International Association of Oil & Gas Producers

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

27th January 2011

Re: SEC consultation on the implementation of Dodd-Frank

Dear Ms Murphy,

The International Association of Oil and Gas Producers (OGP) is pleased to provide comments on the "Securities and Exchange Commission's proposed rules regarding Disclosure of Payments by Resource Extraction Issuers". We are writing on behalf of our thirty-four members active in the production of oil and gas within the European Union (EU).

As well as the specific issues raised below, we urge the Commission to implement consistent measures which will bring real benefits in terms of making third country governments more accountable and transparent while also promoting competitive and efficient capital markets as laid out in Section 3(f) of the Securities Exchange Act.

OGP believes good governance in resource-rich countries is crucial for the delivery of long-term development. For this reason, OGP has long supported the transparency principles of the Extractive Industries Transparency Initiative (EITI - public reconciliation of payments made by the extractive industries and revenues received by the host government) and is committed to working with the U.S. government and multilateral institutions, regulators, and civil society in their efforts to reduce corruption. We believe it is especially important to gain the consent and involvement of sovereign host governments in the disclosure of payment data.

In OGP's view, it is preferable for industry to have a global approach to reporting payments to host governments. Moreover, the recent proposed rules to implement the Dodd-Frank Act, whilst well-intentioned, are poorly conceived. For example the requirement to report tax payment data by project rather than by country (the EITI format) risks adding unnecessary confusion, costs and complexity for little or no benefit to the target audience. Furthermore corporate taxes are paid at the corporate entity or

country level and arbitrary disaggregation to 'project' level serves no meaningful purpose. The EITI process has long concluded that country level aggregation is the desired outcome and it would greatly assist simplicity and comparability with EITI if the SEC guidelines permitted similar country level reporting.

The European Commission is currently considering introducing tax payment disclosure obligations across the EU and has advised OGP that such disclosure would be limited to country level.

U.S.-issuing companies must not be placed at a competitive disadvantage

It is OGP's view that there is a real risk for competitive harm from the implementing rules. We wish to point out that, to comply with new SEC rules on payment disclosures, companies may withdraw from or may choose not to begin operations in certain countries if disclosure of payments breaches local law or contract conditions. This would place companies at a competitive disadvantage in international terms and has the potential to impact security of energy supply. There is also the risk that companies simply choose to delist from U.S. stock exchanges in order to avoid compliance. No such risk exists under EITI. Finally, it should be noted that some States will prefer to work with companies not subject to reporting requirements.

Areas deserving particular attention

We respectfully request that when considering the proposed rules, the following elements are taken into consideration:

Definition of "project": In many countries there may be hundreds of projects depending on the scale and maturity of the extractive sector. A narrow definition would lead to a requirement to prepare extensive data. OGP believes a key element to successful implementation would be an appropriately broad definition of the term "project" which allows U.S.-issuers to aggregate data from the same underlying resource (covered by multiple agreements). In our view, "projects" must relate to those that are "material" to a particular issuer. If the rules under Section 13(q) require public disclosure of unnecessarily detailed information, this is likely to place U.S.-issuing companies at a competitive disadvantage while doing little to advance the cause of transparency. Through on-the-ground experience, EITI has largely resolved these issues and we believe the Commission has the discretion to limit disclosure to "material" projects.

The need to aggregate data in the public domain: We understand the only reporting obligation for U.S.-issuers within Dodd-Frank is to the SEC. The provisions relating to the "public availability of information" (Section 3) allows for raw information provided to the SEC to be made available to the public in the form of a compilation. This is consistent with the EITI process and would protect companies from revealing competitively sensitive information or information that would violate host government laws related to the disclosure of commercial terms.

Exemptions for commercially sensitive information or disclosures prohibited by law: OGP believes there is a real need for exemption provisions where disclosure would

conflict with host government/local contractual laws and/or oil and gas contractual conditions or expose sensitive commercial data to competitors. Special care must be taken, as is the case under EITI, to ensure commercially sensitive information is protected – for example, if a company has only one project in a country, or is the only U.S. issuing company present. We believe exemption provisions relating to sensitive information are vital to ensure that U.S.-issuing companies do not hand a competitive advantage to non-U.S. issuing companies. In this regard, we note the Commission did not repeal Instruction E to Form 10-K. We believe instruction E would be sufficient to protect companies from having to violate host government laws or contract provisions or from having to disclose commercially sensitive information. However, the Commission's proposed amendments failed to include a similar instruction to Form 20-F. This failure would greatly prejudice foreign private issuers and be highly anticompetitive by providing a significant advantage to U.S. domestic listed companies. Given the Commission's history of fair dealings with foreign private issuers, we believe its failure to include a similar instruction to Form 20-F was probably an oversight. Accordingly, we urge the Commission to correct this inequity when adopting its final rules and treat all listed issuers fairly.

In summary, OGP would like to emphasise the following:

- We support the principle and aims of transparency in the context of identifying the totality of payments made to and received by host governments.
- Consideration must be given to creating appropriate solutions (including exemptions or suspensions from such obligations) if disclosure is prohibited by host governments.
- The Commission should aim to put in place rules that encourage the development of global reporting guidelines: these should follow the ground-breaking process embodied in the EITI template.
- Companies registered in the U.S. must not be placed at a competitive disadvantage due to the introduction of new reporting obligations.

We would be happy to discuss these points in further detail with you and your staff.

Yours sincerely,

B Raabe

Beate Raabe
Director EU Affairs