



Friends of the Nation

March 16, 2020

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

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 Corporation Finance

**Subject: Proposed Dodd-Frank 1504 Rule, File Number S7-24-19
Ghana CSO submissions for a strong mandatory disclosure**

Dear Secretary Countryman,

Friends of the Nation, a civil society organization with expertise in the oil, gas, and mining sectors, wishes to make a submission on the US Securities and Exchange Commission's (SEC) newly-proposed rule for Section 1504 of the Dodd-Frank Wall Street Reform Act, especially provisions relating to transparency and accountability in the extractives sector.

Over the past few years, Ghana has seen an unprecedented level of data disclosure as companies operating in our country reported their revenues as required by European, Canadian, and Norwegian laws. In the oil and gas sector, Tullow and ENI both disclose project-level payments to our government as a result of EU law. US oil company Kosmos Energy voluntarily discloses project-level payments in line with EU disclosure requirements.¹ In Ghana, the majority of international mining companies, including Asanko Gold, Golden Star Resources, Kinross Gold, Perseus Mining and Xtra-Gold Resources, have disclosed payments-to-governments reports under Canada's Extractive

¹ <https://www.kosmosenergy.com/transparency/>

Sector Transparency Measures Act (ESTMA). Additionally, Gold Fields, AngloGold Ashanti, and Newmont Mining have made voluntary disclosures regarding the payments they make to our government.² While these disclosures do not follow the exact reporting specifications of the mandatory disclosure regulations, partially limiting their comparability to disclosures made under ESTMA, this positive step by the companies to voluntarily disclose payments provides Ghanaian citizens with a more complete view of the revenues generated in the country's mining sector.

However, we cannot rely on voluntary disclosure and need disclosure that aligns with EU and ESTMA disclosures for comparability. Therefore, it is our considered opinion that the proposed Dodd-Frank Section 1504 rule in its current state creates a roadblock for Ghanaian citizens, the rightful owners of our country's natural resources, to demand a fair share of the proceeds. We also believe that the new rule will reverse the significant successes civil society organizations have attained in through our advocacy efforts to achieve transparency, accountability, and efficient management of Africa's mineral and hydrocarbon wealth. Our concerns are multi-tiered and, as explained below, we are concerned about aspects of the proposed rule which would represent a roll back on the gains from the 2016 rule.

Mining in Ghana

Ghana is Africa's largest gold producer and ranks among the top ten gold-producing countries in the world. According to the Ghana Extractives Industries Transparency Initiative (GHEITI) 2015 Mining report, the gold sector contributed about 96 percent of the total value of mineral exports in 2015, with manganese (1.95 percent), bauxite (1.24 percent) and diamonds (0.31 percent) as the other commodities mined at significant levels in the country.

Ghana's largest mine is operated by US-listed Gold Fields, and the sector includes other leading mining companies such as US-listed Newmont Mining and AngloGold Ashanti as well as Canadian-listed Goldenstar Resources. In total, over 3.3 million ounces of gold were produced in Ghana in 2017. International mining companies that have either disclosed payments-to-governments under ESTMA regulations or made voluntary disclosures produced 86 percent of the total national production.³

Oil Extraction in Ghana

Ghana is also rich in oil. In 2007, the Jubilee oil field was discovered. At the time, it was one of the largest discoveries in West Africa in the last decade. This field is operated by

² Alexander Malden and Edna Osei, "Ghana's Gold Mining Revenues: An Analysis of Company Disclosures," Natural Resources Governance Institute, September 2018, <https://archive.resourcegovernance.org/sites/default/files/documents/ghana-gold-mining-revenue-analysis-company-disclosures.pdf>.

³ Alexander Malden and Edna Osei, "Ghana's Gold Mining Revenues: An Analysis of Company Disclosures," Natural Resources Governance Institute, September 2018, <https://archive.resourcegovernance.org/sites/default/files/documents/ghana-gold-mining-revenue-analysis-company-disclosures.pdf>.

Tullow Oil, a U.K.-based company operating mostly in Africa. Tullow Oil began voluntarily disclosing payments made to governments four years ahead of the mandatory requirements applying to Tullow and other EU-based companies.⁴

ENI, the Italian company, is developing important offshore oil and gas discoveries in the Offshore Cape Three Points block. In early 2019, Norwegian company Aker made a substantial discovery in the Pecan field, and later that year, an even bigger field was discovered by Ghana-based private company Springfield E&P. With these discoveries, Ghana is poised to soon double its oil production. These discoveries present a tremendous opportunity to develop our nation and lift our people out of poverty.

The 2020 Dodd-Frank Section 1504 Rule

We do not think that the past rule would cause “competitive harm” and “undue compliance burdens” for companies. Our concerns are grave and multi-layered. In its current proposed project definition, the rule, which deviates considerably from the 2016 definitions of contract, lease or license, undermines one of the only opportunities for many citizens in Ghana to compare this data with other available data to discover discrepancies, critique these contracts, and to better inform public debate on their resources. In Ghana, U.S. companies like Exxon Mobil, Kosmos Energy, Newmont, and Goldcorp hold substantial stakes in hydrocarbon and mining assets in many poor communities. Currently, Ghana’s existing laws allow for 4.95% of mineral royalties, a single stream of all payment receipts, to be distributed back to subnational governments for use in extraction-affected communities.

Data Use

European Union and Canadian laws allow Ghanaian citizens to conduct comparative analysis of royalty receipts from individual projects and contracts to determine if the central government actually gave communities the financial benefits to which they are entitled.

In the oil sector, Friends of the Nation uses the data that is publicly available, which includes capital expenditure, operational cost and expenditure, as well as benchmark crude oil price, and production volumes. We analyze these data to determine gross revenues, and then examine the revenue streams for the government, and determine what is due to the state, based on the contractual arrangement. When the government announces its revenue, we are able to look at the company reports to see if the government is reporting the same amount as the companies. Section 1504 disclosures, if made at the project-level, would directly support the core work and mission of Friends of the Nation to hold our government accountable for the proper collection, management and expenditure of oil, gas, and mining revenues.

⁴ David Mihalyi, “Tullow Disclosure Yields Insight into Ghana Oil, Gas Sector,” Natural Resource Governance Institute, 15 May 2017, <https://resourcegovernance.org/blog/tullow-disclosure-yields-insight-ghana-oil-gas-sector>.

ESTMA data is also expanding Ghanaian dialogue about resource revenues and their use. For example, through contract-by-contract reporting requirement under Canadian rules, [Kinross](#), a Canadian company working in Ghana reported that in 2017, it paid the legally-required 5% royalty payments in three communities (Asanko, Wassa and Nzema) and a little more - about 0.6% - in two other projects in Chirano and Prestea because those were mines in forest reserves.

Additionally, CSOs have been able to monitor royalty payments based on this analysis and are currently pushing the government of Ghana to fast track rules that would guide the application of this revenue to women-owned livelihood initiatives in host mining communities. In seeing the exact revenues flowing to their sub-national governments, citizens are able to better consider how they can be spent to improve their communities. In this case, citizens are looking for ways to turn mining revenues—which traditionally benefit men—into a resource that can be used to expand the livelihoods of women.

Project-Level Data

We understand that the new proposed rule calls for aggregated or anonymous data disclosure instead of project-level data disclosure. In Ghana's case, this approach would render the oil payment disclosures effectively useless. It would be a waste of effort for reporting companies, and a step back from the currently level of voluntary disclosure we currently have.

Because multiple companies sometimes operate in the same fields, and multiple projects are operated by single companies, under this proposed rule, CSOs, parliamentary oversight bodies, The Ghana Extractive Industries Transparency Initiative, the Ministry of Finance and other data users would be unable to link disclosures to the associated contract which governs the terms of the payment. The company name is necessary to know which contract defines the payment terms. Therefore, any effort to determine whether the payment is appropriate to the contract terms under the proposed Section 1504 rule would be futile.

As you can see, the project-level disclosure offered by Canadian and European countries are already shaping our national discourse and citizen movements. The non-anonymized project-level data that we receive from them allow citizens in the relevant extraction-affected communities to have discussions about what they would like to do with their revenue. We worry that the current version of the Dodd-Frank Section 1504 rule will prevent us from viewing similar data from American companies, and that we will lose an opportunity for necessary oversight of our resource revenues.

We also feel strongly that the proposal for conditional exemptions for foreign law conflicts subverts the United States' leadership role in reducing the socio-economic plight of natural resource-rich but poor countries in Africa and across the world. When our partner CSO, Africa Center for Energy Policy (ACEP), [wrote to you](#) about the 2016 proposed rule,

they explained the need for a strong rule to ensure responsible investment of natural resources in Africa. Our position is not different, and we ask same of you in these rules.

As our organization conducts research on the impact of extractive industries across many areas, we are especially concerned for those countries with weak fiscal regimes and legislative frameworks governing natural resources. In these countries, US leadership can be key in introducing transparency and good governance where there currently is little. In countries with poor human rights records like Equatorial Guinea, Mozambique, and Chad, where U.S companies like Exxon Mobil operate large projects, there are no stringent disclosure laws. This often means that resource revenues that should be used to develop these countries are instead lost to corruption.

The United Nations estimates that between 2010 and 2018 net incomes from oil for African governments amounted to US\$184 billion.⁵ But in so many cases, these inflows have become resources for despotic and corrupt individuals because of poor governance and financial secrecy. Sadly, the current Dodd-Frank Section 1504 proposed rule would allow U.S. companies to continue perpetuating this data non-disclosure in many African countries. We would thus welcome a revision of the current proposed rule to at least the 2016 standard which would guarantee access to project-level payment information in countries where the domestic legislation does not require it.

Ghana has been lucky that so many companies operating here are engaging in some form of mandated or voluntary disclosure, but most African nations are not so lucky. We hope that you consider implementing a strong Dodd-Frank Section 1504 rule so that US-listed companies join companies covered by European and Canadian laws in promoting transparency in host countries. Such a move would go a long way to contributing to the productive use of natural resource revenue. You have the opportunity to help create good in our communities.

We thank you for your consideration of our concerns and are happy to provide you any further clarification if necessary.

Sincerely yours,
Donkris Mevuta



Executive Director, Friends of the Nation

Friends of the Nation (FoN) is a socio-environmental advocacy NGO, based in Sekondi-Takoradi in the Western Region of Ghana. Our mission is to catalyse increased action for sustainable natural resource management and healthy environments as well as provide services to communities and institutions through knowledge transfer, research, capacity building, networking and advocacy.

Learn more at: <http://fonghana.org/>

⁵ United Nations University (2019) “Africa’s Development in the Age of Stranded Assets” United Nations University – Institute for Natural Resources in Africa, 2019, https://i.unu.edu/media/inra.unu.edu/publication/5247/Discussion-paper-Africas-Development-in-the-age-of-stranded-Assets_INRARreport2019.pdf.