they can involve some of the most flagrant and destabilizing instances of theft and corruption in the extractive industries. For example, illegal bunkering or the diverting of fuel from pipelines for resale is estimated to cost the government of Nigeria $5 billion a year.[20]

Existing Commission precedent supports the interpretation of "other significant actions" to include activities in the extractive industries life cycle that are beyond the transport and export of crude oil, natural gas and ores. The Commission's January 9, 2010 Final Rule on Modernization of Oil and Gas Reporting[21] requires disclosure of reserves by final product rather than the pre-processed resource extracted from the ground, because "the economics of the processing plant are critical to the registrant's evaluation of the economic productibility of the resources." The economics of the processing plant including those associated with the midstream and downstream aspects of extractives operations are also significantly influenced by the risks associated with the absence of the resource revenue disclosures required by Section 1504.[22] Implicit in the Commission's actions is the understanding that investors need this information to make accurate production forecasts and undertake a full risk-adjusted valuation of issuers subject to the Final Rule.

2. Payment categories for which disclosure should be required

Section 1504 provides that the term "payment":

> "*includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits"* that *"are part of the commonly recognized revenue stream*", as long as the payment in question is "*made to further the commercial development of oil, natural gas, or minerals*" and is "*not de minimis*".

Regulatory Recommendations
PWYP urges the Commission to include in its rules a definition of a *de minimis* payment that (i) is based on the principle of equal treatment of issuers and (ii) is sufficiently narrow to protect the underlying purposes of the legislation. In addition, PWYP urges to Commission to use its rule-making authority to add within the concept of "other material benefits" certain types of payments that are part of the "commonly recognized revenue stream", set forth below, that, if present, would be important to allow the users of issuer payment disclosures to make appropriate risk-based assessments of the issuers' operations.

(i) **Defining *de minimis* payments.**
De minimus payments should be defined with respect to specific payment amounts on both a per payment and aggregate payment basis. PWYP believes that basing the *de minimus* payment definition on the overall volume of payments made by, or the assets of, an issuer would not be appropriate and would undermine the important general principal that all issuers be treated equally.

[19] See IFC News, Nov. 4, 2003, available at *http://www.ifc.org/ifcext/media.nsf/content/SelectedPressRelease?OpenDocument&UNID=87B904CEA7A55BF585256DD4004FFBA3*. The pipeline will extend from the ACG field through Azerbaijan and Georgia, to a terminal at Ceyhan on the Mediterranean coast of Turkey. Turkey is expected to earn $1.5 billion from payments related to downstream activities including pipeline and terminal operations, transit fees, and upstream investments. Pipeline transit revenues to Georgia are expected to be approximately $500 million.
[20] See: http://news.bbc.co.uk/2/hi/africa/7519302.stm Official estimates are made by subtracting the amount of oil delivered from the amount expected from a wellhead.
[21] U.S. Securities and Exchange Commission. "17 CFR Parts 210, 211 et al. Modernization of Oil and Gas Reporting; Final Rule." www.sec.gov/rules/final/2009/33-8995fr.pdf
[22] Ibid

In April, the IASB released a Discussion Paper[23] that summarized two types of risks that current rules fail to protect investors against; "country specific risks"[24] and "reputational risks"[25]. The logic is that it is the materiality of a payment in relation to a country's size that makes a particular payment item a risk or not to the company. Section 1504 requires issuers to disclose information, at a minimum, according to "such payments made for each project" and "such payments made to each government".[26] Thus, the Section 1504's plain language mandates a concern for relevance to decision-making at the project and host nation level. Further, such a *de minimis* principle would be consistent with the GAAP concept of relevancy, which is a lower standard than the materiality concept.[45] For these reasons, PWYP believes that if the Commission chooses to utilize a qualitative, principle-based standard in defining *de minimis*, it should follow the logic of the IASB. Since *de minimis* concept is concerned with information so insignificant that is it not relevant, PWYP believes a qualitative principle such as "*de minimis* means an item so insignificant that it is not relevant to a reasonable person in determining the net value of the project's annual liabilities" would properly reflect the legislative intent.

If the Commission decides to define a quantitative standard for *de minimis*, either in addition to a qualitative rather than a quantitative standard, PWYP believes that the *de minimus* payment threshold should be set at US$ 1,000 for individual payments and US$ 15,000 for all payments in the aggregate. As such, a reporting issuer would be required to report on any payment that exceeds the equivalent of US$ 1,000 and on payments that, in the aggregate, exceed the equivalent of US$ 15,000.[27]

Alternatively, the Commission may desire to define *de minimis* in terms of relative values, as it has done in the past.[28] In this case, and for the reasons noted in the preceding paragraph, PWYP believes that the Commission should use its rule-making authority to define such a percentage relative to the project's annual liabilities.

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[23] IASB Discussion Paper, Extractive Activities, DP/2010/1 (2010).

[24] Id., 6.19 , at page 152, deals with "country-specific investment risks" and notes that consultations with investors "indicated that the disclosure of payments to governments would be useful in making investment decisions", for example for assessing "economic risks" as well as for compatibility with "socially responsible investment criteria", but that to "be useful for all these purposes, the disclosure of payments to government would need to be presented on a country-by-country basis."

[25] Id., 6.24, at page154 deals with "reputational risks", noting that although operations "immaterial to the entity in quantitative terms, the entity's operations in some of those countries could be material to the entity in qualitative terms (eg material to the entity's reputation) if, for example, the country was economically dependent on the investments made by the entity..." This lends support to the idea that "the entity should use its best efforts to disclose payments to governments whenever there is a reasonable expectation that the entity's operations would be material to the country, even though the country might not be material to the entity in quantitative terms.

[26] H.R.4173 § 1504(q)(2)(A)(i)&(ii).

[45] The FASB notes that to "be relevant [to decision makers], accounting information must be *capable* of making a difference in a decision by helping users to form predictions about the outcomes of past, present, and future events or to confirm or correct expectations." FASB Concept Statement No. 2, at 47. Black's law dictionary defines a *de minimis* item as a fact or thing "so insignificant that a court may overlook it in deciding an issue". Black's Law Dictionary, 8th Ed., (2004), at 464. Thus, *de minimis* applies to information that can be considered not capable of making a difference, meaning that in accounting terms, *de minimis* is concerned with whether the item is large enough to be "relevant". As something *not capable* of making a difference is smaller than something that would *likely* change a reasonable person's behavior, *de minimis* is clearly a lower standard than materiality.

[27] An example of a reasonable *de minimis* payment level is provided by the London Stock Exchange (LSE)'s Alternative Investment Market (AIM), which maintains an implicit *de minimis* threshold for those payments that, alone or as a whole, aggregate over £10,000 (or approximately U.S. $15,000). *See* AIM Note for Mining, Oil and Gas Companies (June 2009), at page 4: http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf. See also Nigeria's reporting as part of its EITI implementation, which requires reporting of payments by company and by payment-category at a U.S. $1,000-level.

[28] *See* definition of *de minimis* in Section 10A(i)(1)(B)(i) of the Exchange Act of 1934 (defining a *de minimis* exception to the requirement that all audit and non-audit services provided to an issuer must be pre-approved by that issuer's audit committee, whereby non-audit services that are less than 5% of of the total amount of revenues paid by the issuer to the auditor need not be pre-approved.

Because of the extremely diverse nature of the participants in the extractive industries, PWYP believes that providing a *de minimus* exception based on the amount of overall payments, the size of assets or any other similar metric would exclude information that Congress intended be disclosed pursuant to Section 1504. This is so because, for certain very large issuers, large payments to governments would almost certainly fall below a *de minimus* payment threshold based on such measures. In addition, PWYP believes that if the *de minimus* exception were to be based on overall payments, asset size or a similar measure, smaller extractive industry participants would likely be treated differently—in that they would be required to disclose more information—than larger companies.[29]

The *de minimus* payment threshold should also not be set too high that the exception undermines the overall effectiveness of the Section 1504. For example, a *de minimis* threshold set at $100,000 could exceed the annual payments, such as lease rents or license fees, in some projects.[30] PWYP believes that an aggregate *de minimus* threshold is important since payments that are *de minimis* when calculated on a per-payment basis may become significant as they accumulate over time. Moreover, some countries require certain payments to be made on an annual basis, while others require similar payments to be made monthly or quarterly. It is even possible that the same type of payment made by two companies in the same country would be paid on a different basis depending on negotiated contract terms. Therefore, a solely per-payment approach to the *de minimis* rule would frustrate attempts at comparing data.

(ii) **Defining "other material benefits" that are "part of the commonly recognized revenue stream"**

The Commission should include all payments that occur over the full life cycle of the energy infrastructure investment in the definition of "other material benefits" that are "part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals".
PWYP notes that the payment categories included in Section 1504 are based on the EITI's payment categories and constitute the majority of the commonly recognized revenue streams in the development of extractive projects.[31] However, to ensure that the intent of the legislation is upheld, PWYP believes that the definitions of "taxes, royalties, fees (including license fees), production entitlements [and] bonuses" should be expanded upon to ensure that they capture all payments that are commonly recognized to fall within each category. For example, value-added tax payments and value-added tax credits received upon export of the resources may be significant and therefore material, but are not specifically listed. Therefore, we believe that the definitions of the listed payments would include, at a minimum, the following:

- Taxes (including value-added tax payments and offsetting value-added tax credits);
- Royalties (in financial form as well as in kind, the latter appropriately distinguished by quality);
- Dividends and profit shares;
- Fees (including license fees, rental fees, entry fees and other considerations for licenses and/or concessions);
- Production entitlements & in-kind payment volumes, appropriately distinguished by quality (including the production share for both nationally state-owned company and for the host government);
- Bonuses (including signature bonuses, discovery bonuses, and production bonuses);
- Import and export levies and taxes.

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[29] *See* discussion in IASB Discussion Paper, Extractive Activities, DP/2010/1 (2010), ¶6.19 at page152 *and* ¶6.24 at page 154.
[30] This is the disclosure threshold that Newmont Mining utilizes, which PWYP believes is inappropriate as a regulatory standard for the reasons stated in the accompanying text. *See* Newmont Mining Corporation, Beyond the Mine (Newmont Sustainability Report 2008).
[31] *See* EITI Validation Guide, Grid Indicator 9 (2009), at 17 (listing the "commonly recognized…revenue streams").

However, PWYP believes that there are several payment categories not specifically listed in Section 1504 for which disclosure would be useful to the users of the disclosures mandated by Section 1504. Further, since all these additional payment categories are integral to the commerciality of energy investment projects and are therefore "made to further the commercial development" of the underlying resources, they are "commonly recognized" to be part of the "revenue stream" flowing from resource extraction projects. The discussion below provides a brief overview of several of these additional categories, which have been included in the list set forth above.

1. As noted above, PWYP believes that the disclosure of payments related to transport operations should be required. Country-specific EITI reporting requirements have included the disclosure of exploration, production, transit, marketing, pipeline and other operations-related payments.[32] As described in section 1 above, the IFC requires disclosure of tax and royalty payments associated with the Peru LNG project[33] and the BTC pipeline[34] as a condition of its loans to these projects. Since these payments are clearly part of the "commonly recognized revenue stream", PWYP believes the Commission should also require the disclosure of payments that fall under the following categories:

- Pipeline transit fees;
- Customs duties & customs users fees;
- Payments related to pipeline and terminal operations.

2. Payment of taxes in lieu, such as where a national oil company JV partner pays taxes "for and on behalf of the" issuer and then provides the issuer a receipt that can be credited against home-country tax filing, should be disclosed by the issuer, even if it did not make the payments.[35]

3. Ancillary payments required under extraction contracts, such as payments made for the training of personnel or pursuant to other "local content" requirements. In Ghana, for example, payments for the training of personnel and management and technical skill transfer programs are required under an agreement between Kosmos Energy and the state-owned Ghana National Petroleum Company. These types of payments accrue over time and can individually exceed over US$100,000.[36] These are commonly recognized to be a major component of contract negotiations, and therefore part of the revenue and benefit stream. For this reason, PWYP urges the Commission to include as a payment category:

- Ancillary payments made pursuant to the investment contract (including personnel training programs, local content, technology transfer and local supply requirements)

4. Payments made after the completion of a project should be included, such as payments relating to penalties incurred due to a failure to obtain required licenses or for violation of law or regulation. The

[32] *See* Nigeria's Extractive Industries Transparency Initiative (NEITI) audit for 1999 to 2004, *available at* http://www.neiti.org.ng/files-pdf/PopularVersionof1stAudit.pdf. The NEITI 2004 includes operations data that was included to acknowledge the political and financial risks exposure of these operations relating to revenue transparency, which according to the NEITI coordinating body include "negligence – or even sabotage – of refineries, leading to higher oil product imports, product losses and potentially inflated prices."

[33] See Footnote 18

[34] See Footnote 19

[35] Humphreys, Macartan. Sachs, Jeffrey. Stiglitz, Joseph. Ed. "Escaping the Resource Curse." Columbia University Press. New York. 2007, page 387.

[36] See Petroleum Agreement Among The Republic of Ghana, Ghana National Petroleum Corporation, Kosmos Energy and the E.O. Group in Respect of West Cape Three Points Block, July 22, 2004, Article 21.1 "Employment and Training", page 68.

recent BP disaster in the Gulf of Mexico provides a recent example of such potential payments. The Commission should also include:

- Payments related to incurred liability (including penalties for violations of law or regulation, environmental and remediation liabilities, and bond guaranties entered with the central bank as well as subsequent foreclosure on the same)

5. "Social payments" may be material and should be assessed for the need to be included in the Section 1504 disclosures. Social payments include payments made by extractive industry participants in order to reduce operational risk by improving the welfare of local communities, individual citizens and organizations in the villages, cities or countries where these companies work, or in order to obtain a "social license to operate".[37] Support for the inclusion of social payments as a disclosure category is demonstrated by practice and law in Kazakhstan[38], by the EITI's recent consideration of social payment disclosure within its rules and guidance[39], and by the practice of multinational extractive industries companies[40]. PWYP believes that the Commission's rules on social payments could be very helpful in supporting the EITI's deliberations on this issue. The Commission should include:

- Social payments (in financial form as well as in kind).

3. <u>The definition of "project"</u>

Section 1504 requires issuers to disclose

> *`` the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals"*

[37] A social license to operate has been defined as existing when a project has the ongoing approval within the local community and other stakeholders, ongoing approval or broad social acceptance and, most frequently, as ongoing acceptance.

[38] In Kazakhstan, extractive companies' social and local infrastructure payments totaled approximately $2 billion between 1996 and 2009. In 2009 alone, these payments totaled $314.4 million (*See* Subsoil Users Monitoring Results as of January 1st, 2010 by Committee on Geology and Subsoil Use, Ministry of Industry and New Technologies of the Republic of Kazakhstan. See: http://geology.kz/index.php?option=com_content&view=article&id=112&Itemid=123&lang=ru). These are comparable in size to many other benefit streams reported through the EITI process in Kazakhstan (*See* Kazakhstan's EITI reports for 2005-2008, at http://www.eiti.kz/ru/documents/reports/). In addition, Kazakhstan's Law on Subsoil and Subsoil Use explicitly states that future contract awards will take into account two main criteria: the level of signature bonus and the social spending commitments of the extractive companies.

[39] The EITI does not yet require social payment disclosure, nor provides guidance on reporting these payments. However, the EITI International Board has recognized a gap in EITI rules and guidance and is studying the issue of social payments to determine whether it will provide soft guidance to countries or amend the minimum requirements for reporting. This is unlikely to be determined before the rules for Section 1504 are finalized. Source: Anthony Richter, Chairman, Revenue Watch Institute, EITI Board Member, Civil Society Representative.

[40] Many companies already report these payments on a consolidated and company-aggregate basis. For example, Newmont Mining reports that it spent $52 million worldwide on "community development" in 2009. (*See* Newmont Mining Corporation, Annual Report 2009, note 6, page 121: http://bnymellon.mobular.net/bnymellon/NEM/document_0/Corrected%20Annual%20Report%20and%20Form%2010-K.pdf). On the other hand, some companies track these payments but do not report them. For example, Chevron posts on its website information on "community engagement programs" it invests in that focus on "improving access to basic human needs, enabling education and training opportunities, and promoting sustainable livelihoods", and notes that it invested $144 million worldwide in such programs in 2009 (*See:* http://www.chevron.com/globalissues/economiccommunitydevelopment/). The only mention of this expense made in the 2009 annual report is in the Letter to Shareholders, without mention of the amount (*See* Chevron Annual Report 2009, page 3: http://www.chevron.com/annualreport/2009/documents/pdf/Chevron2009AnnualReport_full.pdf)

Regulatory Recommendations

The legislation's requirement that disclosures be made on a project basis implies recognition on the part of the drafters that aggregate data reporting does not provide the same level of material information as more granular reporting. In order for Section 1504 to produce meaningful project-level disclosures, the Commission must define "project" narrowly enough as to capture the level of payment disclosure detail that the legislation intended. PWYP believes this is essential to:

- Provide an accurate and full picture of an issuer's activities – information that informs the risk and value assessment decisions made by investors and other users of financial data, and
- Ensure that the type of project-level data provided by all issuers is consistent, which will be crucial to the establishment of a level playing-field for resource extraction issuers reporting under Section 1504.

The "full picture" offered by project-level data in the extractive industries includes a number of individual payments whose values, as noted above, are often determined by the concession, contract and investment terms particular to a given project.[41] Such information can be critical to uncovering fraud, corruption and waste associated with specific development projects – which in turn can impact the reputation and financial liabilities of implicated companies. Project-based reporting is also a critical tool to ensure governments are held to account for regulatory oversight and adequate revenue capture. This is demonstrated by the following recent U.S. example.

On June 30, 2010 the U.S. Department of the Interior ("DOI") assessed a $5.2 million penalty on British Petroleum ("BP") for chronic false reporting of energy production on Southern Ute Indian Tribal lands in Colorado. At the time, this was the largest civil penalty ever levied by the DOI. Specifically, BP was fined for incorrectly reporting royalty rates and prices to the DOI, and for attributing oil and gas production to the wrong leases.[42] This might never have been uncovered had the DOI permitted BP to report information on multiple leases or from multiple extraction sites in the aggregate, instead of reporting information by lease.

We urge the Commission to define "project" in relation to each lease, license and/or other concession-level arrangement entered into by a resource extraction issuer, and to apply this definition universally for all issuers reporting under Section 1504. The definition of a "project" under Section 1504 should capture information related to the discrete, project-specific financial flows affiliated with extractive industry development activities. Where, with respect to a particular jurisdiction, certain payments are made at an entity level rather than at the lease/license level (e.g., corporate income tax calculated on the basis of all profits within a jurisdiction), this fact should have no bearing on the definition of "project" but, rather, may give rise to a limited reporting allowance whereby issuers could report at an entity level, rather than project-level, for that specific payment only. In addition to reporting by project, issuers should report each individual payment type aggregated at the taxable entity level.

Support for the Recommendations

We are unaware of any standard industry definitions of what constitutes an extractive industry "project" for the purposes of financial reporting. Section 1504 will introduce the first project-level reporting regime required under regulation. However, several users of the term "project" by extractive industry participants

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[41] In its work on extractive industry contracts the Bank Information Center has noted that for both the hydrocarbons and mining sectors "in many emerging market and developing countries… agreements typically address a broad range of issues (e.g. fiscal, labor, social, environmental), supersede statutory law, and are negotiated for only one project." (See BIC Brief "Transparency of Extractive Industry Contracts: the Case for Public Disclosure": http://www.bicusa.org/proxy/Document.10795.aspx) Similarly, the fiscal disclosures required by Section 1504 relate to a host of payments determined by project-specific variables, so that the revenue streams associated with any given concession depend on such factors as the competitiveness of its initial bidding round, how and where its production values are calculated, whether any royalty or tax exemptions have been granted, etc.

[42] See: http://www.ogj.com/index/article-display.articles.oil-gas-journal.general-interest-2.government.2010.06.bp-america_fined_.QP129867.dcmp=rss.page=1.html accessed on 11/17/2010.

may be useful to the Commission in making a determination on the definition of "project" under Section 1504.

For example, the Petroleum Resource Management System ("PRMS"), which the Commission has referred to as a "widely accepted standard for the management of petroleum resources developed by several industry organizations,"[43] offers relevant insights regarding the characteristics of development projects in the petroleum sector. For instance, the PRMS notes that each "lease or license area" may have "unique associated contractual rights and obligations including the fiscal terms," and that it is this information that "allows definition of each participant's share of produced quantities (entitlement) and share of investments, expenses and revenues for each recovery project."[44] In other words, the PRMS clearly links the notion of project-level fiscal data to specific leases or licenses, as it is these documents that assign rights and obligations, and establish a framework for the generation of project revenues.

Finally, we believe the Commission would find it useful to consider reviewing the IFC's revenue transparency policy and its application when developing the definition of "project." The IFC's policy requires revenue disclosure from its clients for all extractive industry projects and requires that project revenue information be published online on a central page.[45] The IFC's commitment to transparency and the publication of extractives project revenue data is consistent with the broader intent of Section 1504 to require disclosure of project revenue information[46].

Response to related industry concerns

Companies that have objected to project level payment disclosure have most often cited concerns related to competitiveness, such as the sharing of 'commercially sensitive' and/or proprietary information, and the feasibility and cost of implementation of such disclosure as the bases for their objections. We do not believe, and Congress' adoption of this legislation demonstrates that U.S. legislators do not believe, that these concerns should supersede the benefits of providing users of financial data with access to a full picture of an issuer's activities. We address these concerns below.

The competitive harm argument is principally based on two scenarios. First, based on the concern that the requirements of Section 1504 will be applied unevenly to issuers. Second, that issuers that are required to report information pursuant to Section 1504 will find themselves at a competitive disadvantage when competing with firms that are not subject to such disclosure requirements when bidding for new projects.

The first concern may be largely addressed by ensuring that the key terms in Section 1504, including the term "project," are defined by the Commission in a manner that does not prejudice one type of industry

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[43] See page 10: http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/crude_oil_natural_gas_reserves/current/pdf/SEC33-8995.pdf

[44] See: http://www.spe.org/industry/reserves/docs/Petroleum_Resources_Management_System_2007.pdf

[45] IFC's project payment disclosures can be found here: http://www.ifc.org/ifcext/coc.nsf/content/Disclosure#&Tab=2

[46] PWYP would caution the Commission, however, from adopting other aspects of the IFC's use of the term "project" because PWYP believes such term is used by the IFC in an inconsistent manner, applying in certain cases to specific projects while in other cases referring to aggregate "areas of operation" or to making investments at the corporate level. For example, the IFC notes on its Project-Level Disclosure Pilot site that its "Southern Africa Regional Gas project in Mozambique is really three projects in one that spans across two nations," which is inconsistent with the intended project-level disclosures required by Section 1504. See: http://www.ifc.org/ifcext/disclosure.nsf/AttachmentsByTitle/Development_Outcomes_OG_SouthAfricaGas/$FILE/South_Africa_Regional_Gas.pdf.
PWYP believes that the inconsistency in the IFC's definition of "project" leads to a lack of standardization of reported data and undermines the utility of the data produced through IFC project reporting. For example, IFC-financed companies publish payment disclosure data in disparate formats and in a wide variety of locations and revenue streams reported by companies. In some cases disclosed as one lump-sum aggregate payment, while in other cases benefits are reported at the concession level. See for example, lump-sum payment reporting by Roch S.A. (http://www.roch.com.ar/PagoImpuestos2009.pdf), and reporting at the concession-level and by IPR Transoil Corporation (http://www.iprgoc.com/news/Summary_of_Taxes_to_Egy_Gov_09.pdf).

participant over another. In this regard, a narrow definition or project that does not aggregate multiple stages or elements of operations, would be important in avoiding disparate treatment among industry participants.

The necessity of this approach is borne out by the sheer diversity of extractive companies. For example, if the Commission ruled that a "project" could include both upstream and downstream activities, the project-level data reported by a vertically-integrated issuer would not be comparable to data reported by companies performing only select operating functions along the value chain. PWYP believes that the second concern is likely overstated and there is little support for it in practice. Companies compete on a variety of factors, including the fiscal terms offered, technological capacity, capital available and others, suggesting that it would be unlikely for disclosure of project payments to be the sole determinant of a company's success in winning a bid.

Another argument put forward in opposition of project level payment disclosures is that the operative contracts contain terms that prohibit the parties from disclosing such information. As noted below, however, this argument does not appear to bear out in practice. A joint study by Revenue Watch Institute and the Columbia University Law School, of over 100 oil and mining contracts between host governments and extractive companies worldwide found that "stock exchange disclosures are a widely stated exception in confidentiality clauses and where not explicitly stated, would be interpreted to include such an exception."[47] The study revealed that many companies maintain confidentiality rules around contract terms chiefly as a matter of habit. The report argues that most deals include few matters of genuine commercial sensitivity.

This perspective has been echoed by the IMF[48], leading economists, industry experts, and even extractive industries companies themselves. Indeed, at a Revenue Watch Institute panel discussion on negotiated fiscal terms in the oil sector held in Accra, Ghana in June, 2010, Director of Corporate Affairs for Newmont Mining, Chris Anderson, remarked, "I cannot see one reason why investment agreements are kept confidential," and called the commercial sensitivity argument "an anachronism."[49]

Feasibility

The majority of information required to be disclosed by Section 1504 is already collected by companies for internal record-keeping and audits. As such, compliance with Section 1504 would not appear to present issuers with a significant additional burden, though it may be the case that some companies will have to make adjustments to their information collection systems if they are required to apportion certain payments made to governments to specific in-country projects. PWYP believes that this last category of payments is quite small, and likely consist primarily of those tax payments that are levied at the entity, and not the project, level. The regulatory recommendations provided above take this into account when suggesting that for these, and only these, cases, aggregated reporting by country may be allowed, and even then, only for those individual project payments which are calculated at the entity level.

Implementation costs

On the issue of the cost of implementation, we refer to a recent statement made by Bennett Freeman, Senior Vice President, Sustainability Research and Policy at Calvert Asset Management. The statement

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[47] See: https://org2.democracyinaction.org/o/5399/images/Karin%20Lissakers_addendum_HR6066.pdf

[48] See: IMF "Guide on Resource Revenue Transparency" http://www.imf.org/external/np/pp/2007/eng/051507g.pdf

[49] See: http://www.revenuewatch.org/news/news-article/ghana/rwi-convenes-experts-ghana-push-transparency-oil-and-mining-contracts. This last comment is consistent with the global trend of support for extractive industry contract disclosure. Supporters include the World Bank, the IFC, and the US government. Contract transparency requirements are becoming increasingly incorporated into national legislation and the lending requirements of international financial institutions worldwide, leading to increased disclosure of fiscal terms currently captured in the Petroleum Sharing Agreements and Mining Development Agreements. In countries where this has been the case, there is little evidence of competitive harm or decreased investment. For example, all extractive industry contracts in Peru were made available to the public, specifically to increase investment in extractives project.

noted that companies operating in the U.S. – a category that includes a healthy portion of major oil companies, and notably, many companies represented by the American Petroleum Institute – are already "compelled to make equivalent payment disclosures to taxation authorities, such as the Minerals Management Service," and that as such, "Calvert believes it is reasonable that a practice undertaken in one operating environment may be adapted to those in other countries without the need to make dramatic changes to the existing systems and processes of an efficiently-run enterprise."[50]

4. The form of disclosure

Section 1504 outlines very clear obligations regarding disclosure:

> *``(A) INFORMATION REQUIRED…the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—"*

These requirements are followed by critical clarification of the necessity of an "interactive data format" for this disclosure:

> *``(C) INTERACTIVE DATA FORMAT.--The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format."*

Regulatory Recommendation
We urge the Commission to require that the disclosures required by Section 1504 are included in a separate section of Forms 10-K, 20-F and 40-F, or Exchange Act annual reports, and that these disclosures be subject to rigorous audit or review procedures by the company's independent external auditor. These arrangements would provide the most appropriate and practical useful venue for the required information disclosure.

To meet the Congressional intent of improving government accountability for revenues received from the oil, gas and mining sectors, it is necessary that payment data is reported in such a way that allows reconciliation with domicile government receipts as recorded in its public finance system. The experience of EITI indicates that many governments account for payments on a cash basis, and thus, we recommend that the Commission require issuers to report payments on both a cash and accrual basis.

Further, we recommend that the Commission require the reporting to be done in XBRL format, in order to more seamlessly integrate with existing company filings formatted in XBRL, as well as the Commission's existing XBRL reporting platform, and with external XBRL-based databases managed by private sector companies.

Support for the Recommendation
Disclosures through Forms 10-K, 20-F, 40-F, and other Exchange Act reports provide distinct advantages over other types of disclosure. For instance, these forms are intended to be a comprehensive overview of an entity's financial disclosures, thus it is appropriate that it include the information required by Section 1504

[50] See the Calvert statement made at a June, 2010 IASB-sponsored roundtable: http://www.iasb.org/NR/rdonlyres/2A0A6F2C-E86D-4E06-9A4B-AD99B1976EDF/0/CL6.pdf

which is material, as is established in the plain language of the provision. These forms also have advantages over independently published annual reports or corporate sustainability reports, which are not required nor administered by the Commission, and are distributed by only a small portion of the resource extraction issuers subject to Section 1504. The consistency of the content and timing of disclosures within Forms 10-K, 20-F, 40-F, and other Exchange Act reports can provide users with information that may be more readily used to make the comparisons necessary to undertake various equity and other analyses. Other arguments in support of the recommendations include:

Crucial for improvements in the efficiency and efficacy of EITI processes
EITI criteria require that disclosed “payments and revenues are the subject of a credible, independent audit, applying international auditing standards[51].” However, a recent report by the World Bank[52] indicated that comparability and timeliness of EITI data needs improvement to ensure the initiative can make its necessary reconciliations of domiciled extractive resource company payments and host government receipts. These same challenges of comparability and timeliness are among the reasons why the data produced by EITI processes are of limited use in equity analysis. In PWYP’s view, it is critical that the information be used to support the auditing and comparisons needed for effective implementation of EITI national processes.

The disclosure standardization imposed through the implementation of Section 1504 provides an opportunity for constructive influence on similar efforts to improve comparability within EITI related data. Since EITI data is subject to audit and is reported on a cash basis[53], it would follow that the disclosures required by Section 1504 should be included among the content of Forms 10-K, 20-F, 40-F, and other Exchange Act reports reported in a separate section of the relevant report on both a cash and accruals basis. This would accommodate the needs of all of the potential users of the disclosed data.

Consistency with existing requirements
All entities required to file an annual report with the Commission according to U.S. GAAP or IASB standards must employ the Interactive Data Format on or after June 15, 2011[54], which predates the likely point when such disclosures under Section 1504 would be required. As such, only Forms 10-K, 20-F and 40-F meet the requirements that “the information included in the annual report of a resource extraction issue be submitted in an interactive data format”.[55] The use of interactive data formats should expedite the collecting and compilation of the required data, allowing issuers to comply with the annual reporting timeframes. Further, the Commission’s own findings suggest that reporting costs associated with filing in this format decrease substantially after the first instance.[56] The use of the format will also facilitate analysis of the data by investors and civil society.

We further urge the Commission to specify that issuers employ XBRL as the format for disclosure. XBRL separately identifies each element of a company's financial statements so that the data can automatically flow into analysts' databases, instead of needing to be manually copied from a text-based filing. The advantages of using XBRL as the required "interactive data standard" for payment disclosure are that (a) the technology and the platform already exist at the SEC and would not need to be custom-built; and, (b) financial-market analysts who are already using XBRL-formatted financial statements will be more likely to start incorporating these disclosures into their analyses and recommendations to investors if those disclosures become part of the existing data stream they employ for analysis.

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[51] See http://eiti.org/eiti/principles
[52] See http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266963339030/eifd14_strengthening_eiti.pdf,
[53] To ensure that company data can be reconciled with government receipts, EITI requires participating companies to report their payments on a cash basis. *See* EITI Sourcebook. March 2005. Page 30. at http://eiti.org/files/document/sourcebookmarch05.pdf
[54] Ibid.
[55] SEC. 15 U.S.C. § 78m(q)(1)(C)
[56] Securities and Exchange Commission. “Final Rule: Interactive Data to Improve Financial Reporting.” February 9, 2009. See: http://www.sec.gov/rules/final/2009/33-9002fr.pdf

5. Issuers that should be required to report

Section 1504 states:

> *``…the term `resource extraction issuer' means an issuer that--(i) is required to file an annual report with the Commission; and,(ii) engages in the commercial development of oil, natural gas, or minerals...”*

It requires

> *"…each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer."*

Regulatory Recommendations
The Congressional intent for Section 1504 was to achieve the broadest possible coverage of both U.S. and foreign issuers.[57] A level playing field is critical to ensure that a global standard for disclosure is achieved, and broad implementation of Section 1504 will significantly advance this objective.

We therefore urge the Commission to define “annual report” as those filed by both U.S. and foreign issuers, on Forms 10-K, 20-F or 40-F, or an Annual Report to Security Holders (ARS), and to promulgate rules that require issuers filing these reports to include payment information required by Section 1504 in such filings. In addition, the Commission is respectfully encouraged to provide disclosure guidance to any foreign extractives resource issuer that is not required to file or furnish reports under section 13(a) or section 15(d) of the 1934 Securities Exchange Act (“Exchange Act”). For example, the disclosure of these entities may be achieved through the online compilation set forth in Section 1504.

Finally, we urge the Commission not to allow exemptions for broad categories of issuers, including those that report in other jurisdictions, as this would undermine the legislative intent of the law to apply a new, global standard and would undermine the principle of equal treatment of issuers.

Support for the Recommendations
Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title [15 USCS §§ 78a et seq.] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors".[58] Section 3(f) requires the Commission, when "engaged in rulemaking" where it is constrained by the "necessary or appropriate in the public interest" limitation (such as in the case of Sec. 36), to "also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."[59]

Thus, in order to grant exemptive relief from Section 1504 under Section 36, the Commission must consider whether such an exemption from the statutory requirements of the law is necessary or appropriate in the public interest, is consistent with the protection of investors, and promotes efficiency, competition and capital formation. Properly formulated as such, the requirement provides a high barrier to exemptive relief. This is particularly true, because the disclosures required pursuant to Section 1504 promote efficiency and competition by assisting investors in identifying risks that had previously gone unrecognized, in a manner

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[57] See floor statement of Senator Lugar during Senate debate of the Restoring American Financial Stability Act: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598156901 at 4:51:35.
[58] 15 U.S.C. Section 78mm (a)
[59] 15 U.S.C. Section 78 (c)(f)

similar to the new disclosures require pursuant to the Commissions' recent guidance outline in "Modernization of Oil and Gas Reporting; Final Rule[60]." This, therefore, supports our proposal that the Commission avoid allowing exemptions where possible. Additionally, extensive use of Section 36, especially with regard to limited foreign private issuer exemptions, would have the effect of undermining the Congressional intent to make disclosure pursuant to Section 1504 as broad as possible.

Related Issues
PWYP is committed to ensuring that the largest number of extractive industries companies disclose payments according to standards set by the Commission to implement Section 1504. In this regard, we encourage the Commission to engage financial regulators in other countries and that operate non-U.S. stock exchanges to harmonize disclosure requirements and ensure that companies not subject to Section 1504 are subject to similar disclosure requirements.

6. Entities controlled by the issuer that should be subject to the disclosure requirement

Section 1504 states:

> "*…the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals*…"

Regulatory Recommendation
Section 1504's language regarding entities "under the control" of an issuer clearly requires issuers, at a minimum, to report payments made by each of their consolidated subsidiaries. In addition, with regard to nonconsolidated equity investees and joint venture interests, we urge the Commission to require reporting on a proportionate share basis. In the case of unconsolidated joint ventures, which are considered to be controlled jointly, a proportionate reporting rule would best capture the intent of the legislation and be consistent with oil and gas reserves reporting requirements. In the alternative, if proportionate reporting for nonconsolidated equity investees and joint ventures is not required, the intent of the legislation would be best served by a "control" definition looking at all facts and circumstances to determine control by an issuer and requiring disclosure of all entity payments (not only proportionate payments) where such control is established.

Congressional intent underlying Section 1504 requires that "control" be defined to prevent efforts to avoid reporting for particular subsidiaries and joint ventures. Thus, control should include the direct or indirect power to significantly influence the management (whether operating or financial) of a person, whether through the ownership of voting securities, by contract or otherwise.[61]

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[60] "Modernization of Oil and Gas Reporting; Final Rule." (U.S. Securities and Exchange Commission. "17 CFR Parts 210, 211 et al. Modernization of Oil and Gas Reporting; Final Rule." See: www.sec.gov/rules/final/2009/33-8995fr.pdf)
[61] *See* 17 C.F.R. § 230.405 for the original basis for this definition of "control;" APB 18: The Equity Method of Accounting for Investments in Common Stock, Issued March 1971 (as amended) (discussing the need to account for investments in joint ventures and other entities where control does not rise to the level necessary to be included in consolidated reporting (original "significant influence" standard)); and Emerging Issues Task Force (EITF) Issue No. 02-14, Prepared June 7, 2004 (discussing indices of control beyond stock ownership which would lead to the inclusion of the investment in accounting statements; further development of "significant influence").

Support for the Recommendation

It is clear that reporting under Section 1504 should cover all of an issuer's consolidated subsidiaries. The treatment of nonconsolidated equity investees should be structured to reflect the intent of Congress to capture reporting by the greatest number of entities with the broadest geographical and market coverage possible, while remaining consistent with Commission rules adopted in different, but related, contexts. In this regard, we feel the reserve reporting rules provide a useful guide for proportionate reporting with respect to unconsolidated equity investees and joint venture interests.[62]

There are also examples in industry to support proportionate reporting. For example, in an effort to fulfill its commitments under the Extractive Industries Transparency Initiative, in its 2010 Sustainability Supplementary Information, BHP Billiton included all payments to foreign governments made by BHP Billiton, regardless of its level of ownership interest and whether or not it was the operator of a project. Payments were reported on an equity share basis.[63]

Disclosure of payment information with respect to unconsolidated equity investees and joint venture interests is crucial to fulfill the intent of the legislation as such information provides information necessary for analysts and investors to analyze issuer's future production and assess equity valuation on a risk-adjusted basis.[64] The definition of "control" must therefore be sufficiently broad to cover all relationships through which an issuer directly or indirectly exerts, or has the right to exert, significant influence, whether sole or shared, over an entity making extraction-related payments to a foreign government. This proposal is intended to cover the most common arrangements through which issuers that are MNEs may, directly or indirectly, control other entities that make payments to governments.

It is crucial that any final rule include a definition of control that minimizes the possibility that issuers will manipulate ownership structure, or take other structuring steps that are aimed, directly or indirectly, at avoiding Section 1504's reporting requirements. In particular, we refer to instances where issuers may use conduit entities or payment agents to avoid disclosure obligations under Section 1504. In this regard, it has been suggested that contractual prohibitions on information disclosure, e.g., non-disclosure provisions in joint operating agreements establishing joint ventures, should be a reason to exempt disclosure under Section 1504. We would argue that such an exception could be easily exploited to avoid disclosure and that third-party contractual obligations should thus not be considered in determining either "control" or any other element of the reporting rules under Section 1504. Most "joint operating agreements" include exceptions for disclosure of information pursuant to securities listing rules and other regulatory obligations, but the failure to include such an exception in a joint operating agreement does not relieve a contracting party of its obligation to comply with applicable law.

An example of the foregoing concern is a situation present in several jurisdictions, where a government-owned party to a joint venture is responsible for certain payments by the joint venture. A nationally owned oil-company may, for instance, pay over taxes attributable to each partner's share of production so as to shield such partners from changes in the tax law. This is one means used to increase the stability and predictability of agreements in some countries perceived to have high levels of political and investment risk. While the legal liability for such payments may rest with another party in such cases, there is no doubt that such payments are attributable to other partners, and the Commission's rule should capture this.

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[62] This concept of proportionate payments mirrors the accounting concept of "proportionate consolidation" allowable under IAS generally, and allowable under GAAP in the case of non-incorporated entities.

[63] BHP Billiton, *Our Strategy Delivers: Sustainability Supplementary Information 2010*, at page 26. See: http://www.bhpbilliton.com/bbContentRepository/docs/sustainabilitySupplementaryInformation2010.pdf

[64] Calvert Asset Management, "Materiality of the Energy Security Through Transparency Act". See: http://www.calvert.com/NRC/literature/documents/10003.pdf

Finally, in some countries it is common (and occasionally a legal requirement) for a government-owned entity to participate in a project as a non-operating joint venture partner, which in turn transfers the government's share of the project's revenues to the government as its "equity" stake. In many cases, the government-owned joint venture partner does not contribute equity or does so on a significantly discounted basis. Therefore, where a government-owned entity's financial contribution to a joint venture operated by a foreign partner or partners is not commensurate with its equity stake, the equity payments from the joint venture to the government-owned entity/joint venture partner should be reported by the issuer as a payment in kind. This provision would ensure that the law reaches production-sharing arrangements like those prevalent in Nigeria, in which a significant percentage of the government's revenue comes from the equity stake held by a government-owned oil company as a non-operating partner in all foreign oil production joint ventures.

"Operator" versus "non-operator" in joint ventures. Joint ventures often have one entity that acts as "operator," while the other participants are "non-operators," but operation and control are two different concepts. Where an issuer is directly or indirectly in control of a participant in a joint venture and that joint venture makes payments to a foreign government, the participant is responsible for that payment, as is the entity that directly or indirectly controls that participant, irrespective of whether the participant acts as operator. It is therefore not appropriate to attribute payments of the joint venture solely to an operator to the exclusion of non-operating participants. In addition, as noted above, PWYP believes a standard of proportionate reporting should be adopted by the Commission regarding unconsolidated equity investees and joint venture interests.

However, were the Commission to decide not to require proportionate reporting for unconsolidated equity investees and joint ventures, we believe that a "facts and circumstances" test looking at such issues as operatorship might be used to establish a notion of control over a joint venture solely for the purposes of implementation of Section 1504, with any controlling issuer responsible for reporting of all payments made by the joint venture (not only the issuer's proportionate share).

Payments made via an agent. It is commonplace in the extractive industries and in many other industries worldwide to make payments to government via an agent acting on behalf of the company, such as a local broker or business representing the company or an entity controlled by the company.[65] We urge the Commission to draft implementing regulations that do not permit an issuer to avoid reporting obligations because the payments to government are made through an agent or other representative on behalf of the issuer instead of directly by the issuer or entity controlled by the issuer.

7. The definition of a "company owned by a foreign government"

Section 1504 provides that:

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[65] One example of this is the "Paying Agent Agreement" for the Yadana gas project in Burma. The Yadana consortium, which includes Total S.A. and Chevron Corp., until 2008 had a contract with the French bank BNP Paribas and its Jersey subsidiary to accept gas payments and to distribute those revenues to the joint venture partners and the government. In this case, according to documents obtained through litigation in 2004, the government's revenue stream includes both royalties and in-kind payments, as well as equity payments for the government's share in the joint venture itself. See Yadana Gas Project - Union of Myanmar - Paying Agent Agreement, presented as Defs.' Ex. 1017 at trial in Doe v. Unocal, No. BC 237980 (Cal. Super. Ct.); Sept. 22, 2003 Letter from Tek Lin Tan, Fin. Mgr., BNP Jersey Trust Corp., to Total E&P Myanmar, presented as Defs.' Ex. 2537 at trial in Doe v. Unocal, No. BC 237980 (Cal. Super. Ct.); Arnaud Valerin, *Total et BNP Paribas accusés de «complicité» avec la junte birmane; AU rapport*, Libération (Paris), Jul. 6, 2010, at 6.

"…the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government as determined by the Commission."

Regulatory Recommendation

In some cases, it may be difficult for an issuer to determine whether a company to which it is making a payment, is owned by a foreign government. For this reason, we urge the Commission to require issuers to engage in an appropriate level of due diligence to determine the identity of their partners, counterparties and associates and to provide guidance to issuers to assist them in conducting their due diligence.

The Commission should require issuers' due diligence review to include an analysis of (i) whether an entity is owned by (a) a national government, a department, agency or instrumentality thereof, or (b) a sub-national government, department, agency or instrumentality thereof; and, (ii) whether there may be indirect government ownership of the entity. As in the case of assessing issuer control over subsidiaries and other entities, we urge the Commission to consider providing guidance on what constitutes direct and indirect "ownership" in this context. In addition to direct control manifested by the ownership of a controlling stake of equity or other securities, the Commission should provide guidance regarding indirect control, such as through the provision of working capital from the government treasury, or the holding of significant influence over the company, including, but not limited to, through the ability of the foreign government to (a) direct economic or policy decisions of the company, (b) appoint or remove directors or other management personnel, (c) restrict the composition of the board of directors, or (d) veto the decisions of the company.[66]

In addition, we urge the Commission to promulgate rules specifying that the lack of knowledge of an entity's ownership by a government is not sufficient to escape liability for failure to report, unless the issuer did not know, and after the conduct of reasonable due diligence, the issuer did not have reason to know, that the company to which it has made a payment was owned by a foreign government as set forth herein.

Support for the Recommendation

The language of Section 1504 states that what constitutes a foreign government includes departments, agencies and instrumentalities of a foreign sovereign. Therefore, a "company owned by a foreign government" must include companies owned by those departments, agencies and instrumentalities. Governments often own the land from which minerals are extracted, or have exclusive rights to extract those minerals. This is especially true in developing countries. As a result, governments and/or government owned or controlled entities play a variety of roles in the extraction industries to a larger extent in many other industries. It is not uncommon, for example, for a government to form a corporation to manage its royalty contracts and receipts or to be a required participant in the exploration process. Governments are often shareholders in a corporation given the right to extract oil or natural resources.[67] A payment to one of these government controlled entities is therefore equivalent to a payment made to the government itself.

Issuers may raise the concern that it can be difficult to determine whether an entity falls within this definition because ownership structures are not always transparent. We recognize that information about the ownership of companies may not be readily or independently available, and that it can sometimes be difficult to determine whether an entity is owned by a foreign government or, for example, is instead owned by a foreign government official acting in a private capacity. In light of these challenges, our recommended due diligence standard strikes the appropriate balance between the limitations that may exist in ascertaining whether an entity is owned by a foreign government and the need for an issuer to comply with Section 1504's reporting requirements.

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[66] *See generally* Accounting Principles Board (APB) Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, March 1971. The "equity method" of accounting for an investment should be used in instances where equity ownership is less than 50% but the investor has the ability to exercise "significant influence," as discussed therein.

[67] Humphreys, M., Sachs, J., and Stiglitz, J., Eds., *Escaping the Resource Curse*, 2007 at 27.

8. The definition of "compilation"

Section 1504 requires

> *``To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A)."*

Regulatory Recommendations

PWYP urges that the Commission's "compilation" of reported payment information take the form of an online database and summary report. Drawing from the data reported in interactive format by the issuers, the online database should allow users to download data in bulk, in addition to allowing users to search by country and company, as well as by year or multiple years of reporting. Users should be able to view payment data drawn from multiple years of reporting, to analyze trends. To allow users to download and manipulate the data, search results should provide the data in HTML format, XBRL, as well as an open format that is usable by a wide variety of spreadsheet programs. Data could be in a CSV or XLS format.

The summary report should list, for each government to which payments are reported to have been made, the total payments by each issuer to that government, and total payments within each payment category. Similarly, the report should list for each issuer, the total payments per project, and project payments within each category (where applicable). In addition, each company's disclosures should be included in full in the summary report as annexes. We urge the Commission to ensure that the summary report takes a form substantially similar to the following:

Country 1		
Company A	Bonuses	[amount]
	Income Tax	[amount]
Total for Country 1:	Royalty	[amount]
	Surface Rental	[amount]
[amount]	License Fee	[amount]
	Customs User Fees	[amount]
	Import Levies	[amount]
	Etc.	
Company A Projects		
	Bonuses	[amount]
	Income Tax	[amount]
Project #1	Royalty	[amount]
	Surface Rental	[amount]
[Total for Project #1]	License Fee	[amount]
	Customs User Fees	[amount]
	Import Levies	[amount]
	Etc.	
	Bonuses	[amount]
	Income Tax	[amount]
Project #2	Royalty	[amount]
	Surface Rental	[amount]
	License Fee	[amount]
	Customs User Fees	[amount]

[Total for Project #2]	Import Levies	[amount]
	Etc.	
Company B Total for Country 1: [amount]	Bonuses	[amount]
	Income Tax	[amount]
	Royalty	[amount]
	Surface Rental	[amount]
	License Fee	[amount]
	Customs User Fees	[amount]
	Import Levies	[amount]
	Etc.	
Company B Projects		
Project #1 [Total for Project #1]	Bonuses	[amount]
	Income Tax	[amount]
	Royalty	[amount]
	Surface Rental	[amount]
	License Fee	[amount]
	Customs User Fees	[amount]
	Import Levies	[amount]
	Etc.	
Total for Country 1 [amount]	Bonuses	[amount]
	Income Tax	[amount]
	Royalty	[amount]
	Surface Rental	[amount]
	License Fee	[amount]
	Customs User Fees	[amount]
	Import Levies	[amount]

In order to ensure timely delivery of the information, we urge the Commission to automate the publishing of disclosure data in both the database and summary report formats so that these are made public as soon as reports are submitted by the issuers. We believe this is possible given the requirement for issuers to report their payments in an interactive data format.

Support for Recommendations

The Congressional intent behind this subsection was to ensure that the data was collected from each of these reports and compiled in one place, in order for the public to be able to find it in a workable format that facilitates comparison of company and country data.

This compilation has the potential to greatly enhance the benefit of this reporting to both investors and other stakeholders. For instance, a comprehensive listing of all reported payment information relating to a particular country would enable investors to have a better picture of total revenues[68] flowing to a particular government, which will provide a fuller understanding of political risk than a single company's reports taken by itself. Moreover, comparisons between different issuer's payments to the same country—or even for the same project in the case of certain joint ventures—would provide meaningful information to investors.

[68] Payments from companies not listed in U.S. would not be covered. However, where complete coverage is not possible, the EITI may capture additional companies. In addition, disclosing the greatest amount of information possible may allow citizens in resource-rich countries to push for coverage of additional companies through other mechanisms such as EITI and stock exchange disclosure requirements in other markets.

The ease of making such comparisons will provide an even greater benefit to other users of data, particularly citizens of resource-rich countries who often have little to no information about revenues arising from the extraction and exportation of state-owned resources. Many of these users lack the technical and technological capacity to search through company reports to extract the data relevant to extractive industries in their countries. While independent parties may play a role in translating the data included in company reports, a robust compilation by the Commission will contribute greatly to the achievement of the goals of the legislation.

EITI reports provide a precedent for compiling the required disclosures. They organize already available information in a manner designed to facilitate an evaluation of company- and project-specific disclosures of material information to provide useful information to the governments, companies and civil society representatives engaged in the initiative. As the needs of investors are different than those engaged in the EITI process, the necessary emphasis must be made on the disclosure of comprehensive, comparable and accurate information.

The recommended compilation forms would enable a number of uses intended by Congress, and have beneficial related impact on the enhancement of EITI. For example, this would address several current challenges facing EITI implementation. As a relatively new initiative, the EITI faces important challenges to meeting the goal of producing reliable, consistent data that improve accountability for extractive industries revenue management. The recommendations would address several key challenges to EITI implementation by providing a model for data disclosure that can be emulated by participating governments and promoted by EITI proponents and members of Multi-Stakeholder Groups and by providing organized, downloadable data for administrators responsible for comparing government and company data submitted for EITI reports. It could also support efforts of EITI proponents in non-candidate countries by demonstrating the feasibility of corporate payment reporting, as well as providing an example of distribution mechanisms for EITI reports.

IV. CONCLUSION

We appreciate the opportunity to submit our comments to inform the proposed rules for Section 1504. We look forward to working with the Commission as it continues to examine these critical issues, and would welcome an opportunity to discuss this submission and to provide you with additional information if needed.