Please find below comments to specific requests as listed in "Federal Register / Vol. 75, No. 246 / Thursday, December 23, 2010 / Proposed Rules".

1 - *Should the Commission exempt certain categories of issuers, such as smaller reporting companies or foreign private issuers, from the proposed rules?* No, it should not exempt these categories, notably because these issuers are frequently involved in securing the initial resource contracts, which often bear higher risks of corruption. Some junior extractive companies specialize in doing the 'politically sensitive' work of securing resource contracts with 'high risk' host country authorities before selling a project to much larger companies that have a high public profile and face higher reputational risk. Limiting disclose payments to larger issuers would only entice them to seek the assistance of smaller companies to do this type of operation. The risk of delisting is probably very low as capital still needs to be raised and many of the initial founders/owners of junior companies realize their profit on the value of publicly traded stocks.

4 - *Should the rules apply to issuers that are owned or controlled by governments, as proposed?* Yes, government owned companies control the vast majority of oil reserves and there is good empirical evidence that revenue management related to these companies is a major issue and that many of them are now directly accessing capital through securities including the US.[1]

6 & 7 – The definition of "commercial development of oil, natural gas, or minerals" should be as broad as possible and include exploration, extraction, processing and export. The main reason is that, like in the case of transfer mis-pricing, companies would risk shifting payments to activities with low-disclosure requirements.[2]

8 & 9 - *Are there other significant activities that we should include in the definition?* Transportation, security services, and trading are three areas of concern. Resource transportation generates significant revenues, especially in the case of oil and gas pipelines. The case has been notably made by CSOs with the EITI board to include transportation payments in disclosure legislation.[3] Preferably, transportation in general, rather than only export, should be covered. Security services are an important area of contention over payments and the conduct of security services, disclosure would allow to more easily identifying payments made to government security institutions, verify possible conflicts of interests by the security providers, and investigate cases of corruption or embezzlement (including by security agencies suspected of human rights abuses, for example). Finally, trading constitutes a vulnerable point in the value chain with large (retro)commissions as demonstrated in the Iraqi 'oil-for-food' schemes.

12 - *Should the definition of ''payment'' include the list of the types of payments from Section 13(q), as proposed?* Payments should also include donations (e.g towards the 'charitable' organisations of high ranking officials, or 'development and education' funds that will benefit select populations close to government officials). It is important to keep a broad definition of payments, and mention "*inter alia*" specific types of payments.

14 - *Should a resource extraction issuer be required to disclose payments regardless of how the payment is made (e.g. in cash or in kind)?* Yes, payments in kind have increased massively over the past decade, notably due to resource for infrastructure barter deals. While these deals offer some advantages from a developmental perspective (e.g. by reducing the risk of leakages into less productive sectors than

[1] P.J. Luong and E. Weinthal, 'Rethinking the Resource Curse: Ownership Structure, Institutional Capacity, and Domestic Constraints', Annu. Rev. Polit. Sci. 2006. 9:241–63.
[2] P. Le Billon, Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives. 2011. U4-CMI.
[3] J. Radon, Expanding the Extractive Industries Transparency Initiative (EITI) Agenda to Transportation of Hydrocarbon Resources. 2009. RWI & OSI-Georgia.

infrastructure and increasing absorptive capacity), they frequently lack transparency and should be included.[4]

15 - *Should the rules specifically list other types of fees that would be subject to disclosure?* Consideration should be given to so-called 'facilitation fees' (perhaps by confirming that these are prohibited) and 'corporate hospitality' expenses (by ensuring that these are recorded and disclosed).

16. *Are there other fees that we should identify in the rules or in guidance?* It is important that all payments (and fees) to government be accounted for and disclosed as these could otherwise end up serving as laundering instruments. This comment is valid for requests 17-24, but especially for request 21 as it is also frequent for corporations to include 'sleeping partners' who hold high level positions in government and hold share in the company for mostly political purposes (and can be identified as a form of corruption).

30 - *Should we adopt a definition of ''not de minimis'' that uses an absolute dollar amount as the threshold?* If so, then a minimal value of $10,000 would be consistent with many legislations seeking to track financial flows, e.g. for the purpose of money laundering.

37 - *Should we define payments that are ''not de minimis'' to mean payments that are significant compared to the total expenses incurred by an issuer for a particular project, or with regard to a particular government for the year?* The latter, or more usefully the income of state officials, so that payments influencing decisions made by such officials can be detected, which in turn can have an impact on shareholders (e.g. contract renegotiation following improper allocation of resource contract by a corrupt official in the previous government). A *de minimis* of 10,000 dollars would likely address that risk.

48 - *Should we permit issuers to aggregate payments by country rather than project?* It is clear in the status, and important given the objectives of these rules, to disaggregate disclosed information by *both* country and project.

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?* Yes, payments can be made through a 'consultancy' that is contracted to indirectly make a payment to government. Although considered a 'business cost' (for example under the category of 'Public Relations'), it can in fact consist in a (corrupt) payment to government. Consideration could be given to the FCPA to ensure consistency and adequate coverage between the two legislations.

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?* It is crucial for the final rules not to allow this type of exception as the rules would then provide an enticement for host governments to pass legislation prohibiting such payment information. The same argument is valid for requests 56-60, any exception is likely to see host government to take measures to trigger such exception – at worst such an exception 'due to concerns on employee security' could lead officials seeking to obstruct disclosure to harm the security of employees.

61-67 - The definition of foreign government should ensure that it covers Politically Exposed Persons, in a way similar to regulations of due diligence with regard to money laundering by financial services, so that government officials and their families are not recipient in their 'private capacity' of undisclosed payments by companies.

78-81- The format should be selected to facilitate access, downloading and interactive data treatment.

[4] P. Collier, Plundered Planet, 2010, Allen Lane.