ANGLOGOLD ASHANTI

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January 31, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

File No. S7-42-10

Dear Ms. Murphy:

AngloGold Ashanti Limited is pleased to provide comments to the Securities and Exchange Commission (the "Commission") on its proposed rules to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), published in Release No. 34-63549, Disclosure of Payments by Resource Extraction Issuers (December 15, 2010) (the "Release").

AngloGold Ashanti Limited, headquartered in Johannesburg, South Africa, is a global gold company with a portfolio of long-life, relatively low-cost assets and differing orebody types in key gold producing regions. The company's 20 mining operations are located in 10 countries (Argentina, Australia, Brazil, Ghana, Guinea, Mali, Namibia, South Africa, Tanzania and the United States of America) and are supported by extensive exploration activities in a number of countries around the world. The combined proved and probable ore reserves of the group amounted to 68.3 million ounces as at December 31, 2009.

AngloGold Ashanti's American depositary shares are listed on the New York Stock Exchange under the symbol "AU". As a well-known seasoned issuer and a foreign private issuer, AngloGold Ashanti files annual reports with the Commission on Form 20-F and furnishes its home jurisdiction periodic reports with the Commission on Form 6-K.

AngloGold Ashanti fully supports the aim of Section 1504 of the Dodd-Frank Act to seek to increase transparency in transactions between governments and companies in the extractive industries. AngloGold Ashanti has been an active supporter of the Extractive Industries Transparency Initiative (the "EITI") since the initiative's inception, both via the company's membership in the International Council on Mining & Metals and individual corporate

action. AngloGold Ashanti formally became an organisational supporter of the EITI in 2006. As a matter of principle AngloGold Ashanti has established a practice of disclosing all payments made to governments in its annual Sustainability Review, regardless of whether the country is a formal supporter of the EITI, and the Sustainability Review is published on AngloGold Ashanti's company web site and mailed on CD-ROM to shareholders and interested non-governmental organisations.

We provide below our responses to the Commission's specific requests for comment. For ease of reference, we have reproduced the text of the Commission's requests for comments in bold-face type below, followed by AngloGold Ashanti's comments. All capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Release.



COMMENTS IN RESPONSE TO
THE COMMISSION'S SPECIFIC REQUESTS FOR COMMENT

1. **Should the Commission exempt certain categories of issuers, such as smaller reporting companies or foreign private issuers, from the proposed rules? If so, which ones and why? If not, why not? Would providing an exemption for certain issuers be consistent with the statute? If we do not provide such an exemption when adopting final rules, would foreign private issuers or any other issuers deregister to avoid the disclosure requirement?**

*Response:* We support, as a general matter, the Commission's proposal that foreign private issuers would be required to provide disclosure regarding payments to governments pursuant to Section 1504 of the Dodd-Frank Act. However, we urge the Commission to adopt an exemption to permit foreign private issuers to disclose government payments information in accordance with the EITI guidelines. In the alternative, we urge the Commission to align its government payments reporting rules as closely as possible with the existing EITI framework.

Section 13(q)(2)(E) of the Exchange Act provides that the rules promulgated by the Commission under Section 1504 of the Dodd-Frank Act, "[t]o the extent practicable, [...] shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals".[1] In the Release, the Commission notes that the statute explicitly references the EITI in the definition of "payment" and that, although the provision regarding international transparency efforts does not explicitly mention the EITI, the legislative history indicates that the EITI was considered in connection with the new statutory provision.[2]

Many companies engaged in extractive industries, including AngloGold Ashanti, already have voluntarily committed to disclose information regarding payments made to governments in accordance with the EITI guidelines. The EITI is the prevailing international standard for extractive companies to publish what they pay and for governments to disclose what they receive, and is widely accepted and supported by governments, companies, civil society groups, investors and international organisations. The advantage of a single international standard is that it facilitates matching payments made by companies with payments received by governments, as well as comparability across companies and governments.

[1] Exchange Act § 13(q)(2)(E).

[2] Release at I.

We submit that to require companies registered with the Commission to prepare and publish multiple sets of government payments disclosure to comply with multiple reporting standards would increase costs for issuers and is likely to confuse or mislead investors and other interested parties. AngloGold Ashanti and other extractive issuers have already established operating systems and procedures in order to collate in an efficient and timely manner the data reported in accordance with the EITI principles. To the extent that the rules promulgated by the Commission pursuant to Section 13(q) of the Exchange Act result in a reporting standard that differs from the EITI framework, issuers will incur additional costs to put in place multiple systems of disclosure controls and procedures to report government payments information in accordance with multiple reporting standards. Further, to the extent that certain payments reportable under the EITI principles are not required to be included in the Section 13(q) disclosure, comparability of information would be impaired, and differences in the two reporting standards could confuse or mislead investors and other interested parties.

Therefore, to the extent that the disclosure requirements under Section 13(q) of the Exchange Act overlap the EITI reporting guidelines, we urge the Commission to adopt the EITI standard as closely as possible. To the extent that the plain meaning of the statutory text clearly evidences a legislative intent to require specific, discrete disclosures beyond what is reportable under the EITI guidelines, we urge the Commission to implement these mandates through rules incremental to the EITI guidelines. We have provided our specific recommendations in light of these principles in response to the specific requests for comment below. We submit that such an approach would serve to minimize any inconsistencies between the Commission's rules promulgated pursuant to Section 13(q) of the Exchange Act and the EITI reporting standard, which would, in turn, minimize additional compliance costs for extractive issuers and benefit investors and other interested parties reading the disclosure.

3. **Should the Commission provide an exemption to allow foreign private issuers to follow their home country rules and disclose in their Form 20-F the required home country disclosure?**

*Response:* Yes, we submit that the Commission should adopt an exemption to permit foreign private issuers to disclose government payments information in accordance with the EITI guidelines. See response to #1 above. As discussed in the response to #1 above, EITI is the prevailing international standard for disclosure of payments to governments by companies in the extractive industries sector. We note that many institutional investors, such as CalPERS, have mandates that recommend or require



that portfolio companies adopt the Global Reporting Initiative Sustainability Reporting Guidelines, which incorporate EITI-based reporting, or be included in a sustainability index that has EITI-based reporting as an element of its eligibility criteria.[3]

9. **As noted, we do not believe the proposed definition of "commercial development of oil natural gas, or minerals" would include transportation to the extent that the oil, natural gas, or minerals are transported for purposes other than export, and we note that payments related to transportation activities generally are not included in EITI programs. Should the definition include transportation of oil, natural gas, or minerals? Should compression of natural gas be treated as processing, and therefore subject to the proposed rules, or transportation, and therefore not subject to the proposed rules?**

*Response:* We support the Commission's proposal that, consistent with EITI principles, the proposed definition of "commercial development of oil, natural gas, or minerals" should not include transportation to the extent that the oil, natural gas, or minerals are transported for purposes other than export. We urge the Commission to align its government payments reporting rules as closely as possible with the existing EITI framework. See response to #1 above.

12. **Should the definition of "payment" include the list of the types of payments from Section 13(q), as proposed? Are there additional types of payments that we should include in the definition of "payment?" Should the definition exclude certain types of payments? Are there certain payments, for example, specific types of taxes, fees, or benefits that we should include in, or exclude from, the list? Alternatively, should we provide guidance in our rules in the form of examples of payments that we believe resource extraction issuers would be required to disclose?**

*Response:* We recommend that the Commission adopt a definition of "payment" that aligns the types of payments reportable under the Commission's rules with the set of payments reportable under the EITI. To this end, we recommend that the Commission use the authority delegated to it under Section 13(q) and include in the definition of "payment" specific "other material benefits, that the Commission,

[3] "Global Principles of Accountable Corporate Governance", The California Public Employees' Retirement System (February 16, 2010).



consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals". For example, under the EITI, in addition to license fees and production entitlements, any other considerations for licenses and/or concessions are reportable. Increasingly, governments are looking to raise revenue through non-traditional arrangements with extractive companies. Such arrangements may include, e.g., interest-free loans, the issuance of shares in consideration for regulatory approvals, granting a free carried interest in a mine or a contractual obligation to enter into a loss-making joint-venture with the government to construct and operate local community infrastructure. Many companies, including AngloGold Ashanti, and governments include such non-traditional transfers of value in their EITI reporting. We submit that any transfer of value by an extractive issuer for the benefit of a government that constitutes part of the issuer's overall relationship with the government pursuant to which the issuer engages in the commercial development of oil, natural gas, or minerals should be considered "part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals", and that disclosure excluding such payments would necessarily be incomplete and contrary to the spirit of Section 1504 of the Dodd-Frank Act.

We submit that adopting a definition of "payment" that is aligned with the types of payments reportable under the EITI would ensure consistency of disclosure between issuers that are subject to the Commission's rules and companies that report in compliance with the EITI guidelines. This in turn would minimize additional compliance costs for issuers that already prepare disclosure in accordance with the EITI guidelines and would reduce the potential that different government payments reporting standards would confuse or mislead investors and other interested parties reading the disclosure.

13. **As noted above, the definition of payment includes "taxes," which is consistent with Section 13(q) and the EITI. In order to clarify the meaning of this term in a manner consistent with the EITI, we have included an instruction in our proposal noting that resource extraction issuers would be required to disclose taxes on corporate profits, corporate income, and production and would not be required to disclose taxies levied on consumption, such as value added taxes, personal income taxes, or sales taxes. Consistent with the EITI, we are not proposing to require disclosure of consumption taxes because we do not believe such taxes are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, and minerals. Is our proposal regarding disclosure of taxes appropriate? Should the types of taxes listed as**

**requiring disclosure, or not requiring disclosure, be revised? If so, how should they be revised? Are there other taxes that we should include in or exclude from the disclosure requirements?**

*Response:* In general we support the Commission's proposal. However, we submit that consumption and other taxes should be included in the disclosure requirements to the extent that they are discriminatory taxes targeted at specific industries, as opposed to taxes of general applicability.

14. **While the definition of "payment" in Section 13(q) does not address the means by which a payment may be made, we believe it would cover payments made in cash or in kind. Should a resource extraction issuer be required to disclose payments regardless of how the payment is made (e.g. in cash or in kind)? Should the rule be revised to make clear that "payment" would include payments made in cash or in kind?**

*Response:* We agree with the Commission's view that it is appropriate to require disclosure of payments regardless of how the payment is made. We recommend that the rules should clarify that "payment" includes payments made in cash or in kind. We propose that issuers should be permitted to report in kind payments at actual cost or, if not determinable, at fair market value.

15. **The definition includes "fees (including license fees)," which is consistent with Section 13(q) and the EITI. As noted above, the EITI gives examples of the fees that should be disclosed, including concession fees, entry fees, and leasing and rental fees, which would likewise be covered under our proposal. In addition to license fees, should the rules specifically list other types of fees that would be subject to disclosure?**

*Response:* We submit that, consistent with the EITI, the Commission's rules should be principles-based. To the extent that the rules specifically list the types of fees that are subject to disclosure, an issuer may exclude from its Section 13(q) disclosure payments that do not clearly come within any of the enumerated categories. We believe that such an outcome would be contrary to the spirit of Section 1504 of the Dodd-Frank Act.

16. **Are there other fees that we should identify in the rules or in guidance? For example, should we specify that disclosure would be required for fees paid for environmental permits, water and surface use permits, and other land use permits; fees for construction and infrastructure planning permits, air quality and fire permits, additional environmental permits, customs duties, and trade levies? Would these types of fees be considered to fall within the categories of fees that we have identified as being subject to disclosure?**

*Response:* We submit that these types of fees are "part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals" and should be subject to disclosure. In addition, we believe that any fees levied in a discriminatory manner on the extractive industries, as opposed to fees of general applicability levied on all enterprises, should be included.

17. **Are there some types of fees that we should explicitly exclude from the definition?**

*Response:* Fees of general applicability levied on all enterprises without discrimination (e.g., registration fees) are not "part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals" and should be excluded from the definition.

18. **The definition includes "bonuses," which is consistent with Section 13(q) and the EITI. "Bonuses" would include the examples of bonuses identified by the EITI as noted in the table above. Should we provide further guidance about the meaning of the term "bonus" for purposes of this disclosure?**

*Response:* We support the Commission's proposal to adopt a definition of "bonuses" that is consistent with the EITI.

19. **Are there types of bonuses that we should exclude from the definition of "payment?"**

*Response:* No. We support the Commission's proposal to adopt a definition of "bonuses" that is consistent with the EITI.

**20. Are there "other material benefits" that we should specify as being included within the definition of "payment?" In that regard, how should we determine what benefits "are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals?" Should we include a broad, non-exclusive definition of "other material benefits," such as benefits that are material to and directly result from or directly relate to the exploration, extraction, processing, or export of oil, natural gas, or minerals? Or would including a broad definition be inconsistent with the statutory language directing us to identify other material benefits that "are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals?"**

*Response:* See response to #12 above.

**21. As noted, dividends are not included in the list of payments required to be disclosed under the proposed rules. Should we determine that dividends are "other material benefits" and require disclosure of dividends? Are dividends part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals?**

*Response:* We submit that it is appropriate to include dividends in the list of categories of payments required to be disclosed, consistent with the EITI principles. Ownership in the share capital of a holding company that owns a mine is an alternative structure to a production entitlement or royalty interest, and dividends paid are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.

**22. We do not believe the proposed definition of payment should include payments resource extraction issuers make for infrastructure improvements, even if they are a direct cost of engaging in the commercial development of oil, natural gas, or minerals because it is not clear that such payments would be covered by the specific list of items in the statute or otherwise would be a part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. Should our definition cover such payments? Would such payments be considered part of the commonly recognized revenue stream? Would these types of payments distort the disclosure of payments for extractive activities?**

*Response:* We submit that such payments should be considered part of the commonly recognized revenue stream to the extent that they constitute part of the issuer's overall

relationship with the government pursuant to which the issuer engages in the commercial development of oil, natural gas, or minerals. Conversely, payments made on a voluntary basis for infrastructure improvements should be excluded.

23. **"Social or community" payments generally include payments that relate to improvements of a host country's schools or hospitals, or to contributions to a host country's universities or funds to further resource research and development. As proposed, our rules would not expressly include social or community payments within the definition of "payment." Some EITI programs include social or community payments while others do not. Are such payments part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals? Should we require disclosure of only certain "social or community" payments under the "other material benefits" provision, such as if those payments directly fulfill a condition to engaging in resource extraction activities in the host country? Would such payments be considered part of the commonly recognized revenue stream?**

*Response:* See response to #22 above.

26. **Section 13(q) establishes the threshold for payment disclosure as "not de minimis," which we preliminarily believe is a standard different from a materiality standard. Is our interpretation that "not de minimis" is not the same as "material" correct?**

*Response:* We support the Commission's interpretation.

27. **Should we define "not de minimis" for purposes of the proposed rules? Why or why not? What would be the advantages or disadvantages of not defining that term? If the final rules do not provide a definition, should an issuer be required to disclose the basis and methodology it used in assessing whether a payment amount was "not de minimis?"**

*Response:* We recommend that the Commission define the term "de minimis" for purposes of its rules promulgated under Section 13(q) of the Exchange Act. We submit that a "bright line" standard is appropriate to ensure consistency of reporting among issuers. We recommend that the Commission define the term "de minimis" to mean any payment or series of related payments made at the tax-paying entity level



which in the aggregate is less than U.S.$1,000,000. Such a "de minimis" standard that uses an absolute dollar amount as the threshold would be easier for issuers to apply and would reduce compliance costs for smaller companies.

If the rules do not define "not de minimis", we submit that the rules should not require disclosure of the basis and methodology used in assessing whether a payment amount is "not de minimis".

28. **If we should define "not de minimis," what should that definition be? Provide data to support your definition if you are able to do so.**

*Response:* See response to #27 above.

30. **Should we adopt a definition of "not de minimis" that uses an absolute dollar amount as the threshold? If so, what would be the appropriate dollar amount? Should the "not de minimis" payment threshold be $100,000, an amount less than $100,000, such as $1,000, $10,000, $15,000,74 or $50,000, or an amount greater than $100,000, such as $200,000, $500,000, $1,000,000, or $10,000,000? Should some other dollar amount be used?**

*Response:* See response to #27 above.

31. **The type and amount of payments made by resource extraction issuers may vary greatly, depending on the size of the issuer and the nature and size of a particular project. Should the rules account for variations in size of issuers and projects? Would doing so be consistent with Section 13(q)?**

*Response:* See response to #27 above. We submit that, in order to ensure consistent disclosure and comparability, the "de minimis" standard should be based on an absolute dollar amount and should be the same regardless of size of issuer or project.

32. **Should a payment be considered "not de minimis" if it meets or exceeds a percentage of expenses incurred per project for the year that is the subject of the annual report? Is a per project basis appropriate because Section 13(q) requires an issuer to disclose payment information for each project as well as for each**



**government? Instead of a per project basis, should we base a definition of "not de minimis" on a threshold that uses a percentage of an issuer's total expenses for the year or its total expenses incurred for all projects undertaken in a particular country for the year? Should the percentage threshold be based on something else, such as revenues, profits or income? Would using a percentage threshold further the intent of the statute and help minimize the costs associated with providing the disclosure?**

*Response:* We submit that it would not be appropriate to determine whether a payment is "not de minimis" using a percentage threshold because the issuer will not know the denominator of the percentage (whether expenses, revenues, profits, income or another metric) until after the end of the year in which the determination is to be made. Such an approach would require the issuer to look back after year-end to determine which payments must be included. We believe that an absolute dollar amount threshold for the "de minimis" standard would be much easier for issuers to apply, as it would enable issuers to record a payment as reportable at the time the payment is made.

34. **Should we adopt a definition of "not de minimis" that uses the same dollar amount or the same percentage threshold for all resource extraction issuers, regardless of size?**

*Response:* Yes. See response to #31 above.

35. **Should we adopt a definition of "not de minimis" that depends on the size of a resource extraction issuer so that the dollar amount or percentage threshold would vary depending on the size of the issuer? For example, should the threshold be $1,000 for non-accelerated filers, $10,000 for accelerated filers, and $100,000 for large accelerated filers? Should some other dollar amount be used for each filer category? If so, what amount? If we use a percentage threshold, should the threshold be 1% for non-accelerated filers, 2% for accelerated filers, and 3% for large accelerated filers? Should some other percentage be used for each filer category? If so, what percentage?**

*Response:* See response to #31 above.



**39. Should we define "project" for purposes of this new disclosure requirement? If so, why? If not, why not?**

*Response:* We urge the Commission to adopt a flexible definition of "project" that would permit an issuer to disclose payment information at the country level or the tax-paying entity level within a country. We note that a significant proportion of the payments that AngloGold Ashanti makes to governments are made on a centralised basis in the country and are negotiated at the entity level.

We submit that to require disaggregation of payment information at a more detailed level, such as at the level of an individual mine, would be costly for issuers to implement and is more likely to involve the arbitrary allocation of payments at a level below which the payments are actually made or recorded in an issuer's accounts, which increases the potential that the disclosure will be meaningless, confusing or misleading to readers. In addition, disclosure of disaggregated payments information is more likely to conflict with contractual confidentiality provisions.

A definition of "project" that permits an issuer to disclose payment information at the country level or the tax-paying entity level within a country would align the payment reporting under Section 13(q) more closely with country-level payments reporting under the EITI, which would facilitate comparability among extractive companies and matching with EITI-compliant disclosure by governments of payments received. This approach would also be less likely to result in overwhelming investors and other interested parties with voluminous information.

**40. If we should define "project," what definition would be appropriate? Please be as specific as possible and discuss the basis for your recommendation.**

*Response:* See response to #39 above.

**42. Should we define "project" to mean a field, mining property, refinery or other processing plant, or pipeline or other mode of transport? Should we define "project" to permit the inclusion of more than one field, mining property, refinery or other processing plant, or pipeline or other mode of transport?**

*Response:* See response to #39 above.

**44. Should we permit issuers to treat operations in a country as a "project?" Would doing so be consistent with the statute?**

*Response:* Yes. See response to #39 above.

**48. Should we permit issuers to aggregate payments by country rather than project?**

*Response:* Yes. See response to #39 above.

**49. As noted above, our rules currently include definitions of "subsidiary" and "control," which would apply in this context as well. Should we include a different definition for "subsidiary" or "entity under the control of" a resource extraction issuer? If so, why? How should the definitions vary?**

*Response:* We submit that the definitions of "subsidiary" and "control" should be consistent with those concepts as they are interpreted in applicable financial accounting standards. If "subsidiary" and "control" are defined differently for purposes of Section 13(q) disclosure than for financial reporting purposes, issuers would be required to incur additional costs to adapt their financial reporting systems. Issuers reporting pursuant to the EITI need only include in their disclosure payments made by entities consolidated in the issuer's financial statements. Therefore, the approach we propose would serve to align the Section 13(q) disclosure rules with the EITI. Such an approach would also create a "bright-line" standard that would be easy for issuers to apply and would avoid an issuer having to make a judgment based on the facts and circumstances as to whether the issuer "controls" an entity in which it owns 50% or less of the capital.

**50. Under the definition of control, a resource extraction issuer may be determined to control entities that are not consolidated subsidiaries. Is the requirement to disclose payments by an entity under the control of the issuer even though the issuer does not consolidate the entity appropriate?**

*Response:* See response to #49 above.

**52. Are there instances, other than control in which a resource extraction issuer should have to disclose payments made by a subsidiary or other entity? If so, should we revise our proposal to mandate disclosure in those circumstances? Would resource extraction issuers have access to payment information in those circumstances? Should our rules specify that an issuer would have to disclose payments made by a non-controlled entity only if the issuer is the operator of the joint venture or other project? Would it be appropriate to require an issuer to disclose payments that correspond to its proportional interest in the joint venture rather than all of the payments made by or for the joint venture?**

*Response:* We submit that it would be consistent with the policy underlying Section 1504 of the Dodd-Frank Act to require disclosure of payments made by an issuer on behalf of a joint venture, irrespective of control, to the extent that such payments are disproportionate to the issuer's interest in the joint venture. For example, an issuer should have to report payments it makes on behalf of a joint venture in which it is a 50/50 partner if those payments include the share attributable to the other joint venture partner in circumstances where the other partner is unwilling or unable to make its share of the payment.

**55. Should the Commission include an exception to the requirement to disclose the payment information if the laws of a host country prohibit the resource extraction issuer from disclosing the information? Would such an exception be consistent with the statutory provision and the protection of investors? If we provide such an exception, should it be similar to the exception provided in Instruction 4 to Item 1202 of Regulation S-K? Should we require the registrant to disclose the project and the country and to state why the payment information is not disclosed? If so, should we revise Item 1202 to require the same disclosure of the country and reason for non-disclosure?**

*Response:* We submit that the Commission's rules should include an exception for payments the disclosure of which is prohibited under host country laws, including pursuant to contractual nondisclosure clauses in effect as of the effective date of the rules promulgated under Section 13(q). Such an exception could be similar to the exception provided in Instruction 4 to Item 1202 of Regulation S-K.

We believe that it would be unduly burdensome to require issuers to renegotiate existing contracts containing confidentiality provisions or to put issuers in a position where they are required to withdraw from doing business in jurisdictions where disclosure of such information is prohibited by law.



With respect to contracts entered into after the Commission's rules under Section 13(q) become effective, we recommend that an exception should be provided for information in respect of which an issuer has made "good faith efforts" to comply with the disclosure requirements. Such an exception could be conditioned on the issuer's good faith determination that it would not have been able to enter into the contract but for agreeing to a confidentiality provision. Alternatively, the standard for claiming the exemption could be that the issuer's contractual negotiations would have been materially prejudiced if the issuer had not agreed to confidentiality.

Alternatively, the Commission should consider making available a confidential treatment request procedure, similar to the procedure pursuant to Rule 406 under the Securities Act, to allow issuers to request that particularly sensitive information be redacted from the public record.

**59. Should we permit a foreign private issuer that is already subject to resource payment disclosure obligations under its home country laws or the rules of its home country stock exchange to follow those home country laws or rules instead of the resource extraction disclosure rules mandated under Section 13(q)?**

*Response:* See response to #1 above.

**60. Are there any other circumstances in which an exception to the disclosure requirement would be appropriate? For instance, would it be appropriate to provide an exception for commercially or competitively sensitive information, or when disclosure would cause a resource extraction issuer to breach a contractual obligation?**

*Response:* See response to #55 above.

**61. Should the definition of foreign government include a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as proposed?**

*Response:* We support the Commission's proposed definition of "foreign government". In particular, we submit that it is appropriate to require disclosure of payments made to subnational governments because in many jurisdictions extractive companies make substantial payments to subnational governments but may not



necessarily be required to make payments to the national government. In this regard, we submit that it is appropriate to require disclosure of payments made by resource extraction issuers to subnational governments in the United States as well as to foreign subnational governments. This approach would be consistent with payments reporting under the EITI.

**64. Should the definition of foreign government include a foreign subnational government, such as a state, province, county, district, municipality or territory of a non-U.S. government, in addition to a non-U.S. national government, as proposed?**

*Response:* Yes. See response to #61 above.

**65. Are there some levels of subnational government that should be excluded from the proposed definition of foreign government? If so, please provide specific examples of those levels of subnational government that should be excluded.**

*Response:* We believe that all levels of subnational government should be included in the definition of foreign government.

**66. Should we also require a resource extraction issuer to disclose amounts paid to the states and other subnational governments in the United States in addition to payments to the Federal Government?**

*Response:* Yes. See response to #61 above.

**67. Is there additional guidance that we should provide regarding the definition of foreign government?**

*Response:* We recommend that the Commission's rules should clarify that the definition of foreign government includes any authority that exercises the power and control of a government, even if that authority is not officially recognised as the government by the international community. For example, if a resource extraction issuer continues to make payments, previously made to the deposed government, to a military authority that has seized power in a country by way of a coup, those



payments should be reportable even if the authority in power is not recognised as the official government by the United States or other countries or international organisations.

68. **Section 13(q) requires disclosure of the payment information in an annual report but does not specify the type of annual report. Should we require resource extraction issuers to provide the payment disclosure mandated under Section 13(q) in its Exchange Act annual report, as proposed? Should we require, or permit, resource extraction issuers to provide the payment information in an annual report other than an annual report on Form 10-K, Form 20-F, of Form 40F? For example, should we require the disclosure in a new form filed annually on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR")? Would requiring resource extraction issuers to disclose the information in a separate annual report be consistent with Section 13(q)? Should we require an oil, natural gas, or mining company to file a separate annual report containing all of the specialized disclosures mandated by the Dodd-Frank Act? What would be the benefits or burdens of such a form for investors or resource extraction issuers? If we should require, or permit, a separate annual report, what should be the due date of the report (e.g. 30, 60, 90, 120, or 150 days after the end of the fiscal year covered by the report)?**

*Response:* We submit that it would be unduly burdensome to require an issuer to prepare the payments disclosure pursuant to Section 13(q) within the timeframe for filing its Exchange Act annual report. This is primarily due to the fact that the payments information required pursuant to Section 13(q) will be reported on a cash basis, whereas issuers prepare their financial statements on an accrual basis. During the period between an issuer's fiscal year end and the date the issuer is required to file its audited annual financial statements, the issuer's accounting and financial reporting teams focus their resources on preparing the issuer's annual financial disclosure. For most issuers, it would be these teams which would have responsibility for preparing the Section 13(q) disclosure. Requiring the Section 13(q) disclosure, which is prepared on a different accounting basis, to be furnished at the same time as the issuer's Exchange Act annual report would put further strain on these resources at a time when they are likely already to be operating near full capacity. We propose that it would be reasonable to require that an issuer must furnish the Section 13(q) government payments disclosure within 180 calendar days after the issuer's fiscal year-end.

We further propose that it would be appropriate to permit an issuer to furnish the Section 13(q) payments disclosure on a current report on Form 8-K (for a domestic



issuer) or Form 6-K (for a foreign private issuer) and include a statement in the issuer's Exchange Act annual report, under a separate heading entitled, "Payments Made By Resource Extraction Issuers", informing investors that the disclosure will be furnished on Form 8-K or Form 6-K, as applicable, on or before the 180-day deadline. We believe that this approach is preferable to providing the Section 13(q) payments disclosure in an amendment to the issuer's Exchange Act annual report because, based on our experience, filing amendments to an annual report can be confusing to investors. We believe that investors would be more likely to expect disclosures that are subject to a reporting deadline different from the Exchange Act annual report, and that otherwise are not directly relevant to the issuer's annual reporting, to be furnished on a current report on Form 8-K or Form 6-K, as applicable.

The Commission is not proposing to require that the government payments disclosure pursuant to Section 13(q) would be included as part of an issuer's audited financial statements. However, if the disclosure is to be included as an exhibit to an issuer's Exchange Act annual report, the issuer's independent auditor would need to review the exhibit (which would include a review of the reconciliation of the cash-flow accounting in the payments disclosure to the accrual accounting in the financial statements) as part of its review of the Exchange Act annual report in order to give its consent to the inclusion of its audit report covering the Exchange Act annual report. If the Section 13(q) government payments disclosure is furnished on Form 8-K or Form 6-K, as applicable, it would not form part of the Exchange Act annual report and would thus obviate the additional costs associated with review by the issuer's independent auditor.

The approach we propose above would facilitate access to the government payments information by placing it outside the issuer's Exchange Act annual report, while utilizing existing Commission forms. Given that Section 13(q) of the Exchange Act requires only that the payment disclosure required by that section must be provided in an annual report, but otherwise does not specify the location of the disclosure, either in terms of a specific form or in terms of location within a specific form, we submit that the approach we propose is consistent with Section 13(q) of the Exchange Act.

**69. If we require resource extraction issuers to provide the disclosure of payment information in their Exchange Act annual reports, should we permit resource extraction issuers to file an amendment to the annual report within a specified period of time subsequent to the due date of the report, similar to Article 12 schedules or financial statements provided in accordance with Regulation S-X Rule 3-09, to provide the payment information? If so, what would be the appropriate time period (e.g. 30, 60 or 90 days after the due date of the report)?**

*Response:* See response to #68 above. While we urge the Commission to adopt a due date for the Section 13(q) disclosure that is after the date by which issuers are required to file their Exchange Act annual reports, we believe that furnishing the Section 13(q) disclosure in an amendment to the annual report is likely to confuse investors, especially if the due dates for furnishing other disclosures (e.g., conflict minerals disclosures pursuant to Section 13(p) of the Exchange Act) are different. We propose that it would be preferable to require these disclosures to be furnished on Form 8-K or Form 6-K, as applicable.

**70. As noted above, Section 13(q) mandates that a resource extraction issuer provide the payment disclosure required by that section in an annual report, but it does not specifically mandate the time period for which a resource extraction issuer must provide the disclosure. Is it reasonable to require resource extraction issuers to provide the mandated payment information for the fiscal year covered by the applicable annual report, as proposed? Why or why not? Should the rules instead require disclosure of payments made by resource extraction issuers during the most recent calendar year?**

*Response:* We support the Commission's proposal that the Section 13(q) annual payments disclosure should be required to be provided for the issuer's fiscal year, as to require the disclosure for a different period would require the issuer to incur additional costs to adapt its disclosure controls and procedures. We note that companies report under the EITI on a fiscal year basis.

**71. Should we also require an issuer to provide the resource extraction payment disclosure in a registration statement under the Securities Act of 1933 or under the Exchange Act? If so, what time period should the disclosure cover?**

*Response:* We support the Commission's proposal that an issuer's resource extraction payment disclosure would not be incorporated by reference into the issuer's registration statements and that the issuer would not otherwise be required to provide

the disclosure in its registration statements. Section 13(q) on its face only requires the mandated disclosure to be included in "an annual report of the resource extraction issuer".[5] To the extent that the information required pursuant to Section 13(q) is material to a reasonable investor's decision to invest in the issuer's securities, disclosure would otherwise be required in the issuer's registration statements.

73. **Should we require that information concerning the type and total amount of payments made for each project and to each government relating to the commercial development of oil, natural gas, or minerals be provided in the exhibits to Form 10-K, Form 20-F, or Form 40-F, as proposed?**

*Response:* See response to #68 above.

74. **Should we require, as proposed, a resource extraction issuer to provide a statement, under an appropriate heading in the issuer's annual report, referring to the payment information provided in the exhibits to the report, as proposed?**

*Response:* See response to #68 above.

75. **Should we require a resource extraction issuer to present some or all of the required payment information in the body of the annual report instead of, or in addition to, presenting the information in the exhibits? If you believe we should require disclosure of some or all the payment information in the body of the annual report, please explain what information should be required and why. For example, should we require a resource extraction issuer to provide a summary of the payment information in the body of the annual report? If so, what items of information should be disclosed in the summary?**

*Response:* See response to #68 above.

76. **Section 13(q) does not require the resource extraction payment information to be audited or provided on an accrual basis. Accordingly, the proposed rules do not include such requirements. Should we require resource extraction issuers to have**

[5] Exchange Act § 13(q)(2)(A).



**the payment information audited or provide the payment information on an accrual basis? Why or why not? What would be the likely benefits and burdens? Would including such requirements be consistent with the statute?**

*Response:* We support the Commission's proposal not to require that the Section 13(q) payment information must be audited or provided on an accrual basis. To require that the information must be audited would impose substantial additional costs on resource extraction issuers in the absence of clear legislative intent of such a requirement. We submit that it is appropriate to permit issuers to provide the payments disclosure on a cash basis, consistent with the EITI.

77. **Should we require two new exhibits for the resource extraction disclosure, as proposed?**

*Response:* See response to #68 above.

79. **Should we require the resource extraction payment disclosure to be electronically formatted in XBRL and provided in a new exhibit, as proposed? Is XBRL the most suitable interactive data standard for purposes of this rule? If not, why not? Should the information be provided in XML format? If so, why? Are there characteristics of XML, such as ease of entering information into a form, which makes it a better interactive data standard for the payment information than XBRL? Would the use of the XBRL taxonomy based on U.S. GAAP cause confusion in light of the fact that the information required under Section 13(q) is information about cash or in kind payments (that are not computed in accordance with GAAP) made by resource extraction issuers? Should we require an interactive data standard for the payment information other than XML or XBRL?**

*Response:* We note that an XBRL taxonomy for the electronic tags required pursuant to Section 13(q) does not currently exist and will need to be developed. We recommend that the Commission consider delaying implementation of the requirement to provide the Section 13(q) payments disclosure in an interactive data format until an appropriate XBRL taxonomy is available.

83. **Section 13(q) and our proposed rules require an issuer to include an electronic tag that identifies the project to which the payments relate. Are there some**



**payments that would not relate to a particular project? If so, should we nevertheless require that each payment be allocated to a particular project? Should we instead permit an issuer to use only the electronic tag that identifies the government receiving the payments if those payments do not relate to, or cannot be allocated to, a particular project?**

*Response:* See response to #39 above.

87. **Should we, as proposed, require the resource extraction payment disclosure to be furnished as exhibits to the annual report? If not, why not? How should it be provided?**

*Response:* No. See response to #68 above.

88. **Should we require the resource extraction payment disclosure to be filed as exhibits, rather than furnished, which would affect issuers' liability under the Exchange Act or under the Securities Act (if any such issuer incorporates by reference its annual report into a Securities Act registration statement)?**

*Response:* No. We support the Commission's proposal that the resource extraction payment disclosure should be deemed to be furnished, unless the issuer explicitly states that the resource extraction disclosure is filed under the Exchange Act.



89. **Under Exchange Act section 18, "Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to [the Exchange Act] or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading." Is it appropriate not to have the disclosures subject to Section 18 liability even if the elements of Section 18 could otherwise be established? Should we require the resource extraction payment disclosure to be filed for purposes of Section 18 of the Exchange Act, but permit an issuer to elect not to incorporate the disclosure into Securities Act filings?**

*Response:* We support the Commission's proposal that the Section 13(q) disclosures would not be "filed" for purposes of Section 18 of the Exchange Act unless the issuer states explicitly that such disclosures are filed under the Exchange Act. We submit that it is appropriate not to subject the Section 13(q) government payments disclosure to Section 18 liability even if the elements of Section 18 liability can be established because, as the Commission notes in the Release, the nature and purpose of the government payments disclosure requirements, as set forth in Section 13(q)(2)(E) of the Exchange Act, is not primarily for the protection of investors, but rather to support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.[6] If any of the information subject to disclosure pursuant to Section 13(q) of the Exchange Act is material to a reasonable investor's decision to invest in the issuer's securities, disclosure would otherwise be required in the issuer's registration statements filed under the Securities Act and, in many cases, in its periodic reports filed under the Exchange Act.

[6] See Exchange Act § 13(q)(2)(E); Release at II.F.3.



**90. Should the resource extraction payment disclosure be furnished annually on Form 8-K? Would that approach be consistent with the statute? If so, should foreign private issuers, which do not file Forms 8-K, be permitted to submit the resource extraction payment disclosure either in their Form 20-F or Form 40-F, as applicable, or annually on Form 6-K, at their election?**

*Response:* Yes. See response to #68 above.

**91. Should we provide a delayed effective date for the final rules, either for all issuers subject to the rules or for certain types of issuers (e.g. smaller reporting companies or foreign private issuers)? Would doing so be consistent with the statute? Why or why not? If we should provide for a delayed effective date, should issuers be required to provide disclosure in an annual report for the fiscal year ending on or after June 30, 2012, September 30, 2012, December 31, 2012, or some other date?**

*Response:* We would propose that the Commission should delay the effective date of the final rules. We submit that it would be appropriate to require large accelerated filers to provide the Section 13(q) disclosure for fiscal years ending on or after July 1, 2012 and to require all other issuers to comply for fiscal years ending on or after July 1, 2013. The Commission's proposed effective date would not give an issuer with a fiscal year-end of April 15 any time to put in place a reporting system before the commencement of the first fiscal year for which it must provide the required disclosure. We believe that a phased implementation would reduce costs for smaller issuers, as it would enable those issuers to observe how larger issuers with greater resources comply with the new rules.

AngloGold Ashanti appreciates the opportunity to comment on the Release and would be pleased to discuss any questions the Commission may have in respect of our comments. Should the Commission wish to discuss our comments, please contact the undersigned at +27 11 637 6000.

Yours faithfully,

S. Venkatakrishnan
Chief Financial Officer