



March 8, 2016

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090  
Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: Proposed Rule, Disclosure of Payments by Resource Extraction Issuers  
File Number S7-25-15

Dear Secretary:

Oxfam America (“Oxfam”) and EarthRights International (“EarthRights”), counsel to Oxfam, are pleased to provide the enclosed submission responding to comments received by the Commission on its Proposed Rule implementing Section 13(q) added to the Securities Exchange Act of 1934 by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

As always, we are eager to be a resource and would be happy to provide more information to inform the Commission’s deliberations. We look forward to the vote on the Final Rule scheduled for the end of June.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian Gary".

Ian Gary  
Associate Policy Director  
Fueling Development, Oxfam America

A handwritten signature in black ink, appearing to read "Jonathan A. Kaufman".

Jonathan Kaufman  
EarthRights International  
Counsel for Oxfam America

**1. The rule release adequately justifies the Commission’s discretionary choice to require fully public availability of Section 1504 disclosures.**

The Commission’s decision to require publication on EDGAR of issuers’ Section 1504 disclosures is consistent with its statutory obligations and the District Court’s decision, and is adequately justified in the rule release. We strongly urge the Commission to additionally recognize that fully public disclosure is in the interests of investors, whom Congress also intended to benefit.

- a. The text of Section 13(q) does not require the Commission to create a separate compilation.

The American Petroleum Institute (API) claims that the “plain language” of Section 13(q) dictates a two-step process – confidential disclosure of issuers’ payment data, and then a public compilation prepared by the Commission, but in fact the text of the statute contains no such requirement.<sup>1</sup> Under Section 13(q)(3), the Commission is directed, to the extent practicable, to “make available” to the public a compilation of issuers’ disclosures. This does *not* mean that the Commission is required to *make* or *prepare* a compilation; an alternative, permissible interpretation of the text would be that the Commission need only make such a compilation available to the public *if it already exists*.

Because the Commission is not directed to make a separate compilation, the API’s two-step proposal does not hold, and the Commission acted reasonably in proposing to make all issuers’ submissions public. This is especially true because – as the Commission noted<sup>2</sup> – users will be able to use EDGAR to make their own compilations, which can then be made public if they are shared with the Commission, thus satisfying the terms of Section 13(q)(3).

Moreover, the Commission may choose to make a compilation available in addition to publicly filed disclosures, using the very same public filings. The word “compilation” does not imply use of non-public filings.<sup>3</sup>

- b. The District Court did not require the Commission to make a separate compilation.

API misleadingly discusses the District Court decision in *API v. SEC* when it suggests that a separate compilation was required.<sup>4</sup> The opinion did not, as API suggests, hold that a two-step process is required. Rather, the court’s discussion was confined to Step One of the *Chevron* test – i.e., whether Congress had spoken unequivocally, thereby confining the Commission to a particular reading of the statute. The portions of the decision quoted by API are therefore taken out of context. While the court did indeed identify bases for an alternative interpretation of the statute – i.e., that the compilation, and not the annual reports themselves, are intended to be made

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<sup>1</sup> Comment submitted by American Petroleum Institute (Feb. 16, 2016), at 4. *Available at* <https://www.sec.gov/comments/s7-25-15/s72515-32.pdf> (“API Comment”).

<sup>2</sup> Disclosure of Payments by Resource Extraction Issuers, Proposed Rule, 80 Fed. Reg. at 80,058, 80,080 (Dec. 23, 2015).

<sup>3</sup> An example of compilation based on public documents is the SEC Docket, which compiles a summary of SEC actions that are individually available publicly. *See* SEC Docket. *Available at* <https://www.sec.gov/about/sec-docket.shtml>.

<sup>4</sup> API Comment at 3-4 & n.15.

public<sup>5</sup> – this was done only for the purpose of determining whether there were any reasonable alternative interpretations to the one chosen by the Commission and not for the purpose of mandating any particular interpretation of the statute.

The court found that Congress had not spoken unequivocally (and that the Commission had therefore erred by failing to recognize the discretion granted to it), but it declined to impose upon the Commission an alternative interpretation for the disputed textual provisions.<sup>6</sup> In fact, in its analysis and dismissal of each of the Commission’s and Oxfam’s arguments, the court studiously avoided suggesting that the two-step process was required, but rather confined itself to criticizing the notion that Congress had mandated the Commission’s approach.<sup>7</sup>

Indeed, the court expressly left open the possibility that at *Chevron* Step Two, the Commission might conclude that full public disclosure is the best way to accomplish the aims of the statute. In fact, it expressly declined to consider Step Two arguments, reasoning that a rule justification that relies on an erroneous understanding of “Congress’ judgment that such a regulation is desirable or required” must be declared invalid, “*even though the agency might be able to adopt the regulation in the exercise of its discretion . . .*”<sup>8</sup>

Because the court left open an option for the Commission to re-adopt its original approach to public disclosure as long as it did so as an exercise of discretion, the Commission was free to consider the aims of Congress and decide that fully public disclosure is the best way to attain them.

- c. The Commission is permitted, in the exercise of its discretion, to rely on its conclusions about congressional intent.

At *Chevron* Step Two, the courts consider whether the agency’s regulatory choices are “based on a permissible construction of the statute,”<sup>9</sup> – that is, whether it is “reasonable in light of the Act’s text, legislative history, and purpose.”<sup>10</sup> Thus it was entirely proper – necessary, even – for the Commission to look at the statute and base its choices in part on what it believed was the intent of Congress.

In fact, the court need not agree that the agency’s interpretation is the best one; the court may not substitute its judgment for that of the agency and may only vacate a rule if it is based on a

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<sup>5</sup> *API v. SEC*, 953 F. Supp. 2d 5, 14 (D.D.C. 2013).

<sup>6</sup> Once a court determines that the Congressional text is not unequivocal, the court then cannot substitute its own judgment for that of the agency. *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

<sup>7</sup> *API v. SEC*, 953 F. Supp. 2d at 14 (“the statute’s plain language . . . says nothing about *public* filing of these reports. . . . Given the annual report provision’s silence as to public disclosure . . . the Commission’s argument that the statute unambiguously requires public filing is a climb up a very steep hill.”); *id.* at 15 (“These difficulties make it even less probable that the Commission’s proposed reading is the only one possible.”); *id.* at 16 (“If this is Congress’s way of *unambiguously dictating* that reports must be publicly filed, it is a peculiar one indeed.”) (emphasis added); *id.* at 17 (“All that is left of the Commission’s argument is that public filing of reports ‘is how we usually do it.’ Even if true, however, that does not establish a *clear statutory mandate* to do so here.”) (emphasis added).

<sup>8</sup> *Id.* at 20 (emphasis added) (quoting *Arizona v. Thompson*, 281 F.3d 248, 259 (D.C. Cir. 2002)); *see also id.* at 19 n.5.

<sup>9</sup> *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

<sup>10</sup> *Southern Cal. Edison Co. v. FERC*, 116 F.3d 507, 511 (D.C. Cir. 1997).

statutory interpretation that is arbitrary and capricious.<sup>11</sup> The Proposed Rule Release properly considers factors such as goals of the statute (e.g. promoting international transparency and ensuring that the U.S. is a “global leader in creating a new standard for revenue transparency in the extractive industries”), effective ways to achieve these goals, compatibility with requirements of other jurisdictions, and other relevant factors.

In considering these factors, it is only natural and appropriate that the Commission should look back to legislative history in order to discern what Congress intended. The fact that the district court concluded that fully public disclosure was not *mandated* does not foreclose the possibility that the Commission could reasonably decide to adopt the same approach in the exercise of its discretion, and in doing so, the Commission can rely on its reading of congressional intent.<sup>12</sup>

- d. The Commission should also recognize that Congress intended for Section 1504 to benefit investors.

While the Commission’s stated rationales for adopting fully public disclosure are sufficient to withstand judicial review, it should reconsider its continuing refusal to adequately recognize that full public disclosure under Section 13(q) was intended to – and, in fact, does – protect the interests of investors. This recognition would further underline the necessity for fully public, company-specific reporting, as investors need to be able to link issuers with payments if they are to use the disclosures to evaluate investment decisions.

API suggests that the only effects of Section 13(q) relevant to investors are negative. It also insinuates – falsely, and without support – that the investors who support fully public disclosure can be discounted because they are “investors with a special interest” that detracts from their interest in maximizing shareholder value.<sup>13</sup> These arguments simply do not withstand scrutiny and would require the Commission to completely overlook all available evidence in the administrative record.

First, contrary to the district court’s assumptions, legislative statements – both pre- and post-enactment – do in fact provide strong evidence that legislators voted for the amendment to the Dodd-Frank Act that became Section 13(q) in part out of concern for investors.<sup>14</sup>

Second, since the district court’s decision in July 2013, investors with nearly \$10 trillion in assets under management have written to the Commission and explained a variety of ways in which Section 13(q) disclosures are important to them, including:

- reducing social and political risk;
- deterring corruption;
- allowing investors to price risk more accurately; and

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<sup>11</sup> See, e.g., *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>12</sup> See, e.g., *Appalachian Power Co. v. EPA*, 135 F.3d 791 (D.C. Cir. 1998).

<sup>13</sup> API Comment at 22-23 n.94.

<sup>14</sup> For pre-enactment legislative history, see, e.g., 156 Cong. Rec. S3815 (May 17, 2010) (Sen. Cardin) (“Investors need to know the full extent of a company’s exposure . . .”); *id.* at S3816 (May 17, 2010) (Sen. Lugar) (“would empower investors to have a more complete view of the value of their holdings.”). For the most recent post-enactment statements, see Comment submitted by Richard G. Lugar *et al.*, United States Senators (Ret.), (Feb. 4, 2016). Available at <https://www.sec.gov/comments/s7-25-15/s72515-20.pdf>; Comment submitted by Sen. Benjamin L. Cardin *et al.*, United States Senators, (Feb. 5, 2016). Available at <https://www.sec.gov/comments/s7-25-15/s72515-19.pdf>.

- defusing community frictions that can hold up extractive projects.<sup>15</sup>

The Commission's rationale for dismissing these benefits – that issuers are already required to disclose their most significant risks under other Exchange Act provisions<sup>16</sup> – simply is not commensurate with the number of investors that have insisted Section 13(q) disclosures are significantly valuable to them. The broad and general nature of risk factor disclosures and segment reporting guidance means that they cannot be used to conduct the detailed risk and investment analysis that is necessary in today's rapidly evolving investment environment, especially as this relates to non-technical risks. The comment submitted by the Columbia Center for Sustainable Investment indicates why this is true in the context of both in-depth fundamental equity analysis and more top-down analysis of macroeconomic factors.<sup>17</sup>

The Commission's Modernization of Oil and Gas Reporting permitted the inclusion of proven hydrocarbon reserves extracted from shale, oil sands, and coal in company's disclosures in recognition of dramatic changes in the industry that investors could not fully understand using existing reporting.<sup>18</sup> Increasing demand for energy and materials, the capacity of liquid natural gas infrastructure and mining techniques such as cyanide heap leaching to expand the economic capacity of operations, and national operating companies' (NOCs) control of the vast majority of the world's hydrocarbon reserves have sent oil, gas and mining companies into more operating environments for which current disclosure requirements are insufficient. Section 13(q) disclosures, however, can – and will, according to investors – be used in this way if they are disaggregated by issuer and project. The Commission also fails to credit some of the utility that derives not from risks that would otherwise need to be disclosed but rather improvements to extractive issuers' operating environments that would flow from disclosure.

And third, neither API nor the Commission can cavalierly dismiss the investors that support full public disclosure under Section 13(q) as “special interests” that lack a commitment to shareholder value.<sup>19</sup> This is true for a number of reasons. First, there is nothing in the Exchange Act or any legal source (the dicta from *Business Roundtable* that API quotes notwithstanding) limiting the Commission's investor protection mission to investor function that aims to maximize “share value.” Indeed, it can be argued that public pension funds and private funds committed to applying socially and environmentally responsible screens, which account for at least some of the investor interest in Section 13(q), are more suited to maximizing *long-term* share value than other investors, who may only be interested in short-term gains.<sup>20</sup> Second, such investors *are* required to maximize shareholder value, although they do pursue additional ethical or constituency-based goals that are consistent with overall economic value. And finally, even if it were somehow proper to discount those investors, there would be no basis to exclude the voice of institutions like Allianz Global Investors, ING Investment Management, and BNP Investment Partners, which are some of the largest mainstream investors in the world.<sup>21</sup>

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<sup>15</sup> For a useful summary of these submissions, see Comment submitted by Calvert Investments (Feb. 16, 2016). Available at <https://www.sec.gov/comments/s7-25-15/s72515-39.pdf> (“Calvert Comment”).

<sup>16</sup> 80 Fed. Reg. 80,091 & n.350.

<sup>17</sup> Comment submitted by the Columbia Center on Sustainable Investment (Oct. 30, 2015). Available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-93.pdf>.

<sup>18</sup> See Modernization of Oil and Gas Reporting, Final Rule, 74 Fed. Reg. 2158 (Jan. 24, 2009).

<sup>19</sup> See API Comment at 22-23 n.94.

<sup>20</sup> Lynne L. Dallas, *Short-Termism, the Financial Crisis, and Corporate Governance*, 37 J. Corp. L. 265, 304 (2012)

<sup>21</sup> See Calvert Comment at 4.

- e. The Commission is not required to “minimize costs” to regulated parties.

API also mischaracterizes the Commission’s statutory obligations by suggesting it has “a statutory duty under Section 3(f) and 23(a)(2) of the Exchange Act to minimize costs . . . .”<sup>22</sup> Neither provision imposes such a duty. Under Section 3(f), whenever it is required to consider whether an action is “necessary or appropriate in the public interest,” the Commission is also required to “consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”<sup>23</sup> Section 23(a)(3) requires the Commission in its rulemaking to “consider among other matters the impact any such rule or regulation would have on competition” and not to adopt any such rule “which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”<sup>24</sup>

These provisions require the Commission to explain the economic effects of the rule, but neither require it to minimize costs to regulated parties regardless of the effect on the rule’s intended purpose. Indeed, as explained in Section 2 below, “minimizing costs” in the manner urged by API would render the rule useless to investors and citizens of resource-rich countries who the rule was specifically intended to benefit.

## **2. Fully public, contract-level, company-specific disclosure is necessary to satisfy the needs of Congress’s intended beneficiaries.**

Contrary to the API’s repeated claim that disaggregated information does little to serve Section 13(q)’s purposes,<sup>25</sup> the record shows that the full benefits of Section 13(q) for resource-rich communities can *only* be realized if the information in issuers’ reports is made public at a company-specific, project-by-project level.

- a. Numerous community-based groups in resource-rich countries have demonstrated the added utility, importance, and necessity of project-level, company-specific disclosures.

Since the District Court’s decision in July 2013, numerous community groups from around the world have written to the Commission to explain the importance of fully public, company-specific, project-level disclosure in their efforts to promote responsible natural resource governance. For example:

- The Iraqi Transparency Alliance for Extractive Industries argued that project-level, company-specific disclosures would be necessary for them to reconcile production volumes data provided by the Ministry of Oil with funds received from the Ministry of Finance, to ensure citizens located near extraction sites can determine their fair share, and to achieve greater transparency into payments received by the Kurdistan Regional Government, which are not currently published by companies and are not included in the EITI reports for Iraq.<sup>26</sup>

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<sup>22</sup> API Comment at 30.

<sup>23</sup> 15 U.S.C. § 78c(f).

<sup>24</sup> 15 U.S.C. § 78w(a)(2).

<sup>25</sup> API Comment at 8, 21.

<sup>26</sup> Comment submitted by the Iraqi Transparency Alliance for Extractive Industries (Sept. 25, 2015). at 2-3. Available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-87.pdf> (“ITAEI Comment”).

- The Africa Centre for Energy Policy in Ghana argued that project-level transparency would be necessary to enable communities to advocate to their governments for a sufficient level of social benefits as a proportion of state receipts.<sup>27</sup>
- The Open Society Institute for Southern Africa-Angola noted that project-level data would be necessary to fill in tremendous discrepancies between the reports of various ministries and the media with respect to bonuses and taxes, and to ensure that communities are receiving the amounts due to them based on statutory revenue-sharing formulas.<sup>28</sup>
- The Colombian Civil Society Roundtable for Transparency in the Extractive Industries noted that groups would look at project-specific royalty payments as a basis to demand more investment from their governments, and Royalties Surveillance groups would use information about project-based local taxes to ferret out corruption.<sup>29</sup>
- PWYP Zimbabwe explained that company- and project-level payment data would enable it to track the flow of revenues from U.S.-listed companies into public accounts, enhance civil society and communities' ability to hold state agencies to account for payments they receive and services they are responsible for delivering, boost its ongoing advocacy efforts for national policies to enhance transparency of Zimbabwe's natural resource revenues and how they are spent, and help communities and civil society weigh the costs and benefits of individual projects.<sup>30</sup>
- The Civil Society Coalition on Oil & Gas in Uganda (CSCO) explained that company-by-company, contract-based project-level reporting will greatly enhance its ability to monitor individual companies' contributions to the public finances and ensure that the Government is properly collecting and accounting for payments.<sup>31</sup> CSCO described how Section 1504 disclosures would allow it to expand on the work that it is already doing to track payments into Government accounts using project-level data voluntarily disclosed by Tullow and to "advocate more effectively for transparency at the 'receiving' end of Government."<sup>32</sup>
- The Carter Center noted that disaggregated project level payment data in the Democratic Republic of Congo would be used to bolster their efforts, and those of their Congolese civil society partners, to monitor revenue flows to sub-national governments as well as state-owned companies and strengthen the fight to combat corruption as well as encourage debate on the fiscal regime.<sup>33</sup>
- The National Advocacy Coalition on Extractives in Sierra Leone explained that project-level information would enable communities to understand revenue generated from

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<sup>27</sup> Comment submitted by Africa Centre for Energy Policy (Feb. 16, 2016) at 6. *Available at* <https://www.sec.gov/comments/s7-25-15/s72515-40.pdf> ("ACEP Comment").

<sup>28</sup> Comment submitted by Open Society Institute for Southern Africa-Angola (Jan. 29, 2015) at 5-6. *Available at* <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-60.pdf> ("OSISA-A Comment").

<sup>29</sup> Comment submitted by the Mesa de la Sociedad Civil para la Transparencia in las Industrias Extractivas (Nov. 13, 2015) at 5-6. *Available at* <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-99.pdf>.

<sup>30</sup> Comment submitted by PWYP Zimbabwe (Feb. 20, 2015) at 2-4. *Available at* <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-63.pdf>.

<sup>31</sup> Comment submitted by Civil Society Coalition on Oil and Gas in Uganda (May 18, 2015) at 1. *Available at* <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-71.pdf>.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> Comment submitted by The Carter Center (Apr. 21, 2015) at 1. *Available at* <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-68.pdf>.

specific projects in their backyard and conduct an informed cost benefit analysis of those projects.<sup>34</sup>

- PWYP Indonesia emphasized that “access to full and accurate project-level data is crucial . . . in order to monitor in-kind payments effectively. . . .”<sup>35</sup> It explained that “what makes Indonesia’s EITI so valuable to civil society . . . is the level of detail” because it requires oil and gas companies to report on payments that arise from their production sharing contracts.<sup>36</sup> It described a number of ways PWYP Indonesia and its allies are already putting the newly available EITI project-level payment data to use, and noted that civil society organizations, citizens, and local governments are lobbying for EITI project-level reporting requirements in the mining sector, too.

It is important to note that because the payments that each of these purposes refers to are made at the project level (and not at the political sub-division level), aggregated and anonymized reporting simply would not provide the necessary level of granularity for some of the most resource-dependent and geopolitically important countries in the world. Indeed, the Commission recognized in the proposed rule release that API’s proposal would deprive communities of the information “necessary to enable them to know what funds are being generated from the extraction activities in their particular areas.”<sup>37</sup>

The submissions by community-based groups further support that finding and specifically refute the utility of information provided under API’s proposal. For example:

- The Iraqi Transparency Alliance for Extractive Industries told the Commission that by failing to identify which companies made which payments, API’s proposal would render the information “useless” to Iraqi civil society.<sup>38</sup>
- Similarly, the Africa Centre for Energy Policy explained that API’s approach “would render the oil payment disclosures useless for accountability purposes, and would prove a waste of effort for reporting companies . . . .”<sup>39</sup>
- PWYP Indonesia wrote that reporting only at the first tier below the central government, as suggested by API, would be “completely unsatisfactory in Indonesia” because it would exclude critical information about the revenue local governments are entitled to under Indonesia production sharing agreements.<sup>40</sup>
- The National Advocacy Coalition on Extractives explained that for local communities in Sierra Leone affected by extractives projects, “knowledge of the total, combined amount a company has paid the government for *all* extractives projects is of little value. . . . When a single company operates multiple projects, as commonly occurs in Sierra Leone, community oversight becomes nearly impossible without data on each specific project.”<sup>41</sup>

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<sup>34</sup> Comment submitted by National Advocacy Coalition on Extractives in Sierra Leone (Feb. 20, 2015) at 3. Available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-61.pdf> (“NACE Comment”).

<sup>35</sup> Comment submitted by Publish What You Pay Indonesia (Mar. 11, 2015) at 3. Available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-64.pdf> (“PWYP Indonesia Comment”).

<sup>36</sup> *Id.* at 2. The comment notes US-listed companies operating in Indonesia that report in line with this standard include BP, Chevron, CNOOC, ConocoPhillips, ExxonMobil, PetroChina, and Total.

<sup>37</sup> 80 Fed. Reg. at 80,077.

<sup>38</sup> ITAEI Comment at 4-5.

<sup>39</sup> ACEP Comment at 6.

<sup>40</sup> PWYP Indonesia Comment at 2.

<sup>41</sup> NACE Comment at 3.

- PWYP Cameroon argued that without “project- and company-specific reporting . . . civil society and local communities cannot effectively monitor the revenue to which they are entitled.”<sup>42</sup>
- The Open Society Institute for Southern Africa-Angola told the Commission “it will only be possible to carry out [its] crucial accountability functions if the Section 1504 payment data is disclosed by company and by contract.”<sup>43</sup>

API’s contention that in order to combat the resource curse, all that is needed is the aggregate amount of funds received by each governmental entity is thus demonstrably false. Similarly, Exxon’s vague suggestion that it might be willing to accept company-specific public disclosures in certain limited cases if the Commission adopts API’s definition of project,<sup>44</sup> is likewise unacceptable for the same reasons.

- b. Confidential disclosure is not sufficient to promote Section 1504’s anti-corruption aim.

API concedes that the Commission asserted a congressional interest in combatting corruption as a motivating force behind the enactment of Section 13(q), but insists that confidential disclosure of payment information to the Commission for use in enforcing the Foreign Corrupt Practices Act (FCPA) is sufficient to satisfy that interest.<sup>45</sup> This argument fundamentally misapprehends the nature of FCPA enforcement.

First, confidential treatment of disclosures would deny the U.S. Government and other anti-corruption enforcement authorities one of their most important tools for identifying corruption: the public. The U.S. Department of Justice and the Commission cannot identify corrupt payments by scrutinizing the books and financial disclosures of every single issuer; rather, they rely in part on whistleblowers, public reports, and the efforts of non-profit NGOs.<sup>46</sup> And confidential treatment would deny investors the ability to sniff out potential corruption risks in their investment choices.

Second, the goal of fighting corruption does not end with the U.S. Government; rather, public disclosure of Section 13(q) data would allow other governments to investigate and prosecute corruption that falls within their jurisdiction. API’s contention suggests that U.S. authorities would be expected to take it upon themselves to police the corrupt acts of all reporting issuers, no matter how slight the connection to the United States. In fact, the FCPA only applies to foreign issuers if they have used the U.S. mails or means of interstate commerce to further the corrupt payment, or if they have taken steps to further a corrupt act within the United States.<sup>47</sup> Thus it may well be the case that the disclosures of foreign issuers could indicate corrupt transactions, but

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<sup>42</sup> Comment submitted by PWYP Cameroon (June 8, 2015) at 3. *Available at* <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-75.pdf>.

<sup>43</sup> OSISA-A Comment at 7.

<sup>44</sup> Comment submitted by Exxon Mobil Corp. (Feb. 16, 2016) at 10 & n.16. *Available at* <https://www.sec.gov/comments/s7-25-15/s72515-33.pdf>. (“Exxon Comment (2016)”).

<sup>45</sup> API Comment at 7.

<sup>46</sup> For example, the U.S. government targeted the corruptly acquired assets of Teodoro Obiang, a Vice President of Equatorial Guinea, partially as a result of efforts and information gathered by civil society organization Global Witness.

<sup>47</sup> See U.S. Department of Justice, Criminal Division, and U.S. Securities and Exchange Commission, Criminal Enforcement Division, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012) at 10-12.

the U.S. authorities would not have jurisdiction to prosecute unless the foreign issuer has made those payments through a U.S. bank or made misleading representations in the United States. Only fully public disclosure would ensure that the foreign authorities that *do* have jurisdiction would be able to proceed.

### **3. No country prohibits disclosure, and the Commission should not grant any categorical exemptions.**

API contends that the Commission should adopt a rule providing exemptions for country laws and contracts that prohibit Section 13(q) disclosures.<sup>48</sup> However, as the Commission held in rejecting API's request for a stay pending litigation in 2012, the evidence supporting foreign disclosure prohibitions is "unpersuasive," and *no additional information has been submitted to the record suggesting that such laws exist.*<sup>49</sup> In fact, they do not exist, and if any legal impediments to disclosure were to arise, the Commission's proposal for case-by-case exemptive consideration is the only appropriate means to address them.<sup>50</sup>

- a. API no longer claims that Angola or Cameroon prohibit Section 13(q) disclosures.

As an initial matter, we note that in its most recent comment, API *appears to have abandoned* its claim that Angola and Cameroon prohibit Section 13(q) disclosures.<sup>51</sup> Although there was never any persuasive evidence that those two countries prohibited disclosures, we assume that API's claims with respect to their laws became untenable now that Cameroon is an EITI implementing country, and Statoil has publicly made project-level, company-specific disclosures in Angola pursuant to the Norwegian disclosure law without suffering any legal consequences. (In fact, Statoil has continued to thrive and acquire lucrative new oil concessions in Angola.<sup>52</sup>)

This is crucial because in the Commission's evaluation of potential losses if issuers were forced to shed assets in a fire sale, over 62% of the assets at risk were in Angola and Cameroon.<sup>53</sup> Thus, while we continue to maintain that foreign disclosure prohibitions do not exist and, therefore, the Commission should not include losses of billions of dollars as a potential cost of the rule, if it does insist on doing so (in addition to making methodological changes discussed in the February 16, 2016, Publish What You Pay US comment, at 73-74), it must reduce its estimates by 62%.

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<sup>48</sup> API Comment at 2.

<sup>49</sup> *In the Matter of American Petroleum Institute, et al.*, SEC Rel. No. 68197, Order Denying Stay (Nov. 8, 2012) at 7.

<sup>50</sup> API claims that the district court already "considered and rejected" the argument that a case-by-case exemption is adequate to address issuers' concerns, API Comment at 27, but the language it quotes is taken out of context. The court did indeed note that the exemptions issue was *ripe for judicial review* despite the Commission's ability to grant an exemption if a conflict of laws were to arise in the future, *API v. SEC*, 953 F. Supp. 2d at 20 n.7, but it did *not* hold or even suggest that the case-by-case exemptive authority would be an inadequate means to address the issue.

<sup>51</sup> API Comment at 26 (referring only to China and Qatar).

<sup>52</sup> Statoil, 2014 Payments to Governments at 10 (2015). Available at [http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2014/Documents/DownloadCentreFiles/01\\_KeyDownloads/2014%20Payments%20to%20governments.pdf](http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2014/Documents/DownloadCentreFiles/01_KeyDownloads/2014%20Payments%20to%20governments.pdf). See also Comment submitted by Publish What You Pay US (Feb. 16, 2016) at 53-54. Available at <https://www.sec.gov/comments/s7-25-15/s72515-45.pdf> ("PWYP US Comment (2016)") (responding to Questions 46 and 47).

<sup>53</sup> 80 Fed. Reg. 80,098-99.

- b. Chinese law and policy indicates a preference for disclosure according to investor demand.

Neither of the sources API uses to support its contention about Chinese law actually says that China prohibits Section 13(q) disclosures. In fact, Chinese law does not prohibit the disclosures; both a legal analysis of the Chinese disclosure regime and the empirical record reveal that China has no problem with the disclosure of payment information in the extractive industries. The evidence in the record certainly does not support a blanket exemption for China, especially in light of high-profile corruption scandals in the petroleum industry and the unlikelihood of systematic, granular disclosure through other avenues.

- i. The sources API cites do not provide evidence for the existence of Chinese laws forbidding Section 13(q) disclosures.

API refers to two sources in order to support its contention that China “continue[s] to prohibit the required disclosures.”<sup>54</sup> But neither source actually says that China forbids issuers to disclose information pursuant to Section 13(q). The first – a legal opinion from Jun He Law Offices – was submitted by Royal Dutch Petroleum during the first rulemaking as evidence for a Chinese legal prohibition.<sup>55</sup> It does *not*, however, say Chinese law prohibits disclosure; rather, it opines that *some* of the information required by Section 13(q) *might* be considered sensitive by Chinese authorities, who could declare that the information may not be disclosed. Even if true, this means at most that Chinese law gives the government the *authority* to prohibit Section 13(q) disclosures such that they could become prohibited *in the future*.<sup>56</sup> API does not appear to insist that disclosure prohibitions enacted after Dodd-Frank must be accommodated by a blanket exemption,<sup>57</sup> so it would presumably agree that such an exemption is not necessary for China.

The second source that API cites – an SEC Administrative Law Judge’s decision in the “Big Four” case – neither agrees that Chinese law prohibits *any* particular type of disclosure nor applies to Section 13(q) disclosures. On the pages indicated in API’s comment, Judge Elliott appears to *refrain from* deciding whether China prohibits production of audit work papers

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<sup>54</sup> API Comment at 26 n.114.

<sup>55</sup> See Comment submitted by Royal Dutch Shell PLC (May 17, 2011) at Appendix C. Available at <https://www.sec.gov/comments/s7-42-10/s74210-90.pdf>.

<sup>56</sup> The opinion also argues that Section 13(q) disclosures might be considered business secrets under Chinese law if the information is non-public and required to be treated as confidential. It then notes that Shell’s contracts contain only a confidentiality provision allowing for disclosure to the “home country,” *id.* Appendix C at 5, and concludes that Shell would not be allowed to disclose payment information to the U.S. government because its home governments are the United Kingdom and the Netherlands. This is incorrect; the contractual provision in question would likely be interpreted to include *all* applicable regulations rather than just regulations in the specific home country of the issuer. Moreover, as discussed below, under Chinese law, the “rights holder” is permitted to disclose information that it would otherwise be entitled to withhold under business confidentiality, and if a Chinese-based company is required to disclose Section 13(q) information abroad, it is also required to do so in China. In any case, even if this opinion were correct, these concerns are greatly reduced now that the European Union, Canada, and Norway have enacted mandatory disclosure rules. Thus the vast majority of covered companies – including Chinese companies – are now required to disclose in their home jurisdictions, and the information is now publicly known and not confidential for the purposes of China’s business secrets law.

<sup>57</sup> API approvingly cites the district court’s analysis on this point: “As the district court recognized in 2013, the Commission could have ‘fully address[ed] this concern’ by ‘limit[ing] the exemption to the four countries cited by the commentators or [as] to all countries that prohibited disclosure as of a certain date[.]’” API Comment at 25.

(although what exactly he concluded is unclear due to redactions in the publicly available version of the decision).<sup>58</sup> And more importantly, even if China did block the firms from providing audit work papers to the U.S. Government, that would tell us nothing about whether China prohibits disclosure of payment information related to the extractive industries. Audit work papers are internal documents that would not be covered by Section 13(q) disclosure requirements; a better analogue would be made annual financial statements, the disclosure of which is undisputedly not prohibited in China.

- ii. Although Chinese law does not require Section 13(q)-type disclosures, both Chinese law and practice indicate that the Chinese government would encourage, rather than penalize, disclosure through Section 13(q).

There are a number of strong reasons to believe that China has no problem with Section 13(q) disclosures. First, several provisions of Chinese law indicate a strong preference for disclosure, especially if the information is desired by investors:

- Chinese state secrets regulations related to the petroleum industry do not list Section 13(q) disclosures among the categories of restricted information.<sup>59</sup>
- Under Chinese corporate disclosures legislation, information that companies disclose in foreign markets must also be disclosed in China.<sup>60</sup> Crucially, **when companies are covered by another disclosure regime outside of China, their annual reports to the Chinese securities regulators must follow the regime that requires more disclosure and stricter standards.**<sup>61</sup> In other words, far from ordering Chinese-listed companies to withhold information from foreign regulators when that information is not otherwise mandated in China, the laws give priority to foreign regimes requiring *more* transparency and adopt the foreign regime's requirements in the Chinese market.
- In their annual reports, companies are required to break down the main costs of their work.<sup>62</sup> While this does not necessarily mean project-level, Section 13(q)-type reporting,

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<sup>58</sup> *In re BDO China Dahua CPA Co., Ltd.*, Initial Decision Release No. 553 (Jan. 22, 2014) (File Nos. 3-14872, 2-15116) at 105.

<sup>59</sup> See National State Secrets Bureau, People's Republic of China, 石油、石化工业国家秘密及其密级具体范围的规定 (Shiyou, Shihua Gongye Guojia Mimi ji Qimi ji Juti Fanwei De Guiding) [National State Secrets Bureau, People's Republic of China, Rules on Specific Scope and Level of State Secrets in Petroleum and Petrochemical Industry], (Apr. 6, 1996). Available at <http://kxyj.yangtzeu.edu.cn/look.asp?ArticleID=371> (in Chinese). The Chinese government issued updated state secrets regulations for the petroleum industry in 2013, but the text of those regulations is not publicly available.

<sup>60</sup> See China Securities Regulatory Commission, People's Republic of China, 上市公司信息披露管理办法 (Shangshi Gongsi Xinxu Pilu Guanli Banfa) [Administrative Measures for Information Disclosure of Listed Companies] art. 2, Order No. 40 of the China Securities Regulatory Commission (entered into force Jan. 30, 2007). Available at <http://lawinfochina.com/display.aspx?id=5926&lib=law&SearchKeyword=Administrative%20Measures%20for%20the%20Disclosure%20of%20Information%20of%20Listed%20Companies&SearchCKeyword=>

<sup>61</sup> China Securities Regulatory Commission, People's Republic of China, 公开发行证券的公司信息披露内容与格式准则第2号—年度报告的内容与格式 (Gongkai Faxing Zhengquan de Gongsi Xinxu Pilu Neirong yu Geshi Zhunce di 2 Hao – Niandu Baogao de Neirong yu Geshi) Contents and Format of Information Disclosure for Publicly Listed Companies Guideline No. 2 – Annual Report Contents and Format), art. 6 (issued Sept. 19, 2012). Available at [http://www.csrc.gov.cn/pub/newsite/flb/flfg/bmgf/xxpl/xxplnr/201310/t20131017\\_236414.html](http://www.csrc.gov.cn/pub/newsite/flb/flfg/bmgf/xxpl/xxplnr/201310/t20131017_236414.html).

<sup>62</sup> *Id.* art. 21(A)(2).

it does indicate some expectation that companies will report significant government payments.

- Under China’s access to government information laws, information that may otherwise constitute “commercial secrets” may be publicly disclosed if the “rights-holder” consents.<sup>63</sup> Thus it is in fact up to the issuer that has been granted a concession to decide whether the government will disclose its payment information.
- Companies are required to report their taxes to the government, and may report their taxes to the public if they want to.<sup>64</sup>
- The Chinese State Council has recently issued an opinion urging listed companies to strengthen their public disclosures and, in particular, to follow investor demand as a guide.<sup>65</sup> Under this guideline, the stated support of investors with nearly \$10 trillion in assets under management for Section 13(q) should strongly indicate to issuers listed in China that the Chinese government condones these disclosures.
- In the same opinion, the State Council calls for China to cooperate with international securities and futures regulators, and to participate actively in international regulation of securities and futures.<sup>66</sup> This is a strong indicator that the Chinese government’s policy toward the global movement toward mandatory revenue transparency through securities regulation will be positive.

Moreover, experience to date clearly indicates that the Chinese government has no problem with Section 13(q) disclosures. First, we would call to the Commission’s attention the results of an empirical study conducted by the Natural Resources Governance Institute (NRGI), based on a dataset extracted from Rystad Energy’s UCube database.<sup>67</sup> NRGI pulled information on every new concession or contract awarded between 2005 and 2015 in Angola, Cameroon, China, and Qatar, in order to test API’s contention that transparency-averse countries might discriminate against issuers covered by Section 13(q). The results for China are striking: on every available measure (i.e. number of contracts awarded, total amount of participation in new contracts, and percentage of contracts in which a majority stake was awarded), covered issuers out-competed non-covered companies. Moreover, covered issuers became *more* competitive vis-à-vis non-covered companies *after the Dodd-Frank Act was enacted*; in other words, issuers that will be required to report under Section 13(q) out-competed their non-covered competitors (mostly local Chinese private and state-owned companies) *at a higher rate* after it became clear that they would eventually be required to report their payments. It is hardly likely that the Chinese government

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<sup>63</sup> State Council, People’s Republic of China, 中华人民共和国政府信息公开条例 (Zhonghua Renmin Gongheguo Zhengfu Xinxigongkai Tiaoli [Regulation of the People’s Republic of China on the Disclosure of Government Information], art. 14, Order No. 492 of the State Council (entered into force May 1, 2008). Available at <http://www.lawinfochina.com/display.aspx?lib=law&id=6011&CGid=>.

<sup>64</sup> State Council, People’s Republic of China, 企业信息公示暂行条例 (Qiyexinxigongshizhanxingtiaoli [Provisional Regulations on Enterprise Information Publicity], art. 9(7), Order No. 654 of the State Council (entered into force Oct. 1, 2014). Available at [http://www.gov.cn/zhengce/content/2014-08/23/content\\_9038.htm](http://www.gov.cn/zhengce/content/2014-08/23/content_9038.htm) (in Chinese).

<sup>65</sup> State Council, People’s Republic of China, 国务院关于进一步促进资本市场健康发展的若干意见 (Guowuyuan Guanyu Jin Yi Bu Cujin Ziben Shichang Jiankang Fazhan de Ruogan Yijian) [Several opinions of the State Council on Further Promoting the Healthy Development of the Capital Markets], para. 6 (May 8, 2014). Available at [http://www.gov.cn/zhengce/content/2014-05/09/content\\_8798.htm](http://www.gov.cn/zhengce/content/2014-05/09/content_8798.htm) (in Chinese).

<sup>66</sup> *Id.* para. 23.

<sup>67</sup> Comment submitted by Natural Resources Governance Institute (Feb. 16, 2016). Available at <https://www.sec.gov/comments/s7-25-15/s72515-41.pdf> (“NRGI Comment”).

would have allowed this to happen if it were opposed to Section 13(q)'s transparency requirements and intended to declare the disclosures a state secret.

Moreover, as noted in PWYP US's February 16, 2016, comment, Chinese stock exchanges have a number of requirements encouraging disclosure, and Chinese-listed issuers have in fact disclosed some of the information that Section 13(q) requires in their public reports.<sup>68</sup>

While none of this completely forecloses the possibility that some disclosures could be limited by the State Secrets Authority, it is undeniable that there are strong indicators of a Chinese government policy in favor of corporate disclosure, as well as undisputed evidence that Section 13(q) disclosures are not currently prohibited. Certainly the available evidence eviscerates any suggestion that the Commission should automatically exempt all disclosures from China – a country that is unlikely to join the EITI and where corruption in the extractives sector is both high-profile and poses a severe threat to the ability of companies to operate.<sup>69</sup>

- c. Nothing in Qatari law prohibits Section 1504 disclosures, and Qatari contracts expressly permit disclosure.

API points to a 2009 letter from the Qatari government to Exxon Mobil as evidence that Qatar prohibits disclosures,<sup>70</sup> but its interpretation of that letter is inaccurate. As we have noted in previous comments,<sup>71</sup> the ministerial letter does not on its face prohibit Section 13(q) disclosures. Rather, it informs Exxon (but not, apparently, other oil companies) that pending changes in the law were under consideration at that time, and that Exxon should not disclose commercially sensitive information that could harm the interests of the Qatar government. It then lists several categories of such information, none of which overlaps with Section 13(q) disclosures. As PWYP US has argued in previous submissions,<sup>72</sup> the amounts of payments to governments are not commercially sensitive, and their disclosure could not harm the Qatar government. The letter therefore does not apply to Section 13(q), and the letter merely expresses the possibility that Qatar – like China – *could* choose to prohibit disclosures in the future.<sup>73</sup>

The Qatar government has *not* enacted any positive prohibitions on Section 13(q) disclosures, despite the fact that over six years have passed since the ministerial letter was sent – a fact that Exxon acknowledges in its most recent comment.<sup>74</sup> If Qatar had wanted to block revenue

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<sup>68</sup> PWYP US Comment (2016) at 55.

<sup>69</sup> See, e.g., Aibing Guo, *Former PetroChina Chairman Sentenced to 16 years for Corruption*, Bloomberg (Oct. 12, 2015). Available at <http://www.bloomberg.com/news/articles/2015-10-12/former-petrochina-chairman-sentenced-to-16-years-for-corruption>; Aibing Guo, *Sinopec No. 2 caught in graft probe as China crackdown widens*, Bloomberg (Apr. 28, 2015). Available at <http://www.bloomberg.com/news/articles/2015-04-27/sinopec-no-2-faces-corruption-probe-as-china-crackdown-widens-i902nvcx>; Stephen Mulrenan, *Asia: China corruption push making companies wary*, International Bar Association (Oct. 2, 2013). Available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=1ad0d157-19e3-437b-9965-da387b121a3d>.

<sup>70</sup> API Comment at 26 (*citing* Comment submitted by Exxon Mobil Corp. (Mar. 15, 2011) at Attachment 2).

<sup>71</sup> See PWYP US Comment (2016) at 53-54 & n.180.

<sup>72</sup> *Id.*

<sup>73</sup> Comment submitted by Exxon Mobil Corp. (Mar. 15, 2011) at Attachment 2. Available at <https://www.sec.gov/comments/s7-42-10/s74210-73.pdf>.

<sup>74</sup> “Qatari law... has not changed from what is described in ExxonMobil’s comment letter dated March 15, 2011... including attached legal opinion from local Qatari counsel.” Exxon Comment (2016) at 12 n.19. The reference to an opinion from local Qatari counsel, however, is presumably an error – Exxon has at no

transparency, it likely would have done so by law when the Commission first promulgated a Final Rule to implement Section 13(q) in August 2012. Alternatively, it might have done so more recently in reaction to the UK's implementation of the EU Accounting and Transparency Directives, under which Shell and BP will have to disclose payment information for Qatar later this year. Surely Qatar would not have relied on the at-best ambiguous language of the ministerial letter if its goal had been to avoid transparency. Neither API nor Exxon have come close to demonstrating that any such conflict between the proposed rule and Qatari law exists. Indeed, Exxon acknowledges that there may be no problem with legal conflicts, and yet in the same breath it tells the Commission that it would be easier to obtain permission to make the supposedly-prohibited disclosures if the Commission adopts API's model.<sup>75</sup>

Moreover, the Qatar government's Model Production Sharing Agreement (PSA) contains a carve-out clause allowing a party to disclose any information that might otherwise be deemed confidential, when required by applicable laws and regulations.<sup>76</sup> In the absence of express prohibitions on disclosure, the terms of this contract control confidentiality of information related to each project.

Because neither the ministerial letter nor Qatari law forbid Section 13(q) disclosures, and resource extraction contracts in Qatar by default include a clause allowing for compliance with regulatory disclosure requirements, the Commission should reject the API's invitation to provide a blanket exemption for payments to the Qatar government.

- d. Exxon's proposal for self-executing exemptions would unduly decrease transparency.

Exxon proposes that rather than Rule 0-12, the Commission should follow the example of the CEO pay-ratio rule and allow companies to claim exemptions based on foreign disclosure prohibitions that are "self-executing"; i.e. the issuer need not apply for permission to withhold information but rather can do it unilaterally as long as it also provides certain details and justifications to the Commission.<sup>77</sup> The CEO pay-ratio rule is a poor model for a number reasons, and Exxon's proposal is not acceptable.

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point submitted a letter into the record from Qatari counsel. The only relevant attachment to its 2011 submission was the 2009 ministerial letter.

<sup>75</sup> Exxon Comment (2016) at 12 n. 20 ("We continue to hope that conflict of law issues are only a potential concern .... However we believe the chances of obtaining such permission are significantly greater under the disclosure model of project proposed by API since such an approach would also help protect host governments from disclosure of specific commercial information those governments may view as vital state secrets.")

<sup>76</sup> Article 34.1 of the Qatar Model Exploration and Production Sharing Agreement of 1994, Basic Oil Laws and Concession Contracts provides that "This Agreement and all data and information whatever acquired, developed, received or otherwise obtained hereunder are deemed strictly confidential, and accordingly shall not be disclosed by either Party without the prior written consent of the other Party (such consent not to be unreasonably withheld), except if such disclosure is made to Affiliates, contractors, sub-contractors, consultants, agents, prospective bona fide assignees, financial institutions *or as required by any applicable laws and regulations, in which case such consent shall not be required* but prior notice of disclosure of such information is required." (emphasis added). Although we do not know whether there are more recent Model Agreements, Qatari lawyers have informed us that recent production sharing agreements contain similar carve out provisions to allow the parties to comply with applicable regulatory requirements, including the requirements of stock exchanges on which the parties are listed.

<sup>77</sup> Exxon Comment (2016) at 12.

First, over the course of this rule making, issuers have repeatedly made dishonest claims as to the existence and scope of foreign disclosure prohibitions, and they have always been able to procure legal opinions that they use in support of their arguments.<sup>78</sup> In the face of overwhelming evidence that such prohibitions do not exist, API has now abandoned its contention that Angola and Cameroon prohibit disclosures, but Shell and Exxon submitted purportedly official documentation and legal opinions claiming that such prohibitions *do* exist during the first rule making.<sup>79</sup> As discussed above, Shell also procured a legal opinion that, at most, speculates that China *might* at some time in the future restrict disclosure of *some* of the information required by Section 13(q), but it and other issuers have consistently used that opinion misleadingly to argue for an up-front Chinese exemption applying to *all* Section 13(q) information.<sup>80</sup> And Exxon submitted a letter from the Qatari government that does *not*, on its face, apply to Section 13(q) disclosures, yet it has misleadingly used the letter as a basis to argue that Qatar prohibits disclosure.<sup>81</sup> Given this track record, it would be self-defeating if the Commission were to allow issuers to unilaterally exempt themselves from disclosing in *any* country simply on the strength of a legal opinion.

Second, the impact of the granted exemption in the CEO pay-ratio context is likely to be much less serious than in the revenue transparency context. This is because the CEO pay-ratio exemption appears to contemplate that issuers might exclude information only on a limited number of their employees in a given country,<sup>82</sup> which would have limited impacts on the accuracy of the reported pay-ratio. Moreover, in the rule release, the Commission noted it believed that in the face of a legal prohibition, issuers might be able to find a middle ground between full disclosure and complete exemption, for example by anonymizing the data or using random data sampling.<sup>83</sup> Such measures can indeed be considered by the Commission as part of the case-by-case exemption provision in Section 13(q) as well.

And third, the laws at issue in the CEO pay-ratio rule are privacy laws that were designed to protect individual privacy, so there are legitimate competing interests in the conflicting laws. Any laws in the resource extraction context that may prohibit resource extractor payment disclosures would be measures simply designed to thwart transparency. Notably, such an exemption could also potentially incentivize more countries that wish to prevent transparency to pass such laws, which would frustrate Congressional intent.<sup>84</sup>

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<sup>78</sup> Although, as the above discussion of the Jun He Law Office opinion shows, the legal opinions they have submitted do not in fact demonstrate that foreign disclosure prohibitions exist. *Supra* Section 3.b.i.

<sup>79</sup> See Comment submitted by Royal Dutch Shell PLC (May 17, 2011) at Appendix B. Available at <https://www.sec.gov/comments/s7-42-10/s74210-90.pdf>.

<sup>80</sup> *Id.* at Appendix C.

<sup>81</sup> *Supra* Section 3.c.

<sup>82</sup> SEC Press Release 2015-160, SEC Adopts Rule for Pay Ratio Disclosure: Rule Implements Dodd-Frank Mandate While Providing Companies with Flexibility to Calculate Pay Ratio (Aug. 5, 2015). Available at <https://www.sec.gov/news/pressrelease/2015-160.html>.

<sup>83</sup> Pay Ratio Disclosure, Final Rule, 80 Fed. Reg. 50104.

<sup>84</sup> See, e.g., Comment submitted by Senator Cardin *et al.* (Mar. 1 2011) at 2. Available at <http://www.sec.gov/comments/s7-42-10/s74210-42.pdf>. (warning that “if an exemption is granted, many countries would exploit such an exemption and enact such prohibitions against disclosure in order to circumvent Section 1504. Therefore, granting an exception for host-country laws would be contrary to the spirit and intent” of 1504);

Comment submitted by Senator Levin (Feb. 1, 2011) at 4. Available at <http://www.sec.gov/comments/s7-42-10/s74210-19.pdf>. (warning that exemptions would “create a clear incentive for those countries, who want to prevent transparency, to pass laws against disclosure. In fact, it is precisely those jurisdictions for which investors and the public need additional transparency.”); Comment submitted by Senator Cardin *et*

Therefore, while it is true that an exemption exists under the CEO pay-ratio disclosure Rule, the Rule and the exemption do not appear analogous or particularly relevant to the resource extractor rule.

- e. Clearly Gottlieb’s proposal for using no-action letters provides inadequate protection given the history of false claims.

While API calls for blanket exemptions for any country or contract that prohibits disclosure and criticizes the case-by-case approach and Exxon proposes a self-executing exemption, the law firm Clearly Gottlieb Steen & Hamilton proposes that the Commission should eschew the transparent procedure suggested in the Proposed Rule Release entirely, and instead allow companies to seek No-Action Letters pursuant to a closed process.<sup>85</sup>

As noted above, issuers have repeatedly misled the Commission as to the existence of disclosure prohibitions in law and contract, and it is only through the efforts of civil society organizations that the Commission has been apprised of the truth. The Commission should not deprive itself of the additional expertise and attention that a public process entails given this history. Clearly’s contention that a public process would expose the very information that issuers are seeking confidential treatment for is a strawman that does not hold up to scrutiny; nothing in the exemptive process would require them to disclose the actual payment numbers that they are claiming to be sensitive.

#### **4. The Commission’s proposal does not violate issuers’ First Amendment rights.**

The requirement that public companies disclose basic information about their operations as part of their annual reporting does not violate the First Amendment. The Commission will search API’s comment<sup>86</sup> in vain for the articulation of a cognizable First Amendment injury. What the Commission will find instead is a novel and expansive view of the First Amendment that grants commercial actors the right to remain silent. This view turns the First Amendment’s commercial speech doctrine on its head and upends the constitutional legitimacy of the Commission’s reporting regime.

API contrives a First Amendment injury by framing the disclosure required by the Commission’s proposed rule as *political* speech. It asserts that “speech is being compelled to further political debate about the activities of governments and resource-extraction companies.”<sup>87</sup> More troubling for API, “the subject matter of the speech compelled by the Commission’s proposed rule is precisely the kind used by various constituencies to lobby foreign governments and conduct ‘corporate campaigns’ directed at API’s members.”<sup>88</sup> The hyperbole is self-evident. The “subject matter” of the disclosure is payment information; the “speech” being compelled is a factual

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*al.* (Jan. 31, 2012) at 2. Available at <http://www.sec.gov/comments/s7-42-10/s74210-122.pdf>

(warning that “any exemptions, including www exceptions for conflicting host country laws” would “encourage other countries to enact laws reducing transparency and start a ‘race to the bottom’ . . .”).

<sup>85</sup> Comment submitted by Clearly Gottlieb Steen & Hamilton (Feb. 16, 2016) at 3. Available at <https://www.sec.gov/comments/s7-25-15/s72515-48.pdf>.

<sup>86</sup> API Comment at 10-14.

<sup>87</sup> *Id.* at 10.

<sup>88</sup> *Id.* at 11. In the same breath, API dismisses the effectiveness of the proposed rule. *Id.* at 12. If anything, API appears concerned that the rule will prove too effective.

figure. API would have the Commission believe that money not only talks, it screams political controversy.

API vastly overstates the politics of this particular form of compelled speech. First, it simply ignores – pushes out of the frame – the investor-protection function of the proposed rule.<sup>89</sup> The legislative history of Section 13(q) indicates that Congress intended the required disclosure to function as an informational tool for investors.<sup>90</sup> Investors with nearly \$10 trillion in investments have lauded this function. This aligns the Section 13(q) disclosure in form and function with numerous other public disclosures routinely made by public companies.<sup>91</sup>

Second, API conflates the actual information disclosed with an imagined political debate in which issuers are neither compelled to participate nor choose sides. The political potential of a hard fact does not make the disclosure of that fact a political act.<sup>92</sup> If the constitutionality of a compelled factual disclosure hung on its immunity to public debate, nearly every securities disclosure could be called into question.

What API really contends is that a constitutional violation happens whenever a company is compelled to speak when it prefers to remain silent. But this broad view of the compelled speech doctrine would turn every compelled disclosure into a First Amendment problem: the function of a disclosure is to compel otherwise unforthcoming speech. The First Amendment would become a commercial Fifth Amendment for corporations. The two cases API cites in support of this contention concern the forced endorsement of a government message (driving around with a “Live Free or Die” license plate; beginning each school day with a salute to the American flag).<sup>93</sup> Reporting how much money a company paid to a government does not endorse any government message; nor does it prescribe “what shall be orthodox in politics, nationalism, religion, or other matters of opinion . . . .”<sup>94</sup> Indeed, the disclosure lacks any government-supplied *text* to convey a message. This, alone, distinguishes the Section 13(q) disclosure from the invalidated instances of compelled speech cited by API, including the D.C. Circuit Court’s recent *NAM* decisions (invalidating “conflict free” disclosure because “‘conflict’ free is a metaphor that conveys moral responsibility for the Congo war.”<sup>95</sup>). There is nothing morally or politically confessional about disclosing payments made to governments. The disclosure involves nothing more than an indisputable fact about an inarguable act.<sup>96</sup>

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<sup>89</sup> See, e.g., *Riley v. Nat’l Fed’n of Blind*, 487 U.S. 781, 796 (1988) (“Our lodestars in deciding what level of scrutiny to apply to a compelled statement must be the nature of the speech taken as a whole and the effect of the compelled statement thereon.”).

<sup>90</sup> 76 Fed. Reg. 56,397/3; 56,398/2-3; 56,399/1.

<sup>91</sup> See *National Ass’n of Mfrs. v. S.E.C.*, 748 F.3d 359, 363 (D.C. Cir. 2014) (recognizing Commission as “the agency normally charged with policing America’s financial markets . . . .”). See also *Full Value Advisors, LLC v. S.E.C.*, 633 F.3d 1101, 1109 (D.C. Cir. 2011) (“Securities regulation involves ‘a different balance of concerns’ and ‘calls for different applications of First Amendment principles.’”) (quoting, in part, *Nike, Inc. v. Kasky*, 539 U.S. 654, 678 (2003) (Breyer, J., dissenting from dismissal of certiorari)).

<sup>92</sup> See *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n of N.Y.*, 447 U.S. 557, 562-63 (1980) (declining to “grant broad constitutional protection to any advertising that links a product to a current public debate” because “many, if not most, products may be tied to public concerns with the environment, energy, economic policy, or individual health and safety.”)

<sup>93</sup> API Comment at 10 n.42.

<sup>94</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>95</sup> *Nat’l Ass’n of Mfrs. v. SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015).

<sup>96</sup> See *U.S. v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (First Amendment not implicated by requirement of disclosure to IRS that entails no public dissemination of a political or ideological message).

By ignoring the investor-protection function of the proposed rule, API avoids the **commercial** nature of the compelled speech.<sup>97</sup> There is no constitutionally principled distinction between a factually accurate disclosure about business operations made to investors and a factually accurate disclosure about a product made to customers. The former allows the investor to more accurately price the value and risk of a security in a buy/sell/hold situation. The First Amendment extends protection to commercial speech only by virtue of the “value to consumers of the information such speech provides.”<sup>98</sup> There is therefore only a “minimal” interest in suppressing that information.<sup>99</sup> The First Amendment does not recognize the right to conceal accurate and useful commercial information.

API concludes its First Amendment challenge by contending that the proposed rule will fail strict and intermediate scrutiny (but not rational basis scrutiny). The proposed rule serves the related interests of transparency and investor protection. API cannot credibly challenge, and does not challenge, the government’s historical and compelling interest in the latter. Nor can API challenge, nor does it challenge, the effectiveness of an informational disclosure in advancing the objective of enhanced investor protection. A “public compilation that aggregates the total amount of money paid to governments” – that is, that renders the issuer anonymous – defeats that objective.<sup>100</sup>

Instead, API challenges the constitutional legitimacy of the former interest.<sup>101</sup> Congress identified the benefits of transparency.<sup>102</sup> With all due respect to API’s domestic and foreign policy views, those of Congress take precedence. API’s challenge to the efficacy of the disclosure fares no better. API argues that “the Commission has no evidence to suggest that the compelled disclosures will actually lessen corruption” and points out that “the government cannot rest on ‘speculation or conjecture’” under the First Amendment.<sup>103</sup> Once again, API miscasts the proper inquiry. The Commission need not prove that the proposed rule will “actually lessen corruption.” The rule’s objective is to increase revenue transparency, an objective directly and self-evidently advanced by a payment disclosure.<sup>104</sup> Moreover, transparency is logically enhanced by a *full* disclosure – disclosing not only the payee, but the payor. The payor-anonymous compilation proposed by API seeks to reduce transparency.

The U.S. is falling behind the global transparency standard. Other governments like Canada and the E.U. have managed to pass their own robust transparency rules. API counters that they have done so unencumbered by similar limits on “compelled speech.”<sup>105</sup> API cites no authority for this

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<sup>97</sup> The commercial nature of the speech in question distinguishes it from the speech in *Riley*, in which the Supreme Court held that in the political context, compelled statements of fact – and not only compelled statements of opinion – burdened protected speech. 487 U.S. at 797-98. In the commercial context, where the seller’s right to freedom of speech is expressly balanced against the consumer’s right to know, the distinction between factual and opinion speech is considerably more important.

<sup>98</sup> *Zauderer v. Office of Disc. Counsel*, 471 U.S. 626, 651 (1985).

<sup>99</sup> *Id.*

<sup>100</sup> API Comment at 12.

<sup>101</sup> *Id.* at 11-13.

<sup>102</sup> *See, e.g.*, 156 Cong. Rec. S3815-3818 (May 17, 2010); S5872 (Jul. 15, 2010).

<sup>103</sup> API Comment at 12.

<sup>104</sup> *Cf. Nat’l Ass’n of Mfrs. v. S.E.C.*, 800 F.3d 518, at 525-26 (finding that Commission failed to demonstrate that “conflict free” disclosure “would ‘in fact alleviate’ the harms it recited,” in this instance, “ameliorat[ing] the humanitarian crisis in the DRC.”).

<sup>105</sup> API Comment at 10.

proposition. Moreover, at least with respect to Canada, API is demonstrably wrong.<sup>106</sup> The U.S. is on the verge of an historic commitment to transparency in the world of resource extraction. The First Amendment does not stand in the way of this achievement.

#### **5. The NERA study is based on false assumptions and is inaccurate.**

To back up its contention that company-specific, project-level disclosure is harmful to issuers, the API attaches a confusing and unpersuasive study conducted by NERA, a consultancy with expertise in the natural resources sector.<sup>107</sup> The NERA study concludes that the Commission has underestimated the potential costs of Section 13(q) because a) issuers could be forced to dispose of assets in fire sales that may approach *total loss* as opposed to the steep but not total haircut that the Commission predicted; and b) disclosure of project-level payment information amounts to the loss of valuable trade secrets. Both of these rationales are based on false premises and spurious logic; together these weaknesses indicate that the NERA study was concocted in order to support a pre-determined outcome rather than to provide a serious and in-depth analysis of the risks posed by Section 13(q).

- a. The study focuses on four countries that do not prohibit disclosure.

The key basis for NERA's discussion of fire sales is that four countries prohibit disclosure: Angola, Cameroon, China, and Qatar.<sup>108</sup> However, none of these countries actually prohibit disclosure. As noted above, API no longer claims that either Angola or Cameroon has a disclosure prohibition law or policy; since over 60% of the vulnerable assets that the Commission identified were located in these two countries that undisputedly do *not prohibit disclosure*,<sup>109</sup> it is clear that the Commission severely *over-estimated* the potential losses of a fire sale, rather than underestimating them.

Moreover, as discussed above, there is no reliable evidence that either China or Qatar prohibits disclosure, and strong evidence suggests that both countries will and do permit disclosure without penalty. Therefore, even if it were true that companies that are forced to choose between complying with Section 13(q) and obeying local disclosure prohibitions would lose substantial value – a highly doubtful proposition – the possibility that this would *ever* happen is completely speculative and hypothetical given that there are no countries with disclosure prohibitions in force.<sup>110</sup> The Commission cannot rely on or give substantial weight to a study that is based almost entirely on this false premise.

- b. The study wrongly assumes that total loss would be likely.

NERA's second fundamental error is to assume that an inability to comply with local disclosure prohibitions would likely result in total loss of the asset.<sup>111</sup> While the chain of argumentation is far from clear, NERA appears to assume that companies facing a disclosure prohibition that

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<sup>106</sup> See *Slaight Communications Inc. v. Davidson*, [1989] 1 SCR 1038 (Can.) (compulsion of speech violates freedom of expression just as much as restrictions on speech).

<sup>107</sup> NERA Economic Consulting, *Analysis of Rule 13q-1: Prepared for the American Petroleum Institute* (Feb. 16, 2016) (annexed as Attachment B to API Comment) ("NERA Study").

<sup>108</sup> NERA Study at 1.

<sup>109</sup> 80 Fed. Reg. 80,098-80,099.

<sup>110</sup> Exxon itself acknowledges that "conflict of law issues are only a *potential* concern[.]" See Exxon Comment (2016) at 12 n.20 (emphasis added).

<sup>111</sup> NERA Study at 6.

conflicts with Section 13(q) would either be forced to violate local law – which could prompt uncompensated expropriation – or sell the asset – which would violate their contract with the government and also prompt uncompensated expropriation.

As we have argued above, there is no reliable evidence that companies are likely to face the bind that NERA describes. However, even if they did and were required to sell their assets, there is no reason to suppose that this would prompt uncompensated expropriation. Extractive companies sell whole or partial stakes in their ventures as a matter of course, and this does not usually violate a host country law or contractual provision. (In fact, this is one of the key business models for junior exploration companies: they invest significant time and money into the identification of a commercializable resource and then sell all or part of the venture to larger, more senior companies that have the expertise and ability to develop the resource.) A sale under such circumstances could lead to a “fire sale” discount as the Commission describes, but it is highly unlikely to bring about a total loss.

In addition, majority of operations for oil extraction that involve Transnational Corporations (TNCs) are done either as joint ventures or based on production sharing agreements (between national governments and TNCs).<sup>112</sup> Consequently, as direct beneficiaries of such operations, governments have the incentive of continued operations. Expropriations that do take place usually happen due to a change in the government or shift in broader societal outlook reflected in government policies, not because of required disclosures or potential incompatibilities between laws.<sup>113</sup>

While contracts may require the government’s permission to sell the asset, host states have a strong incentive to grant permission in order to ensure that commercially viable assets are developed and are unlikely to unreasonably withhold permission to sell where a sale is necessary. To withhold permission would mean that the host state would incur negative perceptions of high political risk among investors, and forego production and a significant revenue stream, not to mention the loss of local employment and the value accumulated in well-developed supply chains. And if a government were to unreasonably withhold permission to sell and instead insist on expropriating the asset, this would typically be grounds for a large arbitral award against the state and, in any event, would likely be covered by political risk insurance. In addition, major corporations have sizable leverage over countries due to the impact that their operations have on government revenue, prospects for future foreign investment, and national currency.

Rather than describing total loss as the only likely outcome, it would have been much more responsible and reasonable for NERA to discuss the range of possible outcomes in the event of a legal conflict. NERA also could have tried to assign probabilities to these different outcomes in order to allow for evaluation of risk, in which case it necessarily would have also considered some of the factors weighing against uncompensated expropriation and total loss. It could have analyzed whether companies are likely to be protected under bilateral investment treaties, or whether political risk insurance policies tend to cover legal scenarios such as the one it contacts. It could have looked at past instances in which extractive companies have sold their assets to identify analogous circumstances and their outcomes. But NERA did none of these; instead it made a partial and unsupported case favoring a pre-determined outcome that it was hired to

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<sup>112</sup> United Nations Conference on Trade and Development, *World Investment Report, Transnational Corporations, Extractive Industries and Development*, at xxv. New York 2007.

<sup>113</sup> See generally, The World Bank, *Overview of State Ownership in the Global Minerals Industry*, Washington (2011).

argue. Because NERA has failed to consider the range of eventualities that might mitigate the impacts of a legal conflict, the Commission should not credit its critique.

- c. The study fails to explain why the aerospace industry cannot be compared to the extractive industries.

The NERA study faults the Commission for basing its estimates of the fire sale discount on results in the aerospace industry, arguing that the extractive industries are characterized by significant upfront, sunk costs that only have value with respect to the specific transactions for which they were originally intended.<sup>114</sup> NERA does not, however, consider the extent to which the aerospace industry exhibits the same characteristics, except to say that “specialized equipment” is not the same thing as oil facilities.<sup>115</sup> Arguably, a contract for aerospace engineering is similar to the extractive industry, as aerospace companies need to build factories, establish supply chains, train employees, and transfer extremely valuable and specialized intellectual property before they can begin producing machinery; all this may be subject to expropriation without proper compensation or steeply discounted fire sales if the relationship between government and company is disrupted.<sup>116</sup>

In fact, while fire sales may lead to loss of value as a general matter, it may be easier for oil companies to sell their facilities at closer to market rate under distressed conditions than aerospace companies because once an oil well or production facility is completed, there are a number of essentially interchangeable operators who could take over and might compete for the purchase, thereby bidding up the price. The Commission should not give substantial weight to what is essentially only half an argument – NERA’s contention that the extractive industries are uniquely vulnerable to asset seizure without also considering whether the Commission’s comparator industries are similarly (or more) vulnerable.

- d. The study fails to note that the discrepancy between book value and market value may mean that the Commission *over*-estimated the value of vulnerable assets.

NERA criticizes the Commission for using the cost of assets to determine the value of assets that would be vulnerable to fire sale.<sup>117</sup> The first part of this argument appears superficially reasonable: book value is not a reasonable approximation of market value for assets that involve significant upfront costs and rely on future revenue streams to recoup those costs. However, it was reasonable for the Commission to use book value for allocation purposes – that is, to assume (at least to a first-order approximation) that the fraction of each issuer’s overall market value that is located in the four target countries is comparable to the fraction of the book value of that issuer’s total assets located in the four target countries.

Moreover, the Commission has never been required to price expected future returns into its calculations of loss to issuers, and for good reason. NERA assumes that if the Commission’s

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<sup>114</sup> NERA Study at 5-6.

<sup>115</sup> *Id.* at 8.

<sup>116</sup> In the study that the Commission cited on aerospace plant closings, for example, the authors concluded that there are substantial barriers to efficient redeployment of assets, including the number of years that it takes to wind down operations and sell equipment, substantial transport costs that limited geographical mobility and the highly specialized nature of the equipment. See Valerie Ramey and Matthew Shapiro (2001), *Displaced Capital: A Study of Aerospace Plant Closings*, *Journal of Political Economy* 109(5): 958-92.

<sup>117</sup> NERA Study at 5.

valuation method is an inaccurate approximation of exposed market value, the inaccuracy is biased toward an under-estimation. In fact, it is just as likely that the market value of an extractive asset is significantly *less* than its book value because after all the sunk costs, the expected return on investment may have turned out to be less promising than originally anticipated. This is especially true now, at a time of low commodity prices; oil wells and mines that were begun several years ago may have an asset cost that far exceeds what companies can now expect to recoup. The Commission should not credit NERA's self-serving assumption that estimations based on book value necessarily under-estimate market value, when NERA has failed to do any work to show the sign of the error that it predicts.

- e. The study's discussion of liquidity is without context and fails to make any definitive conclusions.

NERA faults the Commission for looking at industry-level numbers on liquidity in an effort to determine how difficult it would be for issuers to dispose of assets in a fire sale.<sup>118</sup> However, it ignores the additional work that the Commission did to construct a data set at the country level for the four target countries. NERA also insists that the U.S. extractive industries service market is unusually liquid and, without any evidence, insinuates that it would be less liquid in Angola, Cameroon, China, and Qatar.<sup>119</sup> In fact, the magnitude of corporate control transactions in those countries suggests strongly that it is possible to sell extractive assets where necessary, strongly refuting the notion of total loss. The Commission should not accept NERA's criticisms of its liquidity analysis when NERA fails to state any conclusions or provide any alternative methodologies at all.<sup>120</sup>

- f. The study assumes that vertical integration is not an option in the petroleum industry in the four target countries, whereas the industry is in fact highly vertically integrated.

In its discussion of sunk costs, NERA notes that an issuer could protect itself from uncompensated expropriation either by constructing long-term contracts (which would be interrupted to the benefit of the host government counterparty in the case of a fire sale) or by vertically integrating its operations.<sup>121</sup> NERA then discards the second option by speculating – with no support – that vertical integration may not be an option in the four target countries. This failure to even consider whether the very solution it has proposed could undercut its analysis further undermines NERA's credibility.

In fact, many extractive companies' global operations are highly vertically integrated. For example, Royal Dutch Petroleum/Shell is a tightly managed, vertically integrated global conglomerate whose corporate family include either separate or integrated entities to cover a large portion of the supply chain. Shell's corporate group includes transport companies, drilling companies, exploration companies, finance companies, refining capacity, and downstream delivery of finished products to consumers. And this web of companies provides services to *all*

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<sup>118</sup> *Id.* at 8.

<sup>119</sup> *Id.*

<sup>120</sup> In fact, NERA recognizes that there is “no direct way to account for differences . . . [in liquidity for businesses related to the petroleum industry in the four target countries].” *Id.* at 9.

<sup>121</sup> *Id.* at 7.

Shell's operations worldwide.<sup>122</sup> Indeed, it is hard to imagine an industry in which vertical integration plays a more central role in companies' efforts to maintain market dominance.

- g. The study fails to justify its assumption that raw payment data could constitute a trade secret.

The NERA study insists that Section 13(q) disclosures constitute trade secrets, the disclosure of which could lead to competitive harm and economic loss, as if this point were undisputed.<sup>123</sup> But NERA fails to engage with the nature of trade secrets, which according to Milgrim – the most authoritative legal source on trade secrets – are “process[es] or device[s] for *continuous use* in the operation of a business,” that can be used for competitive advantage.<sup>124</sup> One-off payments may be secret, but they are not trade secrets because they do not reflect on-going strategy or proprietary formulas and cannot be used for competitive advantage.

NERA's only evidence that these disclosures are trade secrets is that the extractive industries are willing to disclose through EITI rather than through mandatory project-level disclosure.<sup>125</sup> (The study's authors make no mention of the many other reasons that industry might prefer EITI and choose to fight Section 13(q), such as the ability to avoid legal penalties, desire to disclose only on their terms, the imperative to hide corruption, and the opportunity to set First Amendment precedent that staves off future disclosure requirements that have nothing to do with Section 13(q).) In fact, the monetary value of Section 13(q) disclosures to companies is far from clear, as it seems that these disclosures cannot be used to reverse-engineer companies bidding strategies, reserve valuation, or proprietary technologies.<sup>126</sup> The Commission should not credit an argument that relies entirely on an unexplored and controversial assumption.

- h. The study leaves large logical gaps and opportunistically cites studies without considering counter-arguments.

As described above, the NERA study is composed largely of uncontroversial propositions that are somehow linked to catastrophic hypothetical consequences through a series of unsupported and unexplained logical leaps. For example:

- Failure to abide by applicable law or contract provisions can lead to breach of contract (uncontroversial), so companies will be faced with uncompensated expropriation in at least four countries (unsupported).
- Market value cannot be approximated by book value (uncontroversial), so the Commission must have underestimated vulnerable assets (unsupported).
- The extractive industries are characterized by significant upfront, sunk costs (uncontroversial), so host countries are likely to take advantage of that fact by finding pretenses to expropriate assets (unsupported).

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<sup>122</sup> See, e.g., Petroleum Equipment Institute, *Royal Dutch Shell*. Available at <http://www.pei.org/wiki/royal-dutch-shell>.

<sup>123</sup> NERA Study at 10-11.

<sup>124</sup> Roger R. Milgrim, *Milgrim on Trade Secrets* § 1.01.

<sup>125</sup> NERA Study at 11.

<sup>126</sup> Dr. Robert Conrad addresses similar assumptions at length in his recent letter to the Commission, refuting the notion that Section 13(q) requires disclosure of proprietary or commercially sensitive information. Comment submitted by Dr. Robert Conrad (Jul. 17, 2015). Available at <https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-81.pdf> (“Conrad Comment”).

- Liquidity can be constrained in the extractive industries (uncontroversial), so companies facing fire sales will be unable to protect themselves or find buyers in the four target countries (unsupported).
- Trade secrets are costly and important in the extractive industries (uncontroversial), so Section 13(q) disclosures will cause significant competitive harm (unsupported).

NERA compounds these errors by opportunistically selecting studies that generally support the tautological statements it advances, without recognizing the existence of a wealth of literature that questions its inadequately supported conclusions. This is most obvious in NERA's treatment of disclosures and trade secrets.<sup>127</sup> Here NERA selects a random assortment of studies, most of which do nothing more than to explain the general costs of disclosing trade secrets or the dangers of expressly disclosing confidential formulas in contexts that shed little light on Section 13(q) disclosures.

For example, NERA cites an article written by an oil executive and a corporate lawyer, arguing for a balance between public disclosure of fracking chemical components and trade secrets protection.<sup>128</sup> This article sheds no light on what should be considered a trade secret in general, and it seems uncontroversial that a chemical company that has spent significant resources developing a proprietary chemical treatment would expect that investment to be balanced against the public interest in revealing exposure to potentially toxic compounds. The study also cites a paper comparing the performance of hedge funds whose portfolio composition and management are reported quarterly with those that obtain permission for disclosure on a delayed basis.<sup>129</sup> This scenario is hardly comparable to Section 13(q), as the disclosure is almost real-time (i.e. every three months), as opposed to annually and on a time-lag for Section 13(q), and rather than requesting perpetual confidential treatment as API is doing, the hedge funds are at most allowed to delay their disclosures temporarily. In addition, the subjects of these two regulations are different. Form 13F applies to investment companies, while Section 13(q) seeks disclosure by public issuers. Congress treated these two types of regulated entities differently and subjected them to different disclosure regimes because they are not comparable to each other.

In citing these studies, NERA self-servingly ignores a series of recent, reputable studies indicating that transparency – both in the extractive industries and more generally – can create value for shareholders and promote economic growth.<sup>130</sup> This is not to say that NERA is required to agree with these pro-transparency studies, but rather that the hand-picked selection of

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<sup>127</sup> NERA Study at 10-11.

<sup>128</sup> NERA Study at 10 (citing Betzer, J.P. and Brinkley, J.B. (2015), "Mixology 101: Blending Trade Secret Protections and Fracking Chemical Reporting," *Natural Resources & Environment* 29(4)).

<sup>129</sup> *Id.* citing Aragon, G.O., Hertz, M., and Shi, Z. (2012), "Why Do Hedge Funds Avoid Disclosure? Evidence from Confidential 13F Filings," *Journal of Finance and Quantitative Analysis* 48(5): 1499-1518.

<sup>130</sup> *See, e.g.*, Corrigan, C. (2015), "The Effects of Increased Revenue Transparency in the Extractives Sector on Economic Growth," submitted to the Commission on Feb. 16, 2016, *available at* <https://www.sec.gov/comments/s7-25-15/s72515-28.pdf>; Barth, M.E., Konchitchki, Y., and Landsman, W.R. (2013), "Cost of capital and earnings transparency," *Journal of Accounting and Economics* 55(2-3): 206-224 (firms with more transparent earnings have lower cost of capital); Vale Columbia Center on Sustainable International Investment (Dec. 16, 2011) (companies that disclose tax payments outperform those that do not); Moody's Investors Service, Issuer Comment, "Senegal's EITI Candidacy Status Approved, a Credit Positive" (Oct. 24, 2013), *available at* [http://www.alacrastore.com/moodys-credit-research/Senegal-s-EITI-Candidacy-Status-Approved-a-Credit-Positive-PBC\\_159679#sthash.IOG03a9s.dpuf](http://www.alacrastore.com/moodys-credit-research/Senegal-s-EITI-Candidacy-Status-Approved-a-Credit-Positive-PBC_159679#sthash.IOG03a9s.dpuf).

questionably applicable anti-disclosure citations undermines the objectivity of the study as a whole.

**6. API has not provided evidence to support its assertion that “revealing contract-level information is competitively harmful”**

API’s allegation of purported competitive harm is based on the notion that competitors “can use contract-specific disclosures to harm the disclosing issuer.”<sup>131</sup> These allegations continue to rely *solely* on hypothetical scenarios. Despite the passage of five years since the adoption of Section 13(q), API’s request that the Commission allow confidential disclosure and provide blanket exemptions for alleged competitive harm continues to be made on the basis of *no* concrete, real-world examples, or reliable studies that establish the veracity or even the strong probability of their prediction of harm. API is essentially asking the Commission to frustrate the intent of Congress on the basis of conjecture.

In order to prove that Section 13(q) creates competitive harm for covered issuers, API must convincingly demonstrate **both** that 1) Section 13(q) leads to the disclosure of commercially sensitive information *unavailable to competitors from any other source*; and that 2) the use of the data disclosed by Section 13(q) *would be determinative* in providing competitors with an advantage. API has so far not done so.

- a. API has admitted that competitors already have access to contract-level information about mature projects, and that these contracts are considered “least-sensitive.”<sup>132</sup>

API makes clear that in the case of competitive harm from resource-extraction companies, it is principally concerned about alleged competitive harm that could occur from disclosing contract-level information about new projects in frontier areas to competitors. It states clearly that competitors already have information on the terms of mature projects. API has admitted that for “an oil project in a mature, developed area with multiple wells connected to shared infrastructure”, “contracts for projects like this tend to be old, and the general terms are likely to be known even if technically not public.”<sup>133</sup> As described in section D below, because Section 13(q) requires annual reporting, disclosures will have a time delay of 6-17 months, at which point this information would already be accessible within the industry through other means, such as the commercial databases which, as we have noted, are updated in real time.

This supports our view and evidence in the record, that contract terms are generally known within the industry.<sup>134</sup> It also makes clear that the Commission need not provide an allowance for issuers to aggregate contracts that are “substantially interconnected” for reasons of competitive harm as it

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<sup>131</sup> API Comment at 16.

<sup>132</sup> API Comment at 19-20.

<sup>133</sup> *Id.* at 19.

<sup>134</sup> Comment submitted by Revenue Watch Institute (Feb. 17, 2011) at 5. *Available at* <http://www.sec.gov/comments/s7-42-10/s74210-23.pdf> (“detailed information on bonus payments and lease fees is already readily available within industry circles.”); Comment submitted by Oxfam America (Feb. 17, 2011) at 23. *Available at* <http://www.sec.gov/comments/s7-42-10/s74210-24.pdf> (“Disclosures mandated by Section 13(q) will often include public information known to other actors in the industry, or information that will not give a competitive advantage to another actor in the field. An entire industry exists to provide intelligence on natural resources transactions. It is hard to believe that the best data available to competitors usually take the form of an annual Section 13(q) filing.”)

has proposed,<sup>135</sup> since according to API, the general terms of such mature projects are already known to competitors.<sup>136</sup>

- b. API has not provided the Commission with evidence demonstrating that competitors could not find contract-level information on new, frontier projects using the alternative sources of information established in the record, such as oil and gas market intelligence services.

As made clear in the rulemaking record, competitors – including state-owned companies - have vast competitive intelligence resources available to them to assess a region’s development potential and to value new oil and gas investments and the potential of individual assets in a country. These include continuously updated sources such as IHS<sup>137</sup>, Rystad Energy<sup>138</sup>, Global Data<sup>139</sup>, Barrows Company<sup>140</sup>, and Wood Mackenzie<sup>141</sup>. Several of these services also provide information on bonus payments and bid round results, information that API alleges is competitively sensitive, as illustrated in the hypothetical scenarios involving the fictional AmeriCo.<sup>142</sup>

However, API has omitted any mention of the possibility that competitors could, in fact, access information they consider competitively sensitive using these other means, nor has API provided any analysis of the extent to which these other means provide the same information disclosed under Section 13(q) that is purportedly of competitive concern. This is surprising, given that these are services used regularly by API members<sup>143</sup>, and evidence of their existence has been in the

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<sup>135</sup> 80 Fed. Reg. at 80,0076, 80,103.

<sup>136</sup> This also makes clear that any alleged competitive costs assessed by the Commission related to disclosure should not consider these “mature projects.”

<sup>137</sup> IHS briefings on oil and gas exploration and production trends includes: “spending and cost trends; frontier play activities and economics; shale, deepwater and conventional companies; country development strategies.” See <https://www.ihs.com/products/strategic-horizons.html> The IHS International Exploration and Production Database includes modules with reserves and production data and includes more than 27,900 current valid contracts and 34,700 historical ones. See <http://www.ihs.com/products/consulting/industries/energy/upstream-oil-gas/index.aspx>.

<sup>138</sup> See Rystad Energy <http://www.rystadenergy.com/Databases>. UCube (Upstream Database) is an online, field-by-field database for the international upstream oil & gas industry. It is a single source tool integrating detailed asset information, company analysis, economical modeling as well as maps. UCube contains reserves, production, financial figures and a range of additional key parameters for all fields, discoveries and licenses globally, including both conventional and unconventional resources. Data can further be split by variables like geography, on-/offshore, ownership, operators, life cycle and water depth, among others. UCube covers 65,000 assets and 3,200 companies, with historical data from 1900 and forecasted data up to 2100.

<sup>139</sup> See GlobalData, <http://oilgas.globaldata.com/>

<sup>140</sup> See Barrows Company, <http://www.barrowscompany.com/>. “Barrows Company is the world's leading and most comprehensive international reference library for oil, gas, and mineral laws and contracts, serving the Petroleum industry for over 50 years. The vast Barrows Basic Oil Laws & Concession Contracts library contains the complete texts of petroleum laws and contracts, which includes National Oil Company Statutes and LNG contracts.”

<sup>141</sup> See WoodMackenzie, <http://www.woodmac.com/analysis/11703479>

<sup>142</sup> API Comment at 16-17. See also Appendix 1 for a summary of the services offered, and Appendix 2 for a fact sheet that outlines the data and services offered by the IHS Exploration and Production Database.

<sup>143</sup> See IHS Fact Sheet on EDIN. Available at [https://www.ihs.com/pdf/EDIN-Brochure\\_162001110913044932.pdf](https://www.ihs.com/pdf/EDIN-Brochure_162001110913044932.pdf) (quoting Heritage Oil as saying “We access EDIN regularly because it provides us with an easy, fast & reliable way to access the comprehensive IHS energy information that we need to help make reliable investment decisions for new ventures.” See also WoodMacKenzie, Clients,

record for several years. This is a glaring omission from API's arguments and significantly undermines its claim that competitors would otherwise be unable to access this information.

Likewise, host governments, which API claims will use Section 13(q) disclosures to issuers' disadvantage, have other, more accurate means to gather data to assist them in bargaining with covered issuers.<sup>144</sup>

Furthermore, API appears to suggest that without Section 13(q) disclosures, anonymity in greenfield exploration is protected. Notwithstanding the information available in the commercial databases referenced above, it is worth noting that in fact, the global standard for government-led disclosure of licensing results is moving toward transparency. Open bidding and licensing processes are endorsed and promoted by the International Monetary Fund and the World Bank.<sup>145</sup> The EITI Standard requires countries to have a public license register including the names of companies and the dates of the awards.<sup>146</sup> In light of information already available, and of these normative trends away from anonymity, it is difficult to argue that Section 13(q) disclosures could have the detrimental impact suggested by API.<sup>147</sup>

- c. API has not provided convincing evidence to prove that "first mover" advantages would be lost as a result of disclosure under Section 13(q).

API's arguments with respect to competitive concerns related to new projects fail under scrutiny. API argues that Section 13(q) disclosure puts "first-movers" at a disadvantage when they seek to expand their operations nearby. They illustrate their concern with a hypothetical that claims that the size of an upfront project-level bonus payment, if disclosed, would signal to competitors a new project's potential viability and drive up an issuers costs to access adjacent land when it comes up for bid.<sup>148</sup>

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<http://www.woodmac.com/consulting/clients> (noting clients include both international exploration and production companies, as well as national oil companies, among others).

<sup>144</sup> Conrad Comment at 8. ("The officials in host countries and their advisers have better, and more accurate, means to measure the minimum returns required by different resource producers[...]Country officials and their advisers can compute various measures of the risk-adjusted cost of capital for listed firms using finance methods such as the Capital Asset Pricing Model and Arbitrage Pricing Theory, to name two methods. In addition, the divisional cost of capital might be inferred from the use of similar data, by comparing the returns of specialized firms and other methods. In short, host country officials and their advisers do not need reported total annual payments to make such inferences.")

<sup>145</sup> Conrad Comment at 11, FN 35.

<sup>146</sup> See the EITI Standard 2016, Requirement 2.3, Register of Licenses. Available at [https://eiti.org/files/english\\_eiti\\_standard\\_0.pdf](https://eiti.org/files/english_eiti_standard_0.pdf) ("Implementing countries are required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report: License holder(s); Coordinates of the license area [...]; Date of application, date of award and duration of the license; In the case of production licenses, the commodity being produced.")

<sup>147</sup> See also Conrad Comment at 11. (Suggesting that "companies that explore, presumably in green fields, may not want to acknowledge failure as well as success;" "In my experience, the license may be obtained by auction, in which case everyone knows who is exploring, or by first-come, first-served distribution, in which case the name of the license holder may be a matter of public record;" and, "At a minimum, competitors will know that exploration is being undertaken when a drilling rig is placed at a location or an exploration shaft is excavated.")

<sup>148</sup> API Comment at 17.

Firstly, as shown above, there is no evidence to demonstrate that competitors *would not* be able to access bonus payment information from other sources that would be significantly more timely than Section 13(q) disclosures. Secondly, there is no evidence demonstrating that the publication of the payments would have any impact on a first mover's advantage in accessing adjacent properties. Exploration success is celebrated publicly in many countries, and even if this were not made public, success in the initial property would lead the government to seek to increase the value of the adjacent properties in future licensing rounds.<sup>149</sup> The publication of payments would not eliminate other first mover benefits that provide competitive advantage, such as knowledge of the geological structures in the initial property or the institutional environment, or existing investment in transport infrastructure that increases the attractiveness of bids on adjacent properties.<sup>150</sup>

- d. API has not responded to evidence in the record countering its claims of competitive harm available in the record since 2014.

Concrete evidence in the rulemaking record demonstrates that 1) Section 13(q) disclosures are not detrimental to success in the modern competitive environment;<sup>151</sup> 2) even if Section 13(q) disclosures were at all useful to competitors, they have more timely sources of this information at their disposal;<sup>152</sup> 3) state-owned firms – even if not covered by disclosure requirements – have access to competitive intelligence services and maintain other competitive advantages that have nothing to do with transparency;<sup>153</sup> and, 4) governments do not view Section 13(q) disclosures as sensitive and there is no evidence that they will overlook competitive bids by covered issuers and grant licenses to non-covered issuers in order to avoid payment disclosure.<sup>154</sup>

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<sup>149</sup> Conrad Comment at 10. (“Publication of such information is neither necessary nor sufficient, however, for the first mover's advantage to be lost. Self-interest of the resource-owning government, combined with the public information that the first mover was successful, will naturally lead to an increase in the value of adjacent properties.”)

<sup>150</sup> *Id.* at 11.

<sup>151</sup> Comment submitted by Publish What You Pay US (Mar. 14, 2014) at 36-37. Available at: <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-28.pdf>. (“PWYP-US 2014 Comment”) (Citing the Independent Petroleum Association of America (IPAA) International Primer, which documents the complex factors involved in bidding and the range of criteria used by governments to evaluate bids, as well as recent bidding rounds in Nigeria and Brazil, and a study published in Oil & Gas Energy Law Journal reviewing host state and oil company bargaining models since the 1970s. PWYP found that these undermine the assumption that transparency would be a decisive or even a relevant factor in winning or losing a bid.)

<sup>152</sup> *Id.* at 38-39. (Citing the existence of intelligence services by IHS, GlobalData, Barrows Company, Wood MacKenzie and Rystad Energy, and noting that “these commercial databases provide this information in real-time, giving them far more competitive value than Section 1504 disclosures, which will operate on a time delay of between 6 and 17 months.”)

<sup>153</sup> *Id.* at 39-40. (Citing access by state-owned companies to the same commercial intelligence services as non-state competitors, as well as factors unrelated to transparency that gives them competitive advantage such as access to significant amounts of capital, the ability to obtain government loans at little or no interest, as well as the capacity to arrange oil for infrastructure packages with host governments.)

<sup>154</sup> *Id.* at 40-41. (Citing to bidding success of covered companies even in countries that purportedly prohibit disclosure; the time lag between contract signature, the payment being made and eventual disclosure and its impact in reducing the relevance of payment information to future contract negotiations in a quickly changing market; and, contrasting payment information with information that is typically considered to be sensitive by governments such as contemplated transactions, bids or negotiating position on such transactions, business models, proprietary technology or confidential communications.)

Supporting evidence in the record since 2014 that counters API's claims includes guidance by the International Petroleum Association of America (IPAA), studies on the bargaining environment published in *Oil and Gas Energy Law Journal*, as well as information on the commercial intelligence – including payment information - provided by oil and gas advisory services and exploration and production databases such as those of IHS and WoodMacKenzie.<sup>155</sup> API has failed to provide any reason why the Commission should disregard the evidence from these reputable sources.

Additional submissions also provide evidence refuting claims of competitive harm. These include submissions by Dr. Robert Conrad of Duke University,<sup>156</sup> OpenOil,<sup>157</sup> EarthRights International,<sup>158</sup> Calvert Investments,<sup>159</sup> Natural Resource Governance Institute,<sup>160</sup> and Publish What You Pay.<sup>161</sup>

- e. Transparency increases safety and security for workers, and no evidence been provided to support the notion that insurgents and terrorists would have access to no other information to locate high value projects.

Since 2011, leading oil, gas and mineral workers unions have made clear that transparency at the contract level in fact increases the security of workers and employees of covered companies. The United Steelworkers, the principal labor union representing oil and gas industry and mine workers in North America,<sup>162</sup> the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG), representing thousands of workers in prospecting, drilling, distribution and marketing of oil and

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<sup>155</sup> *Id.* at 34-41.

<sup>156</sup> Conrad Comment. (Providing perspective as PhD in Economics with a focus on natural resource economics and public finance, having served as fiscal policy advisor to more than 40 countries as well as development institutions such as the IMF and the World Bank)

<sup>157</sup> Comment submitted by OpenOil (Oct. 26, 2016). Available at <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-94.pdf> (Citing results of contract database review, finds that most contracts explicitly allow for disclosure, and cites the standard exception to confidentiality included in the model contract of the Association of International Petroleum Negotiators).

<sup>158</sup> Comment submitted by EarthRights International (Dec. 12, 2014) at 9. Available at <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-58.pdf> (“International oil companies are not competing with national oil companies on the basis of transparency.”)

<sup>159</sup> Calvert Comment at 2 (“As Calvert and other investors have noted, the comment record for Section 13(q)-1 includes no compelling evidence that substantiates the potential for competitive harm of the rule that would be the basis for exemptive relief.”)

<sup>160</sup> NRGJ Comment at 2 (“The data shows that in the period following the passing of Section 1504 oil and gas companies covered by Section 1504 have continued to receive contracts in countries cited by industry as allegedly prohibiting disclosure. Therefore, in practice, there has been no blanket exclusion of covered companies from awards in these countries. Our findings further show that the covered companies have not been significantly affected in their ability to secure contracts in the industry-cited countries after the adoption of Section 1504.”)

<sup>161</sup> PWYP-US Comment (2016) at 41-47 (Responding to Questions 40-44).

<sup>162</sup> Comment submitted by United Steelworkers (Mar. 29, 2011) at 3. Available at: <http://www.sec.gov/comments/s7-42-10/s74210-78.pdf> (“Industry commentators have raised concerns that revenue transparency as proposed in the [2012] rule could jeopardize employee safety. We believe that enhanced transparency would in fact enhance employee safety”; “information is reported on in local, national and international media”; “terrorists would not need to rely on SEC filings to identify these locations.”) See also PWYP-US Comment (2016) at 45 (responding to Question 42).

gas operations in Nigeria,<sup>163</sup> and the Petroleum & Natural Gas Senior Staff Association of Nigeria (PENGASSAN), representing over 20,000 senior and middle management employees in a variety of oil and gas companies throughout Nigeria, including Chevron Nigeria Limited, and Shell Nigeria Limited,<sup>164</sup> wrote to the Commission in 2011 supporting contract-level transparency and disputing industry claims that transparency would lead create insecurity.

Neither API nor any of its member companies have acknowledged or responded to the evidence submitted by these workers. They have also failed to provide any credible evidence apart from hypothetical scenarios, to support their view that terrorists or insurgents would use annual report data to determine the value and location of important projects. As an organization with operations in 90 countries, Oxfam can attest that this position is ignorant of the widespread access to the internet in these countries, and to the extent to which local news media, including official government media, will regularly report on the progress and locations of oil, gas and mining projects. It is also ignorant of the proximity of most projects to population centers. Many high value projects are located very close to communities, and individuals can very simply determine the locations of these projects, examine the surrounding infrastructure and infer which projects are of high value. The notion that securities disclosures would be the sole source of this information instead of Google, news outlets and the naked eye is farfetched.

- f. API members have admitted that their competitive concerns related to project reporting have been overstated.

At the September 2014 meeting of USEITI, Exxon Mobil apparently admitted that industry concerns about competitive harms from project level reporting have not been as significant as expected.<sup>165</sup>

It is notable that comments submitted to the Commission by API members, Total (in 2016),<sup>166</sup> BHP Billiton (in 2016),<sup>167</sup> Kosmos Energy (in 2015), Chevron (in 2014),<sup>168</sup> Royal Dutch Shell

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<sup>163</sup> Comment submitted by NUPENG (July 8, 2011). Available at <http://www.sec.gov/comments/s7-42-10/s74210-97.pdf>.

<sup>164</sup> Comment submitted by PENGASSAN (June 27, 2011). Available at <http://www.sec.gov/comments/s7-42-10/s74210-93.pdf>.

<sup>165</sup> See U.S. Department of Interior, USEITI Multi-Stakeholder Group Advisory Committee Meeting Minutes (Sept 9-10, 2014) at 16, <https://www.doi.gov/sites/doi.gov/files/migrated/eiti/FACA/upload/USEITI-MSG-Sept-2014-Mtg-Summary-Approved-by-MSG-141213.pdf> (stating that “Mr. John Harrington, ExxonMobil, clarified that the industry sector continues to have concerns about competitive harm caused to firms due to project-level reporting, but that, upon examination, these concerns were not as significant as initially anticipated.”)

<sup>166</sup> Comment submitted by Total (Jan. 13, 2016). Available at: <https://www.sec.gov/comments/s7-25-15/s72515-14.pdf> (“Total believes equivalency recognition should help global transparency initiatives evolve toward a common standard, thereby improving the quality and comparability of information. It encourages foreign jurisdictions that have not yet adopted resource extraction payment disclosure laws to provide a level of disclosure that is consistent with U.S. and EU rules.”)

<sup>167</sup> Comment submitted by BHP Billiton (Jan. 25, 2016). Available at <https://www.sec.gov/comments/s7-25-15/s72515-9.pdf>

<sup>168</sup> Comment submitted by Chevron Corporation (May 7, 2014). Available at <http://www.sec.gov/comments/dfitile-xv/resource-extraction-issuers/resourceextractionissuers-40.pdf> (“We believe ‘equivalency’ between the EU and U.S. reporting regimes is critical as the EU Member States move to implement the transparency reporting Directives. No one benefits from an outcome in which multinational resource companies are required to file multiple reports in multiple jurisdictions, providing substantially the same information in different forms.”)

and Exxon (in 2014),<sup>169</sup> support rules that are equivalent with the EU, which requires public, project reporting by contract.

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<sup>169</sup> Comment submitted by Royal Dutch Shell plc and ExxonMobil Corporation (May 1, 2014). *Available at* <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-37.pdf> (“Equivalency, we believe, is critical as the EU member states move to implement the transparency reporting directives. No one benefits from an outcome under which multinational resource companies are required to file multiple reports in multiple jurisdictions providing substantially the same information in different forms.”).

## APPENDIX 1

### Overview of Select Oil and Gas Competitive Intelligence Services

**IHS** - <https://www.ihs.com/index.html>

**IHS Global Exploration and Production Service (GEPS), includes License Round Monitor**

<https://www.ihs.com/products/global-exploration-production-service-geps.html>

“Track current license rounds globally, providing clients with key details on the acreage available along with the assumed fiscal terms. Alongside the monitor service is detailed commentary on the progress of each round from first preparation through inception to the completion and awards. IHS holds a large archive of historical activity as well, which allows users to read back through past rounds and see which companies were successful in their bids.”

**IHS International Exploration and Production database EDIN**

<https://www.ihs.com/products/oil-gas-tools-edin.html>

“User can research the exploration history and analyze past successes, future potential, and the competitive environment”

“With full access to the entire history of the oil industry, a user can rapidly assess past company activity, drilling details, reserves, and production, as well as detailed technical and geological information to verify the potential for future reserves from the available acreage.”

**Contracts and Blocks Database**

[https://www.ihs.com/pdf/International-Exploration-Production-Database-IHS\\_165378110913044932.pdf](https://www.ihs.com/pdf/International-Exploration-Production-Database-IHS_165378110913044932.pdf)

The IHS Contract & Blocks Database enables oil & gas companies to look closely at competitors and potential partners – evaluating their work commitments and assessing whether more advantageous terms could be negotiated. With more than 27,900 currently valid contracts, 34,700 historical ones, over 125,000 contract-blocks and 65,000 currently available or historical bidding/offered blocks and open areas. From the bidding block to the application / award stage through to partial relinquishment, all company interest changes are recorded in the database. This is the only database that can go back a hundred years to reveal the real success in an area. Providing detailed information on: Upcoming renewal, partial relinquishment, expiry; Financial, seismic or drilling commitments organised by exploration phases; Various payments on signature, production, etc; Royalty rates; Resource type and unconventional type; Farm-in opportunities.”

**IHS Petroleum Economics and Production Service (PEPS)**

<https://www.ihs.com/products/oil-gas-petroleum-news-peps.html>

“Provides detailed information on the assumed fiscal terms for every hydrocarbon region globally and provides a level of comparative analysis of the commercial terms against the political risks and the exploration landscape.”

**RYSTAD ENERGY** - <http://www.rystadenergy.com/>

**UCube (Upstream Database)**

<http://www.rystadenergy.com/Databases/UCube>

“UCube is an online, complete and integrated field-by-field database, including reserves, production profiles, financial figures, valuation, breakeven prices, ownership and other key parameters for all oil and gas fields, discoveries and exploration licenses globally. UCube

includes 65,000 oil and gas fields and licenses, portfolios of 3,200 companies, and it covers the time span from 1900 to 2100. Hence, UCube is a representation of the global E&P universe. UCube is an indispensable tool for anyone involved in strategy and business development work or investments within the global upstream oil and gas industry.”

“UCube can be broken down along a number of dimensions like, hydrocarbons, life cycle, geography, water depth, field type, unconventional, companies and operators. Financial figures can be split among costs such as operational costs, exploration and capital investments, government take and free cash flow.”

“The data in UCube originates from primary sources such as company and government reports.”

“Data is continuously scouted and updated, with new versions available on a monthly basis.”

Features:

- “Strategy & competitor intelligence: Strategy and targets definition as well as competitor portfolio analysis
- Benchmarking: Comparison of production, reserves and economics at country, company or asset level
- Target screening & business development: Identify targets for acquisitions or farm-ins from a wide range of search criteria
- Valuation: Net present value calculation of assets and portfolios”

### **ECube (Exploration Database)**

<http://www.rystadenergy.com/Databases/ECube>

“Provides bottom-up, up-to-date and consistent well level data relevant to understanding ongoing exploration efforts, with historical data from the award of new acreage and forward looking to uncertain exploration programs that may change depending on the industry decisions. Variables that ECube offers are acreage, discovered volumes, drilling days, exploration costs, exploration wells and formation drill depths. It is possible to split data by basin, sub basin, operators, companies and geography as well as on several well type splits, e.g. content and stratigraphy. ECube includes complete tables with acreage size, acreage positions, number of commitment wells and optional wells as well as committed seismic line kilometers. It allows for review of timeframes from license awards to license relinquishment for any basin. Undeveloped acreage can be compared to available acreage per country and filtered split into different criteria, e.g. by water depth. Creaming curves can be created for each basin and are further divided into geological time or by player.”

Features:

- “Well-by-well database tailor-made for exploration analysis – taking UCube data to the well level
- Data parameters include discovered volumes, exploration costs, acreage positions, license round information and a range of reservoir parameters
- Contains historical data including creaming curves as well as forward looking data with estimates of activity levels, costs and yet-to-find volumes
- Data automatically presented in charts, tables and layered maps, with easy export to Excel and PowerPoint
- Online access with monthly update”

### **GLOBALDATA - <http://energy.globaldata.com/>**

#### **Upstream Analytics**

<http://energy.globaldata.com/research-areas/oil-and-gas/upstream-analytics>

“Details on global fields including forecasts for capital and operating expenditures, cash flows, and production scenarios by field, company or country.

Over 80 different parameters available including geography, operator, water depth, formation, development stage, projected start date, total capital budget, production levels, recovery factor, remaining recoverable reserves, and remaining net present value.

Associated details available for past and future bid round details, block and license participation, and exploration well results. Locate nearest infrastructure with projects linked to related assets across the value chain including pipelines, refineries, processing plants, storage sites, LNG plants, and petrochemical plants.

Daily updates provide up to date and complete information ensuring the impacts of market events are captured. Weekly analytical reports on the main flashpoints facing the upstream industry compliments the interactive tool.”

### **Upstream Economics**

<http://energy.globaldata.com/research-areas/oil-and-gas/upstream-economics>

“Economic analysis and evaluations of producing and planned field developments, including field reports models.

Asset models are available online or in an auditable Excel file, with economic output such as remaining and full cycle NPV, IRR, and payback period driven by analyst assessed reserves estimates, production forecasts, capital and operating expenditure estimates, and country and field specific fiscal terms.

Reports include updated details on the current status of the development, an analyst opinion on the outlook of the project highlighting potential risks, the geology of the field, an economic analysis outlining assumptions around costs, and the rationale supporting the reserves and production forecast.

A fiscal report details the applicable terms in detail, inclusive of tools that provide comparative analysis between countries. Access to analysts is provided to explore analysis in further detail.”

Features:

- “Review specific field development expectations and economic analysis to evaluate financial performance for acquisition or divestment.
- Evaluate the economics of further capital investment or a price shift on a upstream project
- Understand the fiscal, cost, price, and production sensitivities on specific fields
- Compare project economics across various countries or companies
- Identify project specific production and cost drivers with an outlook into potential risks and upside”

**WOOD MACKENZIE** - <http://www.woodmac.com/>

### **Upstream Oil and Gas Research**

<http://www.woodmac.com/analysis/11703479>

“Our expertise in upstream oil and gas is driven from our unique databases, economic models and forecasts. We provide comprehensive asset and company valuations, in-depth analysis and insight into key issues. This objective research helps companies around the world to identify, evaluate and rank upstream growth opportunities.”

Features:

- “Exploration Service - Benchmark performance and future potential of basins around the world
- Fiscal Service - Visualise, compare and analyse petroleum fiscal systems across over 160 regimes using a wide range of metrics and assumptions
- Global Economic Model (GEM) - Value upstream assets and portfolios around the globe using your own price assumptions and assess the impact of changes in costs and production

- LNG Service - Spot emerging global trends, quantify opportunities and understand which LNG projects are best-placed to meet growing demand
- North America Company and Play Analysis Tool - Benchmark public and private companies and evaluate every key play in the region down to the well level
- North America Well Analysis Tool - Accurately forecast upstream performance using our historical well-level dataset
- Oil Supply Tool- Assess the future of oil and NGL supply with a detailed breakdown of our base case view, which incorporates reserves growth, technical reserves and yet-to-find volumes
- Unconventional Play Service- View proven and emerging plays around the globe and explore their potential using a variety of unique metrics
- Upstream Service - Identify and screen upstream development opportunities on a global scale whilst understanding critical issues at the asset and country level
- Upstream Data Tool - Access our full upstream dataset online to search, screen and compare growth opportunities around the world.
- Corporate Service - Validate, understand, compare and challenge corporate viewpoints and market sentiment using our unrivalled, data-driven analysis
- Corporate Benchmarking Tool - Compare past and future upstream performance of competitors and partners to understand corporate challenges and opportunities
- M&A Service - Discover underlying value and strategic drivers of upstream transactions to objectively benchmark, evaluate and manage M&A opportunities”

### **Upstream Consulting**

<http://www.woodmac.com/consulting/upstream>

“Our expert Upstream consultants help clients thrive against current industry challenges by offering challenging, creative and thoughtful business advice. Our clients include:

- Major and independent E&P companies
- National oil companies
- Governments
- Supply and service organisations
- Financial institutions

Our upstream consulting offerings fall into four categories:

- Business environment
- Business improvement
- Strategy
- Transaction support”

### **BARROWS COMPANY – <http://www.barrowscompany.com/>**

“Barrows Company is the world's leading and most comprehensive international reference library for oil, gas, and mineral laws and contracts, serving the Petroleum industry for over 50 years. The vast Barrows Basic Oil Laws & Concession Contracts library contains the complete texts of petroleum laws and contracts, which includes National Oil Company Statutes and LNG Contracts. Barrows Mining Legislation contains the texts of mining laws in all countries. Subscribers can efficiently sort and search the library content.”

## **APPENDIX 2**

IHS FACT SHEET:

International Exploration & Production Database

Also available at: [https://www.ihs.com/pdf/International-Exploration-Production-Database-IHS\\_165378110913044932.pdf](https://www.ihs.com/pdf/International-Exploration-Production-Database-IHS_165378110913044932.pdf)



IHS International Exploration & Production Database



# International Exploration & Production Data Overview

## A fully integrated dataset at your fingertips

The IHS International E&P Database is the most comprehensive and reliable dataset available to oil and gas industry professionals today. Maintained in a unique relational data model it provides a fully integrated data area with more than 13,000 E&P attributes.

The database allows companies to compare, rank and assess exploration and production activity at a global, regional or country level, supporting both economic and geological workflows.

### Continuously updated

With 17 technical teams positioned around the world and proficiencies in 35 languages, our staff of experts maintains an unparalleled communication network with operators, national oil companies, government agencies and service companies to ensure we deliver the latest petroleum industry activity worldwide. The data is gathered and reported daily from more than 100 in-country correspondents who are focused on tracking, reporting and analysing industry activity to provide critical insights for E&P decision-makers.

Whatever the location, and the scale of your operations, IHS has the data, expertise and knowledge to support you every step of the way.

The International E&P Database allows organisations to thoroughly review the hydrocarbon prospectivity of a trend or region, thereby allowing you to understand the feasibility of a project.

Typical users are:

- Explorationists – Review previous exploration activity to determine true hydrocarbon prospectivity in the basin and assess the risk of the exploration play
- New Ventures and Strategic Planning Groups – Analyse country and basin entry opportunities and assess basin prospectivity
- Negotiators – Evaluate work commitments to determine if a competing company was able to negotiate terms that differ from the model contract
- Service Companies - Assess supply and demand for drilling equipment, rigs and seismic vessels ahead of a tender process



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IHS has more than 50 years of experience in converting raw data into the information required for making critical decisions. We ensure information quality with three core concepts:

- 1 Use consistent, repeatable processes. We source and transform data into information following these steps:



- 2 Assess quality at each step of the process. Quality metrics can only be defined relative to end users' needs and expectations. We assess quality relative to the 4Cs and we share our progress with our customers on a quarterly basis. The 4Cs are:



- 3 Make continuous process improvements using a consistent methodology.



IHS knows companies must have confidence in the quality of the historical and current data they are using to make investment decisions. With more than 50 years' experience of transforming raw data to critical information IHS is dedicated to providing the highest quality information, software, insight and support available.

Rigorous quality checks are made throughout all stages of data transformation and across all 4C domains (Completeness, Correctness, Consistency and Currency) from initial authenticity checks made by our experienced regional experts to matching with our existing data and ensuring timely information is made available as soon as possible following announcement.

More than 930 SQL scripts are built in to the E&P database which runs automatically as information is inserted into the database these ensure internal consistency across the database.

Validation reports are run weekly on new records entered or updated to ensure missing attributes, inconsistencies and errors are identified and resolved prior to release. Spatial validations checking geodetic parameters and datum definition, entity dimensions and areas, locations and distances, overlaps and gaps and consistency with other modules are an integral element of the workflow.

Alongside these procedures we are continually improving existing data through numerous quality projects at both a global and regional level and also through our Quality Goals.

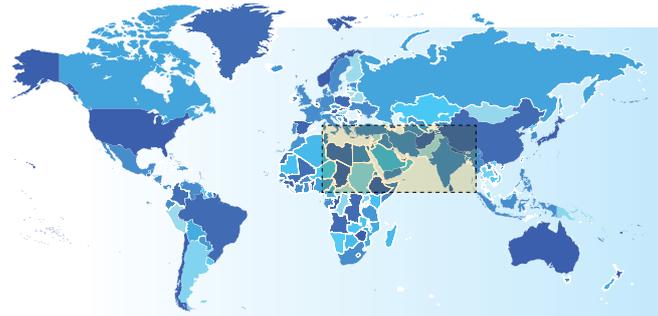
# Data Coverage and Content

Our International Energy information provides global coverage of energy data sourced through both the public and private domain using an unparalleled communication network with operators, national oil companies, government agencies and service companies.

The data is gathered and reported daily by more than 140 in-country correspondents and IHS professionals. Over 8 major categories of energy information are sourced and transformed by our experts into the valuable information that oil and gas companies require. The depth and breadth of our coverage is second to none with substantial details in relation to both the geological and economic workflows.

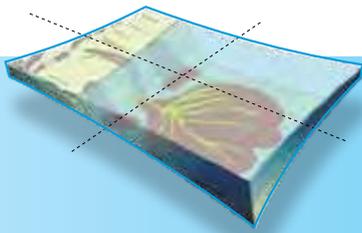
The database is fully integrated and many elements can be found under various headings (e.g., a company under concessions, seismic survey, well or field), the database is composed of the following main modules:

- Basin Database – a comprehensive study of petroleum and plays for more than 490 basins worldwide to assess hydrocarbon potential and exploration opportunities
- Contract & Blocks Database – includes open areas, bid blocks, exploration acreage and production concessions, with full information on the various current and historic contract stages and company acreage positions.



- Geophysical Surveys Database - key header data and 2D seismic line location / 3D seismic survey outlines along with magnetic and gravimetric survey information.
- Well Database – data includes the drilling history and available information on tested intervals and stratigraphic tops. Location data includes details on the projection system and datum to allow correct transformation into WGS84 coordinates
- Discovery & Field Database – the most comprehensive worldwide database of discoveries with reservoir details and reserves, planned and actual field development and annual and monthly production figures

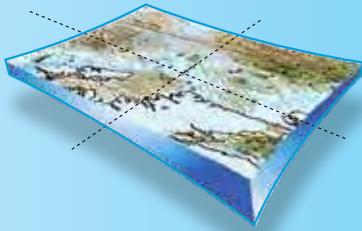




## Basin Level Analysis

Assess plays and petroleum systems, review hydrocarbon prospects and previous exploration success.

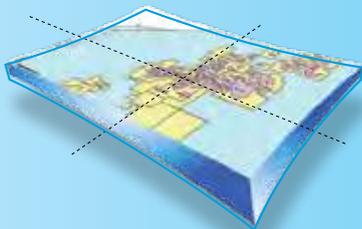
- 495 Basin Monitors available



## Exploration Surveys

Identify previous survey activity, evaluate 2D, 3D survey areas.

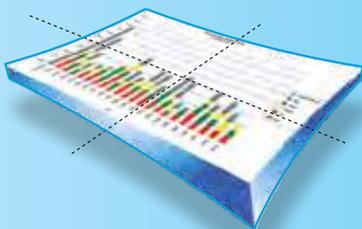
- More than 53,500 seismic gravity & magnetic surveys



## Field Evaluation

Investigate reserves and production, explore hydrocarbon potential and reservoir characteristics.

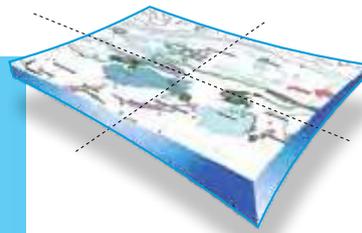
- More than 27,665 discoveries & field have been described in detail



## Well Information

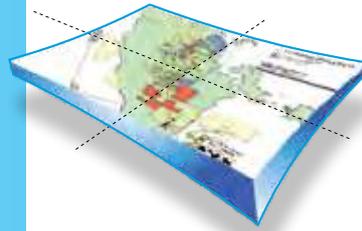
Review current and historical drilling results, analyse potential for drilling success.

- More than 700,000 International wells available



## Cultural & Geopolitical

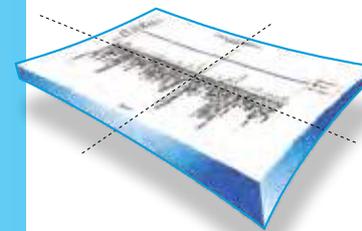
E&P content is integrated with our global cultural database to help you understand water depth, distance to landfall, markets and key infrastructure (road, rail, rivers, airports etc)



## Contracts & Terms

Review contract terms to negotiate better deals, look at bidding/open blocks currently available, examine contract histories.

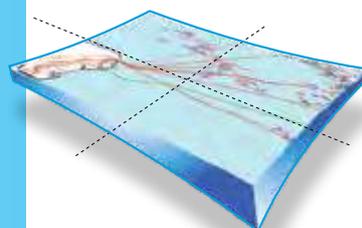
- More than 27,900 current and valid contracts and 34,700 historical entities



## Competitor & Company Analysis

Research potential partners and/or competitors.

- Information on more than 45,000 companies



## Midstream

Analyse infrastructure to bring your product to market.

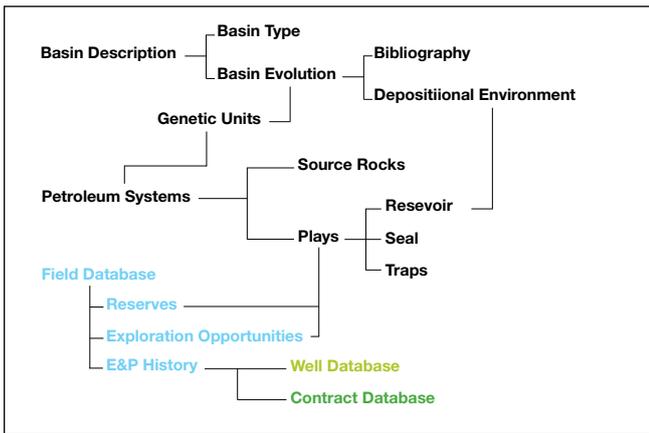
- Our global database of gathering stations, pipelines, pumping / processing facilities and ports helps you understand how easy you can get energy to key markets.

# Basin Database

IHS offers the largest set of basin studies and related geological data for a worldwide analysis of petroleum systems and plays.

The IHS Basin Database helps exploration teams understand the evolution and strategic stratigraphic features of individual basins, review previous exploration activity and evaluate hydrocarbon prospectively. This information can be used to access the risk of plays, and make comparisons with existing assets in a company's portfolio.

## Basin Database – Main Elements



Description of more than 490 basins in the database is compiled from multiple public and private sources that have been collected for decades, forming a unique dataset. Integrated with E&P data it allows comprehensive analysis of existing reserves and opportunities for future exploration. No other database offers this unique aspect, making any analysis more valuable than just the geological interpretation. As all data is available in standard database format, comparative and analogue studies are easily undertaken using IHS GIS softwares like EDIN and EDIN Desktop, or can be printed in an easy-to-read standard paper format of a Basin Monitor.

## Multiple Purposes and Results with One Dataset

The Basin Database supports a number of critical workflows, among which the most popular include:

- Fast initial screening for basin potential
- Basin ranking and comparative studies
- Petroleum system analysis
- Play fairway mapping

The Basin Database is organised around the following main study areas:

**Basin Evolution** – With the geological description of the development of the various stratigraphic sequences (genetic units)

**Petroleum Systems** – Combining details of the potential and proven source rocks with Plays that give detailed (lithostratigraphic) description of reservoirs, seals and traps. Integrated with the reservoir description in the Field Database, the play definition offers a unique dataset to determine the real potential of producing or prospective plays. This is the only dataset in the world that allows reserves distribution, risk analysis and Yet-To-Find Analysis on the play level

**Exploration, Development and Production History** – Summarises past activity and success, helping to evaluate opportunities and risks for future exploration in the basin

**Images** – including stratigraphic charts, tectonic, structural and stratigraphic distribution maps, geological cross-sections and representative well log or seismic sections help to quickly understand the main characteristics of the basin

**Basic Geological Layers** – Of structural elements (major fault zones), oceanic features like transform faults, oceanic magnetic anomalies and salt diapirs, worldwide gravity, and magnetic maps assist to define geological trends.

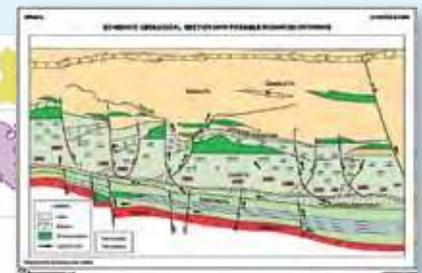
Play Fairway Mapping



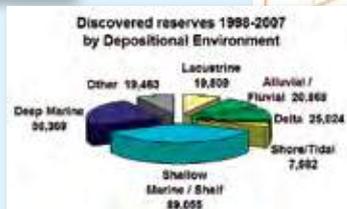
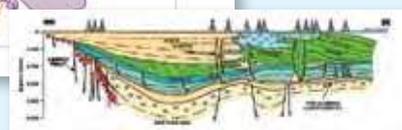
Initial Fast Screening of Basin Opportunities



Petroleum System Analysis



Analogue Studies



## Basin Database Coverage

Africa, Australasia, CIS, Europe, Far East, Frontier North America, Latin America, Middle East

Basin	Geological provinces	Names, location details, structure and prospectivity
		Classifications
		Studies
		Margins
		Geological data (ages, thickness)
		Basin outline
		Geological spatial layers (tectonic and salt structures, gravimetry, magnetism)
		Size
		Images
	Basin monitor remarks	Geological overview remarks
		Exploration overview remarks
		Development & production overview remarks
		Exploration summary remarks
		Development and production summary remarks
	Genetic units	General remarks and graphic remarks
		Name and general remarks
		Geological data
		Margins
		Tectonic regime (type, age, structures)
	Stratigraphy	Igneous event (type, age, lithology)
		Units and sub-units
		Type/reference section
		Associated and equivalent units
		Bibliography
		Age
Lithology		
Geochemistry		
Poro-perm characteristics		
Thickness		
Depositional environment		
Plays	HC significance (source, reservoir, seal)	
	Name, basin, petroleum system, status, remarks	
	Classification (conventional/unconventional)	
	Reservoir details	
	Seal details	
	Trap details	
	Geochemistry data for unconventional	
	Plays outline for unconventional	
	Plays size for unconventional	
	Resource figures for unconventional	
	Remarks for unconventional (geological, exploration, development, fiscal, and economics overviews)	
	Spatial layers for unconventional (reservoir depth, reservoir thickness, TOC, Ro)	
Petroleum systems	Bibliography	
	Images	
	Name, basin, play, remarks	
	Source deposition, generation, overburden ages	
Bibliography	Reservoir, seal, trap, migration ages	
	Entity links	
	Authors, publishers	
	Language	
Country		

# Contract & Blocks Database

The IHS Contract & Blocks Database enables oil & gas companies to look closely at competitors and potential partners – evaluating their work commitments and assessing whether more advantageous terms could be negotiated.

With more than 27,900 currently valid contracts, 34,700 historical ones, over 125,000 contract-blocks and 65,000 currently available or historical bidding/offered blocks and open areas.

From the bidding block to the application / award stage through to partial relinquishment, all company interest changes are recorded in the database.

This is the only database that can go back a hundred years to reveal the real success in an area. Providing detailed information on:

- Upcoming renewal, partial relinquishment, expiry
- Financial, seismic or drilling commitments organised by exploration phases
- Various payments on signature, production, etc
- Royalty rates
- Resource type and unconventional type
- Farm-in opportunities

## Contract & Blocks Database Coverage

Africa, Australasia, CIS, Europe, Far East, Frontier North America, Latin America, Middle East

Contract & Blocks Database	General contract information	Contract type and rights
		Class and validity
		Area and location details
		Contract remarks
	Contract stages	Event
		Dates
		Operator and participants
		Area and block outlines
	Schedules, commitments and payments	Renewal schedule
		Commitments
		Period schedule
		Production split
	Blocks	Activity and production payments
Status		
Farm-out details		
Elevation rights		
Area split		
	Co-ordinates	





2012 Concessions by E&P Contract Situation



2000 Concessions by E&P Contract Situation



Blocks available for farm-in

The example above shows the major changes in the concession acreage during the last twelve years. The map to the left shows the 2012 E&P contracts situation, the central map the E&P contract situation in 2000, and the map on the right shows blocks available for farm-in in the same area (reddish orange).

### Companies and Group Participant Data

Information on some 45,000 companies includes not only operating companies but all participating companies with local subsidiaries in E&P concessions. This is important as many companies operate under different subsidiaries

in various countries. As companies merge or are acquired by other companies, it is of paramount importance to understand the exact company structure and interests (e.g., to evaluate the reserves or production history of a parent company). These companies are used in the Participant Database to form the operating groups. This database contains over 37,000 currently valid groups and over 83,000 historical ones.

The example below shows the structure of Total Group 6 in Angola with all the participating companies, their interest percent and their detailed ownership structure.

TOTAL 6			
Group Summary			
Group Validity Flag	Y		
Unique ID	100000141741		
Start Date	20 July 2012		
Group Companies			
Company Name	Company Acronym	Interests Pct	Operator
<b>Sonangol Presquisa e Producao SARL (Sonangol P&amp;P)</b>	<b>SONANGOL P</b>	20.00%	
100.0% Soc Nacional de Petroleos de Angola (Sonangol E.P)			
<b>Esso Exploration Angola (Block 32) Ltd</b>	<b>ESSO A032</b>	15.00%	
100.0% Exxon Mobil Corp			
<b>China Sonangol International Holding Ltd</b>	<b>CHINA SONA</b>	20.00%	
70.0% Soc Nacional de Petroleos de Angola (Sonangol E.P)			
30.0% Beiya International Development Ltd			
<b>Marathon Int'l Petroleum Angola Block 32 Ltd</b>	<b>MARATHON32</b>	10.00%	
100.0% Marathon Oil Co			
<b>GALP-Exploracao e Producao Petrolifera LDA</b>	<b>GALP</b>	5.00%	
100.0% Galp Energia,SGPS,SA			
owned 28.3% by Eni SpA			
owned 26.3% by Other partner(s)			
owned 7.0% by Government of Portugal			
owned 38.3% by Amorim Energia BV			
owned 45.0% by Soc Nacional de Petroleos de Angola (Sonangol E.P)			
owned 55.0% by Corticeira Amorim, SGPS, SA			
<b>TOTAL E&amp;P Angiola Bloco 32 Ltd</b>	<b>TOTAL 32</b>	30.00%	Is Operator
100.0% TOTAL SA			



The Geophysical Survey Database contains worldwide data on over 53,500 seismic, gravity, and magnetic surveys. This comprehensive database provides information such as vintage, operator, contractor, terrain, and amount recorded. A worldwide resource for evaluating geophysical coverage of an area of interest, providing oil & gas companies a way to view the survey header details and identify which contractors have experience in a particular region.

Since geophysical activity is a precursor to exploratory and development drilling, the Survey Database along with the Survey Navigation Layer (which displays 2D lines and 3D polygons) allows explorationists to quickly determine:

- Where geophysical activity has occurred
- Identify areas possibly underexplored
- Make enquiries for licensing purposes if 2D or 3D exists
- Determine crew efficiency
- Validation of field reserves through 3D coverage

The Survey Navigation Layer contains more than 10.81 million km of 2D lines and 3.13 million sq km<sup>2</sup> of 3D. In addition to the location of lines and polygons, information on the type of survey (spec, multi-client, exclusive), acquisition dates, contractor, and data quality is provided for quick analysis. Where available, the owner of the seismic is identified.



*This image shows both 2D and 3D coverage over the Rubiales and surrounding fields in Colombia.*

### Geophysical Surveys Database Coverage

Africa, Australasia, CIS, Europe, Far East, Frontier North America, Latin America, Middle East

Surveys	General survey data	Name, method, seismic type
		Start, end dates, status, party days
		Area covered, km, CDP km, sq km
		Stations, energy source, CDP fold
		Crew and ship names
		Remarks
		Operator and contractor names
	Spatial data	Centre co-ordinates
		Country, basin, political province
		Contract and field name
Survey operational plan	Survey method	
	Seismic planned	
	Seismic intended start and end dates	



The IHS Wells Database allows companies to compare current and historical results to evaluate the possibility of drilling success.

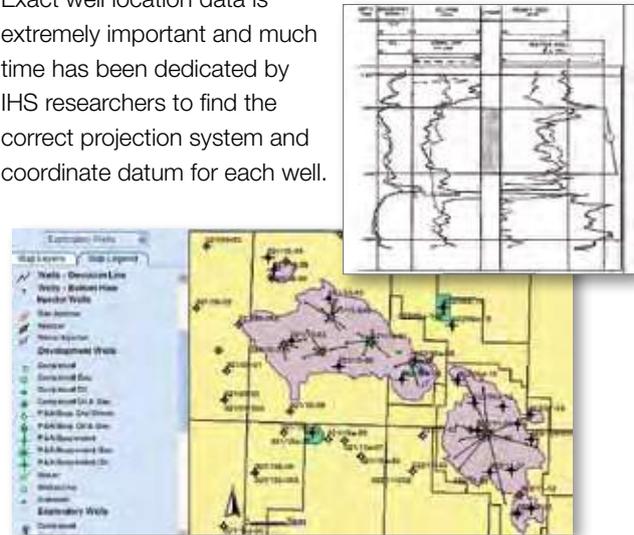
With more than 700,000 international wells, IHS provides the largest data set on exploration, appraisal and development wells. Apart from basic information such as the operators and partners that drilled the well, the spud and completion dates and the type of well, IHS provides detailed information on:

- Drilling history with drilled depths versus time and information about drilling problems like stuck pipe or the sidetracks with kick-off depths
- Objective formation(s) and lithology
- Total depth and true vertical depth with bottom-hole formation and lithology
- Formation tops with geological age and lithology
- Tested intervals with geological formation and lithology, choke sizes, flow rates and pressures

Applications of a complete well dataset are multi-faceted, from analysing drilling success ratios for different well categories or mapping well tops and evaluating test results.

In addition to the surface location, well deviation paths and bottom-hole locations are available as shown on the map below.

Exact well location data is extremely important and much time has been dedicated by IHS researchers to find the correct projection system and coordinate datum for each well.



The result is a comprehensive database of well locations of over 250 projection systems and 110 different datum shifts with the latest EPSG version 7.1 transformations to provide location data in WGS84 format. Well locations are provided as both a spatial layer with the original datum and as a WGS84 layer to allow the user to select the type of coordinate projection that best fit their purpose.

## Well Database Coverage

Africa, Australasia, CIS, Europe, Far East, Frontier North America, Latin America, Middle East

Wells	General well information	Name and location details
		Ground elevation/water depth
		Discovery indicator
		Field
		Remarks
	Operations	Dates
		Classification (initial and final)
		Technical and content status
		Planned operations including geological objective
		History of operations
	Contracts and operator/partners	Total depth and true vertical depth
		E/P contract (licence and block)
	Drilling details and equipment	Participants – individual company or group of companies interest breakdown
		Casings
		Rig details
		Depth reference elevation
		Bottom hole location
	Tests and sampling	Costs data
		Test details and tested intervals
		API, flow rates, pressure, temp, HC characteristics and composition, fluid recovery

# Fields & Discoveries Database

The IHS Fields & Discoveries database allows companies to undertake a detailed review of existing assets in an area, be it to understand local geological trends or to evaluate farm-in potential of available licenses.

More than 27,665 discoveries and fields have been described in detail in the database. This is the most comprehensive database with a total of almost 56,670 reservoirs described by its main characteristics including:

- Reservoir depth and thickness, hydrocarbon column and Gas-Oil-Water contacts
- Lithology, porosity, permeability, water saturation, GOR, salinity
- Reservoir age, depositional environment, play type
- Trap type and seal, fluid and drive system, reservoir pressure and temperature
- Hydrocarbon composition like oil type and gravity, gas composition, contaminants like sulphur, nitrogen, CO<sub>2</sub>, etc.
- oil, gas and condensate reserves with in-place and recoverable volumes by fields/reservoirs

Some 11,410 of the discoveries are currently producing and

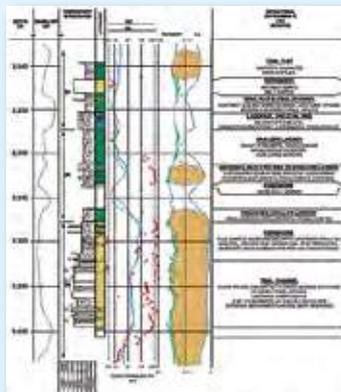
1,960 fields have been abandoned. For these fields, in addition to the detailed reservoir description above, the following information is available:

- Details of operator and partner interests
- Discovery and drilling history
- Field development scheme and description
- Platform information like type, height, weight, slots
- Cost estimates of development, service contractor information
- Well statistics: number of producing oil /gas wells, injectors, depleted wells
- Annual production
- Reserves history of in-place and recoverable reserves with a breakdown in proven, probable and possible reserves

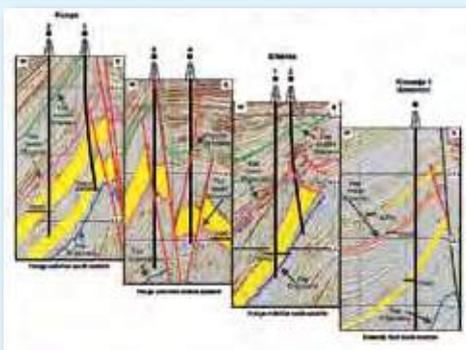
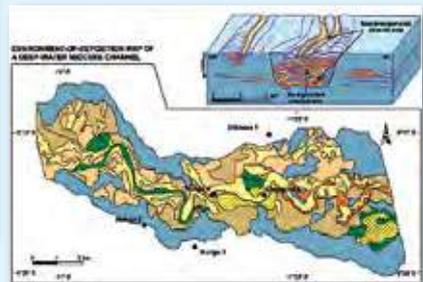
Illustrations of top structure maps of reservoirs, composite logs of hydrocarbon bearing intervals, structural cross-sections, development schemes, etc., form an important part of the database. Some examples are shown below.

Stratigraphic summary

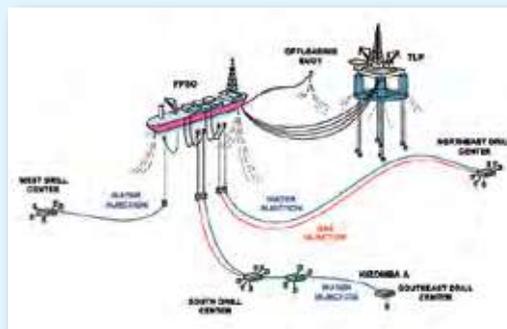
Structure map



Gross depositional environment maps



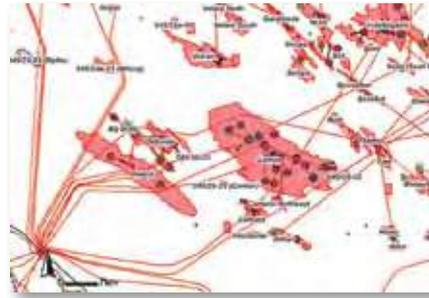
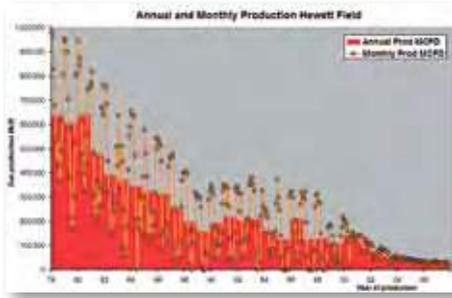
Seismic cross-sections



Development and production schematics

Monthly production data forms part of the Fields & Discoveries Database. In addition to the 357,900 annual production figures, the monthly database contains a total number of 2,030,500 volumes. Monthly figures in particular

can help to better understand the field history. For example, periods of reduced production due to workovers, or seasonal variation in supply (DCQ) are shown in the example from the North Sea below.



### Fields & Discoveries Database Coverage

[Africa](#), [Australasia](#), [CIS](#), [Europe](#), [Far East](#), [Frontier North America](#), [Latin America](#), [Middle East](#)

Fields	General field data	Field location
		Dimension
		Production status
		Field HC type
	Contract and ownership information	Current contract (licence and block)
		Participants (individual company or group of companies)
		Historic details (original and previous participants).
	Development history	No. of wells drilled and active, (producing)
		General development remark
		Costs data and associated remarks
		Field event history
	Production and reserves	Cumulative and annual production volumes (historic and current)
		Field monthly production details (historic and latest)
		Country total production history (onshore/offshore split)
		IOR/EOR secondary methods information
		Fields reserves figures (historical reserves have been systematically stored since 1999)
	Fluid and gas characteristics and composition	Reservoirs reserves figures (historical reserves have been systematically stored since 1999)
		API gravity
		GOR
		Gas type and gas gravity
Viscosity		
Hydrocarbon data by field and reservoir	Liquid / gas ratio	
	Chemical composition.	
	HC column	
	HC/water contacts	
Reservoirs	Fluid system	
	PVT characteristic.	
	Geological parameters - trap details, closure, source rocks, seal rocks, plays,	
	Reservoir geological details.	
Geological information by field and reservoir	Production and reserves figures of individual reservoirs are stored when available.	
	Lithostratigraphic unit names	
	Age	
	Lithology	
	Poro-perm and fluid saturation characteristics	
	Thickness	
Field outline, images and bibliography	Depositional environment	
	Field outline	
	Scanned images	
	Bibliographic references database.	

From the Wellhead to Market



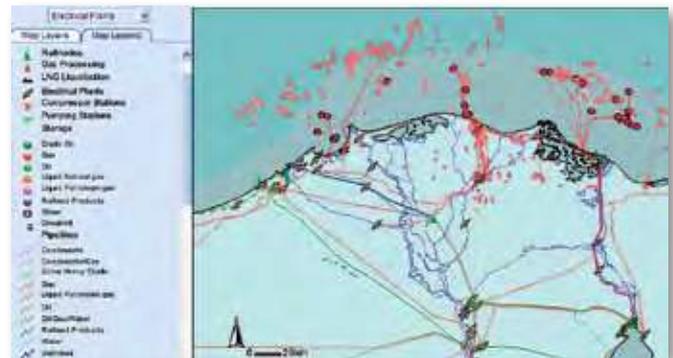
# From the Wellhead to Market

## The Full Supply Chain

Once hydrocarbons are flowing from the wellhead, information about transportation, storage, refining, processing and markets is required to assess potential of the entire value chain. Complementary to the E&P Database is the Midstream Database, providing detailed information for decision support of:

- New Ventures Screening – Improve accuracy and consistency of infrastructure cost estimates and market options studies
- Field Development – Reduce cycle times and increase accuracy of planning for transport, processing and marketing of oil and gas
- Gas and Power – Assess the supply /demand balance for electric power generation in a market, using plant data for generation capacity by fuel type, expansion plans, electricity demand growth, gas source options and pipeline access
- Gas Sales and Distribution – Use market profiles, as defined by customer class and structural sales options, to design the most profitable gas sales or purchasing program

- Joint Venture Projects – Quantify key risk factors, such as gas market growth and transport availability, to assess profitability of large-scale investments aimed at monetizing “stranded gas”
- Strategic Planning – Study infrastructure developments at the regional and sector levels to assist in market entry/exit decisions



## Data Delivery

Geological, E&P and Midstream data, delivered when you need and how you need it.

Our data delivery applications provide web and desktop access to the most current and comprehensive International Exploration and Production Information. They enable companies to select, retrieve, integrate and visualize the IHS data types in a variety of ways so that you can answer questions and make timely business decisions.

- IHS EDIN offers easy-to-use, online access to global map or text-based oil & gas information from IHS International E&P and Midstream databases. Quickly retrieve the most up-to-date information via a single-screen to support your critical investment decisions.
- IHS EDIN Desktop enables users to query, map, browse and report IHS and proprietary data from a single vantage point. Used by engineers, investors, marketers, geologists, and many others, this service features: map, query, browse, graph, data card, export.

- IHS Enerdeq Web Services delivers “hands-free” data access and analysis from a client’s in-house software or database to IHS well and production data over the internet. Services include search and access to reports, graphs and exports.
- IHS Energy Map Services connects you directly to the best source of global energy spatial information in the timeliest manner possible. It shortens lead times with data in one source, decreases costs of maintaining spatial information, and provides easy access to spatial data.

Whatever your project requires, IHS can deliver the data to you in the most convenient way to allow you to get the information quickly, consistently and in an easy-to-use format.

For more information

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