Natural Resource Governance Institute

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090, USA.

CC:
Mr. William Hinman, Director, Division of Corporate Finance
Mr. Barry Summer, Associate Director, Division of Corporation Finance
Ms. Elizabeth Murphy, Associate Director, Division of Corporate Finance
Mr. Elliot Staffin, Special Counsel, Division of Corporate Finance

Via Email (to: rule-comments@sec.gov)

16th March, 2020

Re: File Number S7-24-19 – Proposed Rule 13q-1 to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Secretary Countryman,

We welcome the opportunity to provide a submission to the Securities and Exchange Commission (the "Commission") on proposed Rule 13q-1 and amendment to Form SD implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504) requiring payment disclosure by resource extraction issuers.

The Natural Resource Governance Institute (NRGI), an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy. NRGI is recognized for its technical expertise, and has been involved in the development of mandatory reporting requirements for the extractive industries in the United States, Europe and Canada. We have also contributed extensively to the development of the Extractive Industries Transparency Initiative (EITI), including serving on the initiative's board since its inception and contributing to the revised version of the EITI Standard adopted in 2019.

The 2019 proposed rule proposes a new modified project definition (MPD), defining "project" using the following three criteria: (1) the type of resource being commercially developed; (2) the method of extraction; and (3) the major subnational political jurisdiction where the commercial development of the resource is taking place.

In this submission, we have carried out a study to analyze the impact that implementing the MPD would have on the resulting project payment reporting. Utilizing the payments-to-governments reporting of 731 companies that have disclosed in the EU, UK, Canada and Norway, we have simulated the aggregation that would occur under the MPD. In doing so, this study assesses the impact MPD reporting would have on the data disclosed, including which types of companies and countries would be most impacted by this aggregation. This study also analyses the impact that adopting the MPD would have on

the utility of these disclosures in promoting transparency. A final aim of this study is to analyze the potential impact of the $750,000 project "not de minimis" threshold introduced in the 2019 proposed rule.

In particular, our analysis is relevant to the following questions in the 2019 proposed rule:

- Question 35 regarding whether the SEC should adopt the modified project definition
- Question 36 regarding whether the modified project definition achieves an appropriate balance between reducing costs on companies and promoting transparency
- Question 37 regarding the experience of companies complying with the EU directives and Canada's ESTMA.
- Question 23 regarding whether it is appropriate to adopt the $750,000 project "not de minimis" threshold, given the introduction of the modified project definition.

The study's key findings, based on analysis of the most recent payments-to-governments report of 731 companies, are the following:

1. Under the MPD, 44 percent of contract-level projects would be aggregated with another project by the same company.
2. The aggregation that would occur under the MPD would have a greater impact on the disclosures of larger companies. 86 percent of companies with disclosures totaling over $1 billion would have at least one instance of project aggregation in their disclosures, compared to just 33 percent of companies with total disclosure equaling under $1 million.
3. Total S.A., which in a recent comment to the Commission stated that its reporting costs are 'in the region of $200k per year'[1], disclosed payments for 155 identifiable projects, the largest number of any reporting company, challenging the notion that such reporting is costly and burdensome.
4. This form of aggregation would be detrimental to the utility of this data for accountability purposes.
5. Based on the most recent year of reporting under the contract-level project definition, 55 percent of projects would not exceed the $750,000 threshold. However, even when the aggregation that would occur under the MPD is simulated, 49 percent of MPD projects would still not exceed this $750,000 project threshold.

We urge the Commission to ensure the final rule aligns with the contract-level project reporting requirements as laid out in the EU Accounting Directive and Canada's Extractive Sector Transparency Measures Act (ESTMA) and to remove the $750,000 project "not de minimis" threshold proposed in the 2019 Proposed Rule.

We appreciate the opportunity to make this submission and would welcome the opportunity to discuss our analysis with you in further detail. Please do not hesitate to contact us with any questions.

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[1] François Badoual, "Letter to US Securities and Exchange Commission on proposed Dodd-Frank 1504 rule," 10 Feb 2020, www.sec.gov/comments/s7-24-19/s72419-6791650-208331.pdf.

Natural Resource Governance Institute

Sincerely,

Suneeta Kaimal
Interim President and Chief Executive Officer
Natural Resource Governance Institute

Analysis of the impact of the modified project definition in the 2019 proposed rule for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

INTRODUCTION

Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504) requires resource extraction issuers that file annual reports with the U.S. Securities and Exchange Commission (SEC) to report on a range of payments that they make to governments on a per project basis. The 2019 proposed rule proposes a new modified project definition (MPD), defining "project" using the following three criteria: (1) the type of resource being commercially developed; (2) the method of extraction; and (3) the major subnational political jurisdiction where the commercial development of the resource is taking place. The introduction of the MPD deviates from the contract-level project definition in the 2016 Rule, and which is used in the payments-to-governments laws in the EU, UK, Canada and Norway and that was recently adopted by the Extractive Industries Transparency Initiative (EITI) in its 2019 Standard.

This study analyzes the impact that implementing the MPD would have on the resulting project payment reporting. Utilizing the payments-to-governments reporting of 731 companies that have disclosed in the EU, UK, Canada and Norway, we have simulated the aggregation that would occur under the MPD. In doing so, this study assesses the impact MPD reporting would have on the data disclosed, including which types of companies and countries would be most impacted by this aggregation. This study also analyses the impact that adopting the MPD would have on the utility of these disclosures in promoting transparency. A final aim of this study is to analyze the potential impact of the $750,000 project "not de minimis" threshold introduced in the 2019 proposed rule.

In particular, our analysis is relevant to the following questions in the 2019 proposed rule:

- Question 35 regarding whether the SEC should adopt the modified project definition
- Question 36 regarding whether the modified project definition achieves an appropriate balance between reducing costs on companies and promoting transparency
- Question 37 regarding the experience of companies complying with the EU directives and Canada's ESTMA.
- Question 23 regarding whether it is appropriate to adopt the $750,000 project "not de minimis" threshold, given the introduction of the modified project definition.

The first section of this study analyses the impact the adoption of the MPD would have on project level disclosures, and which types of companies and countries would be most impacted by this aggregation. Section 2 examines what impact the adoption of the MPD would have on the utility of the resulting project reporting for accountability purposes. Following this, section 3 outlines the major developments that have occurred since the development of the 2016 Rule that have established contract-level project reporting as the payment transparency global norm. Finally section 4 examines the impact the adoption of the proposed $750,000 project "not de minimis" threshold could have on reporting, and whether it is appropriate to adopt the $750,000 project "not de minimis" threshold, given the introduction of the

MPD. A description of the methodology we adopted to simulate the project aggregation that would occur under the MPD is available in Appendix 1.

The study's key findings, based on analysis of the most recent payments-to-governments report of 731 companies, are the following:

1. Under the MPD, 44 percent of contract-level projects would be aggregated with another project by the same company.
2. The aggregation that would occur under the MPD would have a greater impact on the disclosures of larger companies. 86 percent of companies with disclosures totaling over $1 billion would have at least one instance of project aggregation in their disclosures, compared to just 33 percent of companies with total disclosures equaling under $1 million.
3. Total S.A., which in a recent comment to the Commission stated that its reporting costs are 'in the region of $200k per year'[1], disclosed payments for 155 identifiable projects, the largest number of any reporting company, challenging the notion that such reporting is costly and burdensome.
4. This form of aggregation would be detrimental to the utility of this data for accountability purposes.
5. Based on the most recent year of reporting under the contract-level project definition, 55 percent of projects would not exceed the $750,000 threshold. However, even when the aggregation that would occur under the MPD is simulated, 49 percent of MPD projects would still not exceed this $750,000 project threshold.

ANALYSIS OF IMPACT OF MODIFIED PROJECT DEFINITION ON PROJECT REPORTING

Overview

In total, we were able to simulate the potential impact of adopting the MPD on 731 companies' most recent payments-to-governments disclosures. Of the 731 company disclosures analyzed, at least 303 companies, or 41 percent, have at least two contract-level projects in the same major subnational jurisdiction that would be aggregated under the MPD. These 731 companies disclosed payments for 4,018 identifiable projects, of which at least 1,776, or 44 percent, would be aggregated with another project by the same company. These 1,776 contract-level projects would aggregate to just 535 projects under the modified project definition. In 53 percent of these instances of aggregation, two contract-level projects by the same company in the same major subnational jurisdiction would be aggregated together. In the other 47 percent of instances of aggregation, three or more contract-level projects would be aggregated together under the MPD.[2]

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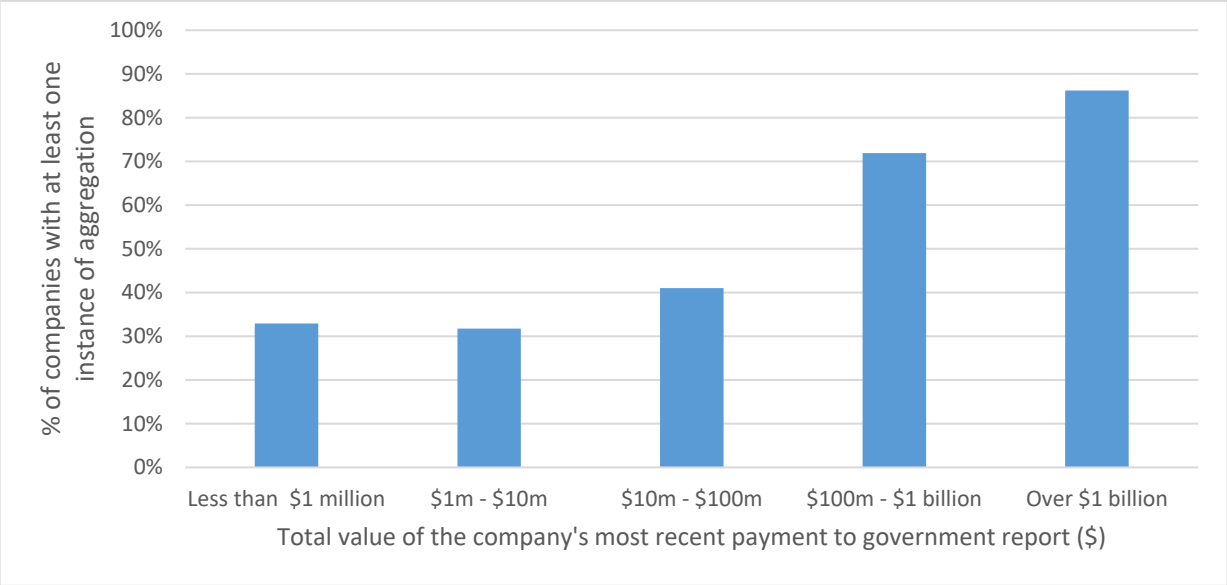
[1] François Badoual, "Letter to US Securities and Exchange Commission on proposed Dodd-Frank 1504 rule," 10 Feb 2020, www.sec.gov/comments/s7-24-19/s72419-6791650-208331.pdf.

[2] As one notable example, the payments generated from five zinc-lead mines (Rampura Agucha Mine, Kayad Mine, Rajpura Dariba Mine, Sindesar Khurd Mine and Zawar Mine) and one oil and gas project (RJ-ON-90/1) in Rajasthan, India disclosed on by Vedanta Resources Limited would have been aggregated together under the MPD. (See Figure 3.) This aggregated Rajasthan MPD project would have generated over $2.2 billion in payments in 2018.

Company analysis

Examining the project aggregation that would occur under the MPD by size of company payments, the results suggest that the MPD would have a much greater impact on the disclosures of larger companies. Looking at the total dollar value of a company's most recent payments-to-governments report, the analysis suggests that 86 percent of companies with disclosures totaling over $1 billion would have at least one instance of project aggregation in their disclosures, compared to just 33 percent of companies with total disclosures equaling under $1 million. (See Figure 1.)

Figure 1 Percentage of companies that would have at least one instance of project aggregation if reporting under the MPD by total value of most recent payment to government report



Total S.A. was the company within the dataset with the largest number of identifiable projects. In its most recent payments-to-governments report, Total S.A. disclosed payments for 155 identifiable projects. Total S.A. would also have the most contract-level projects aggregated under the MPD, with at least 60 of the company's projects located in the same major subnational jurisdiction as another one of the company's projects.

One of the justifications for adopting the MPD cited in the 2019 proposed rule is that reporting under the broader MPD would reduce the compliance burden compared to the contract-level reporting in the 2016 rule. Following that logic, a company with a greater number of contract-level projects to report on should experience greater compliance costs. However, Total S.A., in a recent comment to the Commission stated that its reporting costs are "in the region of $200k per year."[3] Given that Total S.A. is, based on existing payments-to-governments data, the company that faces the greatest burden in reporting their payments at the contract-level, its $200k per year report costs figure indicates that this form of reporting is not overly burdensome for companies.

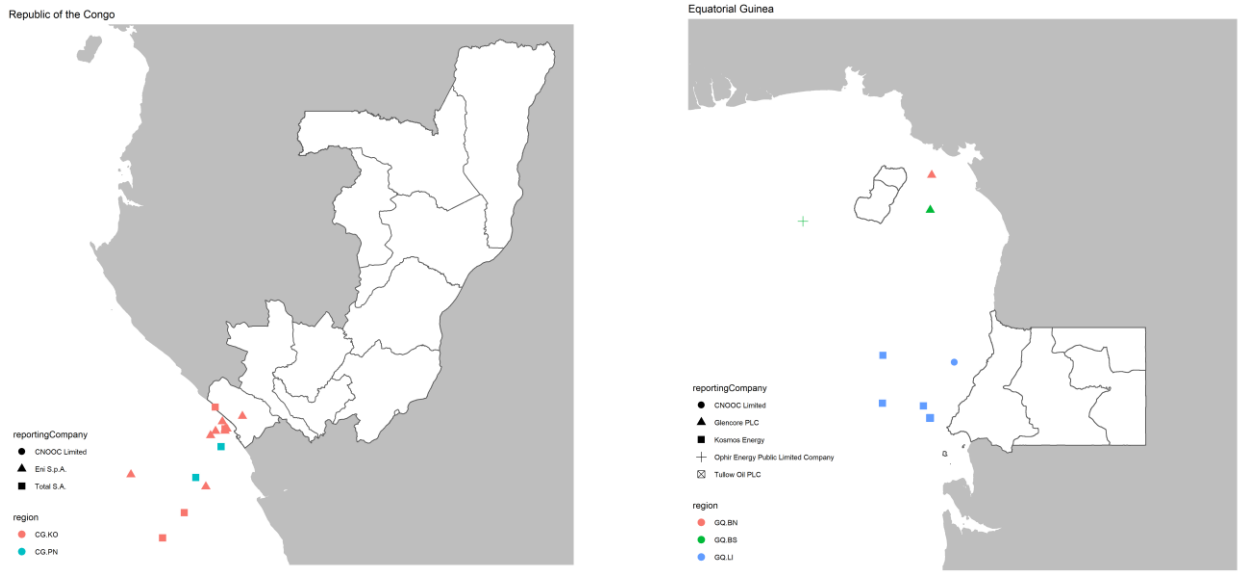
[3] François Badoual, "Letter to US Securities and Exchange Commission on proposed Dodd-Frank 1504 rule," 10 Feb 2020, www.sec.gov/comments/s7-24-19/s72419-6791650-208331.pdf.

Country analysis

Seventy-nine of the 135 countries with geographically identifiable projects have at least one instance of a company having two or more projects in the same major subnational jurisdiction that would be aggregated under the MPD.

Many of the countries that would see the largest number of projects aggregated under the MPD score "poor" or "failing" in the 2017 Resource Governance Index (RGI)[4], NRGI's index measuring the quality of resource governance in a country. In the Republic of Congo, which scores "poor" on the 2017 RGI, contract-level payment data was identifiable for 18 projects. These would aggregate to just five projects under the MPD, with both Total S.A. and Eni SPA having multiple offshore oil projects that would be aggregated under the MPD. Similarly, in Equatorial Guinea, which scores "failing" on the 2017 RGI, contract-level payment data was identifiable for 11 projects. These would aggregate to just six projects under the MPD. Both Kosmos Energy and Tullow Oil would have multiple offshore oil and gas projects aggregated together into a single project if required to disclose under the MPD. (See. Figure 2.) These cases demonstrate that the MPD would therefore significantly impact the usability of project level data for accountability purposes in countries that urgently require greater transparency and accountability in their extractive sector.

Figure 2 Contract-level project reporting in Republic of Congo and Equatorial Guinea



ANALYSIS OF IMPACT OF MODIFIED PROJECT DEFINITION ON USABILITY OF PROJECT DATA

The 2019 proposed rule acknowledges that by adopting the modified project definition and not requiring contract-level disclosure of project information, it narrows the scope of its transparency benefits. Given the level of potential aggregation of project-level data outlined in the impact analysis in Section 1 of this report, we examined the effect this aggregation would have on the usability of this data for accountability purposes.

[4] NRGI '2017 Resource Governance Index (RGI)' 2017, https://resourcegovernanceindex.org/

During previous rulemakings, commenters from resource-rich countries have emphasized the importance of project-level data for accountability purposes.[5] In the years since these comments were written, companies have begun reporting their payments-to-governments under mandatory disclosure laws in the EU, UK, Canada and Norway. Civil society organizations, journalists and oversight bodies across the globe have begun to use the resulting contract-level project data for accountability in their communities.

Below are three examples of project-level payment data being used that would not have been possible if the reporting companies were required to disclose under the MPD, rather than the contract-level reporting disclosure requirements in the EU, Canada, UK and Norway.

RAMPURA AGUCHA MINE, VEDANTA – RAJASTHAN, INDIA

Royalty rate assessment by Transparency International

In its *Under the Surface* report, Transparency International analyzed the royalty payments made by Vedanta Resources Limited for its Zinc-Lead Rampura Agucha Mine in Rajasthan, India.[6] Under India's Mines and Mineral Development and Regulation act (MMDRA), mining companies are required to make a payment equivalent to 30 percent of a mine's royalty payment made to the local District Mineral Foundation (DMF). DMFs are independent trusts that use 40 percent of the revenue generated from mining activities in the local area on physical infrastructure such as roads, bridges and watershed development. The remaining 60 percent is used on social development purposes such as education, drinking water supply and improving the welfare of women.

In order to assess whether Vedanta had paid the correct royalty amount and to estimate the amount generated for the DMF from this project, the researchers required production data which they were able to source from the company's annual report. By combining this production data with publicly available annual zinc pricing data, Transparency International was able to compare their estimation of the royalty payment for this project to the amount reported by the company. This form of analysis would not have been possible if Vedanta had reported under the MPD, as the payments generated from this mine would have been aggregated together with the payments from four other mines (Kayad Mine, Rajpura Dariba Mine, Sindesar Khurd Mine and Zawar Mine) and one oil and gas project (RJ-ON-90/1) the company reports on in Rajasthan. (See Figure 3.) This aggregated MPD Rajasthan project would have generated over $2.2 billion in payments in 2018.

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[5] See, for example: Dr. Mohammed Amin Adam, "Letter to the US Securities and Exchange Commission," 16 Feb 2016, www.sec.gov/comments/s7-25-15/s72515-40.pdf; Maryati Abdullah, "Letter to the US Securities and Exchange Commission," 11 March 2015, www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-64.pdf; and Andrés Hernández, "Colombian civil society organizations' interest in fully public, project-level, company-specific disclosures under Section 1504 of the Dodd-Frank Act," 13 Nov 2015, www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-99.pdf.

[6] Elena Gaita and Don Hubert, *Under the Su*rface: Looking into payments by oil, gas and mining companies to governments (Transparency International EU, Oct 2018), transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf.

Figure 3. Map of Vedanta Resource Limited's oil, gas and mining projects in Rajasthan, India

OIL MINING LICENSES 4, 38 AND 41, SEPLAT PETROLEUM – DELTA STATE, NIGERIA

Supporting extractive affected communities to demand accountability by Paradigm Leadership Support Initiative (PLSI)

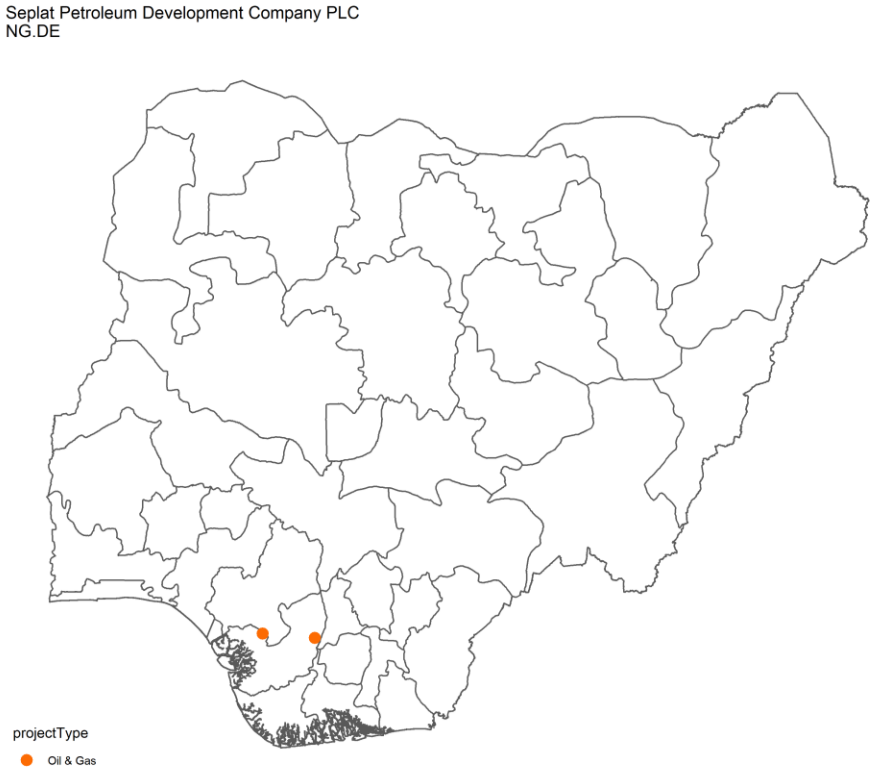
In its 2020 comment submitted to the Commission[7], PLSI described its Resource Benefits project. Launched in 2018, this project uses payments-to-governments data to hold Nigerian public officials and government entities accountable for management and utilization of extractive revenue, particularly funds collected from international oil companies operating in Nigeria.

By the end of March 2020, Resource Benefits plans to train 100 community-based organizations and citizens from the areas most affected by extractive activities in Nigeria's Edo, Delta, Bayelsa and Rivers states. Target beneficiaries will be trained on how to access relevant payments-to-governments data and use them to demand accountability from key government agencies and officials. Participants in these trainings will include citizens from the Oben, Amukpe, Okporhuru, Ovor, Orogho, and Sapele communities affected by Seplat Petroleum's Oil Mining Licenses 4, 38 and 41 project. Seplat Petroleum is a Nigerian oil and gas company that discloses its payments-to-governments as a result of its listing on the London Stock Exchange.

[7] Olusegun Elemo "Letter to US Securities and Exchange Commission on proposed Dodd-Frank 1504 rule," March 6, 2020, https://www.sec.gov/comments/s7-24-19/s72419-6925914-211408.pdf

If Seplat Petroleum was required to disclose under the modified project definition, this form of direct engagement with extractives-affected communities to support their demand for accountability would not be possible. Seplat Petroleum also discloses payments related to its Oil Mining License 53 project, located at the other side of the Delta State to Oil Mining Licenses 4, 38 and 41, meaning the payments for these two oil and gas projects would be aggregated together under the MPD, thereby limiting extractive-affected communities' abilities to demand accountability for the revenue generated from the projects in their area. (See Figure 4.)

Figure 4. Map of Seplat Petroleum's oil and gas projects in Delta State, Nigeria



EAST GANAL PSC – EAST KALIMANTAN, INDONESIA

Verify the size and recipient of oil and gas project signature bonuses by Publish What You Pay (PWYP) Indonesia and NRGI

In 2019, PWYP Indonesia and NRGI released *Indonesia's Oil and Gas Revenues: Using Payments to Governments Data for Accountability*, a report exploring the uses of payments-to-governments reporting in Indonesia for accountability by civil society organizations and journalists in the country.[8] This report found that some international oil companies are paying bonuses to the Directorate General of Oil and Gas within the Ministry of Energy and Natural Resources (ESDM), rather than to the state treasury, as is required by ESDM's own regulation, No. 30/2017. As one-off payments, bonuses are

[8] Alexander Malden and Fikri Zaki Muhammadi, *Indonesia's Oil and Gas Revenues: Using Payments to Governments Data for Accountability* (NRGI, Dec 2019), resourcegovernance.org/analysis-tools/publications/indonesia-oil-gas-revenues-payments.

particularly susceptible to mismanagement or illegitimate diversion because they are of high value and not always incorporated into the normal budgetary process.

The researchers examined Eni's bonus payment for East Ganal PSC, an offshore oil and gas project located off East Kalimantan. In the company's 2018 payments-to-governments report, Eni stated that it paid its bonus payment for the East Ganal PSC to SKK Migas, Indonesia's upstream oil and gas regulator. The researchers wrote to Eni to ask why SKK Migas was the recipient of this signature bonus payment. The company noted that this was a clerical error and that the bonus was actually paid to the Directorate General of Oil and Gas within the Ministry of Energy and Mineral Resources, and not - as incorrectly reported – to SKK Migas. Eni shared with the researchers an excerpt of its assignment decree for the East Ganal PSC which outlines that the company should deposit the signature bonus into a Directorate General of Oil and Gas bank account. Royal Dutch Shell and Equinor both also disclosed paying their signature bonus payments to the Directorate General of Oil and Gas, rather than the state treasury. The state treasury can delegate the right to collect non-tax revenues to director generals, however doing so restricts citizens' ability to follow the money and hold government entities accountable for how this money is managed and used.

This issue flagged by PWYP Indonesia and NRGI gained national media coverage in Indonesia,[9] and raised public questions around how signature bonus revenue from newly-awarded PSCs is managed. Analysis of the signature bonus payments resulting from signing a new PSC would not be possible had Eni been required to disclose under the MPD. Eni has a second offshore project off East Kalimantan, Jangkirk with which the payments from East Ganal would have been aggregated under the MPD. The payment aggregation that occurs under the MPD restricts civil society and media in resource-rich countries from verifying and monitoring payments generated at the contract-level.

In aggregating all of a company's project payments generated in one subnational jurisdiction, the MPD hinders the ability of citizens in resource-rich countries to hold companies and government entities accountable for the revenue generated at the contract level.

CONTRACT-LEVEL PROJECT REPORTING GLOBAL NORM

Since the 2016 rulemaking process and 2017 CRA process, a series of developments have firmly established contract-level project reporting as the payment transparency global norm. In the EU, UK, Canada and Norway companies have reported contract-level payments for five years. According to NRGI's payment to governments data repository, since the first report was released in 2015, at least 792 companies have disclosed over $807 billion in payments resulting from 6,610 projects in 154 countries.[10]

Contract-level project reporting's role as the global norm for payment transparency was underscored in 2019 when the EITI 2019 Standard defined a project as "operational activities that are governed by a single contract, license, lease, concession or similar legal agreement, and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, the multi-stakeholder group must clearly identify and document which instances are considered a single

[9] "NRGI dan PWYP Sebut Ada Perusahaan Migas Tak Patuhi Aturan," CNN Indonesia, 18 Dec 2019, www.cnnindonesia.com/ekonomi/20191218130420-85-458014/nrgi-dan-pwyp-sebut-ada-perusahaan-migas-tak-patuhi-aturan; and "Perusahaan migas internasional tidak bayar langsung ke Kemenkeu, Ditjen Migas anggap 'wajar, sudah sesuai UU,'" BBC Indonesia, 19 Dec 2019, https://www.bbc.com/indonesia/media-50851059.
[10] *Data sourced from www.*resourceprojects.org (NRGI), accessed March 2020.

project."[11] In clarifying a precise definition of project in the 2019 Standard, the EITI is requiring companies operating in all 52 implementing countries to report under this definition. As a result, if the Commission adopts a modified project definition, it would be forcing many US-listed issuers that operate in EITI-implementing countries to report their payments under two separate definitions. As the EITI notes in its project-level reporting guidance note, "The alignment of the definition of 'project' in the 2019 EITI Standard with the existing mandatory disclosure requirements in the EU and Canada seeks to ensure that the information is consistent and comparable across jurisdictions."[12] Furthermore, major subsidiaries of US issuers such as Chevron Corp, ConocoPhillips and ExxonMobil currently report under payments-to-governments laws in Europe and Canada. Given the divergence between the proposed rule and those in place in Europe and Canada, it is highly unlikely that the rules, if adopted in their proposed form, would be deemed equivalent in Europe and Canada and therefore a number of US issuers would have to report on a number of their projects at the contract level and on others using the MPD which would increase rather than decrease the compliance burden.

Recognizing the establishment of this global norm, in 2019 the International Monetary Fund (IMF) included in the natural resource revenue management pillar (Pillar IV) of its Fiscal Transparency Code (FTC), support for contract-level project payment transparency.[13] In the FTC, the IMF acknowledges that this form of reporting provides critical information to affected communities, governments and investors on the economic contribution of specific extractive projects.[14]

ANALYSIS OF IMPACT OF MPD ON PROJECT "NOT DE MINIMIS" THRESHOLD

The 2019 proposed rule introduces a new $750,000 project "not de minimis" threshold for payment disclosure, asserting that it is necessary "in light of the larger aggregations permitted under the revised definition of project." To test the validity of this claim, we examined how many of the 4,018 identifiable contract-level projects within the dataset used in this study would fail to meet this $750,000 threshold and compared them to the number of projects that would meet the threshold under the MPD's aggregation simulation.

The results suggest that under both contract-level reporting and under the MPD, around half of the projects would no longer be reported on under the new $750,000 project "not de minimis" threshold. Based on the most recent year of reporting under the contract-level project definition, 55 percent of projects would not exceed the $750,000 threshold. However, even when the aggregation that would occur under the MPD is simulated, 49 percent of projects would still not exceed this $750,000 project threshold. (see Figure 5.)

These results suggest that under both the contract-level project definition and modified project definition, the $750,000 "not de minimis" threshold would dramatically decrease transparency. Given this, the SEC should remove the $750,000 project "not de minimis" threshold proposed in the 2019

[11] "The EITI Standard 2019," EITI, 15 Oct 2019, eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf.
[12] "Project-Level Reporting Guidance 29 – Requirement 4.7," EITI, Jan 2020, eiti.org/files/documents/guidance_note_29_english.pdf
[13] "Fiscal Transparency Initiative: Integration of Natural Resource Management Issues," International Monetary Fund, 29 Jan 2019, pg. 7 www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues.
[14] Ibid.

Proposed Rule and revert to the $100,000 individual payment (or set of payments) threshold included in the 2016 rule, which aligns with the mandatory disclosure laws in EU, UK, Canada and Norway.

Figure 5. Percentage of projects that would fall below the $750,000 project "not de minimis" threshold

CONCLUSION AND RECOMMENDATIONS

This study uses the payments-to-governments disclosures of 731 companies, reporting on 4,018 contract-level projects, to simulate reporting under the MPD in the 2019 proposed rule. In doing so, we were able to analyze the potential impact this new definition would have on project reporting.

The results suggest that under the MPD, 44 percent of contract-level projects would be aggregated with another project or projects located in the same subnational jurisdiction by the same company. This analysis also indicates that the aggregation that would occur under the MPD would have a greater impact on the disclosures of larger companies.

This study also outlined three case studies which highlight why this form of aggregation would be detrimental to the utility of this data for accountability purposes. In aggregating all of a company's payments generated into one subnational jurisdiction, this definition hinders the ability of citizens in resource-rich countries to hold companies and government entities accountable for the revenue generated at the contract level.

Finally, this study also showed that under both contract-level reporting and under the MPD, the impact of the $750,000 project "not de minimis" threshold in terms of the number of projects that would fall

below this threshold and thus not be reported on would be very significant and undermine the utility of the rule and intent of the underlying statute.

Based on the findings of this study, we would recommend that:

- The SEC should adopt a contract-level project definition in the final rule. Doing so would align with the project definition in mandatory disclosure laws in the EU, Canada, UK and Norway. With the adoption of a contract-level project definition by the EITI in its 2019 Standard, and the IMF's support for this definition in its Fiscal Transparency Code, contract-level project reporting has been established as the global payment transparency norm.
- The SEC should remove the $750,000 project "not de minimis" threshold proposed in the 2019 Proposed Rule and revert to the $100,000 individual payment (or set of payments) threshold included in the 2016 rule, which aligns with the mandatory disclosure laws in EU, UK, Canada and Norway.

Appendix 1. Methodology, data collection, and simulation

METHODOLOGY

For this analysis, we sought to quantify the impact of reporting using the MPD laid out in the 2019 proposed rule, relative to existing contract-level reporting. Specifically, we sought to measure the impact on the number of projects reported when defining "project" using the following three criteria: (1) the type of resource being commercially developed; (2) the method of extraction; and (3) the major subnational political jurisdiction where the commercial development of the resource is taking place.

The data used in this analysis comes primarily from the Natural Resource Governance Institute's (NRGI) open data portal for payments-to-governments data, resourceprojects.org. This project, which began in 2017, seeks to identify, collect and standardize data from all payments-to-governments reports from companies disclosing such payments under laws in the European Union, the United Kingdom, Canada and Norway. The data, freely available on the site, is collected directly from corporate reporting, then cleaned and standardized before publication. Cleaning and standardization on resourceprojects.org allows the data to be maximally comparable between companies and years.

For reported projects and government entities receiving payments, we link the reported values with publicly-recognizable names, for example as described by companies in their annual reports, to increase their utility for research and analysis or matching names across years. For example:

- Project names: in the United States, the projects "GC 137" and "Green Canyon 137" were reported separately. Open source research shows this as a block in the Gulf of Mexico, so both instances are shown as "Green Canyon 137 (Gulf of Mexico)" on ResourceProjects.org.
- Government entities: in Angola, the Ministry of Finance was reported separately as "Financial Ministry," "Ministerio Das Financas" and "Ministry of Finance." On ResourceProjects.org, these all appear as "Ministry of Finance; Angola."

Data preparation

We used the project-level payment data from resourceprojects.org for this analysis. In addition to what is available for direct download on resourceprojects.org, NRGI has categorized projects according to their extractive type and collected location data based on open source research. Categorization is done by extractive type, either "Oil and Gas," "Mining," "Corporate" or "Unidentifiable." An unidentifiable project type would result from insufficient information in the project name, such as a project reported in the United States called "Alabama" or a name which we cannot connect to a public reference. A corporate project type is a project that is reported as the name of a company, or in many cases as "Corporate," "Entity level" or similar. Where appropriate, NRGI is able to alert companies or regulators where a project is not sufficiently identified.

We collect locations through open source research efforts for both identifiable and unidentifiable project types. If a public reference to a project can be found, we attempt to find an exact or approximate location for it, recording latitude and longitude coordinates. In most cases, the locations are approximated from public documents from a mining or petroleum company that include a map, or from company websites. Less often, exact coordinates can be found in a company document. Other times, industry-specific publications will have news items or public databases which include location references. In some countries, detailed public cadasters are available and align with project names

reported in those countries, allowing us to collect highly accurate locations. This is the case in the United Kingdom and Norway. No private databases are used to collect location data on projects.

For unidentifiable projects, we are still often able to collect a meaningful location. Many of these project names reference a subnational jurisdiction, such as a province, in which case we use the location of the regional capital, or a city or town, whose location we will use directly. Project names might also reference a geographic landmark, such as a lake, mountain or harbor, which can be used to identify an estimated location. All such locations are collected to be accurate at the subnational boundary level, so if a location cannot be accurately placed within a region or province, it is not collected. Such would be the case with a project reported as "Tunisia South."

Simulating project reporting under the modified project definition

The core of our analysis depends on identifying in which major subnational political jurisdiction a disclosed project is physically located. In particular, we looked to identify regions referenced by subnational ISO 3166-2 codes, which are specified in the proposed rule as an acceptable level of project aggregation. The 2019 proposed rule states that "[t]he proposed definition of project would include commercial development activities using multiple resource types or extraction methods if such activities are located in the same major subnational political jurisdiction. The issuer would be required to describe each type of resource that is being commercially developed and each method of extraction used for that project."[15]

As elaborated above, we have latitude and longitude coordinates available for the majority of projects disclosed by companies already reporting payments. In order to identify in which major subnational political jurisdiction these coordinates are located, we used the full-world geospatial shapefile dataset available from GADM.org, the Database of Global Administrative Areas. This dataset is freely available for academic and non-commercial use.

The GADM dataset contains geospatial boundaries for all countries, both national borders as well as varying levels of subnational boundaries. For our analysis, we relied on their "Level 1" data, which includes boundaries for the highest level of internal jurisdictions within the country. For example, in the United States, it is a state; in Canada, it is a province or territory; in Ghana, it is a region. For each country in the dataset, a distinct geometry for each subnational region is included and tied to a subnational ISO codes.

We performed our analysis using the R statistical programing language, utilizing the *sf* package for geospatial analysis. In a given country, we first check each individual project location for an intersection with one of the regional geometries from the GADM dataset. If a project's coordinates fall within the boundaries of a region, we assign that region to the project. Our location dataset also contains a significant number of project locations that fall outside of any country's boundaries: offshore oil and gas projects.

The 2019 proposed rule states that if a project is offshore, "the proposed rules would require an issuer to disclose that it is offshore and the nearest major subnational political jurisdiction."[16] To determine which major subnational political jurisdiction is nearest an offshore project, we first calculate the great-

[15] US Securities and Exchange Commission, Dodd-Frank Section 1504 2019 Proposed Rule, p. 69
[16] US Securities and Exchange Commission, Dodd-Frank Section 1504 2019 Proposed Rule, p. 68.

circle distance between the coordinate and each subnational geometry in the country dataset, again using functions from the *sf* package in R. From that, we select the nearest region and assign it to the project.

Using this method, we are able to identify the subnational region or nearest region for every project location we have in our dataset. We then proceed to test how many projects reported by the same company fall within a major subnational political jurisdiction with one or more other projects reported by the same company. For this analysis, we selected the data from only the most recent payments-to-governments report from each company available on resourceprojects.org as of March, 2020. We made this decision in order not to inflate the number of project aggregations, since companies may sell or end a project from one fiscal year to the next; we are only showing what is disclosed in a single company report. This also means that our dataset covers projects reported in different years, as companies disclose reports according to their fiscal years, which vary. As of March, 2020, most companies' latest disclosure covers the 2018 fiscal year.

In a given country, any number of companies will have reported on one or more projects, for which we have identified regions. Our analysis tests aggregation only at the company level. For example, if in Canada, two companies report a project each in Alberta, and a project each in British Columbia, our test will find zero project aggregation in that sample. If a company reports two projects in Alberta, and another company reports two projects in Ontario, our test will find an aggregation from four reported projects to two; we can also say that four projects are susceptible to aggregation, or that four projects are reported in the same region as at least one other project from the same company.

We do not have a location for all reported projects, meaning we are not able to place them in a subnational jurisdiction. For our analysis, these projects are all considered to be located in their own subnational jurisdiction, distinct from all other locatable and un-locatable projects. This means a country or company with a high number of not-located projects will not show significant amounts of regional project aggregation. These projects are not removed from our analysis; they are present in both original and aggregated figures, always representing a single company-region project. In reality, a project must have a location. Therefore, it is likely that some of these projects do in fact fall in the same subnational jurisdiction as another reported by the same company and our estimates for project aggregation under the MPD represent a floor, rather than a ceiling. We have kept these projects in our calculations so as to not overstate the effects of the subnational aggregation.

The aggregations exclude any project with payments identified as "Corporate." This could be a project disclosed as a company name, such as "Equinor Angola AS," or some kind of description, such as "Corporate – South Africa," "Payments not attributable to projects" or "Entity level." About 20 percent of projects in our database are tagged as such. We excluded these for two reasons. First, the 2019 proposed rules permit an issuer to disclose certain payments such as corporate income tax or dividends at the entity level rather than at the project level. Second, in cases in which we could find a location, most often an office address, we determined that such a location is not meaningful to the operation of a project in the context of geographical aggregation. A corporate project may relate to multiple operations within the country, and its location, often in the capital city, is not specific to those operations. For this, we do not include corporate projects in aggregation calculations.

Across our entire dataset, we calculate our results by aggregating all projects at the major subnational jurisdiction level by company. Any two or more projects from the same company in the same region are aggregated into a single project. For calculating project payments across aggregated projects, we sum

the total amount disclosed under each project from the company in the subnational jurisdiction into a single value.

The analysis presented in this study rests on the assumption that the levels of aggregation that would occur and number of projects that would meet the $750,000 “not de minimis” threshold in existing payments-to-governments reports would be similarly reflected in the disclosures under Dodd-Frank Section 1504. We believe that this assumption is reasonable for three reasons.

The first is that with 731 companies in the dataset used for this analysis, it represents a large and diverse sample set. The companies disclosing payments-to-governments reports in the EU, UK, Canada and Norway include many of the world’s largest international oil companies and mining companies, national oil companies as well as medium sized and smaller extractive companies. The second reason we believe this assumption is reasonable is that, as a result of dual-listing, many of the companies that would be required to disclose under the Dodd-Frank Section 1504 are already reporting under existing payments-to-governments regulations and thus are included in the dataset used for this analysis. Third, major subsidiaries of US issuers such as Chevron Corp, ConocoPhillips and ExxonMobil currently report under payments to governments laws in Europe and Canada and associated payment and project data is included in our analysis.

Appendix 2. www.resourceprojects.org

Resourceprojects.org seeks to identify, collect and standardize data from all payments-to-governments reports from companies disclosing such payments under laws in the European Union, the United Kingdom, Canada and Norway. The data, freely available on the site, is collected directly from corporate reporting, then cleaned and standardized before publication. Cleaning and standardization on resourceprojects.org allows the data to be maximally comparable between companies and years. As of January 2020, www.resourceprojects.org contains data on over $807 billion in payments in over 150 countries from 2014 to 2019.

Key features of resourceprojects.org include:

- **Collection and standardization of PtG data.** Resourceprojects.org collects all identified payments-to-governments reports. It standardizes the currency, project name and government entity name data within the reports, making them easier to use for comparison and analysis.

- **Enables citizens to find data relevant to them.** The repository's filter feature enables users to search the data by country, project, recipient government agency, company, year and payment type. This feature allows users to quickly find and download the data relevant to them.

- **Subscribe for timely updates**. A key element of payment to government data as an accountability tool is its timeliness. Most companies are required to disclose their payments within six months of the end of their financial year. To maximize the benefits of this timeliness, www.resourceprojects.org has developed a feature where users can subscribe to receive an email when NRGI uploads a relevant payment to governments report onto the site.