



**Kyle B. Isakower**  
Vice President  
Regulatory and Economic Policy

1220 L Street, NW  
Washington, DC 20005-4070  
Telephone (202) 682-8314  
Fax (202) 682-8408  
Email isakowerk@api.org  
www.api.org

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Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Subject: File Number S7-42-10  
Release No. 34-63549

Dear Ms. Murphy:

As the recent court decision in *Business Roundtable and Chamber of Commerce v. SEC* makes clear, the Commission's rulemaking under the Exchange Act must adequately consider the rule's effect upon efficiency, competition and capital formation. In this regard, the *Business Roundtable* decision is consistent with President Obama's July 22, 2011 Executive Order, including independent regulatory agencies such as the Securities and Exchange Commission within the scope of the earlier Executive Order 13563. Executive Order 13563 directed federal agencies to engage in a cost-benefit analysis, with the participation of the public, of proposed and existing regulations.

As explained in detail in prior comment letters submitted by API and by many of our member companies, the pending rulemaking under Section 13(q) of the Exchange Act has the potential to impose substantial costs and to have significant adverse effects on efficiency, competition and capital formation. We refer not only to the potential for hundreds of millions of dollars in direct reporting and compliance costs,<sup>1</sup> but to the very real potential for tens of *billions* of dollars of existing, profitable capital investments to be placed at risk should the final rules require public disclosure of information that is prohibited from disclosure by the laws of other countries.<sup>2</sup> In addition to the risk to existing investments, substantial value could be lost to SEC filers and their shareholders because of competitive harm from disclosure of overly detailed information,<sup>3</sup> and from the fact that such filers may be excluded from many future projects altogether. Of course, since energy underlies every aspect of the economy, these negative impacts have repercussions well beyond resource extraction issuers.

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<sup>1</sup> See API comment letter dated January 28, 2011 ("API letter"), Paperwork Reduction Act response.

<sup>2</sup> See API letter, response to Question 54 *et seq.*; see also, ExxonMobil comment letter dated March 15, 2011; Shell comment letter dated March 17, 2011; Shell comment letter dated August 1, 2011.

<sup>3</sup> See API letter, response to Question 60 *et seq.*

Fortunately, as also detailed in our prior letters, the Commission has clear discretion to implement Section 13(q) in a manner that substantially achieves the objectives of the legislation while minimizing the potential for damaging impacts.

First, the statutory language gives the Commission discretion to hold individual company data in confidence, and to use that data to prepare a public report consisting of aggregated payment information by country.<sup>4</sup> Such a high-level public report would address many of industry's concerns regarding disclosure of commercially sensitive or legally prohibited information, while still providing transparency as to the amounts received by governments from the extraction of their resources. Such an approach would also be consistent with the Extractive Industries Transparency Initiative, as provided in the statute.

In addition to holding such information in confidence and reporting only aggregated payment information by country, the Commission also has discretion in a number of additional areas to implement Section 13(q) in a manner that achieves its purposes while protecting against disproportionate harm.<sup>5</sup> Specifically, the Commission has authority to (i) define the term "project" so as to minimize the disclosure of commercially-sensitive individual contract terms; (ii) limit disclosure to "material" projects, consistent with long-standing disclosure principles; (iii) provide an exemption from the disclosure of information if prohibited by the laws of another country, consistent with existing Instruction 4 to Paragraph (a)(2) of Item 1202 of Regulation S-K; and (iv) provide an exemption from the disclosure of information that would result in competitive harm, consistent with existing General Instruction E of Form 10-K. To satisfy the requirements to consider the rule's effect upon efficiency, competition, and capital formation, we strongly encourage the Commission to use its discretion as described above, in addition to holding company data in confidence and preparing a public report consisting only of aggregated payment information by country.

In short, we believe there is a path forward that would appropriately balance costs and benefits under Section 13(q), achieve the positive objectives of the statute without causing disproportionate harm to SEC filers and their shareholders, and be supportable under recent court precedent. We urge the Commission to take that path.

Sincerely,



Kyle B. Isakower  
Vice President  
Regulatory and Economic Policy  
American Petroleum Institute

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<sup>4</sup> See API letter, response to Question 86.

<sup>5</sup> See letter from Cravath and seven additional law firms dated November 5, 2010; see also, API letter, responses to Questions 26, 39, 54, 60, and related questions.

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The Hon. Mary L. Schapiro, Chairman  
The Hon. Elisse B. Walter, Commissioner  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Troy A. Paredes, Commissioner

Ms. Meredith Cross, Director, Division of Corporation Finance  
Mr. Mark Cahn, General Counsel  
Mr. Craig Lewis, Chief Economist