



Joseph Kraus, Ph.D.  
Policy Director, The ONE Campaign  
1299 Pennsylvania Ave. NW, Suite 400  
Washington, DC 20004

October 9, 2020

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

**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 write to provide an update to the Commission that is relevant to its consideration of draft rules implementing Section 1504. This update further demonstrates the necessity of ensuring that the Commission's final rule closely aligns with the international standard that has now become industry standard practice, as detailed in previous submissions.<sup>1</sup> To do so, it is essential that the final rule require fully public and disaggregated reporting of payments at the contract level, and with a payment threshold consistent with other markets.

***EITI expands reach of global standard on project-level transparency to new countries, companies***

**Angola:** In September, Angola formally notified the EITI of its intention to join and implement the EITI Standard.<sup>2</sup> In a recent letter to the EITI Board, the Minister of Mineral, Oil and Gas Resources, appointed by the President to lead coordination, outlined steps already taken toward EITI implementation.<sup>3</sup>

Angola's EITI implementation will cover several US-listed companies, including BP, Chevron, China Petroleum & Chemical Corporation, Eni, Equinor, ExxonMobil, and Total. It will also

---

<sup>1</sup> See for instance comment submitted by The ONE Campaign (Mar. 25, 2020), available at: <https://www.sec.gov/comments/s7-24-19/s72419-6996927-214761.pdf> (summarizing strong industry support for alignment of implementation of section 13(q) with the international transparency standard and detailing the extent to which US-listed companies already disclose payments to government information under similar reporting standards).

<sup>2</sup> See, e.g. 'Maximum transparency' pledge: Oil giant Angola plots path to EITI membership, Upstream Online (Sept. 3, 2020) <https://www.upstreamonline.com/politics/maximum-transparency-pledge-oil-giant-angola-plots-path-to-eiti-membership/2-1-868853>; Angola to join oil and extractives transparency group, Reuters (Aug. 29, 2020) <https://www.reuters.com/article/us-angola-oil/angola-to-join-oil-and-extractives-transparency-group-idUSKBN25P0PA>.

<sup>3</sup> Angola formalises its intention to join the EITI, EITI (Sept. 22, 2020) <https://eiti.org/news/angola-formalises-its-intention-to-join-eiti>.

expand reporting of project-level payments made to the government of Angola by significant non-listed companies, as shown in Angola's latest oil block map.<sup>4</sup> This includes Angola's national oil company Sonangol E.P., which will be required to disclose payments under the EITI Standard.<sup>5</sup>

This development is material to the Commission's rulemaking on Resource Extraction for a number of reasons. In addition to serving as further evidence of the expanding global consensus around the proper standard for payment transparency, it is also worth noting that certain industry commenters previously suggested in the Commission's original rulemaking that Angola might be one of the few countries that prohibit such disclosures. In addition to the reporting by companies operating in Angola that has already taken place, the Angolan government's announcement that it will implement the EITI further confirms that no such reporting barriers exist.<sup>6</sup>

This development shows not only that no such exemptions would be necessary, but also demonstrates how important it is that there be robust, meaningful safeguards around any potential consideration of exemptive relief on the basis of alleged foreign law prohibitions in order to prevent abuse.<sup>7</sup> Based on industry comments to the Commission in its original rulemaking, had a self-executing exemption been in place in 2012, several issuers likely would have claimed exemptive relief for Angola, despite a lack of evidence any such relief was actually necessary, and despite the fact that European and Canadian companies shortly thereafter began reporting disaggregated project level payments in Angola with no issues. The Commission must ensure it prevents abuse of any exemptive relief it may consider in the final rule, given justifiable concerns over certain issuers' past specious claims in this regard.

We note also that this development further illustrates that contract-level payment transparency has become standard industry practice in a way that has important implications for the Commission's estimate of costs attributable to its final rule. As we have explained in past submissions, the Commission must take into account the extent to which U.S.-listed companies are already required to have systems in place for reporting at the

---

<sup>4</sup> Sonangol EP. Angola-Concessions.

<https://www.sonangol.co.ao/English/AreasOfActivity/Concessionary/Documents/GAD201901-DMC0001-I.pdf>. (Accessed Oct. 1, 2020).

<sup>5</sup> See PWYP-US comment (Mar. 16, 2020) at 59 and The ONE Campaign comment (Mar. 25, 2020) (discussing the extent to which US-listed companies not cross-listed in other jurisdictions already report under the same standard in numerous EITI countries, and showing why this must be taken into account in the Commission's cost analysis as these are reporting costs that are already, or will soon be, incurred and thus could not be attributed to compliance with U.S. disclosure rules).

<sup>6</sup> See PWYP-US comment (Mar. 16, 2020) at 80, available at: <https://www.sec.gov/comments/s7-24-19/s72419-6961610-212816.pdf> (summarizing the history of industry commenters' claims with respect to Angola, and the evidence of companies already reporting project-level payments in Angola).

<sup>7</sup> See *Ibid*, at 83-95, for specific suggested safeguards.

contract level based on EITI countries in which they operate, in addition to countries that mandate such reporting.<sup>8</sup>

This makes costs associated with using a similar definition in the United States lower, as (at a minimum) large segments of many such companies will already be set up accordingly. But conversely, it also shows that adopting the API's "Modified Project Definition" would *not* have the cost saving implications that the Commission has seemingly assumed in the proposed rule (without meaningful analysis or evidentiary support). Indeed, there is no evidence whatsoever that anyone – any company, any country, investors, other data users or anyone else – has ever used such a definition for "project," let alone for their internal record keeping.<sup>9</sup> International consensus has solidified around a contract-based project reporting standard, and the number of companies and countries implementing it through the EITI and mandatory reporting regimes has only continued to grow.

Alignment of Section 13(q) with this international project reporting standard is not only essential to implement the specific mandate from Congress in Section 1504, but is also a critical cost saving and benefit-enhancing measure, whereas using a novel definition as currently proposed would only complicate reporting for companies and data users alike, likely increasing compliance costs for companies while hindering the ability of data users to analyze comparable reporting across different jurisdictions. This is true even if the Commission allows issuers to fulfill their Section 13(q) reporting requirements by submitting reports from alternative reporting regimes (i.e. Canada, EITI, EU, Norway, UK).

To illustrate, ExxonMobil discloses, or soon will disclose, payments to government under the EITI or mandatory reporting regimes in 25 of the 39 countries in which we have identified relevant exploratory or production activities.<sup>10</sup> Should the Commission implement its "Modified Project Definition", ExxonMobil could either: 1) set up a new internal accounting system to track payments in the 14 countries for which it does not currently report payments, and operate two distinctly different accounting systems across the company's operations, or 2) use the same accounting system already in place to track payments (expanded to the 14 countries for which payments are not currently reported, if such a system is not already being used there). Scenario #1 would almost certainly lead to additional compliance costs since there is no evidence that ExxonMobil (or any company) currently tracks payments in ways compatible with the Commission's proposed "Modified

---

<sup>8</sup> In the Appendix below we update our previously submitted analysis (The ONE Campaign, Mar. 25, 2020) to account for recent international developments. **The 45 US-only issuers that operate in EITI implementing countries or in countries that mandate payment disclosure already cumulatively disclose payments in more than 59% (182 of 308) of their country operations.**

<sup>9</sup> See Alan Detheridge comment (Mar. 15, 2020), available at: <https://www.sec.gov/comments/s7-24-19/s72419-6955597-212686.pdf> (a former senior executive at Royal Dutch Shell, one of the world's largest oil and gas companies, noting that the Commission's proposed modified project definition is atypical and would require companies to construct new internal accounting systems).

<sup>10</sup> See The ONE Campaign comment (Mar. 25, 2020), available at: <https://www.sec.gov/comments/s7-24-19/s72419-6996927-214761.pdf>.

Project Definition”, and abundant evidence that ExxonMobil (and many other companies) do already track payments at the contract-level.

**Uganda:** The EITI Board in August also approved Uganda’s application to join the EITI.<sup>11</sup> As a result, the payments to government of US-listed companies CNOOC and Total, which operate in Uganda, will be disclosed. Angola’s subsequent announcement makes it the 55<sup>th</sup> country to commit to EITI implementation.

**State-Owned Companies:** The number of state-owned oil companies signed up as EITI Supporting Companies has also continued to grow. In addition to Qatar Petroleum, which became an EITI Supporting Company in October 2019,<sup>12</sup> this August, Nigeria’s national oil company, the Nigerian National Petroleum Corporation (NNPC), became an EITI Supporting Company,<sup>13</sup> thereby committing to follow the EITI’s Supporting Company expectations, which include “promoting transparency throughout the extractive industries.”<sup>14</sup> This further demonstrates the consensus around payment transparency standards and further shows the need for the United States to align with other markets and the international community to further bolster this significant progress.

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

Please feel free to reach out should you need additional information on the above.

Sincerely,



---

<sup>11</sup> *Uganda joins the EITI*, EITI (Aug. 12, 2020) <https://eiti.org/news/uganda-joins-eiti>.

<sup>12</sup> *See Qatar Petroleum joins EITI as a supporting company*, EITI (Oct. 17, 2019) <https://eiti.org/news/qatar-petroleum-joins-eiti-as-supporting-company>. See also PWYP-US comment (Mar. 16, 2020) at 80-81.

<sup>13</sup> *Nigerian National Petroleum Corporation becomes an EITI supporting company*, EITI (Aug. 18, 2020) <https://eiti.org/news/nigerian-national-petroleum-corporation-becomes-eiti-supporting-company>.

<sup>14</sup> *Expectations for EITI supporting companies*, EITI (June 2018) <https://eiti.org/document/expectations-for-eiti-supporting-companies>.

[illegible]