

Publish What You Pay

February 13, 2020

Re: Open letter urging the protection of the global transparency standard

To US-listed [EITI supporting Companies](#):

AngloGold Ashanti, ArcelorMittal, Barrick Gold, BHP Billiton, BP, Chevron, ConocoPhillips, Eni, Equinor, ExxonMobil, Freeport-McMoRan, Gold Fields, Hess Corporation, Hudbay, Iamgold, Kinross, Kosmos Energy, Marathon Oil, Newmont, Noble Energy, Petrobras, Rio Tinto, Royal Dutch Shell, Total, and Vale SA

Given your company's commitment to the principles of the Extractive Industries Transparency Initiative (EITI), we are reaching out to ask for your support in defending the global transparency standard in the extractive industries. As an EITI-supporting company, your company has agreed to "[p]ublicly declare support for the EITI Principles and, by promoting transparency throughout the extractive industries, **help public debate and provide opportunities for sustainable development.**"¹ The EITI Principles states that "[w]e believe that **a broadly consistent and workable approach to the disclosure of payments and revenues is required**, which is simple to undertake and to use."²

As you may be aware, the U.S. Securities & Exchange Commission (SEC) recently published a proposed rule to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank 1504"),³ a mandatory payment disclosure law that catalyzed the passage of similar laws in Canada, the EU, Norway, and the UK.

The SEC's proposed rule, if implemented, would deviate significantly from that global transparency standard, including the EITI Standard agreed to and adopted by the EITI Board in 2019. Most notably, the SEC's draft rule proposes a definition of "project-level" reporting that would allow companies to artificially aggregate payments to the sub-national or national levels across multiple separate projects, rather than using the contract-based approach for defining project-level payments embedded in the EITI Standard and in complementary mandatory payment disclosure laws in place in Canada, the EU, Norway, and the UK.⁴

¹ EITI, 2019 Standard, Part 1, Section 7, https://eiti.org/files/documents/eiti_company_expectations_en.pdf. Emphasis added.

² EITI, 2019 Standard, Part 1, Section 1, The EITI Principles, <https://eiti.org/document/eiti-principles>. Emphasis added.

³ SEC, January 15, 2020, "Disclosure of Payments by Resource Extraction Issuers," 85 Federal Register 2522-2571, <https://www.federalregister.gov/documents/2020/01/15/2019-28407/disclosure-of-payments-by-resource-extraction-issuers>.

⁴ In addition, in 2019 the IMF updated its Fiscal Transparency Code to include corporate project-level payment reporting as one of the expectations for countries when they evaluate fiscal performance.

If implemented as proposed, the SEC's rule would establish dual-reporting standards for companies disclosing under Dodd-Frank 1504 and the EITI or mandatory disclosure laws in Canada, the EU, Norway, and the UK, creating an uneven playing field across the oil, gas, and mining industries.

Recognizing the importance of detailed information to better enable stakeholders to understand and monitor revenue payments, the EITI Board updated the EITI Standard to include disaggregated (contract-based) project-level reporting. The SEC's proposed approach, if adopted, would represent a regressive step, making the payments reported by US-listed companies much less useful to investors, government officials, journalists, civil society, ordinary citizens, and others. Furthermore, such an approach would make it virtually impossible for stakeholders to analyze and compare data from US-listed companies alongside far more detailed data from the EITI or other mandatory reporting regimes.

In short, the SEC's proposed rule, if adopted in its current form, would be a marked step backwards in the global movement to ensure that stakeholders have access to relevant information about the extraction and sale of their country's natural resource wealth.

Does your company support the EITI Standard's definition of project-level reporting? Do you agree that this definition should be adopted by the SEC in its final rule?

Given your company's stated support for the EITI, we kindly request a response to these questions. We will publish responses (or non-responses) to this letter on the PWYP-US website. *We look forward to your response by Monday February 24th at 12:00pm EST.*

We also urge your company, as a supporting member of the EITI, to use this critical opportunity to submit a comment to the open rulemaking to request that the SEC produces a final rule that is consistent with the 2019 EITI Standard. The SEC is currently seeking public input on the draft rule until March 16, 2020.⁵

We look forward to continuing to work with you to protect and advance the global transparency standard for the extractives sector, and stand ready to assist or provide additional information about the above request.

Respectfully,



Kathleen Brophy
PWYP-US Director

⁵ SEC, "Comments on Proposed Rule: Disclosure of Payments by Resource Extraction Issuer," <https://www.sec.gov/comments/s7-24-19/s72419.htm>.