1100 New York Avenue NW
Suite 710W
Washington, DC 20005

ASP
American Security Project

January 21, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Comment on Proposed Rule Requiring
Disclosure of Payments by Resource Extraction Issuers

Dear Secretary Fields:

I write to provide the following comments on proposed rule 13q-1, approved by the U.S. Securities and Exchange Commission (SEC), on December 11, 2015, on behalf of myself and the American Security Project (ASP), where I serve as the Director of Studies and Senior Fellow for Energy and Climate. Based in Washington, D.C., ASP is a nonprofit, nonpartisan public-policy organization created to educate public audiences about the changing nature of America's security and global leadership in the 21st Century.

ASP's interest in this issue derives from the belief that greater transparency of resource-extraction payments to foreign nations is fundamentally a good thing; that putting in place a protocol that allows for these disclosure data to be submitted, collected, curated and made available to the public in a broadly accessible and intelligible way is essential to the program's success; and that the SEC has an historic opportunity to implement a system that, if done right, can be replicated by regulatory agencies around the world, allowing the United States to reclaim a position of leadership. I was the author of a report, "Alleviating the Resource Curse" published on November 23, 2015 that explained these principles in full, and provided a model for how to move forward. The report was provided to the SEC through your public comment protocol.

As currently constituted, I am concerned that the proposed rule falls short on a number of these core imperatives. The rule will adopt fundamental aspects of proposed payment disclosure directives from Europe and elsewhere. If these rules are implemented here, it will make it harder – not easier – to both protect the competitiveness of U.S.-listed companies operating abroad and provide the public with the information it needs to ensure that the governments receiving these payments can be held to account.

In my November report, I outlined a foreign-payments disclosure system that would deliver on the priorities of transparency for the public and competitiveness for American industry. That report focused in particular on the value of embedding a "dashboard" tool for viewing disclosed data that could be accessed and used by lay audiences. Such a tool that would allow interested parties to gather information on payments broken-out by the type of resource that had been produced, the type and nature of the extraction activity in question, and the specific state, province and/or regional jurisdiction in which those activities had taken place.

Congress's intent in advancing this historic legislation was not merely to create new data streams for the sake of creating new data streams – as I'm afraid this rule would do. Congress meant to build on the work that has already been done, most notably through the international Extractive Industries Transparency Initiative (EITI). We can introduce greater order, consistency, accessibility and informational integrity to the existing regime. Having in place a system that allows for this level of disaggregated disclosure is critical in delivering on the broader policy imperatives envisioned by Congress when it first passed Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act back in 2010.

But as other commenters have noted in their submissions, the protocols currently being contemplated by various regulatory agencies abroad, and specifically in and by the European Union (EU), suffer from many of the same structural inconsistencies and incongruities that Congress rightly sought to correct by way of Dodd-Frank. Most troubling, the new proposed rules issued by SEC appear to accept at face-value the utility of adopting an overly expansive EU definition of what constitutes a "project," potentially forcing regulated parties to release detailed contract-level information related to their specific operations and putting them at a significant competitive disadvantage relative to non-listed, and particularly state-sponsored, firms that are not subject to the same rules.

The report specifically addressed the issue of defining a project, specifically saying that all resource extraction projects can be defined by three key attributes: (1) What resource is being extracted, (2) How the resource is being developed, and (3) Where the development is taking place. The combination of what resource, how it is extracted, and where it is extracted from is a comprehensible, easily accepted way of reporting that will produce meaningful results.

Everyone agrees that the overriding public-interest goal of Section 1504 isn't to handicap U.S.-listed firms relative to their state-owned competitors. It's to create a system that allows disclosure data to be usable to public audiences – so that these audiences themselves can insist on accountability from their home governments.

Nothing we've seen from the disclosure protocols being contemplated by the EU and other foreign regulatory agencies gives us confidence that citizens will have access to such a system if the SEC goes forward and adopts a de facto EU model. To the contrary, the regimes currently being discussed appear to suffer from many of the same problems that make our present system ineffective: companies use different definitions to describe largely similar activities; there are no standardized naming conventions for projects; and great volumes of data is generated by many of different parties, but there is no framework in place that allows everyday citizens to have even a fighting chance of understanding what's actually being reported.

The good news, as discussed in ASP's November report, is that a workable model does exist, and with a few small but important changes made to its structure, could be adopted in a way that addresses each and every one of the issues highlighted above. Specifically, the data disclosure dashboard system developed by the American Petroleum Institute (API), would seem on its face to represent a credible, significant upgrade over the protocols at the core of the proposed set of rules promulgated by SEC this past December. Attached to this letter, please find a copy of that study, which I previously submitted to the Commission soon after its new rules were announced.

I understand the Commission's previous attempts over the past several years to develop, refine and implement a 1504 rule that both aligns with Congress's goal of promoting greater foreign payment transparency in the resource-extraction sector and protects the competitiveness of U.S.-listed firms operating abroad. ASP commends the SEC for its diligence and hard work in arriving at the point where we find ourselves today.

But, as discussed in the report, there will be no "do-overs" available to the Commission this time around. This final stage represents the last opportunity for SEC to put a system in place that both works here at home and can be adopted as a standard around the world. This is the final chance to deliver to citizens both here in the United States and around the world a regime that is actually useful in a real-world context.

Unfortunately, the current proposed rule does not, at present, meet this standard, and I hope the Commission uses this comment period and the time still available to make the changes necessary to ensure that it can, and does, meet it moving forward. I thank you for your time and for your forthright consideration.

Sincerely,

Andrew Holland
Director of Studies
American Security Project