ITF House
49 - 60 Borough Road
London SE1 1DR

Telephone +44 (0)20 7403 2733
Fax +44 (0)20 7357 7871

国際運輸労連
International Transport Workers' Federation
Federación Internacional de los Trabajadores del Transporte
Fédération internationale des ouvriers du transport
Internationella Transportarbetarefederationen
Internationale Transportarbeiter-Föderation
Международная федерация транспортников
التنظيم عالمياً، النضال من أجل حقوقنا

March 7, 2016

Dear Chair White and Fellow Commissioners:

I am writing on behalf of the International Transport Workers' Federation (ITF) to express our support for the adoption of the proposed rule implementing Section 1504 of the Dodd Frank Act, and to respond to comments urging the Commission to accept voluntary disclosure.[1]

As an initial matter the ITF strongly supports the rule as proposed by the Securities and Exchange Commission on December 11, 2015. The ITF is an association of 700 labor unions representing more than 4.5 million workers in 150 countries. Many of the workers affiliated with our organization work in the resource sector. These members transport coal, oil, gas or other resource products and provide services to resource projects in both the construction and production phases. Having a financially sound, transparent and sustainable resource sector is vitally important to our members' employment, well-being and security.

Our member organizations are also stewards of benefit funds that are heavily invested in companies in the resource sector and are represented on employee benefit funds around the world. These funds range from small funds with only a few million dollars in assets under management to funds that are counted among the largest institutional investors in the world and manage hundreds of billions of dollars. The assets of these funds are deferred wages invested for the benefit of fund participants and their families.

As a representative of employee benefit fund trustees our view is that transparency about risks and returns is fundamental to having a well-functioning market. Resource companies have a complex set of risks to navigate and often the

[1] In particular I would like to respond to comments made by Ourada, Jeanette from Chevron Corp. "Disclosure of Payments by Resource Extraction Issuers (File Number S7-25-15)." Letter to Brent Fields. 16 Feb. 2016. San Ramon, California; Rosenthal, David from Exxon-Mobil Corp. "Disclosure of Payments by Resource Extraction Issuers." Letter to Brent Fields. 16 Feb. 2016. Irving, Texas; retrieved from https://www.sec.gov/comments/s7-25-15/s72515.shtml as well as the various comments submitted by the American Petroleum Institute and published on their website at http://publications.api.org/API1504/

nature, timing and extent of these risks are not adequately understood even by sophisticated investors. That is one of the main reasons we are in support of adopting this rule and ensuring that it has broad application. A more transparent and accountable investment climate will better protect the assets built up by our members and their respective benefit funds.

Project transparency helps investors by balancing incentives for optimism bias

It is often difficult for investors to assess the prospects and operations of resource projects. This is especially true of megaprojects and large-scale operations. Companies tout many projects as financially sound that ultimately fail to live up to their promises. Despite claims of tremendous benefits and limited risks, megaprojects often are delayed and over-budget. Oxford Professor Bent Flyvbjerg describes this phenomenon as the 'megaproject paradox.' Having surveyed megaprojects around the world, Flyvbjerg and his colleagues have concluded that project participants often have incentives to underestimate costs, overestimate revenues, undervalue environmental impact, and overvalue the project development effects. For Flyvbjerg, these incentives are magnified by a lack of project transparency and accountability.[2] As oil and other commodity prices decline, investors in resource companies will increasingly have to wrestle with the paradox that Flyvbjerg and colleagues describe. Projects that were once touted as 'winners' may be more and more likely to lose money. Having project level disclosure about payments made to governments, taxation arrangements and other project features will provide investors with better tools to assess the risks and returns of projects, and to judge the track record of managers in implementing projects. The advantage of this data lies in giving investors a view of project governance and organization, and will likely contribute to a more enhanced sense of project success than would production data alone.

These concerns are not limited to projects in the developing world. A prime example of how project level disclosure can help investors comes from Australia and the Gorgon liquefied natural gas project. Gorgon is the largest natural resource project in Australia's history. It is built and operated by a consortium of energy companies. Chevron is the project operator with a 47.3% stake; Exxon-Mobil and Shell each maintain a 25% interest; and Japanese utilities Osaka Gas, Tokyo Gas and Chubu Electric hold the balance of equity in the project. [3]

---

[2] Flyvbjerg, Bent, Nils Bruzelius, and Werner Rothengatter. *Megaprojects and Risk: an Anatomy of Ambition*. Cambridge: Cambridge University Press, 2013.

[3] See Chevron Fact Sheet Gorgon Project, retrieved January 3, 2016; https://www.chevronaustralia.com/docs/default-source/default-document-library/fact-sheet-gorgon-project-overview.pdf?sfvrsn=19

When the project was being contemplated project backers asserted it would begin shipping by 2014 and cost roughly $37 billion.[4] Moreover they predicted that it would produce enough revenue to allow governments to reduce personal income tax rates. [5] Such a project would likely seem promising to both governments and investors, and the company maintained that it would be "very economic" going forward.[6] Over the next several years the company spent a substantial portion of its total capital expenditure on projects in the international upstream business segment.

Year	Chevron Announced Planned Capex Spending	International Upstream Expenditure
2011	$26 Billion	$17.2 Billion
2012	$32.7 Billion	$22.3 Billion
2013	$36.7 Billion	$25.5 Billion
2014	$39.8 Billion	$27.9 Billion
2015	$35 Billion	$23.4 Billion

Source: Chevron Annual Reports and press statements [7]

In the upstream segment, Gorgon and Wheatstone were the largest and most expensive projects.[8] Investors were repeatedly told that these projects were important to the financial future of Chevron and its future growth. Below is a selection of quotes from Chevron reports and executives on the subject.

- In December 2013, Chevron Vice-Chairman George Kirkland described the Wheatstone and Gorgon projects this way, "These LNG developments are two of our most important future legacy assets, representing approximately

---

[4] Wai-yin Kwok, Vivian. "Australia's $37 Billion Gorgon Project Gets The Go-Ahead." *Forbes*. Forbes Magazine, 14 Sept. 2009.

[5] Chevron Australia, Draft Environmental Impact Statement/Environmental Review and Management Programme for the Proposed Gorgon Development , September 2005, Chapter 15 Economic Environment Effects and Benefits, pp. 731-732. https://www.chevronaustralia.com/our-businesses/gorgon/environmental-approvals; see also Chenoweth, Neil. "Chevron Claimed Gorgon Bonanza Would Pay for Tax Cuts." Australian Financial Review, 16 Nov. 2015.

[6] Chambers, Matt. "Gorgon Project Profitable despite Cost Blowout Says Chevron." The Australian, 1 Dec. 2012. & Quinn, Russel. "Chevron's Gorgon Project Taking Shape." *Perth Now* 2 Feb. 2011

[7] See Chevron press releases at:
www.chevron.com/chevron/pressreleases/article/12092010_chevronannounces260billioncapitalandexploratorybudgetfor2011.news;www.chevron.com/chevron/pressreleases/article/12072011_chevronannounces327billioncapitalandexploratorybudgetfor2012.news;www.chevron.com/chevron/pressreleases/article/12052012_chevronannounces367billioncapitalandexploratorybudgetfor2013.news;www.chevron.com/chevron/pressreleases/article/12112013_chevronannounces398billioncapitalandexploratorybudgetfor2014.news;www.chevron.com/chevron/pressreleases/article/01302015_chevronannounces350billioncapitalandexploratorybudgetfor2015.news See Chevron Australia Factsheet August 2015 http://www.chevron.com/documents/pdf/australiafactsheet.pdf.

[8] See Chevron press releases at:
www.chevron.com/chevron/pressreleases/article/12052012_chevronannounces367billioncapitalandexploratorybudgetfor2013.news;www.chevron.com/chevron/pressreleases/article/12112013_chevronannounces398billioncapitalandexploratorybudgetfor2014.news;www.chevron.com/chevron/pressreleases/article/01302015_chevronannounces350billioncapitalandexploratorybudgetfor2015.news

400,000 barrels a day of net production at full capacity. They will be substantial contributors to our cash flow for decades to come." [9]

- In 2009, Chevron Chairman Dave O'Reilly was quoted as saying, "With a total resource base of more than 40 trillion cubic feet of gas and an estimated economic life of at least 40 years, Gorgon will be a major contributor to our company's future growth."[10]

- The Chevron Australia Factsheet published on the internet says, "Currently, LNG makes up about seven percent of Chevron's global production and is expected to increase to 14 percent by 2017. This will be largely driven by the Gorgon and Wheatstone Projects which are major contributors towards the company's growing production. Right now we are investing billions to develop world-scale LNG projects that will spearhead Australia as a leading supplier of clean natural gas to Asia. Gorgon and Wheatstone will make Chevron one of the world's leading LNG suppliers.[11]

As the Gorgon project approaches its first shipment one might now question whether Gorgon has suffered from the biases and misaligned incentives that Flyvbjerg and his colleagues identify. Chevron's disclosures about the project have demonstrated growing budgets and shifting timelines. Initial estimates for the Gorgon project from securities filings in 2009 reportedly indicated that the project would be complete by mid-2014 and cost roughly USD $37 billion. Chevron now estimates Gorgon's cost overrun to be $17 billion – or 45% – above initial estimates, and projects Gorgon will deliver first gas in the first half of 2016, two years after initial projections of the project being operational.[12] But even as Chevron's disclosure to investors shifted Gorgon's start date, project partner Shell maintained that the project would commence shipping between 2016 and 2018.[13]
Investors could be forgiven for wondering what the real returns and operational milestones of the project are. Why was Shell, a non-managing partner in the

---

[9]See Chevron press release "Chevron announces $39.8 billion capital and exploration budget for 2014" available at: http://www.chevron.com/chevron/pressreleases/article/12112013_chevronannounces398billioncapitalandexploratorybudgetfor2014.news

[10] See Chevron press release "Chevron makes final investment decision to Construct Gorgon Natural Gas Project" available at: http://www.chevron.com/chevron/pressreleases/article/09132009_ChevronMakesFinalInvestmentDecisiontoConstructGorgonNaturalGasProject.news

[11] See Chevron Australia publication available at: http://www.chevronaustralia.com/docs/default-source/publications/chevron-australia-corporate-brochure.pdf?sfvrsn=2

[12] Sabine Pass and Gorgon LNG Prepare for First Shipments, Oil and Gas 360, February 22, 2016 and for initial projections see Chevron Makes Final Investment Decision to Construct Gorgon Natural Gas Project September 13, 2009, http://www.chevron.com/chevron/pressreleases/article/09132009_ChevronMakesFinalInvestmentDecisiontoConstructGorgonNaturalGasProject.news

[13] McDonald-Smith, Angela. "Shell Casts Doubt on Chevron's Gorgon Gas Field Start Date." *The Sydney Morning Herald*. N.p., 15 Mar. 2014 available at: http://www.smh.com.au/business/mining-and-resources/shell-casts-doubt-on-chevrons-gorgon-gas-field-start-date-20140314-34se3.html

venture, able to correctly identify when first gas would begin and why did Chevron not do the same?

For investors trying to understand the risks and returns of projects like these, that are important to the future finances of Chevron, the shifting and different narratives of projects are difficult to wade through. Project level disclosure about payments, lease sharing arrangement and taxes paid will give a much clearer view of the governance, prospects and operations of projects. Knowing that shareholders will have ex-post information on project governance and performance would reduce any incentive for overly optimistic disclosures about projects.

Problems with voluntary disclosure

In comments submitted to the SEC and other public statements, Exxon-Mobil, Chevron, the American Petroleum Institute and others have expressed a preference for voluntary disclosure. If voluntary disclosure is accepted then project reporting will mostly be left open to the incentives that Flyvbjerg et al. describe. The draw towards optimism bias as well as under-reporting risks and negative information will be strong and investors will have little ability to weigh statements presented by companies.

An example of how these incentives may work comes from Angola. In Chevron's 2013 10-k, and at its 2014 Annual Meeting, as well as in other shareholder communications, the company failed to disclose that the $10 billion LNG megaproject in Angola was shut down due to a pipeline fracture.[14] Chevron's subsidiary, Cabinda Gulf Oil Company Limited, has a 36.4 percent interest in the project, along with Sonangol which has a 22.8 percent interest and subsidiaries of Total, BP and ENI, each with a 13.6 percent interest. Chevron's partner Sonagol started to report delays, maintenance and other issues on the project as early as October 2013. By contrast Chevron made no mention of delays in its 2013- 10-k or annual reports.[15] As one reporter noted, Chevron neglected even to mention the shutdown at its 2014 shareholders meeting at which it touted its LNG accomplishments.[16] In this instance Chevron and its partners provided shareholders with information about projects presumably as a means of helping them to understand business prospects and operations. But the disclosures appear to have

[14] Press Release, "Chevron Confirms First Cargo From Angola LNG" http://online.wsj.com/article/PR-CO-20130616-900596.html June 16, 2013, retrieved June 27, 2014. Moran, Jacinta "Gas Leak to keep Angola LNG Plant out for a year", Platts Oilgram News, May 29, 2014.
[15] See article at https://www.downstreamtoday.com/Projects/Project.aspx?project_id=65&AspxAutoDetectCookieSupport=1
[16]Gilbert, Daniel, " Chevron Boasts about Angola, forgets to mention one important detail", The Wall Street, Journal, May 28, 2014, http://blogs.wsj.com/corporate-intelligence/2014/05/28/chevron-boasts-about-angola-forgets-to-mention-one-important-detail/ retrieved June 27, 2014.

omitted important information. Relying solely on voluntary disclosure of project level payments could produce similar results.

In their comments on rule 1504, Chevron and Exxon-Mobil cite their membership in EITI as evidence of their commitment to transparency. API notes that many of its members participate in EITI programs. Yet, even in EITI, in which Chevron and Exxon-Mobil have a stake and have participated in developing standards for transparency and disclosure. Both firms declined to report their taxes, again demonstrating the limits of voluntary disclosure of project payments from extractive firms.[17]

Understanding tax schemes important for evaluating project and country risk

Resource companies often invest in countries for long periods of time; they often must manage assets for 25 years or more. The leases and assets attached to resource development might persist even after regimes change or other political upheavals create a climate in which it is difficult to operate. It can be difficult for investors to understand the risks, rewards and trade-offs of projects in volatile countries and regions or even in stable countries with changing political climates. Transparency about resource company payments to government entities or officials may help investors to assess the financial and operational prospects of projects and have a clear view of the project importance. The proposed rule will assist in this sense by allowing investors to make their own judgments about the nature of financial arrangements made between resource companies and governments or government officials. Systematic and standardized transparency on payments to governments on a project by project basis should reduce risks to investors and provide the basis for independent and informed analyses.

This is especially the case when evaluating effective taxing arrangements. Understanding the taxes paid on a project can give important perspective about operations, risk and the environment in which a project operates as well as be a marker for profitability. For example, the Federal Court of Australia recently ruled that Chevron and its subsidiaries have engaged in a transfer pricing scheme where profits are siphoned out of Australia and transferred to a Delaware based subsidiary of Chevron. This scheme has meant the loss of more than $269 million in taxes for Australia. The company has been ordered to repay the taxes with penalties bringing the total amount that the company owes the Australian Tax Office to more

[17]See report at https://www.doi.gov/sites/doi.gov/files/uploads/USEITI_Extractive%20Revenue%20Appendix_Final_120215.pdf p. 68

than $300 million.[18] Moreover, a recent Australian Senate inquiry has revealed that the ATO is auditing an additional $36.5 billion loan involving Chevron as another possible part of the alleged transfer-pricing scheme.[19] Similarly, Chevron and Exxon-Mobil are in the midst of appeals in the Tax Court of Canada over their stakes in the Hibernia Project. [20]

Taxes and compliance with tax laws are important aspects of project and firm success. Major disputes with tax authorities carry regulatory, reputational and financial risk that investors should be aware of. The proposed rule will help to provide investors with an enhanced view of these and other issues at extractive firms.

Emerging global consensus means lower administrative burden in reporting

Investors, regulators and members of civil society around the world are moving to increase the transparency in the resource sector. Many companies will now face reporting requirements around the world. The adoption of extractives payment transparency laws in the EU and Canada, tax transparency laws in Australia and other measures mean that many resource companies that have operations in these jurisdictions will already have to report many of the payments identified in the December 11 rule. The rule should be less expensive to implement now given that many companies already now have to operate in similar reporting regimes.

- In 2013, the European Union adopted the EU Accounting and Transparency Directives. These directives require companies involved in the oil, gas, mining, and logging sectors and operating in the EU to disclose payments they make to governments on a per government and per project basis. In 2014, the United Kingdom became the first of the EU member states to implement the EU Accounting Directive; [21]
- In December 2014, the Canadian government adopted a federal resource extraction disclosure regime similar to the Commission's originally adopted

[18] Chenoweth, Neil. "Round 2: How Tough Will Tax Office Play After Its $269 Million Court Win over Chevron." *Australian Financial Review*. N.p., 9 Nov. 2015. Available at: http://www.afr.com/business/energy/gas/round-2-how-tough-will-tax-office-play-after-its-269m-court-win-over-chevron-20151108-gktum3

[19] Chenoweth, Neil. "Round 2: How Tough Will Tax Office Play After Its $269 Million Court Win over Chevron." *Australian Financial Review*. N.p., 9 Nov. 2015. Available at: http://www.afr.com/business/energy/gas/round-2-how-tough-will-tax-office-play-after-its-269m-court-win-over-chevron-20151108-gktum3 and see Khadim, Nassim. "Chevron loses long running battle with ATO, faces multimillion dollar tax bill" Sydney Morning Herald, October 23, 2015 http://www.smh.com.au/business/the-economy/chevron-loses-longrunning-battle-with-ato-faces-multimilliondollar-tax-bill-20151023-gkgk6y.html#ixzz42KkQ3gP1

[20] See Canadian Tax Court Appeal, 2013-759(IT)G Chevron Canada as well Canadian Tax Court Appeal 2012-1389(IT)G Exxon Mobil Hibernia Canada.

[21] See information available at http://europa.eu/rapid/press-release_MEMO-13-546_en.htm; http://ec.europa.eu/finance/company-reporting/index_en.htm at http://www.oxfamamerica.org/press/uk-passes-historic-transparency-law-for-oil-gas-and-mining-companies/.

resource extraction rules, known as the Extractive Sector Transparency Measures Act ("ESTMA").[22]

- Australia has implemented the OECD's Country-by-Country reporting effective from January 1, 2016. The reporting requirements apply to any entities operating in Australia with annual global income of AUD 1 billion or more. Companies will be required to report annually to the Australian Tax Office income and taxes paid globally. Detailed reporting of intercompany transactions will also be required. [23]

Additionally, claims that this measure will somehow make firms less competitive seem diminished given that there are already a number of companies such as Statoil, BHP Billiton, Rio Tinto and others that have been publicly reporting government payments. [24]

We commend the SEC on reflecting the needs of investors by adopting rules for Section 1504. We hope that the examples we have provided highlight how important and useful the rule is to investors and in creating a transparent investment climate. We believe that specific, public project level payment disclosure is of the utmost importance in the adoption of the December 11 rule. We believe that it will give investors better insight into the risk and return inherent in business strategy, will aid in understanding country risk and will not be unduly burdensome for companies. We hope that the major resource companies will see the opportunity to be market leaders in a changing global context that is demanding greater transparency rather than trying to delay or weaken these necessary changes.

Sincerely,

Shannon O'Keeffe
Resource Policy Director - Sydney Office
International Transport Workers' Federation
Level 2, 365 Sussex Street
Sydney NSW 2000

---

[22] *See* Letter from Publish What You Pay (Mar. 14, 2014), *available at* http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf; *Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies,* Publish What You Pay (updated Feb. 2015), *available at* http://www.publishwhatyoupay.org/wp-content/uploads/2015/10/Company_Coverage_Fact_Sheet_Final.pdf and http://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html

[23] See reporting at: https://www.ato.gov.au/general/new-legislation/in-detail/other-topics/international/country-by-country-reporting-and-transfer-pricing-documentation/#

[24] See company reports at: http://www.riotinto.com/ourcommitment/features-2932_14713.aspx; http://www.statoil.com/en/environmentsociety/sustainabilityapproach/pages/transparency.aspx; http://www.bhpbilliton.com/society/operatingwithintegrity/bhp-billiton-revenue-transparency-principles