Our date
2011-02-22

Via E-mail

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

Re: File No. S7-42-10; Release No. 34-63549; Disclosure of Payments by Resource Extraction Issuers

Ladies and Gentlemen:

Statoil ASA ("Statoil") appreciates the opportunity to comment on the Proposed Rule on Disclosure of Payments by Resource Extraction Issuers (the "Proposed Rule"),[1] which would implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Statoil supports the aim of Section 1504 to increase transparency of revenues to governments for the commercial development of natural resources. We are writing to comment on practical and commercial issues related to the application of the Proposed Rule.

Statoil's Support of Robust Transparency Initiatives

Statoil is an international energy company headquartered in Norway. Our main activities are oil and gas production and we have a presence in forty countries. Our ordinary shares are listed on the Oslo Stock Exchange and our American Depositary Shares, each representing one ordinary share, are listed on the New York Stock Exchange. As of December 31, 2010, the Norwegian State had an ownership interest in Statoil of 67%.

We believe that transparency is a cornerstone of good governance and a productive business environment. Transparency allows businesses to prosper in a predictable environment and enables citizens, markets and governments to hold others accountable for their performance. In transparent and anti-corrupt environments, the benefits from our industry will also be more readily shared by society as a whole.

Since 2005, Statoil has voluntarily disclosed country-by-country payments to governments and related activities as part of our Sustainability Report. Our disclosure is based on common categories and easily accessible data in our reporting systems and includes investments, revenues, direct and indirect taxes, an estimate of "profit oil," signature bonuses, purchases of goods and services, employee pay and benefits, and social investments.

Statoil has also been an active supporter of the Extractive Industries Transparency Initiative (the "EITI") since its inception in 2003 and has served as a national oil company representative member of the EITI's board of directors since 2009. EITI-compliant reporting regimes covering payments made to the governments in eight of the countries in which Statoil operates—Azerbaijan, Indonesia, Iraq, Mozambique, Nigeria, Norway and Tanzania—are currently either in place or being implemented.

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1 Proposed Rule: Disclosure of Payments by Resource Extraction Issuers, Release No. 34-63549, 75 Fed. Reg. 80,978 (Dec. 23, 2010) (the "Proposing Release").

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Comments on the Proposed Rule

1. Exception for Payments Made by Foreign Issuers to Foreign Governments

We believe that the Commission should permit foreign issuers to disclose payments made to foreign governments in the manner that their home country regulators or accounting standards, or regulators in other jurisdictions in which they do business, may require. Under this exception, if a foreign issuer is already required to disclose resource extraction payments made to a government, the foreign issuer would report those payments to the Commission to the extent and in the manner required under that parallel transparency regime. Such an exception would eliminate the potential for conflicting and overlapping disclosure requirements for issuers likely to be subject to multiple disclosure regimes. Alternatively, the Commission could limit such an exception to payments reported under an EITI-compliant regime. Foreign issuers would nevertheless be required to disclose, in accordance with the Commission's requirements, all payments to the United States federal government and payments to foreign governments that an issuer is not required to disclose elsewhere.

We believe that many resource extraction issuers currently are or soon will be subject to similar resource extraction payment transparency regimes outside the United States. EITI-compliant reporting has been or is expected to be implemented in more than 30 natural resource-producing countries. In October 2010, the International Accounting Standards Board considered a proposal to require disclosure of resource extraction payments in financial statements prepared in accordance with International Financial Reporting Standards ("IFRS"). The Board may add that proposal to its agenda for the future. Proposals to require resource extraction companies to disclose payments to governments are also under discussion in the European Union. Permitting foreign issuers to report information about payments to foreign governments in the format in which they have already been disclosed would significantly reduce the burden on foreign issuers, in terms of time and expense, of preparing multiple sets of disclosures. Alleviating these burdens may dissuade foreign issuers from deregistering to avoid increased costs of compliance.

Section 1504 directs the Commission to ensure, "to the extent practicable," that its final rule "support[s] the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals." In the Proposing Release, the Commission cited the EITI as one initiative to which the federal government had demonstrated a commitment that Section 1504 directs it to support. By accommodating parallel international initiatives, such as the EITI, an exemption permitting disclosure of payments to foreign governments in the format that is required under other transparency frameworks would be consistent with Section 1504's mandate in this regard.

Alternatively, the Commission should permit foreign issuers to disclose resource extraction payments to foreign governments on a country-by-country basis rather than on a project basis. Such an exemption would more closely align a foreign issuer's reports to the Commission with EITI-compliant reporting.

2. Definition of "Project"

The Commission should provide more guidance on the definition of a "project" for which payment disclosure is required. The Proposing Release asked whether the Commission should adopt a definition of "project" substantially similar to the definition of "development project" in Rule 4-10 of Regulation S-X. We do not believe that this "development project" definition would be appropriate for determining the level of project detail that issuers should disclose about resource extraction payments to governments. Under Rule 4-10,

issuers could determine that multiple "development projects" exist within a single reservoir or field. Disclosure of this level of disaggregated detail in relation to payments to governments would significantly disadvantage issuers subject to the new rule, as this highly granular data would be both commercially sensitive and extraordinarily costly, in terms of time and expense, to prepare. In addition, reporting project data on such a highly issuer-specific basis would impair the ability of investors and others to compare payment information across issuers.

We consider a geographic definition would be more appropriate. While we would recommend that the Commission adopt a country-by-country basis for project reporting, consistent with the EITI, Statoil would alternatively support the American Petroleum Institute's ("API") suggestion to define "project" as "technical and commercial activities carried out within a particular geologic basin or province to explore for, develop and produce oil, natural gas or minerals." Because it is geographically based, such a definition would be consistent with the EITI reporting framework. By defining "project" on a geographical basis, the Commission may promote more efficient and meaningful reconciliation of issuers' reports with EITI-compliant reports of payments provided to governments.

We would also propose that the Commission permit issuers to disclose only payments related to material projects. Limiting disclosure to material projects would increase the utility of resource extraction payments reports by eliminating voluminous, immaterial information while mitigating the time and expense required to prepare the disclosures. In the alternative, issuers could label payments related to immaterial projects as "other projects," reducing the time and expense required to prepare disclosures of immaterial information.

We also note that some payments to governments are not separable on a project basis. In these limited cases, issuers should be permitted to satisfy the project disclosure requirement by aggregating payments on a reporting unit or entity basis. For example, reliable allocation of tax payments to projects would require completion of tax returns and resolution of any tax challenges, which are unlikely to occur by the proposed deadline for reporting payments. Issuers would expend significant time and expense to allocate such items to projects on a preliminary basis and later would have to adjust those allocations to reflect the final tax accounting. An approach to project reporting that permits issuers to report such payments by an appropriate reporting unit or entity would reduce the time, expense and uncertainty associated with allocating payments preliminarily across a large number of projects, as well as mitigate the potential for confusion caused by finalizing adjustments made in subsequent years.

3. Identifying the "De Minimis" Threshold

To assist issuers in applying the Proposed Rule's "not de minimis" standard, the Commission should include an instruction referencing existing guidance for determining whether information is material to investors. We support the API's responses to question 26 and 29 recommending that the new rule clarify that payments should be reported if they are material under the well-established standards set forth in Rule 12b-2 under the Exchange Act, Staff Accounting Bulletin 99 and the Financial Accounting Standards Board (FASB) Concept 2.

4. Payments to Companies That Are Majority-Owned by a Foreign Government

The Commission should include an instruction to the definition of "payment" clarifying that payments to companies that are majority-owned by a foreign government would not be subject to reporting under the new rule if the payments are such that would be paid to any other company operating in a commercial

capacity, such as payments by joint venture partners to the company as operator of a well or field and payments by commercial contract counterparties. Without this clarification, the rule could be construed to require disclosure of every commercial payment to such companies. Similarly, intra-company payments made by a foreign government-owned company to a subsidiary or entity controlled by it should not be subject to reporting under the new rule. The details of such commercial and intra-company payments are commercially sensitive and could potentially cause significant competitive harm both to resource extraction issuers registered with the Commission and to the markets in which they participate. These payment flows are not part of the commonly recognized stream of revenues to governments from the development of natural resources, nor do they fall within the scope of Section 1504 or other international transparency efforts aimed at increasing the accountability of governments in their capacity as sovereigns responsible for the stewardship of natural resources under their jurisdiction. For these reasons, the Commission should clarify that its new rule would not require disclosure of these types of payments.

We fully support the API's comments to question 63 in this respect.

5. *Equal Treatment of Issuers' Payments to Sub-National Governments*

The Commission should limit the definition of "foreign government" to national governments and their departments, agencies and instrumentalities and companies owned by them. The Proposed Rule would not require reporting of payments to sub-national governments of the United States, but would require reporting of payments to foreign sub-national governments. We believe that requiring disclosure of payments to national governments only, whether U.S. or non-U.S., would be more consistent with Section 1504 and other international transparency initiatives, as well as treat resource extraction issuers more fairly, wherever their operations are located.

Section 1504 does not require reporting of payments to sub-national governments of the United States or of any foreign government. The statute instead simply requires disclosure of payments made to "a foreign government or the [U.S.] Federal Government." A definition of "foreign government" limited to national governments would parallel this reference to only the U.S. federal government. Furthermore, Congress defined "foreign government" in Section 1504, omitting any mention of foreign sub-national governments.

Section 1504 does require issuers to include in the interactive data format versions of their reports electronic tags identifying both the recipient government for each payment and the country in which that government is located. The Commission cited this provision as evidence that Congress intended for the term "foreign government" to include foreign sub-national governments, despite its failure to do so in its definition of that term. The Commission appears to have concluded that, because issuers must provide information about the country in which a recipient government is located, the requirement to identify the recipient foreign government would be superfluous unless Congress intended to require issuers to disclose payments to both national and sub-national governments. We disagree. Congress expansively defined "foreign government" to include departments, agencies and instrumentalities of a foreign government, as well as companies owned by a foreign government. Based on this definition, issuers would be required to report, for example, payments made to national agencies or departments that regulate the extraction of natural resources or to national oil companies. Reports of such payments would identify a recipient "foreign government" distinct from the country in which it is located. The plain meaning of Section 1504 does not, therefore, require reporting of payments to any U.S. or non-U.S. sub-national government and, in fact, appears to require only payments to national governments.

Requiring disclosure of payments to foreign sub-national governments while exempting from disclosure payments to U.S. states and municipalities also imposes a higher burden on resource extraction issuers with operations primarily outside the United States compared to issuers with operations primarily inside the United States. As a result of this unequal treatment, the Proposed Rule's burdens in terms of time and expense may fall disproportionately on resource extraction issuers with operations primarily outside the United States.

6. Definition of Entities Under an Issuer's Control

The Proposed Rule would require disclosure of payments made by a subsidiary of a resource extraction issuer or an entity under the issuer's control. Section 1504 does not define either "subsidiary" or "control." Although Rule 12b-2 under the Exchange Act of 1934 contains definitions of "subsidiary" and "control," we do not believe these definitions provide sufficient clarity for purposes of reporting payments under the Proposed Rule. Companies operate through a variety of contractual, partnership and shareholding relationships. These relationships may be deemed to confer control on one or more entities for purposes of Rule 12b-2, but may not constitute control for accounting purposes. An issuer could potentially face significant burdens, in terms of time and expense, to determine whether its interest in any unconsolidated entity satisfies the definition of control under Rule 12b-2 such that it would need to disclose payments made by that entity as part of the issuer's resource extraction payments report, even though information about such payments may not be available to it in connection with the preparation of its financial statements. We would instead propose that the Commission define "control" for purposes of the new rule to mean that an issuer consolidates the entity (either wholly or proportionally) in its financial statements. Entities accounted for by the equity method rather than through consolidation should not be deemed to be "controlled" for this purpose. This definition would ensure that resource extraction issuers have access to the underlying accounting data for all payments that they are required to disclose.

7. Limited Exemption for Existing Legal Prohibitions

The Commission should permit a limited exemption from disclosure for payments prohibited to be disclosed by law or agreement. As eight leading law firms noted in their joint comments to the Commission of November 5, 2010, Section 23(a)(1) of the Exchange Act of 1934 gives the Commission broad authority to vary its disclosure requirements to accommodate issuers subject to conflicting legal responsibilities. We agree with the API that the Commission should grant to foreign private issuers an exemption from disclosure comparable to the relief for U.S. domestic issuers in Instruction E to Form 10-K, which permits omission of information with respect to foreign subsidiaries when disclosure would be detrimental to the issuer. Such an exemption would avoid the potential for placing foreign private issuers at a competitive disadvantage to U.S. public companies with respect to the new disclosure requirements. Should the Commission choose to create a new form under which issuers may furnish resource extraction payments reports, the instructions to that form should include similar relief, to avoid placing resource extraction issuers registered with the Commission at a competitive disadvantage compared to those not subject to the new disclosure requirements.

Alternatively, the Commission should exempt from disclosure payments for which disclosure is prohibited by law, as well as payments for which a confidentiality agreement is in place as of the date the final rule comes into effect. The Commission should not require issuers to choose between observing the law and their existing commitments and complying with newly promulgated disclosure requirements. Such a choice could lead foreign private issuers to consider deregistration to avoid, on the one hand, incurring penalties and subjecting personnel to the risk of civil or criminal liability following prohibited disclosures or, on the other hand, breaching existing agreements by withholding payments or restricting operations to those for which

payment disclosure is permitted. In addition, requiring issuers to disclose payments despite legal prohibitions would, as a practical matter, prohibit issuers subject to the new rule from doing business in jurisdictions and under circumstances that do not permit such disclosure. Such a prohibition goes beyond the purpose of the statute and could potentially cause significant competitive harm both to resource extraction issuers registered with the Commission and to the markets in which they participate. At a minimum, the Commission should exempt from disclosure payments for which disclosure is prohibited by law and allow a transition period with respect to disclosure of payments currently required by agreement to be kept confidential.

8. Definition of "Commercial Development"

We agree with the Commission that the concept of "commercial development of oil, natural gas or minerals" should exclude activities that are ancillary or preparatory to commercial development. We also propose that the Commission confine the concept of "commercial development of oil, natural gas or minerals" to the upstream activities of exploration and production.

9. Types of Payments Subject to Disclosure

We agree with the Commission's conclusion that the types of payments subject to reporting should be limited to the core elements of the revenue stream for the commercial development of oil, natural gas and minerals, excluding indirect payments such as support for infrastructure, social and community initiatives and taxes on consumption and personal income. For the same reason, we also agree with the Commission that dividends paid to governments as shareholders, which Congress did not include in Section 1504's list of payments subject to disclosure, should not be included in resource extraction payments reports.

10. Form of Resource Extraction Payments Reports

To avoid investor confusion and any inference that a resource extraction payments report forms part of an annual report on Form 10-K, Form 20-F or Form 40-F or a registration statement under the Securities Act of 1933, the Commission should create a new form under which issuers may furnish resource extraction payments reports. A separate form would also facilitate use of the information reported by placing it in a document that users may access independently of an issuer's annual report to investors.

11. Status of Resource Extraction Payments Reports

We agree with the Commission that resource extraction payments reports should be deemed to be furnished rather than filed and, as a result, should not be subject to liability under Section 18 of the Securities Exchange Act of 1934. We also agree that resource extraction payments reports should be deemed not to be incorporated in registration statements under the Securities Act of 1933. The new disclosure requirements were intended primarily to increase the transparency of government revenues for the commercial development of natural resources, rather than to protect investors. To promote that aim, it is not necessary for the Commission to expand issuers' potential liability to investors. Such an expansion of liability would significantly increase the costs, in terms of time and expense, of producing resource extraction payments reports without enhancing the benefits to transparency.

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We appreciate the opportunity to comment on the Commission's Proposed Rule on Disclosure of Payments by Resource Extraction Issuers. Please do not hesitate to contact Catherine Marchand Støle, Legal Department, at +47 (95) 73 38 86 or cms@statoil.com if you require additional information.

Sincerely,

Statoil ASA

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Executive Vice President and Chief Financial Officer