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

RE: Comments on Proposed Rule Requiring Disclosure of Payments by Resource Extraction Issuers, File No. S7-24-19

Dear Secretary Countryman,

The ONE Campaign appreciates the opportunity to provide comments on the Commission's proposed rule implementing Section 13(q) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The ONE Campaign is a global movement campaigning to end extreme poverty and preventable disease. We believe that transparency of natural resource revenues is critical for enabling citizens in resource-rich countries to hold their governments accountable for using natural resource revenues effectively to combat poverty, improve citizen wellbeing, and promote peace and prosperity.

We believe that a robust rule to implement Section 13(q) that requires fully public, company-specific, contract-based project-level reporting is in the best interests of governments, shareholders, and citizens in resource-rich countries. A final rule to implement Section 13(q) should align with the now-established global transparency standard in the extractives sector; in particular, the Commission should ensure that the definition of project aligns with the standards now in place in Canada, the EITI, EU, Norway, and UK. Doing so will ensure that the data disclosed under Section 13(q) is robust, relevant, and comparable to data from those other disclosures, thereby helping to meet the Congressional intent of Section 13(q) by maximizing the ability of end-users to harness the data to combat corruption and hold governments accountable for the use of natural resource payments.

The purpose of this submission is two-fold: 1) to illustrate the strong industry support for alignment of implementation of section 13(q) with the international transparency standard, and 2) to help inform crucial gaps in the Commission's economic analysis by providing an analysis of the number of US-listed issuers not already subject to related disclosure laws in Canada, the EU, Norway, or the UK ("US-only issuers") that currently disclose in EITI countries or have already disclosed payments under the mandatory payment disclosure regimes in other jurisdictions.

One of the key concerns expressed by a handful of commenters in the 2016 rulemaking, and which formed a key basis to use the Congressional Review Act ("CRA") to repeal the 2016 Final Rule, were the supposedly high compliance costs associated with disclosing contract-based project-level payments. While we understand the challenging position that the CRA places the Commission in regards to issuing a new rule that adheres to both the evidentiary record and the CRA's mandate to avoid issuing a rule that is "substantially the same", we believe that the Commission's proposed rule essentially ignores significant portions of the former in service of the latter. Notwithstanding the CRA disapproval, the

Commission must craft a rule that considers all evidence, and implement Section 13(q) in a way that achieves the original purpose of the statute. The proposed rule, if implemented without key revisions, would fail on both counts.

Most critically, the Commission’s proposed definition of “project” is untenable, both in terms of achieving the statute’s stated purpose of combatting corruption in the oil, gas, and mining sectors and in complying with the statute’s mandate to “support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.”¹

In its effort to address the CRA restriction against a rule that is “substantially the same,” the Commission has veered too far and reversed course on nearly every significant feature in its 2016 Final Rule. Most concerning, the Commission’s proposed definition of “project” places greater importance on the comments of a handful of commenters, while ignoring dozens of comments from a wide range of stakeholders who have urged the Commission to define project as contract-based payments.² Those commenters include a significant number of oil, gas, and mining companies (see Appendix 1), in addition to investors,³ current and former members of Congress,⁴ US government agencies,⁵ and civil society organizations.⁶

¹ 15 U.S.C. 78m(q)(2)(E).

² The Commission’s proposed rule relies heavily on previous comments from API, Chevron, and ExxonMobil, most notably the proposed “Modified Project Definition”, which is essentially a relabeled definition of project originally proposed by API (see for instance: comment submitted by API, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-32.pdf>, p. 31-32). In addition to concerns about the Commission opportunistically considering comments from a small number of commenters while overlooking overwhelming support for avenues the Commission fails to even consider (see for instance: comment submitted by Oxfam America and EarthRights International, March 23, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6984657-214635.pdf>), it is worth emphasizing that API does not speak with a unified voice on this issue. As is highlighted below, a number of US-listed issuers with membership in API have strongly spoken out against the “Modified Project Definition” and urged for alignment with the project definition in place in other reporting regimes. Those API member companies include: BHP, BP, Equinor, Ovintiv, Royal Dutch Shell, and Total, whose total market capitalization (on March 25, 2020) is 50% greater than the combined market capitalization of Chevron and ExxonMobil, the two most active proponents of API’s position in previous rulemakings (see for instance ExxonMobil’s submission, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-33.pdf>, p. 4; and Chevron’s submission, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-36.pdf>, p. 2).

³ See for instance: Comment submitted by Calvert Investments, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-39.pdf>; Comment submitted by ACTIAM NV et al, March 8, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-52.pdf>; Comment submitted by US SIF, March 8, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-54.pdf>.

⁴ See for instance: Comment submitted by Richard Lugar, Carl Levin, and Christopher Dodd, February 4, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-20.pdf>; Comment submitted by Ben Cardin et al, February 5, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-19.pdf>.

⁵ See for instance: Comment submitted by the US State Department, January 21, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-13.pdf>; Comment submitted by USAID, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-37.pdf>.

⁶ See for instance: Comment submitted by Publish What You Pay – US, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-45.pdf>; Comment submitted by Oxfam America, February 16,

Support for the International Transparency Standard

Since the passage of Section 13(q), a significant number of US-listed issuers have expressed support for aligning implementation of Section 13(q) with the reporting requirements of similar transparency regimes, including the EITI and mandatory payment disclosure laws in Canada, the EU, Norway, and the UK. In both the Commission's first and second Section 13(q) rulemaking, there was near unanimous support from industry commenters to align implementation of Section 13(q) with the EITI reporting standard. While that support was predicated on the EITI's then-standard of country-level payment disclosure, numerous industry commenters have reiterated their support in the current rulemaking, with the EITI standard now requiring contract-level payment disclosure.⁷ It is noteworthy that a number of the industry commenters that expressed that position are long-time Board Members or supporting-companies of the EITI that played an active role in the evolution of the EITI Standard to adopt contract-based project-level payment reporting in 2019.⁸ That includes companies like Chevron and ExxonMobil, both of which are long-standing EITI Board Members and prominent members of the American Petroleum Institute that support and report under the EITI's 2019 Standard in at least one dozen countries each (see analysis below).

To illustrate the broad industry support for alignment between Section 13(q) implementation and the international transparency standard established by reporting standards in Canada, the EITI, the EU, Norway, and the UK, we have included companies' supportive comments in Appendix 1. Industry commenters, including a number of API members, make clear their support, in particular, for a definition of project that aligns with those other reporting regimes.

The legislative history of Section 13(q) makes clear that the statute was intended to "complement multilateral transparency efforts such as the Extractive Industries Transparency Initiative—the EITI—under which some countries are beginning to require all extractive companies operating in their territories to publicly report their payments."⁹ Notably, several supporters of the CRA resolution of disapproval of the Commission's 2016 Final Rule emphasized to the Commission that they "are committed to efforts to encourage corporate transparency on these matters **consistent with the international standards already adopted by European and other governments.**"¹⁰

The international landscape has changed significantly since the 2016 Final Rule in ways that the Commission should take into consideration when crafting a new final rule, including its economic

2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-35.pdf>; Comment submitted by Africa Centre for Energy Policy, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-40.pdf>; Comment submitted by Global Witness, March 8, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-58.pdf>.

⁷ See for instance: Comments submitted by BHP, March 16, 2020; RioTinto, March 16, 2020; BP, March 16, 2020; Equinor, March 13, 2020; Newmont Mining, February 25, 2020; Kosmos Energy, February 19, 2020.

⁸ EITI Secretariat, March 6, 2020, EITI Board Members 2019-2022, available at: https://eiti.org/files/documents/board_members_2019-2022_6_march_2020.pdf; EITI, Supporting Companies, available at: <https://eiti.org/supporters/companies>.

⁹ 74 CONG. REC. S3815-16 (daily ed. May 17, 2010) (statement of Sen. Richard Lugar), available at: <https://www.congress.gov/crec/2010/05/17/CREC-2010-05-17-senate.pdf>.

¹⁰ Comment submitted by Sens. Bob Corker, Susan Collins, Marco Rubio, Johnny Isakson, Lindsey Graham and Todd Young; U.S. Senate, February 2, 2017, available at: <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cl16-3080156-161926.pdf> (emphasis added).

analysis. In particular, at nearly 800 oil, gas, and mining companies have been disclosing project-level payments to governments in more than 150 countries, some for as many as five years, without any reported negative competitive harm or significant compliance costs. Furthermore, the EITI updated its Standard in 2019 to require contract-based project-level payment reporting, aligned with the reporting standards in Canada, the EU, and UK. As a result, the roughly 2,000 oil, gas, and mining companies that currently operate and report in the EITI's 53 implementing countries will publish payments to government at the contract-based project-level.¹¹

US-only issuers

The Commission's proposed definition of "project" will not reduce compliance costs as much as the Commission suggests; we believe it is more likely to increase them. That is because **a substantial number of US-only issuers are already disclosing contract-based project-level payments or soon will under the EITI Standard.** The Commission's proposed rule fails to acknowledge or consider the available evidence from other international reporting regimes to inform its economic analysis, instead oddly continuing to rely upon a few obsolete industry guesstimates from nearly a decade ago, essentially reprising its 2016 analysis while ignoring real-world data that has emerged in the intervening years that has direct bearing on the current economic analysis. To the extent that contract-based project-level reporting requires the creation or modification of administrative or accounting systems, US-only companies will already have incurred any associated costs as a result of being subject to other regimes with contract-based project-level reporting requirements. As such, the Commission should discount those companies' compliance costs in a manner similar to how it treats cross-listed issuers, significantly discounting their compliance costs for countries in which they already report payments.¹²

To help inform the Commission's economic analysis, we provide an analysis of the US-only oil, gas, and mining companies required to comply with Section 13(q) and that operate in at least one EITI country or have reported contract-based project-level payments in Canada, the EU, Norway, or UK. As a result of those other reporting regimes' requirements, those companies already have begun disclosing, or are preparing to disclose, contract-based project-level payments.

As can be seen in greater detail in Appendix 2, a significant number of US-only issuers operate in EITI countries or have published project-level payments under existing laws in Canada, the EU, Norway, or the UK. Our analysis estimates that at least 45 US-only issuers operate in one or more of the 53 EITI-implementing countries, or have published payments under mandatory payment disclosure laws.¹³ On average, **those disclosures account for 53.8% of those US-only issuers' total operations**, by country.

¹¹ Estimate based on ONE's analysis of EITI data. See "EITI Complete Summary Data Table," available at: <https://www.resourcedata.org/dataset/eiti-complete-summary-table>, accessed February 1, 2020.

¹² This could include, for instance, using an average cost per country of operation to calculate issuers' compliance costs, based on actual cost estimates submitted by companies, as we have done below, and discounting US-only issuers' compliance costs accordingly. Alternately, the Commission could exclude the portion of companies' total assets that are already subject to contract-level reporting. Regardless of the approach the Commission ultimately chooses, it clearly must discount US-only issuers' activities in countries for which they already (or soon will) disclose project-level payments.

¹³ This represents more than 19% of the 236 issuers that the Commission estimates "would bear the full costs of compliance with the proposed rules." See Proposed Rule, 85 Fed. Reg. at 2553.

That includes significant portions of the countries of operation of some of the largest US-listed companies. For instance, ExxonMobil has disclosed – or soon will under EITI – contract-based project-level payments in 64% of the countries where it has active oil or gas production or exploration activities.¹⁴ For both Chevron and ConocoPhillips that figure is 50%.¹⁵ Six US-only companies already (or soon will) disclose contract-based project-level payments in 100% of their operations.¹⁶

Notably, several large state-owned oil, gas, and mining companies already disclose significant portions of their project-level payments. CNOOC, the giant Chinese state-owned oil company, already discloses (or soon will under EITI) contract-based project-level payments in 100% of the countries in which it operates. Two other large state-owned companies, China Petroleum & Chemical and PetroChina, have disclosed or will disclose contract-based project-level payments on 61% and 67% of their country operations, respectively. With operations in three EITI countries, Petrobras, the state-owned Brazilian oil company, will soon report contract-based project-level payments in 50% of the countries in which it operates. Russian oil giants Rosneft and Gazprom are reporting for all of their countries of operation as a result of their listings on the London Stock Exchange. These high levels of disclosures by some of the world’s largest state-owned extractive companies undercuts the claims by certain commenters¹⁷ that Section 13(q) disclosures will give state-owned companies a competitive advantage.¹⁸

Since those companies detailed in Appendix 2 already have been, or soon will be, compelled to disclose contract-based project-level payments in a significant number of countries, those portions of issuers’ operations should be discounted in the Commission’s economic analysis.

With companies now disclosing payments for multiple years in other jurisdictions, the Commission now has real-world compliance costs with which to estimate the compliance costs of Section 13(q) after discounting the costs US-only issuers have incurred as a result of their operations in EITI countries or other mandatory disclosure jurisdictions. Aligning the definition of project in the implementation of Section 13(q) with the international transparency standard will be far less costly than a small number of commenters have previously guesstimated, based on hypothetical scenarios during the Commission’s original rulemaking on Section 13(q).¹⁹ Now, with years of evidence of actual reporting by companies in

¹⁴ ExxonMobil has disclosed project-level payments valued at \$15.3 billion in nine countries (Angola, Canada, Cote d’Ivoire, Germany, Guyana, Liberia, Netherlands, Norway, and South Africa) via subsidiaries in Canada and Europe. See NRG, “Open Source Data on Oil, Gas and Mining Payments,” www.resourceprojects.org (accessed March 21, 2020).

¹⁵ Chevron’s Canadian subsidiaries have disclosed project-level payments valued at \$12.5 billion in Canada, Indonesia, Nigeria, and the UK. ConocoPhillips has disclosed project-level payments valued at more than \$3 billion to date via subsidiaries in Canada, Norway, and the UK. See NRG, “Open Source Data on Oil, Gas and Mining Payments,” www.resourceprojects.org (accessed March 21, 2020).

¹⁶ The six companies are Buenaventura Mining Co., CNOOC, Coeur Mining, Dynaresource, Inception Mining, and Vedanta Ltd.

¹⁷ See for instance: Comment submitted by Harry Ng, American Petroleum Institute, January 19, 2012, available at: <https://www.sec.gov/comments/s7-42-10/s74210-121.pdf>.

¹⁸ Furthermore, currently 55 state-owned oil and mining companies participate in the implementation of the EITI in 35 countries and at least 25 are represented in EITI multi-stakeholder groups. For example, EITI, October 17, 2019, “Qatar Petroleum joins EITI as a supporting company,” available at: <https://eiti.org/news/qatar-petroleum-joins-eiti-as-supporting-company>.

¹⁹ See for instance: Comment submitted by Patrick Mulva, ExxonMobil, January 31, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-11.pdf>.

other jurisdictions at hand, and a revised EITI Standard that aligns with that reporting, it is clear that the costs of compliance are far lower than those original estimates.

- In its most recent payments-to-governments report, Total disclosed payments for 45 countries. In its comment dated February 17, 2020, Total states that the “internal cost for this reporting is low, in the region of \$200,000 per year.”²⁰ This equates to an average recurring cost per country of operation of \$4,444.
- In its initial payments-to-government report in 2013, Tullow disclosed payments for 25 countries.²¹ In its most recent payments-to-governments report in 2018, Tullow disclosed payments for 16 countries.²² Tullow has stated that its initial compliance costs and its ongoing annual costs are each “less than \$150,000”,²³ yielding a per country average initial compliance cost of \$6,000 and average ongoing costs per country of operation of \$9,375.
- In its initial payments-to-government report in 2016, Eni disclosed payments for 30 countries. In its most recent payments-to-governments report in 2018, Eni disclosed payments for 29 countries.²⁴ In its response to a 2018 survey conducted by the European Commission on company reporting in the EU, Eni states that its start-up costs for complying with the EU Directives were €1,000,000, and that its recurring costs are €500,000 per year.²⁵ That equates to an average start-up cost of €33,333 per country, and an average annual ongoing cost of €17,241 per country.
- In its initial payments-to-government report in 2016, BASF disclosed payments for five countries. In its most recent payments-to-governments report in 2018, BASF disclosed payments for six countries.²⁶ In its response to the European Commission’s 2018 survey on company reporting in the EU, BASF states that its start-up costs for complying with the EU Directives were

²⁰ In its most recent payments-to-governments report, Total disclosed payments for 155 identifiable projects, the most of any reporting company. Comment submitted by Francois Badoual, Total, February 17, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6879145-210715.pdf>; Total, March 20, 2020, Form 20-F, Exhibit 15.1, available at:

<https://www.sec.gov/Archives/edgar/data/879764/000119312520080490/d862109dex151.htm#ofc24>; NRG, “Total’s payments to government”, available at: www.resourceprojects.org.

²¹ Tullow Oil, 2014, “Creating Shared Prosperity through Transparency,” available at:

https://www.tulloil.com/Media/docs/default-source/5_sustainability/tullow_2013_transparency_report.pdf?sfvrsn=4.

²² See NRG, “Open Source Data on Oil, Gas and Mining Payments,” available at: www.resourceprojects.org.

²³ Tullow Oil communication to PWYP-UK. See PWYP-UK, November 25, 2019, available at:

<https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cll6-6470014-199342.pdf>, p. 4.

²⁴ See NRG, “Open Source Data on Oil, Gas and Mining Payments,” available at: www.resourceprojects.org.

²⁵ European Commission, 2018, “Public Consultation on the Fitness Check on the EU Framework for Public Reporting by Companies.” A searchable database of the published results is available at:

<https://ec.europa.eu/eusurvey/publication/finance2018-companies-public-reporting>.

²⁶ See NRG, “Open Source Data on Oil, Gas and Mining Payments,” available at: www.resourceprojects.org.

€47,000, and that its recurring costs are €26,000 per year.²⁷ That equates to an average initial cost of €9,400 and average ongoing costs of €4,333 per country of operation.

With a significant number of US-only issuers already obligated to report project-level payments under reporting regimes in Canada, the EITI, the EU, Norway, and the UK, the incremental costs to US-only issuers of complying with a Section 13(q) final rule requiring contract-based project level reporting would be significantly lower than the Commission has suggested. Consequently, implementing a definition of project in the final rule for Section 13(q) that aligns with the international transparency standard would not significantly increase compliance costs for issuers – it would in fact minimize aggregate costs by not requiring companies to set up or modify two distinct tracking systems.²⁸

As always, we appreciate the Commission’s continued hard work to implement Section 13(q), and stand ready to assist going forward.

Sincerely,



²⁷ European Commission, 2018, “Public Consultation on the Fitness Check on the EU Framework for Public Reporting by Companies.” A searchable database of the published results is available at: <https://ec.europa.eu/eusurvey/publication/finance2018-companies-public-reporting>.

Extractive assets make up a small percentage of BASF's total assets, and it doesn't break down the figure for extractives in its annual report.

²⁸ As other commenters have noted, it is standard practice in the oil, gas, and mining industry for companies to track project payments at the contract level, and requiring companies to aggregate those payments to the sub-national or national levels, as the Commission’s Modified Project Definition (and arbitrary \$750,000 reporting threshold), proposes, is likely to increase, not decrease, issuers’ compliance costs (See comment submitted by: Alan Detheridge, March 15, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6955597-212686.pdf>; and comment submitted by Oxfam America and ERI, March 23, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6984657-214635.pdf>).

Appendix 1: Industry support for a common international standard

AngloGold Ashanti

- “The advantage of a single international standard is that it facilitates matching payments made by companies with payments received by governments, as well as comparability across companies and governments.

“We submit that to require companies registered with the Commission to prepare and publish multiple sets of government payments disclosure to comply with multiple reporting standards would increase costs for issuers and is likely to confuse or mislead investors and other interested parties. AngloGold Ashanti and other extractive issuers have already established operating systems and procedures in order to collate in an efficient and timely manner the data reported in accordance with the EITI principles. To the extent that the rules promulgated by the Commission pursuant to Section 13(q) of the Exchange Act result in a reporting standard that differs from the EITI framework, issuers will incur additional costs to put in place multiple systems of disclosure controls and procedures to report government payments information in accordance with multiple reporting standards. Further, to the extent that certain payments reportable under the EITI principles are not required to be included in the Section 13(q) disclosure, comparability of information would be impaired, and differences in the two reporting standards could confuse or mislead investors and other interested parties.

“Therefore, to the extent that the disclosure requirements under Section 13(q) of the Exchange Act overlap the EITI reporting guidelines, we urge the Commission to adopt the EITI standard as closely as possible.”²⁹

API

- “API member companies fully support government accountability through international transparency efforts such as the Extractive Industries Transparency Initiative (“EITI”).”³⁰

BHP

- “BHP Billiton supports the SEC’s proposal to define the term “project” to be consistent with the definition contained in the EU Directive.... As outlined in the Preamble to our Transparency Principles, BHP Billiton supports the establishment of a globally consistent and mandatory disclosure framework which includes equivalence agreements between jurisdictions.... A globally consistent mandatory framework will create a level playing field amongst the resource sector while minimizing the reporting burden and compliance costs for companies operating in multiple jurisdictions and ensuring stakeholders are able to access and analyze uniform data.”³¹

²⁹ Comment submitted by AngloGold Ashanti, January 31, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-15.pdf>, p. 3-4.

³⁰ Ibid. p. 2.

³¹ Comment by BHP, January 25, 2015, available at: <https://www.sec.gov/comments/s7-25-15/s72515-9.pdf>, p. 2-3.

- “A level playing field will ensure all companies disclose on the same basis and reduce the reporting burden for those operating in multiple jurisdictions. To this end, appropriate national and extra-territorial mandatory corporate reporting should complement EITI and provide a globally consistent regulatory framework for all extractive industry companies.”³²
- “BHP supports the EITI Standard's definition of project-level reporting. We use that definition in developing our annual ECR disclosure, as we both support the Standard and are required to meet it under the European Union Accounting Directive and implementing regulations from the United Kingdom.
- “BHP supports use of the EITI Standard's definition of project level reporting in all mandatory and voluntary disclosure regimes; this ensures globally consistent and harmonized financial reporting. BHP had publicly supported the use of the EITI Standard's definition in US disclosure regulations and we will be submitting comments to that effect with the SEC in response to its most recent 1504 rule proposal.”³³
- “BHP has a long-standing commitment to transparency and the good governance of natural resources and their related revenues. Accordingly, BHP supports globally consistent and harmonized mandatory reporting requirements. We are a founding corporate supporter of the voluntary Extractive Industries Transparency Initiative (EITI), and contribute to implementation of the EITI Standard in EITI implementing jurisdictions where we operate. 6 Setting a global standard for open and accountable management of natural resources revenues ensures that the disclosure of payments made by extractives companies to governments is understandable for stakeholders. It also provides reporting companies with the most efficient manner of compliance, helps reduce related costs and simplifies data consistency.

“We are concerned that in aiming to avoid charges that the new rule is 'substantially the same' as the 2016 rule, the proposed 1504 rule moves too far away from the underlying statutory requirements. The proposed rule includes a number of provisions that, in BHP's view, conflict with Section 1504's mandate that the Commission implement the statute in a manner 'consistent with the guidelines of the Extractive Industries Transparency Initiative', and that the rules 'support the commitment of the Federal Government to international transparency promotion efforts'. We address our primary concern - the proposed rule's definition of a 'project' - below.

“While the Commission argues that the variances from the EITI Standard will result in cost savings to issuers, BHP's experience is that consistent mandatory and voluntary reporting requirements across jurisdictions and initiatives such as EITI actually reduces overall costs and increases efficiencies for both issuers and data users. Our comments below illustrate some of

³² Comment submitted by BHP, January 25, 2015, available at: <https://www.sec.gov/comments/s7-25-15/s72515-9.pdf>, p. 4.

³³ BHP, February 21, 2020, Letter to the Business & Human Rights Resource Centre, available at: https://www.business-humanrights.org/sites/default/files/documents/BHP%20to%20Publish%20What%20You%20Pay_1504%20rule_21%20Feb%202020.pdf.

our experiences in complying with transparency systems based on the EITI Standard and highlight the cost effectiveness of reporting to a single global standard.

“BHP does not support the proposed 1504 rule's 'Modified Project Definition', which differs from the definition used in both the EITI Standard and mandatory disclosure regimes such as the European Union (EU) Directive. Under the SEC's proposal, US regulations would not align with those adopted by the EU, Canada and other nations. 8 This will present data users with inconsistent information and could require issuers to produce multiple sets of disclosure information to accommodate the differing requirements and reconcile any differences between reports.

“BHP recommends that the SEC instead adopt the EITI Standard's definition of a 'project', which is based at the contract level:

A project is defined 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. - EITI Standard, Requirement 4.7

“This is consistent with the national and regional disclosure regimes noted above and aligns with Section 1504's underlying statutory mandate. Adopting the EITI Standard's definition of project currently in use globally will reduce disclosure burden and compliance cost for issuers.”³⁴

BP

- “We believe that mandatory revenue transparency regulations will be most effective if they complement the multi stakeholder approach of EITI by adopting the EITI disclosure methodology. This would best be achieved by the development of a common standard....Users of the data will benefit due to the greater level of consistency in the data reported irrespective of the country of listing of the extractive industry company; preparers would benefit by minimizing the administrative burden, and cost, of complying with multiple reporting methodologies; and the adoption of the EITI disclosure methodology by respected regulators could encourage more countries to join EITI. Furthermore, the regulatory burden on extractive industry companies, and the risk of competitive disadvantage based on country of listing, would both be minimized if regulators adopted a common disclosure standard.

“It remains our view that the interests of the users of the data that extractive industry companies will be required to disclose will be best served through the reporting of the same type and level of information rather than different versions of the same payment data that would arise for companies that need comply with different regulatory requirements. We therefore believe that such a common standard would deliver benefits for regulators, extractive industry companies, investors, governments and civil society.”³⁵

³⁴ Comment by BHP, March 16, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6960337-212716.pdf>, p. 1-2.

³⁵ Comment submitted by BP, July 8, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-95.pdf>.

- “The EITI disclosure model was developed through a collaborative approach involving multiple stakeholders. It would therefore be most helpful to issuers if mandatory regulations on disclosures mirrored the EITI disclosure model to the largest possible extent.”³⁶
- “BP believes that the adoption of 13q-1 should go as far as possible to seek alignment with E.U. and Canadian rules, and consistency with the EITI Standard to the greatest extent possible by law.

“Regulatory alignment on the approach to contract-level reporting already enshrined in the E. U. and Canada reporting requirements and the EITI Standard would be the most effective means of producing high-quality and comparable data. In particular, we would welcome a standard definition of a "project" for the purposes of disclosing contract-level payments. Defining extractive projects consistently across all countries to the greatest extent possible would foster improved transparency and support accountability in practice. This would provide meaningful, material data across the different reporting jurisdictions, in a manner that avoids commercial harm to companies, and would improve the quality and comparability of the information provided for the user of these data.”³⁷

- “Our commitment is enacted on a daily basis through the constructive engagement of BP businesses around the world in support of EITI implementation, our membership of the EITI international Board and the disclosures BP makes in respect of payments to governments, both within the framework of the EITI and as a matter of compliance with national reporting obligations. This commitment is thus not merely a matter of principle, but of practice: through the EITI, we have worked with governments and civil society to help develop disclosure standards that are workable, proportionate and effective in improving accountability.

“Our position is clear: convergence on a standard approach to reporting meaningful, material data across the different reporting jurisdictions - in a manner that avoids commercial harm to companies - would improve the quality and comparability of the information provided. In particular, we would welcome convergence on the definition of a ‘project’ for the purposes of disclosing project-level payments: defining extractive projects in a consistent manner across all countries would foster improved transparency and support accountability in practice.

“Accordingly, BP believes that the adoption of an implementing Rule 13q under the Dodd Frank Act should aim to maintain a level playing field among oil and gas companies and encourage convergence on a standard approach by seeking alignment with EU rules and consistency with the new EITI Standard to the greatest extent possible. The 2019 EITI Standard embodies a global consensus - negotiated between governments, civil society and companies - on a consistent and workable approach to the disclosure of material payments (and other, relevant data) in respect of extractive activity. Regulatory alignment and convergence around the approach to project-

³⁶ Comment submitted by BP, February 11, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-21.pdf>, p. 2.

³⁷ Comment submitted by BP, March 16, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6952845-212570.pdf>, p. 2.

level reporting already enshrined in the EITI Standard would be the most effective means of producing high-quality and comparable data.”³⁸

Chevron

- “EITI sets the global standard for improving payment and revenue transparency related to the commercial development of natural resources.”³⁹
- “Chevron is the longest continually serving member on the international board.”⁴⁰

Eni

- “We therefore welcome the new Rule proposed by the SEC in the USA, as it goes in the direction of levelling the field in the industry and addresses the issue of multiple reporting obligations and the associated compliance costs.”⁴¹
- “Eni already complies with EU Directive 2013/34: it prepares and publishes a report on payments to governments for each financial year, reported on a project level. In this regard, Eni supports the definition of “project level reporting” as embodied in the EU Directive 2013/34 and in line with EITI standard. Eni also draws up its Country-by-Country Report (CbC Report), as recommended in Action 13 of the project “Base Erosion and Profit Shifting” (OECD), and it is among the very few companies to voluntarily publish its CbC Report.

“We believe that the enhancement of transparency over payments to Governments in the extractive sectors risks being jeopardized by the development of different disclosure obligations and asymmetric reporting requirements; for these reasons – as already highlighted in Eni 2016 communication on the rule proposed by the SEC for resource extraction issuers - we support the definition of a “global, consistent standard on transparency for all companies” as “it goes in the direction of levelling the field in the industry and addresses the issue of multiple reporting obligations and the associated compliance costs” (Letter from Eni CEO Claudio Descalzi to the SEC, Comments on Proposed Rule, File number S7-25-15, 31th January 2016).”⁴²

Equinor

- “However, the U.S. should aim to adopt rules that align with existing disclosure regimes - most notably the EU regime. Such alignment is particularly important for companies such as Equinor subject to disclosure obligations in several jurisdictions. Alignment will ensure that companies such as ours can keep compliance costs at a reasonable and proportional level. Alignment would

³⁸ BP, February 28, 2020, Letter response to the Business & Human Rights Resource Centre, available at: <https://www.business-humanrights.org/en/usa-publish-what-you-pay-calls-on-extractive-companies-to-comment-on-latest-sec-payment-disclosure-rules-including-company-responses/?page=1#c204183>.

³⁹ Comment submitted by Chevron, January 28, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-12.pdf>, p. 1.

⁴⁰ Comment submitted by Chevron, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-36.pdf>, p. 1

⁴¹ Comment by Eni, January 31, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-12.pdf>, p. 2.

⁴² Eni, February 24, 2020, Letter to the Business & Human Rights Resource Centre, available at: <https://www.business-humanrights.org/sites/default/files/documents/Eni%27s%20answer%20to%20BHRRC%2024022020.docx>.

also contribute to a level playing field in the global extractive sector between those companies listed in the US and those listed elsewhere and would increase the value of the disclosed information for the market and other third parties.”⁴³

ExxonMobil

- “ExxonMobil fully supports international transparency efforts, in particular the Extractive Industry Transparency Initiative (EITI), which promote government accountability. The stated intent of Section 13(q) is to support EITI which represents a balanced and responsible framework for reporting resource extraction payments. ExxonMobil supports Commission rulemaking that is consistent with that intent.”⁴⁴
- “ExxonMobil has been directly and constructively engaged in transparency advocacy and initiatives since the Company helped form and launch the Extractive Industries Transparency Initiative (EITI) at a Lancaster House Conference in London in 2003. At that conference, twelve EITI Principles were announced, and these remain the foundational principles for the initiative, which is growing rapidly and is now being implemented in 49 countries. Section 1504(2)(E) of the Dodd Frank Wall Street Reform and Consumer Protection Act states:

To the extent practicable, the [SEC rule]... shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

“For the SEC to comply with this mandate, we believe it is essential for the Commission to adopt a rule that is consistent with the EITI Principles and that can help the cause of transparency succeed on a global scale.”⁴⁵

- “As we noted in our previous comment letter, for the SEC to comply with its mandate, the Commission must adopt a rule that is consistent with EITI Principles and that can help the cause of transparency succeed on a global scale.”⁴⁶

Gold Fields

- “As an EITI supporting company, and as a member of the International Council on Mining & Metals (ICMM), Gold Fields supports the EITI Standard's definition of project-level reporting.... We support a broadly consistent and workable approach to the disclosure of

⁴³ Comment submitted by Equinor, March 16, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6952843-212532.pdf>, p. 2.

⁴⁴ Comment submitted by ExxonMobil, January 31, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-11.pdf>, p. 2.

⁴⁵ Comment submitted by ExxonMobil, February 16, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-33.pdf>, p. 1-2.

⁴⁶ Comment submitted by ExxonMobil, March 8, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-57.pdf>, p. 2.

payments and revenues by mining companies to governments at all levels, which is simple to undertake and to use. The EITI Standard meets those criteria.”⁴⁷

Kosmos Energy

- “We therefore support the EITI Standard’s definition of project-level reporting. In addition, now that we have a secondary listing in London, and therefore reporting obligations in both the US and the UK, it would be helpful and more cost-efficient if there was substantial international alignment on this definition and on payments-to-government reporting requirements more broadly.”⁴⁸
- “In 2014, prior to our London listing, we made a policy decision to disclose payments to governments at the project level as defined in the European Union Accounting Directive. We believe that this type of disclosure is beneficial to investors, civil society, and local communities, and reflects evolving international expectations.

“We therefore support the EITI Standard’s definition of project-level reporting. In addition, now that we have a secondary listing in London, and therefore reporting obligations in both the US and the UK, it would be helpful and more cost-efficient if there was substantial international alignment on this definition and on payments-to-government reporting requirements more broadly.”⁴⁹

National Mining Association

- “Section 1504 is designed to promote EITI, consistent with the goal of promoting a single international standard for disclosures of extractive payments to governments, which will allow comparability across companies and governments (and thereby increase the accuracy of the disclosures). Requiring that foreign issuers comply with multiple, potentially discrepant, disclosure standards would only unfairly increase the burden on these issuers, and would create confusion for investors faced with multiple reports.”⁵⁰
- “Given the shared goal, but different mechanisms for achievement of that goal, there is potential for significant overlap and confusion between the EITI and Dodd-Frank efforts to increase transparency of payments to governments. Clearly, Congress contemplated the alignment of these processes. Congress directed that “the rules issued under (DoddFrank § 1504) shall support the commitment of the federal government to international transparency

⁴⁷ Gold Fields, February 24, 2020, Letter to the Business & Human Rights Resource Centre, available at: <https://www.business-humanrights.org/sites/default/files/documents/Gold%20Fields%20response%20to%20PWYP.pdf>.

⁴⁸ Comment submitted by Kosmos Energy, February 19, 2010, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6838138-208628.pdf>, p. 2.

⁴⁹ Kosmos Energy, February 18, 2020, Letter to the Business & Human Rights Resource Centre, available at: <https://www.business-humanrights.org/sites/default/files/documents/Kosmos%20Energy%20letter%20to%20PWYP-US%20Feb%202020.pdf>.

⁵⁰ Comment submitted by the National Mining Association, March 2, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-45.pdf>, p. 24.

promotion efforts relating to the commercial development of oil, natural gas or minerals." § 1504(q)(2)(E). In addition, § 1504 tasks the Commission with defining reportable payments, "to the extent practicable," "consistent with the guidelines of the Extractive Industries Transparency Initiative." § 1504(q)(1)(C)(ii). Thus in the Act, Congress pushed for alignment of the SEC regulations with the EITI, to which it is explicitly tied."... It is imperative that these processes be aligned and coordinated to ensure that extractive industries are not subject to contradictory or overlapping reporting processes.⁵¹

Newmont Mining

- "Newmont actively advocates for the EITI Standard and serves as an industry member on the Multi-Stakeholder Group in Suriname directly and via industry associations in other jurisdictions. We believe that Dodd-Frank Section 1504 can complement the EITI and its requirements should be closely aligned with the EITI Standard. This will ensure companies can develop a consistent approach to project-level reporting across multiple jurisdictions and broaden and deepen the transparency agenda globally. Alignment will also reduce onerous reporting obligations while advancing efficient and consistent reporting requirements."⁵²

Ovintiv

- "While Ovintiv supports the proposed rules, we believe the SEC rules should more closely align to the disclosure requirements established by other reporting jurisdictions including the European Union Directives ("EU Directives") and Canadian disclosures under the Extractive Sector Transparency Measures Act ("ESTMA"). We believe that narrowing differences between the compliance frameworks will better serve the objective of transparency, consistency of the disclosures and ease the reporting burden for issuers reporting in multiple jurisdictions."⁵³

RioTinto

- "we urge the Commission to follow the EITI principles to the fullest extent possible...We are, however, committed to transparency, and we urge the Commission and the U.S. government to work with other regulators and governments around the world to issue regulations that are consistent with the EITI principles, to ensure that appropriate disclosures are made across all companies, and that investors have access to consistent types and levels of information. This will help to ensure that investors are able to base their investment making decisions on the same type and level of information."⁵⁴
- "We believe that mandatory revenue transparency regulations will be most effective if they complement the multi stakeholder approach of EITI by adopting the EITI disclosure model. This would best be achieved by the development of a common standard that requires companies to

⁵¹ Comment submitted by the National Mining Association, June 15, 2012, available at: <https://www.sec.gov/comments/s7-42-10/s74210-387.pdf>, p. 1-2.

⁵² Comment submitted by Newmont Mining, February 25, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6962968-212798.pdf>, p. 1.

⁵³ Comment submitted by Ovintiv, March 16, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6960417-212759.pdf>, p. 1.

⁵⁴ Comment submitted by RioTinto, March 2, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-44.pdf>, p. 2-3.

disclose, by country, payments to governments broken down along the lines of the benefit streams set out in the EITI Source Book reporting template. Users of the data will benefit due to the greater level of consistency in the data reported irrespective of the country of listing of the extractive industry company; preparers would benefit by minimizing the administrative burden, and cost, of complying with multiple reporting methodologies; and the adoption of the EITI disclosure model by respected regulators could encourage more countries to join EITI.

- “Furthermore, the regulatory burden on extractive industry companies, and the risk of competitive disadvantage based on country of listing, would both be minimized if regulators adopted a common disclosure standard.”⁵⁵
- “Rio Tinto supports the EITI’s position on project-by-project reporting....Rio Tinto encourages the harmonisation of reporting obligations aligned with global best practice. We believe that the creation of a consistent standard by which companies can report their contributions with integrity and responsibility is essential to promoting confidence in business. Accordingly, we support the harmonisation of the section 1504 proposal with the requirements under the UK and Canadian mandatory disclosure regimes.”⁵⁶
- “Rio Tinto supports the EITI’s position on project-by-project reporting. Our annual taxes paid report discloses country-by-country data on taxes and payments to government, as well as project-by-project disclosures. We also file additional reports to disclose payments to governments connected with extractive activity to meet requirements in the UK and Canada (Chapter 10 of EU Accounting Directive 2013/34 and the Extractive Sector Transparency Measures Act respectively). These reports include the project-by-project information disclosed in our annual taxes paid reports.

“Further, Rio Tinto encourages the harmonisation of reporting obligations aligned with global best practice. We believe that the creation of a consistent standard by which companies can report their contributions with integrity and responsibility is essential to promoting confidence in business. Accordingly, we support the harmonisation of the section 1504 proposal with the requirements under the UK and Canadian mandatory disclosure regimes.”⁵⁷

Shell

- “We believe that mandatory revenue transparency regulations will be most effective if they complement the multi stakeholder approach of EITI by adopting the EITI disclosure methodology. This would best be achieved by the development of a common standard that

⁵⁵ Comment submitted by RioTinto, July 6, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-102.pdf>, p. 1.

⁵⁶ Comment submitted by RioTinto, March 16, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6955544-212649.pdf>, p. 1.

⁵⁷ Rio Tinto, February 28, 2018, Letter to the Business & Human Rights Resource Centre, available at: <https://www.business-humanrights.org/sites/default/files/documents/Rio%20Tinto%27s%20Response%20Re%20PWYP%27s%20open%20letter.pdf>.

requires companies to disclose, by country, payments to governments broken down along the lines of the commonly recognised revenue streams laid out in the EITI rules.”⁵⁸

- “Shell has been a long standing member of EITI. We have worked within the EITI framework to help develop the standards, and we support these standards, including the EITI standard’s definition of project-level reporting. The implementation of EITI standards is a government-led process, with multi-stakeholder support, and we encourage countries to join EITI.

“Shell is subject to the UK requirements regarding the detailing of payments to governments in relation to our extractive activities. These include references to project-reporting which are similar to the EITI standard.

“We believe that close alignment in reporting standards is beneficial to all stakeholders, and we support countries in implementing their transparency ambitions.”⁵⁹

Total

- “Total considers that the re-introduction of Rule 13q-1 under the Dodd Frank Act should both restore a level playing field among major publicly-listed oil and gas companies and improve transparency to help combat global corruption and increase accountability.... Total believes equivalency recognition should help global transparency initiatives evolve toward a common standard, thereby improving the quality and comparability of information.”⁶⁰
- “TOTAL considers that the re-introduction of Rule 13q-1 under the Dodd Frank Act should enhance transparency for the benefit of the whole industry and its stakeholders and ,to this end, restore a level playing field among major publicly listed oil and gas companies. TOTAL believes that the alignment of the Proposed rule with Directive 2013/34/EU is key in improving the quality and comparability of information between issuers complying with different reporting regimes.”⁶¹

US Chamber of Commerce

- “The Energy Institute fully supports government accountability through international transparency efforts, especially the Extractive Industries Transparency Initiative (“EITI”). The stated intent of Section 13(q) is to support EITI, and we support rulemaking consistent with that intent.”⁶²

⁵⁸ Comment submitted by Royal Dutch Shell, July 11, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-98.pdf>

⁵⁹ Royal Dutch Shell, March 6, 2020, Letter to the Business & Human Rights Resource Centre, available at: <https://www.business-humanrights.org/en/usa-publish-what-you-pay-calls-on-extractive-companies-to-comment-on-latest-sec-payment-disclosure-rules-including-company-responses/?page=1#c204192>.

⁶⁰ Comment submitted by Total, January 13, 2016, available at: <https://www.sec.gov/comments/s7-25-15/s72515-14.pdf>.

⁶¹ Comment submitted by Total, February 10, 2020, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6791650-208331.pdf>, p. 1.

⁶² Comment submitted by the US Chamber of Commerce, March 2, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-60.pdf>, p. 2.

Vale

- “Rather than subject cross-listed companies to an array of slightly differing disclosure regimes, for comity's sake, the Commission should defer to disclosure regimes in other countries where that best serves the broad purpose of the statute.”⁶³

⁶³ Comment submitted by Vale, March 2, 2011, available at: <https://www.sec.gov/comments/s7-42-10/s74210-68.pdf>, p. 2.

Appendix 2 (continued)

Notes:

Only US-only companies are included in the analysis, i.e. US-listed companies cross-listed in Canada, the EU, Norway, or the UK have been excluded.

“Total country disclosures” represents the total number of countries in which companies operate that are either EITI members or for which companies have reported project-level disclosures under mandatory payment disclosure laws in place in Canada, the EU, Norway, and the UK.

“Total # of countries with operations” refers to the total number of countries in which companies have active oil, gas, or mining production or exploration activities, and/or in which they have disclosed project-level payments in Canada, the EU, Norway, or UK. Midstream and downstream activities, including refining, transport, and marketing, were excluded.

“% of countries with disclosures” divides “total country disclosures” by “total # of countries with operations” to yield the percentage of a company’s total country operations for which a company currently reports project-level payments or soon will under the revised EITI Standard.

Information on companies’ countries of operations was obtained primarily from their Forms 10-K, 20-F, or 40-F. In certain instances, the analysis was supplemented with information from the EITI,⁶⁴ company websites,⁶⁵ mandatory payment data,⁶⁶ or in rare instances, media reports.⁶⁷ Data on companies’ mandatory payment disclosures was obtained from www.resourceprojects.org.⁶⁸ A list of EITI member countries is available on the EITI’s website.⁶⁹

⁶⁴ For instance, EITI Complete Summary Data Table, available at: <https://www.resourcedata.org/dataset/eiti-complete-summary-table>.

⁶⁵ According to its website, CNOOC currently operates in 21 countries. However, the company has disclosed payments in four additional countries via its project-level reporting in the UK (Ghana, Equatorial Guinea, Iceland, and New Zealand). See: CNOOC, “Key Operating Areas,” available at: <https://www.cnoclt.com/col/col7321/index.html>, accessed March 21, 2020, and NRG, “Open Source Data on Oil, Gas and Mining Payments,” www.resourceprojects.org, accessed March 21, 2020.

⁶⁶ NRG, “Open Source Data on Oil, Gas and Mining Payments,” www.resourceprojects.org.

⁶⁷ Vedanta Ltd. delisted from the London Stock Exchange in 2019. Given that the company was reporting project-level payments for all countries of operations until its delisting, however, it already has internal reporting systems in place. We have therefore included those country disclosures in our analysis. See Vedanta Ltd, Form 20-F, annual report for fiscal year ending March 31, 2019, available at: https://www.sec.gov/Archives/edgar/data/1370431/000119312519194036/d745879d20f.htm#toc745879_5.

⁶⁸ NRG, “Open Source Data on Oil, Gas and Mining Payments,” www.resourceprojects.org.

⁶⁹ EITI, Countries: implementation status, available at: <https://eiti.org/countries>, accessed March 20, 2020.