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17 CFR Parts 229 and 249
Disclosure of Payments by Resource Extraction Issuer; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release No. 34–63549; File No. S7–42–10]

RIN 3235–AK85

Disclosure of Payments by Resource Extraction Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to our rules pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to disclosure of payments by resource extraction issuers. Section 1504 added Section 13(q) to the Securities Exchange Act of 1934, which requires the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires a resource extraction issuer to provide information about the type and total amount of payments made for each project related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q) requires a resource extraction issuer to provide certain information regarding those payments in an interactive data format, as specified by the Commission.

DATES: Comments should be received on or before January 31, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–42–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.
- All submissions should refer to File Number S7–42–10. This file number should be included on the subject line if e-mail is used.

To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Tamara Brightwell, Senior Special Counsel, Division of Corporation Finance, or Elliot Staffin, Special Counsel in the Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3290, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–4553.

SUPPLEMENTARY INFORMATION: We are proposing new Item 105 [1] of Regulation S–K,[2] an amendment to Item 601 of Regulation S–K,[3] and amendments to Forms 10–K,[4] 20–F,[5] and 40–F [6] under the Securities Exchange Act of 1934 ("Exchange Act").[7]

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I. Background

This release is one of several we are required to issue to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act").[8] This release proposes a new rule [9] and certain rule [10] and form amendments [11] to implement Section 13(q) of the Exchange Act, which was added by Section 1504 of the Act. New Section 13(q) requires the Commission to "issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government

[1] Proposed 17 CFR 229.105.

[2] 17 CFR 229.10 *et al.*

[3] 17 CFR 229.601.

[4] 17 CFR 249.310.

[5] 17 CFR 249.220f.

[6] 17 CFR 249.240f.

[7] 15 U.S.C. 78a *et seq.*

[8] Public Law 111–203 (July 21, 2010). To facilitate public input on the Act, the Commission has provided a series of e-mail links, organized by topic, on its Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml*. The public comments we received are available on our Web site at *http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specialized-disclosures.shtml*.

[9] *See* proposed Regulation S–K Item 105 [17 CFR 229.105].

[10] *See* proposed Regulation S–K Item 601(b)(97) and (98) [17 CFR 229.601(b)(97) and (98)].

[11] *See* proposed Item 16I under Part II of Form 20–F, and proposed paragraph (17) to General Instruction B of Form 40–F.

for the purpose of the commercial development of oil, natural gas, or minerals, including—(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals, and (ii) the type and total amount of such payments made to each government."[12]

Section 13(q) provides the following definitions and descriptions of several key terms:

- "Resource extraction issuer" means an issuer that is required to file an annual report with the Commission and engages in the commercial development of oil, natural gas, or minerals;[13]
- "Commercial development of oil, natural gas, or minerals" includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;[14]
- "Foreign government" means a foreign government, a department, agency or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;[15] and
- "Payment" means a payment that:
- Is made to further the commercial development of oil, natural gas, or minerals;
- Is not de minimis; and
- Includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[16]

Section 13(q) specifies that "[t]o the extent practicable, the rules issued under [the section] shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals."[17] As noted above, the statute explicitly refers to one international initiative, the Extractive Industries Transparency Initiative ("EITI"),[18] in the definition of "payment." Although the provision regarding international transparency efforts does not explicitly mention the EITI, the legislative history indicates that the EITI was considered in connection with the new statutory provision.[19] The United States is one of several countries that support the EITI.[20]

The Commission's rules under Section 13(q) must require a resource extraction issuer to submit the payment information included in an annual report in an interactive data format[21] using an interactive data standard established by the Commission.[22] Section 13(q) defines "interactive data format" to mean an electronic data format in which pieces of information are identified using an interactive data standard.[23] The section also defines "interactive data standard" as a standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.[24] The rules issued pursuant to Section 13(q)[25] must include electronic tags that identify:

- The total amount of payments, by category;
- The currency used to make the payments;
- The financial period in which the payments were made;
- the business segment of the resource extraction issuer that made the payments;
- The government that received the payments and the country in which the government is located; and
- The project of the resource extraction issuer to which the payments relate.[26] Section 13(q) further authorizes the Commission to require electronic tags for other information that it determines is necessary or appropriate in the public interest or for the protection of investors.[27]

Section 13(q) provides that the final rules "shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year * * * that ends not earlier than 1 year after the date on which the Commission issues final rules[.]"[28]

Finally, Section 13(q) requires the Commission to make publicly available online, to the extent practicable, a compilation of the information required to be submitted by resource extraction issuers under the new rules.[29] The

[12] 15 U.S.C. 78m(q)(2)(A).

[13] 15 U.S.C. 78m(q)(1)(D).

[14] 15 U.S.C. 78m(q)(1)(A).

[15] 15 U.S.C. 78m(q)(1)(B).

[16] 15 U.S.C. 78m(q)(1)(C).

[17] 15 U.S.C. 78m(q)(2)(E).

[18] The EITI was announced by former UK Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg in September 2002. *See http://www.eiti.org/eiti/history.* The World Bank Group officially endorsed the EITI in 2003. *See Implementing the Extractive Industries Transparency Initiative* (2008) ("*Implementing the EITI*") (available at *http://eiti.org/document/implementingtheeiti*). The EITI is a voluntary coalition of oil, natural gas, and mining companies, foreign governments, investor groups, and other international organizations dedicated to fostering and improving transparency and accountability in countries rich in oil, natural gas, and minerals through the publication and verification of company payments and government revenues from oil, natural gas, and mining. *See Implementing the EITI.* According to the EITI, "[b]y encouraging greater transparency and accountability in countries dependent on the revenues from oil, gas and mining, the potential negative impacts of mismanaged revenues can be mitigated, and these revenues can instead become an important engine for long-term economic growth that contributes to sustainable development and poverty reduction." *EITI Source Book* (2005) at p. 4 (available at *http://eiti.org/files/document/sourcebookmarch05.pdf).*

Currently five countries—Liberia, Azerbaijan, Timor Leste, Ghana, and Mongolia—have achieved "EITI compliant" status by completing a validation process in which company payments are matched with government revenues by an independent auditor (available at *http://eiti.org/countries/compliant*). Some 27 other countries are EITI candidates in good standing and are in the process of complying with EITI standards (available at *http://eiti.org/candidatecountries*). Several other countries have indicated their intent to implement the EITI (available at *http://eiti.org/othercountries*). Implementation of the EITI varies across countries—the EITI provides criteria and a framework for implementation, but allows countries to make key decisions on the scope of its program (*e.g.* degree of aggregation of data, inclusion of subnational or social or community payments). *See Source Book,* pp. 23–24.

[19] *See, e.g.,* statement by Senator Lugar, one of the authors of Section 1504 ("This domestic action will complement multilateral transparency efforts such as the Extractive Industries Transparency Initiative—the EITI—under which some countries are beginning to require all extractive companies operating in their territories to publicly report their payments."), 111 *Cong. Rec.* S3816 (daily ed. May 17, 2010). Other examples of international transparency efforts include the recent amendments of the Hong Kong Stock Exchange listing rules for mineral companies and the London Stock Exchange AIM rules for extractive companies. *See* Amendments to the GEM Listing Rules of the Hong Kong Stock Exchange, Chapter 18A.05(6)(c) (effective June 3, 2010) (available at *http://www.hkex.com.hk/eng/rulesreg/listrules/gemrulesup/Documents/gem34_miner.pdf*) (requiring a mineral company to include in its listing document, if relevant and material to the company's business operations, information regarding its compliance with host country laws, regulations and permits, and payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis) and Note for Mining and Oil & Gas Companies—June 2009 (*available at http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/rules/guidance-note.pdf*) (requiring disclosure in the initial listing of "any payments aggregating over £10,000 made to any government or regulatory authority or similar body made by the applicant or on behalf of it, in regards to the acquisition of, or maintenance of its assets.").

[20] *See* the list of EITI supporting countries at *http://eiti.org/supporters/countries.*

[21] 15 U.S.C. 78m(q)(2)(C).

[22] 15 U.S.C. 78m(q)(2)(D).

[23] 15 U.S.C. 78m(q)(1)(E).

[24] 15 U.S.C. 78m(q)(1)(F).

[25] 15 U.S.C. 78m(q)(2)(D)(i).

[26] 15 U.S.C. 78m(q)(2)(D)(ii).

[27] 15 U.S.C. 78m(q)(2)(D)(ii).

[28] 15 U.S.C. 78m(q)(2)(F).

[29] 15 U.S.C. 78m(q)(3).

statute does not dictate a particular form or content for that compilation.

II. Proposed Rules Under Section 13(q)

A. Summary

As discussed in detail below, we are proposing amendments to Form 10–K, Form 20–F, and Form 40–F to require the disclosures mandated by Section 13(q). The disclosure requirements for Form 10–K would be set forth in new Item 105 of Regulation S–K,[30] which would require a resource extraction issuer to provide information relating to any payment made by it, a subsidiary, or an entity under its control to a foreign government or the U.S. Federal Government during the fiscal year covered by the annual report for the purpose of the commercial development of oil, natural gas, or minerals. The item would specify that this information would be set forth in two exhibits to the filing—one exhibit filed in HyperText Markup Language ("HTML") or American Standard Code for Information Interchange ("ASCII") format and another exhibit filed in eXtensible Business Reporting Language ("XBRL") format. We are proposing to amend Item 601 of Regulation S–K to add these new exhibits to Form 10–K for the disclosure.[31] We also propose to add new Item 4(c) to Form 10–K to require a resource extraction issuer to provide disclosure in Part I of Form 10–K noting that the information required by Section 13(q) and new Item 105 of Regulation S–K is included in exhibits to the filing.[32] An issuer would be required to include in the proposed exhibits the type and total amount of payments made for each project, as well as the type and total amount of payments made to each government, relating to the commercial development of oil, natural gas, or minerals.[33] The proposed rules also would require a resource extraction issuer to include certain detailed information about the payments made.

Section 13(q) applies to any issuer that is required to file an annual report with the Commission and that engages in the commercial development of oil, natural gas, or minerals, which includes foreign private issuers that file annual reports on Forms 20–F and 40–F.[34] Because Regulation S–K does not apply to those forms, we propose to amend Forms 20–F and 40–F to include the same disclosure requirements as those proposed for resource extraction issuers that are not foreign private issuers.[35]

As noted above, Section 13(q) requires the Commission to issue rules requiring the payment information to be submitted in an interactive data format. We propose to require a resource extraction issuer to submit the information in an exhibit using the interactive data standard known as XBRL.

B. Definition of "Resource Extraction Issuer"

Under the proposed rule and form amendments, "resource extraction issuer" would be defined as it is under Section 13(q). Specifically, a resource extraction issuer would be defined as an issuer that:

- Is required to file an annual report with the Commission; and
- Engages in the commercial development of oil, natural gas, or minerals.[36]

Section 13(q) specifically applies to issuers that are required to file an annual report with the Commission and that engage in the commercial development of oil, natural gas, or minerals. The provision does not indicate that the Commission, in adopting implementing rules, should provide different standards for different issuers or should exempt any issuers from the new requirements.[37] Thus, under the proposal, all U.S. companies and foreign companies that are engaged in the commercial development of oil, natural gas, or minerals, and that are required to file annual reports with the Commission, regardless of size or the extent of business operations constituting commercial development of oil, natural gas, or minerals, would be subject to Section 13(q). Likewise, the proposed rules would apply equally to companies that fall within this definition whether or not they are owned or controlled by governments.

Request for Comment

1. Should the Commission exempt certain categories of issuers, such as smaller reporting companies or foreign private issuers,[38] from the proposed rules? If so, which ones and why? If not, why not? Would providing an exemption for certain issuers be consistent with the statute? [39] If we do not provide such an exemption when adopting final rules, would foreign private issuers or any other issuers deregister to avoid the disclosure requirement?

2. Would our proposed rules present undue costs to smaller reporting companies? If so, how could we mitigate those costs? Also, if our proposed rules present undue costs to smaller reporting companies, do the benefits of making their resource extraction payment information publicly available justify these costs? Should our rules provide more limited disclosure and reporting obligations for smaller reporting companies? If so, what should these limited requirements entail? Should our rules provide for a delayed implementation date for smaller reporting companies in order to provide them additional time to prepare for the requirement and the benefit of observing how larger companies comply?

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

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[30] *See* proposed Item 105 of Regulation S–K.

[31] *See* proposed Items 601(b)(97) and (98) of Regulation S–K.

[32] *See* proposed Item 4(c) under Part I of Form 10–K.

[33] *See* proposed Item 105(a) and Items 601(b)(97) and (b)(98) of Regulation S–K.

[34] While Form 20–F may be used by any foreign private issuer, Form 40–F is only available to a Canadian issuer that is eligible to participate in the U.S.-Canadian Multijurisdictional Disclosure System ("MJDS").

[35] *See* proposed Item 16I under Part II of Form 20–F and proposed paragraph (17) to General Instruction B of Form 40–F.

[36] *See* proposed Item 105(b)(4) of Regulation S–K, proposed Item 16I.B.(4) under Part II of Form 20–F, and proposed paragraph B.(17)(b)(4) under the General Instructions of Form 40–F.

[37] A commentator requested that the Commission consider an exemption to allow foreign private issuers to follow their home country rules and disclose in their Form 20–F the required home country disclosure. The commentator expressed concern that foreign private issuers will be required to provide multiple payment disclosures in their Form 20–F to satisfy U.S., UK, and EU requirements. *See* letter from Royal Dutch Shell plc ("RDS") (October 25, 2010).

[38] *See* the definition of "smaller reporting company" in Exchange Act Rule 12b–2 [17 CFR 240.12b–2] and the definition of "foreign private issuer" in Exchange Act Rule 3b-4 [17 CFR 240.3b–4].

[39] *Cf.,* Statement of Senator Cardin in support of Amendment No. 3732 to Restoring American Financial Stability Act (S. 3217) (indicating the legislation was intended to cover foreign private issuers by stating that "The provisions of this amendment would apply to all oil, gas, and mining companies required to file periodic reports with the SEC; namely, 90 percent of the major internationally operating oil companies and 8 out of the 10 largest mining companies in the world—only 2 of which are U.S. companies. We are talking about foreign-owned companies, not U.S. companies, by and large. Of the top 50 oil and gas companies by proven oil reserves, 20 are national oil companies that do not usually operate internationally. These companies are not registered with the SEC and * * * do not compete with internationally operating companies. Of the remaining 30 companies that do operate internationally, 27 would be covered by this legislation—27 of the 30. These include Canadian, European, Russian, Chinese, Brazilian, and other international companies."), 111 Cong. Rec. S3316 (daily ed. May 6, 2010). *See also* letter from Senator Cardin (December 1, 2010) ("Senator Cardin") (stating that, with respect to the meaning of resource extraction issuer, "the intent was to include all issuers, including foreign issuers, which have a reporting requirement to the SEC.").

4. Should the rules apply to issuers that are owned or controlled by governments, as proposed? If so, why? If not, why not? Should the disclosure requirements be varied for such entities?

5. General Instructions I and J to Form 10–K contain special provisions for the omission of certain information by wholly-owned subsidiaries and asset-backed issuers. Should either or both of these types of registrants be permitted to omit the proposed resource extraction payment disclosure in the annual reports on Form 10–K?

C. Definition of "Commercial Development of Oil, Natural Gas, or Minerals"

As noted above, Section 13(q) defines "commercial development of oil, natural gas, or minerals" for purposes of the section.[40] Consistent with Section 13(q), we propose to define "commercial development of oil, natural gas, or minerals" to include the activities of exploration, extraction, processing, export and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity.[41] While Section 13(q) provides the Commission with flexibility to define commercial development, we believe it is appropriate to use the statutory direction in the proposed rules and to seek comment on the scope of activities included in the proposed definition.

We understand that the EITI criteria primarily focus on exploration and production activities.[42] Thus, the statutory language appears to include activities beyond what is currently contemplated by the EITI.[43] However, because the statute sets forth a clear list of activities, we preliminarily believe that our rules should be consistent with that list.

The proposed definition is intended to capture only activities that are directly related to the commercial development of oil, natural gas, or minerals. It is not intended to capture activities that are ancillary or preparatory to such commercial development. Accordingly, we would not consider a manufacturer of a product used in the commercial development of oil, natural gas, or minerals to be engaged in the commercial development of the resource.[44] For example, a manufacturer of drill bits or other machinery used in the extraction of oil would not fall within the definition of commercial development. Similarly, transportation activities generally would not be included within the proposed definition. On the other hand, an issuer engaged in the removal of impurities, such as sulfur, carbon dioxide, and water, from natural gas after extraction but prior to its transport through the pipeline would be included in the definition of commercial development because such removal is generally considered to be a necessary part of the processing of natural gas in order to prevent corrosion of the pipeline.

Request for Comment

6. Should we, as proposed, define "commercial development of oil, natural gas, or minerals" as the term is described in the statute? Should it be defined differently (*e.g.* more broadly or more narrowly)? If we should define the term, what definition would be appropriate?

7. Should the definition of "commercial development of oil, natural gas, or minerals" include the activities of exploration, extraction, processing, and export, as proposed?[45] Should we exclude any of these activities? If so, which activities and why? If not, why not? Would excluding certain activities be consistent with the statute?

• In this regard, we note that, as discussed above, disclosing payments beyond those related to exploration and production is not required by the EITI criteria, and other countries have focused on identifying, reporting and verifying revenue streams related to those activities only.[46] Should the definition only include the activities of exploration and extraction, consistent with the EITI, and not include processing, export, and other significant actions?[47] Should the definition include the activities of exploration, extraction, and only some processing activities, such as those related to the upgrading of bitumen and heavy oil?[48] Should the definition explicitly include production, consistent with the use of that term by the EITI?[49] Does "production" in the oil, natural gas, and mining industries include activities that are different than those covered by "extraction" so that if we do not include production in the definition of commercial development, some payments may go unreported?

8. Are there other significant activities that we should include in the definition?[50] Should we provide further guidance regarding activities that may not be covered by the list of activities, but could constitute a "significant action?" If so, what activities should be covered?

9. As noted, we do not believe the proposed definition of "commercial development of oil natural gas, or minerals" would include transportation to the extent that the oil, natural gas, or minerals are transported for purposes

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[40] *See* Section I. above and 15 U.S.C. 78m(q)(1)(A).

[41] *See* proposed Item 105(b)(1) of Regulation S–K, proposed Item 16I.B.(1) under Part II of Form 20–F, and proposed paragraph B.(17)(b)(1) under the General Instructions of Form 40–F.

[42] *See, e.g., Implementing the EITI* at p. 24. Exploration and production activities often are referred to as "upstream activities." *Id.* We note, however, that at least one EITI program has included the disclosure of payments made in connection with or following processing activities, such as excise and export taxes, in addition to those relating to exploration and production activities. *See* Liberian Extractive Industries Transparency Initiative Secretariat, *Final Report of the Administrators of the Second LEITI Reconciliation,* Annex 2 (February 2010) ("*Liberian Final Report*") (available at *http://leiti.org.lr/doc/LEITI2ndReconciliationFinalReport.pdf*).

[43] *See also* letter from Senator Cardin, stating that " * * * EITI is a minimum reporting standard, and the intent of Sec. 1504 was to go beyond these requirements.").

[44] In this regard, we have received a letter suggesting that we clarify whether selling equipment to a resource extraction company, which is then used to explore for oil, natural gas, or minerals, is a significant action relating to oil, natural gas, or minerals. *See* letter from Mike Koehler, Assistant Professor of Business Law, Butler University (September 3, 2010).

[45] In this regard, we have received a letter suggesting that we interpret the statutory definition of commercial development to include "upstream" activities involved in the exploration and production of resources, "midstream" activities involved in the trading and transport of resources, and "downstream" activities involved in the refining, ore processing and marketing of resources. *See* the letter from Calvert Investments and Social Investment Forum ("Calvert and SIF") (November 15, 2010).

[46] *See Implementing the EITI* at p. 35.

[47] Some commentators support limiting the definition of commercial development to "upstream" activities only. *See* letters from American Petroleum Institute ("API") (October 12, 2010); National Mining Association ("NMA") (November 16, 2010) (submitted as a "White Paper"); and RDS. In contrast, other commentators support a definition of commercial development that covers "upstream," "midstream," and "downstream" activities. *See* letters from Calvert and SIF and Publish What You Pay United States ("PWYP") (November 22, 2010).

[48] *See* letter from API, which suggests this approach.

[49] We believe the term "extraction" would include the production of oil and natural gas as well as the extraction of minerals. The EITI appears to use the terms "extraction" and "production" interchangeably. For example, the EITI recognizes that "the benefits of resource extraction occur as revenue streams over many years * * *." *EITI Source Book* at p. 8. However, when discussing various aspects of benefit streams, such as their materiality, the EITI refers to a company's or host government's estimated total production value. *See EITI Source Book,* p. 27.

[50] We have received a request to specify that other significant actions "includes the transport of oil, natural gas or ores, such as in pipelines or other mechanisms" and "may include, but not be limited to, contracting for services such as security operations that may be necessary to the operation of a particular element of the resource extraction life cycle." Letter from PWYP.

other than export, and we note that payments related to transportation activities generally are not included in EITI programs.[51] Should the definition include transportation of oil, natural gas, or minerals? [52] Should compression of natural gas be treated as processing, and therefore subject to the proposed rules, or transportation, and therefore not subject to the proposed rules?

10. Should the definition of "commercial development of oil, natural gas, or minerals" explicitly exclude any other oil, natural gas, or mining activities? If so, please tell us what types of activities should be excluded and why.

11. Should we provide any additional guidance regarding the types of activities that may be within or outside of the scope of the definition?

D. Definition of "Payment"

Section 13(q) defines "payment" to mean a payment that:

- Is made to further the commercial development of oil, natural gas, or minerals;
- Is not de minimis; and
- Includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with EITI's guidelines (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[53]

We propose to define the term "payment" in the proposed rule and form amendments using the definition provided in the statute.[54]

1. Types of Payments

We interpret Section 13(q) to provide that the types of payments that are included in the statutory language should be subject to disclosure under our rules to the extent that the Commission determines that the types of payments and any "other material benefits" are part of the "commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals." Consistent with Section 13(q), we propose to require resource extraction issuers to disclose payments of the type identified in the statute because, as discussed below, we preliminarily believe that they are part of the "commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals." Therefore, we are proposing to include the statutory list as the list of payments covered by the rules. We note that the types of payments listed in the statute generally are consistent with the types of payments the EITI suggests should be disclosed, which we believe is evidence that the payment types are part of the commonly recognized revenue stream for this purpose. As noted above, the statute provides that our determination should be consistent with the EITI's guidelines, to the extent practicable. Guidance for implementing the EITI suggests that a country's disclosure requirements might include the following benefit streams: [55]

Benefit Stream [56]	Further description
Host government's production entitlement	This is the host government's share of the total production. This production entitlement can either be transferred directly to the host government or to the national state-owned company. Also, this stream can either be in kind and/or in cash.
National state-owned company production entitlement	This is the national state-owned company's share of the total production. This production entitlement is derived from the national state-owned company's equity interest. This stream can either be in kind and/or in cash.
Profits taxes	Taxes levied on the profits of a company's upstream activities.
Royalties	Royalty arrangements will differ between host government regimes. Royalty arrangements can include a company's obligation to dispose of all production and pay over a proportion of the sales proceeds. On other occasions, the host government has a more direct interest in the underlying production and makes sales arrangements independently of the concession holder. These "royalties" are more akin to a host government's production entitlement.
Dividends [57]	Dividends paid to the host government as shareholder of the national state-owned company in respect of shares and any profit distributions in respect of any form of capital other than debt or loan capital.
Bonuses (such as signature, discovery, production)	Payments related to bonuses for and in consideration of: • Awards, grants and transfers of extraction rights; • Achievement of certain production levels or certain targets; and • Discovery of additional mineral reserves/deposits.
Licence fees, rental fees, entry fees and other considerations for licences and/or concessions.	Payments to the host government and/or national state-owned company for: • Receiving and/or commencing exploration and/or for the retention of a licence or concession (licence/concession fee)[.] • Performing exploration work and/or collecting data (entry fees). These are likely to be made in the pre-production phase. • Leasing or renting the concession or licence area.
Other significant benefits to host governments [58]	These benefit streams include tax that is levied on the income, production or profits of companies. These exclude tax that is levied on consumption, such as value-added taxes, personal income taxes or sales taxes.

[51] *Implementing the EITI* at p. 35. While transporting, processing, and refining are activities that are outside the scope of most EITI programs, the EITI has stated that "a country may find it useful to cover these 'downstream' oil, gas, and mining transactions in order to gain a better understanding of overall sector financial flows, and possibly to obtain a better understanding of the link between the value of downstream transactions and original, upstream transactions (exploration and production-related)." *Implementing the EITI* at pp. 35–36.

[52] PWYP advocated including transportation under the definition of commercial development "[g]iven the potential size of the payments involved, and the capacity of vertically integrated companies to substitute payments to governments at different levels * * *." Letter from PWYP.

[53] 15 U.S.C. 78m(q)(1)(C).

[54] *See* proposed Item 105(b)(3) of Regulation S–K, proposed Item 16I.B.(3) under Part II of Form 20–F, and proposed paragraph B.(17)(b)(3) under the General Instructions of Form 40–F.

[55] *EITI Source Book,* pp. 27–28.

[56] Under the EITI, benefit streams are defined as being any potential source of economic benefit which a host government receives from an extractive industry. *See EITI Source Book,* p. 26.

[57] Dividends are not included in the list of payments identified in Section 13(q) and the proposed rules do not include dividends in the list of payments required to be disclosed.

[58] Under our proposed rules, taxes include both profit taxes and taxes that the EITI suggests are significant benefits to host governments. We have not identified any other material benefits at this time.

We preliminary believe that a definition that is generally consistent with EITI guidance furthers the intent of the statute to support international transparency efforts.

At this time we are not proposing to determine "other material benefits" that should be classified as payments subject to disclosure. We recognize that there may be other payments that should be included in, or excluded from, the list. In addition, it is possible that the nature of payments that are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals may change over time, including in response to final rules promulgated under Section 13(q). We also recognize that it may be appropriate to provide more specific guidance about the particular payments that should be disclosed. Our requests for comment are intended to elicit detailed information about what types of payments should be included in, or excluded from, the rules; what additional guidance may be helpful or necessary; and whether there are "other material benefits" that should be specified in the list of payments subject to disclosure because they are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.

Request for Comment

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

13. As noted above, the definition of payment includes "taxes," which is consistent with Section 13(q) and the EITI.[59] In order to clarify the meaning of this term in a manner consistent with the EITI, we have included an instruction in our proposal noting that resource extraction issuers would be required to disclose taxes on corporate profits, corporate income, and production and would not be required to disclose taxies levied on consumption, such as value added taxes, personal income taxes, or sales taxes.[60] Consistent with the EITI, we are not proposing to require disclosure of consumption taxes because we do not believe such taxes are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, and minerals. Is our proposal regarding disclosure of taxes appropriate? Should the types of taxes listed as requiring disclosure, or not requiring disclosure, be revised? If so, how should they be revised? Are there other taxes that we should include in or exclude from the disclosure requirements?

14. While the definition of "payment" in Section 13(q) does not address the means by which a payment may be made, we believe it would cover payments made in cash or in kind. Should a resource extraction issuer be required to disclose payments regardless of how the payment is made (*e.g.* in cash or in kind)?[61] Should the rule be revised to make clear that "payment" would include payments made in cash or in kind?

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

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

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

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

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

20. Are there "other material benefits" that we should specify as being included within the definition of "payment?" In that regard, how should we determine what benefits "are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals?" Should we include a broad, non-exclusive definition of "other material benefits," such as benefits that are material to and directly result from or directly relate to the exploration, extraction, processing, or export of oil, natural gas, or minerals?[62] Or would including a broad definition be inconsistent with the statutory language directing us to identify other material benefits that "are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals?"

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

22. We do not believe the proposed definition of payment should include payments resource extraction issuers make for infrastructure improvements, even if they are a direct cost of engaging in the commercial development of oil, natural gas, or minerals because it is not clear that such payments would be covered by the specific list of items in the statute or otherwise would be a part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[63] Should

[59] As noted above, the EITI includes in its suggested list of payments to be disclosed profits taxes and "other significant benefits," which include taxes levied on the "income, production or profits of companies." *EITI Source Book* at pp. 27–28.

[60] *See* proposed Instruction to paragraph (b)(3)(iii)(A) of Regulation S–K Item 105, proposed Instruction 3 to Item 16I of Form 20–F, and proposed Note 3 to Instruction B.(17) of Form 40–F.

[61] For example, the EITI permits the use of an "in kind" measure, such as the number of barrels or volume conveyed to the host government, instead of a cash value, for production entitlements and royalty arrangements that are similar to production entitlements. *See EITI Source Book,* p. 27.

[62] One commentator requested that we define broadly other material benefits as governmental payments "relating to the execution of any aspect of covered operations in the relevant jurisdiction that a reasonable person would find material to the project's net worth," including but not limited to activities involved in the exploration and production of resources, the trading and transport of resources, and the refining and marketing of resources. Letter from PWYP.

[63] Mining companies often make such payments either because, due to the poor level of development in a host country, infrastructure

Continued

our definition cover such payments? Would such payments be considered part of the commonly recognized revenue stream? Would these types of payments distort the disclosure of payments for extractive activities?

23. "Social or community" payments generally include payments that relate to improvements of a host country's schools or hospitals, or to contributions to a host country's universities or funds to further resource research and development. As proposed, our rules would not expressly include social or community payments within the definition of "payment." Some EITI programs include social or community payments while others do not.[64] Are such payments part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals? Should we require disclosure of only certain "social or community" payments under the "other material benefits" provision, such as if those payments directly fulfill a condition to engaging in resource extraction activities in the host country?[65] Would such payments be considered part of the commonly recognized revenue stream?

24. Are there other types of payments that we should include as "other material benefits?" For example, should we, as requested by one commentator, require disclosure of "ancillary payments made pursuant to the investment contract (including personnel training programs, local content, technology transfer and local supply requirements)" and payments "related to any liabilities incurred (including penalties for violations of law or regulation, environmental and remediation liabilities, and bond guarantees entered into with the central banks or similar national or multi-national entities, as well as costs arising in connection with any such bond guarantees)"?[66]

25. Should we provide additional guidance regarding the types of payments that resource extraction issuers should disclose? If additional guidance is appropriate, should we provide clarification in the rules or as interpretive guidance?

2. The "Not De Minimis" Requirement

Section 13(q) defines "payment," in part, to be a payment that is "not de minimis," without defining what would be considered "not de minimis." If a payment is de minimis, it would not be subject to disclosure; if it is not de minimis, it could be subject to disclosure if the other standards for disclosure are present.

Under the EITI, countries are free to establish a materiality level for disclosure. For example, countries may establish a materiality level based on the size of payments or the size of companies subject to disclosure.[67] As noted, Section 13(q) established the threshold for payment disclosure as "not de minimis" rather than requiring disclosure of "material" payments.[68] Given the use of the phrase "not de minimis," we preliminarily do not believe that "not de minimis" equates to a materiality standard. The term "de minimis" is defined generally as something that is "lacking significance or importance" or "so minor as to merit disregard."[69] We preliminarily believe the phrase "not de minimis" is sufficiently clear that further explication is unnecessary, and we do not propose to prescribe a standard for what amounts would be considered de minimis or not de minimis for purposes of the new disclosure requirement.

We preliminarily believe it is more appropriate to define the term "payment" consistent with the definition in Section 13(q) without specifically defining "not de minimis" for purposes of the requirement. However, we seek comment, as described below, on whether to define "not de minimis." We also are soliciting comment on several possible standards to include in our final rule, as necessary or appropriate, to provide additional certainty concerning what payments are required to be disclosed under these new rules. As described in more detail below, the possible standards could include an absolute dollar amount, a relative measure (*e.g.* a percentage of expenses, revenues or some other amount incurred per project or in total for the year covered by the annual report), or a combination of the two approaches.[70]

Request for Comment

26. Section 13(q) establishes the threshold for payment disclosure as "not de minimis," which we preliminarily believe is a standard different from a materiality standard.[71] Is our interpretation that "not de minimis" is not the same as "material" correct?

27. Should we define "not de minimis" for purposes of the proposed rules? Why or why not?[72] What would be the advantages or disadvantages of not defining that term? If the final rules do not provide a definition, should an issuer be required to disclose the basis and methodology it used in assessing whether a payment amount was "not de minimis?"

28. If we should define "not de minimis," what should that definition be?[73] Provide data to support your definition if you are able to do so.

29. What would be the advantages or disadvantages of defining "not de

improvements are necessary to gain access to the host country's minerals, or because the companies are contractually obligated to improve the host country's roads as a condition of engaging in exploration or extraction activities. The EITI has acknowledged that the scope of an EITI program might have to be expanded to include such infrastructure payments. *See Implementing the EITI,* p. 25.

[64] *See Implementing the EITI,* p. 24. *See also* letter from Senator Cardin (noting that many EITI implementing countries are considering reporting on social payments). One commentator has requested that we exclude payments relating to community development, including those pertaining to local purchasing or employment, from the disclosure requirements. *See* letter from NMA.

[65] *See* letter from PWYP (supporting the inclusion of "social" payments under the definition of payment, which it defines as payments "made by extractive industry participants in order to reduce operational risk by improving the welfare of local communities, individual citizens and organizations in the villages, cities or countries where these companies work, or in order to obtain a 'social license to operate'."). *Cf.* letter from NMA (opposing disclosure of payments "that provide only 'indirect economic benefits' such as construction of local infrastructure (like schools, roads, hospitals, and the like) that are not primarily used for extractive activities.").

[66] Letter from PWYP.

[67] *Implementing the EITI,* p. 30. The EITI Source Book notes that a benefit stream is material "if its omission or misstatement could distort the final EITI report" for the country. *EITI Source Book* at p. 26.

[68] In contrast, the definition of payment also includes the phrase "other material benefits."

[69] Merriam-Webster Dictionary (available at *http://www.merriam-webster.com/dictionary/deminimis*).

[70] For example, we could define "not de minimis" to be an amount that meets or exceeds the lesser of a dollar amount, such as $100,000, or a percentage, such as 1%, of an issuer's expenses, revenues or some other amount for the year.

[71] One commentator stated that "reporting only on material payments is contrary to Congress's distinction between a de minimis standard applied to individual payments and a materiality standard applied to benefit streams." *See* letter from Revenue Watch Institute (December 6, 2010) ("RWI").

[72] Some commentators have requested that we provide a definition of "not de minimis." *See* letter from Calvert and SIF (stating such a definition is necessary "due to the lack of applicable precedent regarding the de minimis concept featured in Section 1504* * *"); NMA; and PWYP.

[73] Calvert and SIF have suggested that we set the "de minimis threshold" at $15,000, which is similar to the level used by the London Stock Exchange's Alternative Investment Market ("AIM") listing rule that requires disclosure of any payment above £10,000 (approximately $15,000) made to any government or regulatory authority by an oil, gas or mining company. *See* letter from Calvert and SIF. PWYP has suggested both qualitative and quantitative definitions of de minimis. According to its qualitative definition, de minimis "means an item so insignificant that it is not relevant to a reasonable person in determining the net value of the project's annual liabilities." According to its quantitative definition, de minimis "means any payment that exceeds the equivalent of $1,000 or payments that, in the aggregate, exceed the equivalent of $15,000." Letter from PWYP.

minimis" as "material?" Would such a reading be consistent with the language and intent of the statute? Would such a standard be a reasonable means of encouraging consistent disclosure? Would it be necessary for the Commission to provide additional guidance on how to determine materiality if a materiality standard governed this disclosure? If so, what guidance would be appropriate in the context of this information?

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

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

32. Should a payment be considered "not de minimis" if it meets or exceeds a percentage of expenses incurred per project for the year that is the subject of the annual report? Is a per project basis appropriate because Section 13(q) requires an issuer to disclose payment information for each project as well as for each government? Instead of a per project basis, should we base a definition of "not de minimis" on a threshold that uses a percentage of an issuer's total expenses for the year or its total expenses incurred for all projects undertaken in a particular country for the year?[75] Should the percentage threshold be based on something else, such as revenues, profits or income? Would using a percentage threshold further the intent of the statute and help minimize the costs associated with providing the disclosure?

33. If a percentage threshold should be used to define "not de minimis," should the percentage be 1%, 2%, 3%, 4%, 5%, or a higher percentage? Should the definition use a percentage lower than 1%, such as 0.1%, 0.2%, 0.3%, 0.4%, or 0.5%?

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

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

36. Should we define "not de minimis" to be an amount that meets or exceeds the lesser of two measures, for example, a dollar amount, such as $100,000, or a percentage, such as 1%, of an issuer's expenses, revenues or some other amount for the year? Would such an approach be appropriate to address variations in the size of resource extraction issuers?

37. Should we define payments that are "not de minimis" to mean payments that are significant compared to the total expenses incurred by an issuer for a particular project, or with regard to a particular government for the year?

38. We note that the phrase "not de minimis" is used only in the definition of the term "payment." Would it be consistent with the statute to require disclosure of payments that are "not de minimis" only if they are related to material projects of a resource extraction issuer?[76]

3. The "Project" Requirement

While Section 13(q) requires a resource extraction issuer to disclose information regarding the type and total amount of payments made to a foreign government or the Federal Government for each project relating to the commercial development of oil, natural gas, or minerals, it does not define the term "project."[77] We note the EITI does not provide for the disclosure of payments on a per project basis, and thus, does not define the term or provide guidance on how we should define the term. Our rules currently do not include a definition of "project," although, as noted below, our rules include some references to the term "project" that may be useful in considering the term. We understand that, depending upon the particular industry or business in which an issuer operates, and other factors such as the size of an issuer, "project" may be defined in a variety of ways. In light of the fact that neither Section 13(q) nor our current disclosure rules include a definition of the term and to provide flexibility in applying the term to different business contexts, we are not proposing a specific definition for the term. However, we are soliciting comment regarding whether we should define "project," and, if so, what definition would be appropriate.

Request for Comment

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

40. If we should define "project," what definition would be appropriate?[78] Please be as specific as possible and discuss the basis for your recommendation.

41. Should we define "project" to mean a project as that term is used by a resource extraction issuer in the ordinary course of business? What are the advantages and disadvantages of such an approach? If the final rules were to use such an approach, should an issuer be required to disclose the basis and methodology it used in defining what constitutes a project?

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[74] *See* letter from Calvert and SIF and PWYP.

[75] One commentator suggested a definition of "de minimis" that would require an issuer to disclose payments to a government if, in the aggregate, payments across all categories exceeded five percent or more of the issuer's gross expenses. Once the aggregate amount of payments exceeded the specified threshold, "then all payments in that country otherwise meeting the definition in the Act would be reportable, even though each payment stream would not necessarily be material." Letter from NMA.

[76] Commentators have suggested such an approach, noting that this approach would be consistent with the EITI, which requires disclosure of material payments only. *See* letters from API and RDS. Under the EITI, countries can determine the appropriate threshold for materiality. *See, e.g., EITI Source Book,* p. 26. *Cf.* letter from Senator Cardin (stating that "[r]eporting under Sec. 1504 is designed to complement reporting done under the Extractive Industries Transparency Initiative (EITI), but does not mimic it, and purposefully requires reporting at the project level, disaggregated by payment stream.").

[77] The legislative history does not provide an indication as to how we should define the term.

[78] API suggested defining project to mean "technical and commercial activities carried out within a particular geological basin or province to explore for, develop and produce oil, natural gas or minerals. These activities include, but are not limited to, acreage acquisition, exploration studies, seismic data acquisition, exploration drilling, reservoir engineering studies, facilities engineering design studies, commercial evaluation studies, development drilling, facilities construction, production operations, and abandonment. A project may consist of multiple phases or stages." Letters from American Petroleum Institute (December 9, 2010). PWYP has requested that we define project "in relation to each lease, license and/or other concession-level arrangement entered into by a resource extraction issuer," so as to "capture information related to the discrete, project-specific financial flows affiliated with extractive industry development activities." Letter from PWYP.

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

43. Should we adopt a definition of "project" that is substantially similar to the definition of "development project" under Rule 4–10(a)(8) of Regulation S–X? [79] Would reliance on that existing definition, with which oil and natural gas companies are already familiar, help to elicit appropriate payment disclosure under Section 13(q) without over-burdening issuers? [80] Or is that definition unsuitable for purposes of Section 13(q) because it does not explicitly encompass other types of projects, such as exploration projects, and does not relate to mining activities? What modifications to the Regulation S–X definition of "development project," if any, would be appropriate to provide a definition for "project" for it to be suitable for purposes of the disclosure required by Section 13(q)?

- In particular, similar to Rule 4–10(a)(8) and staff guidance regarding the rule, should we define project as:
- The means by which oil, natural gas, or mineral resources are brought to the status of being economically producible or commercially developed;
- typically involving a single engineering activity with a distinct beginning and end;
- having a definite cost estimate, time schedule, or investment decision, and approved for funding by management;
- one that, when completed, results in the exploration, extraction or production, processing, transportation or export of oil, natural gas, or minerals; and
- one that may involve a single reservoir, field or mine, the incremental development of a producing field or mine, or the integrated development of a group of several fields or mines and associated facilities with a common ownership?
- Would it be appropriate to include or exclude any of the aspects listed above? Why or why not?
- Should the definition of project include one that involves more than one engineering activity or an engineering activity that is open-ended? Would a definition that focuses on the level of engineering activity fail to elicit the disclosure of payments in connection with some projects, for example, an exploration project?
- Would a project always have a definite cost estimate, time schedule, or investment decision, or be approved by management? Should any of these characteristics be excluded from any definition of project? Are there any additional characteristics that we should include in any definition of project?
- Should any definition of project encompass only a single reservoir, field or mine? Why or why not?

44. Should we permit issuers to treat operations in a country as a "project?" Would doing so be consistent with the statute? [81]

45. We note that issuers currently use the concept of "reporting unit" for financial reporting purposes (*e.g.*, an operating segment or one level below an operating segment). Should the definition of "project" be consistent with the "reporting unit" concept? [82] Is that definition consistent with the statute? Would using such a definition ease implementation of the disclosure requirements for resource extraction issuers given that payments currently may be tracked on that basis? What concerns, if any, are raised by using such a concept as the basis for defining "project?" Are there other concepts, such as an "asset group" or "cash generating unit," that would provide a more appropriate basis for the definition of "project?"

46. Are there any other factors that we should include in the definition of "project?"

47. Should we define "project" to mean a material project? [83] If so, what should be the basis for determining whether a project is material for purposes of the resource extraction payment disclosure rules? Would defining project to mean a material project be consistent with Section 13(q)?

48. Should we permit issuers to aggregate payments by country rather than project? [84] Would that be consistent with Section 13(q)?

4. Payments by "a Subsidiary * * * or an Entity Under the Control of the Resource Extraction Issuer"

Section 13(q) requires a resource extraction issuer to disclose payments made by a subsidiary or an entity under the control of the resource extraction issuer, in addition to its own payments, to a foreign government or the Federal

[79] Under that rule, the term "development project" is defined as the "means by which petroleum resources are brought to the status of economically producible. As examples, the development of a single reservoir or field, an incremental development in a producing field, or the integrated development of a group of several fields and associated facilities with a common ownership may constitute a development project." 17 CFR 210.4–10(a)(8). *See also* Compliance and Disclosure Interpretation ("CDI") 108.01 under the Oil and Gas Rules issued by the Commission's Division of Corporation Finance on October 26, 2009 (available at *http://www.sec.gov/divisions/corpfin/guidance/oilandgas-interp.htm).* The CDI provides in relevant part that a "development project is typically a single engineering activity with a distinct beginning and end, which, when completed, results in the production, processing or transportation of crude oil or natural gas. A project typically has a definite cost estimate, time schedule and investment decision; is approved for funding by management; may include all classifications of reserves; and will be fully operational after the completion of the initial construction or development. The scope and scale of a project are such that, if a project were terminated before completion, for whatever reason, a significant portion of the previously invested capital would be lost."

[80] One commentator suggested the Commission could use this definition as a basis for defining project because it is well understood by the industry and investors. *See* letter from RDS.

[81] *See* statement from Senator Cardin (explaining the need for the statute because existing disclosures are "not useful in determining the extent of a company's operations in or its ongoing financial arrangements with a country."). 111 *Cong. Rec.* S3315 (daily ed. May 6, 2010). PWYP has suggested permitting an issuer to disclose certain payments on an entity level with respect to a particular jurisdiction but only when the payment, such as a corporate income tax, is calculated at the entity level rather than the project level. *See* letter from PWYP.

[82] One commentator suggested that we define project to be "consistent with the concepts of operating segments and reporting units under which mining companies currently provide information." The suggested definition would include preparation for, or exploitation of, mineral deposits in an identified geographic area, and "would exclude activities such as prospecting, surveying and exploration, which are undertaken well before a 'project' has materialized." Letter from NMA.

[83] Some commentators have suggested defining project in this way. *See* letters from API; Cravath, Swaine & Moore LLP, Cleary Gottlieb Steen & Hamilton LLP, Davis Polk & Wardwell LLP, Shearman & Sterling LLP, Simpson Thacher & Bartlett LLP, Skadden, Arps, Slate, Meagher & Flom LLP, Sullivan & Cromwell LLP, and Wilmer Cutler Pickering Hale and Dorr LLP (November 5, 2010) ("Eight Law Firms"); and RDS. *But see* letter from RWI (stating that "* * * limiting reporting to material projects contravenes Congress's intent to implement a level playing field through a project-by-project disclosure standard.").

[84] *See* letter from API suggesting such an approach. In addition, the NMA has suggested permitting disclosure of payments at the country level for prospecting, surveying, and exploration activities, and for payments that constitute commercially sensitive information or are subject to reasonable host government confidentiality restrictions, in addition to payments, such as corporate income tax payments, that are calculated at the country level. Letter from NMA. Another commentator noted that some payments may be made at the entity level rather than at the project level, and that establishing systems to apportion entity level payments may be prohibitively expensive and that such apportionment could be somewhat arbitrary. The commentator suggested that compliance costs could be mitigated by allowing entity-level payments to be reported at the country level rather than the project level. *See* letter from RWI. *See also* letter from PWYP ("Where * * * certain payments are made at an entity level rather than at the lease/license level * * * this fact should have no bearing on the definition of 'project' but, rather, may give rise to a limited reporting allowance whereby issuers could report at an entity level, rather than project-level, for that specific payment only.").

Government for the purpose of the commercial development of oil, natural gas, or minerals.[85] We are proposing to use the language from Section 13(q) in the disclosure requirements.

Under our proposal and consistent with the statutory language, a resource extraction issuer would be required to provide disclosure if control is present. Consistent with the definition of control under the securities laws, such as in Exchange Act Rule 12b–2, a resource extraction issuer would need to make a factual determination as to whether it has control of an entity based on a consideration of all relevant facts and circumstances.[86] At a minimum, under our proposal, payments made by a subsidiary or entity under the control of a resource extraction issuer would be subject to disclosure under this standard if the resource extraction issuer must provide consolidated financial information for the subsidiary or other entity in the issuer's financial statements included in its Exchange Act reports.[87]

Request for Comment

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

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

51. Under the proposed rules, a resource extraction issuer would be required to provide disclosure for an entity if it is consolidated in the financial statements of the resource extraction issuer presented under U.S. GAAP (or other jurisdictional GAAP that requires a U.S. GAAP reconciliation) and IFRS as issued by the IASB because entities meeting the consolidation requirement generally also meet the definition of control. Are there circumstances under U.S. GAAP and IFRS that would render different consolidation results, such as proportionate consolidation, that we should consider? If so, please describe the circumstances and indicate how the different circumstances should be addressed in the new rules. We understand that entities and operations that are proportionately consolidated are viewed as consolidated entities or operations of an extractive issuer, while investments presented on the equity method are not viewed as consolidated entities or operations. Should our rules specifically include these concepts? For instance, should our rules treat equity investees differently even if they are controlled by the resource extraction issuer? Should our rules, as proposed, include equity investees that the issuer controls but does not consolidate?

52. Are there instances, other than control in which a resource extraction issuer should have to disclose payments made by a subsidiary or other entity? If so, should we revise our proposal to mandate disclosure in those circumstances? [88] Would resource extraction issuers have access to payment information in those circumstances? Should our rules specify that an issuer would have to disclose payments made by a non-controlled entity only if the issuer is the operator of the joint venture or other project? [89] Would it be appropriate to require an issuer to disclose payments that correspond to its proportional interest in the joint venture rather than all of the payments made by or for the joint venture? [90]

53. Are there factors or concepts different than the ones discussed above that should determine whether a resource extraction issuer must disclose payments made for a subsidiary or other entity under the issuer's control for the purpose of commercial development of oil, natural gas, or minerals? For example, should the rules require disclosure only of information that the issuer knows or has reason to know?

5. Other Matters

Under the disclosure rules concerning oil and gas reserves adopted in 2008,[91] the Commission required disclosure of reserves in the aggregate and by geographic area and for each country containing 15% or more of a registrant's proved reserves.[92] The oil and gas disclosure rules provide an exception that a registrant need not provide disclosure of the reserves in a country containing 15% or more of the registrant's proved reserves if that country's government prohibits disclosure of reserves in that country.[93] Section 13(q) does not contain an exception to the requirement to disclose payments made to foreign governments for the purpose of commercial development of oil, natural gas, or minerals in circumstances when the host country prohibits the disclosure. The provision also does not include an exception for confidentiality clauses in existing or future agreements. Thus, we have not proposed any exceptions to the proposed disclosure requirements under Section 13(q). Nevertheless, we are interested in learning whether the disclosure requirement would potentially cause a resource extraction issuer to violate any host country's laws and whether an exception similar to the exception in the oil and gas disclosure

[85] 15 U.S.C. 78m(q)(2)(A).

[86] Under Exchange Act Rule 12b–2 [17 CFR 240.12b–2] and Rule 1.02 of Regulation S–X [17 CFR 210.1.02], "control" is defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." The rules also define "subsidiary" ("A 'subsidiary' of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (*See also* 'majority-owned subsidiary,' 'significant subsidiary,' and 'totally-held subsidiary.' ").

[87] This would be the case whether the resource extraction issuer provides consolidated financial information under U.S. Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS"). *See also* letters from API; NMA; and RDS. Those commentators support limiting disclosure of payments made by a subsidiary or other entity to only those entities for which an issuer must consolidate financial information in its Exchange Act reports.

[88] One commentator stated that "[d]isclosure of payment information with respect to unconsolidated equity investees and joint venture interests is crucial to fulfill the intent of the legislation as such information provides information necessary for analysts and investors to analyze issuer's future production and assess equity valuation on a risk-adjusted basis. The definition of 'control' must therefore be sufficiently broad to cover all relationships through which an issuer directly or indirectly exerts, or has the right to exert, significant influence, whether sole or shared, over an entity making extraction-related payments to a foreign government." Letter from PWYP.

[89] We note that, depending on the circumstances, a resource extraction issuer that is the operator of a joint venture may be deemed to control the joint venture, and therefore would be required to provide the payment disclosure for the joint venture pursuant to the disclosure requirements as proposed.

[90] PWYP supports proportionate reporting with respect to unconsolidated equity investees and joint venture interests. *See* letter from PWYP. The NMA also supports proportional reporting when an issuer controls a venture but holds less than a 100 percent interest in the venture and further suggests that proportional reporting would be appropriate if an issuer does not wholly own an entity even though it fully consolidates the financial results of that entity. *See* letter from NMA.

[91] *Modernization of Oil and Gas Reporting,* Release No. 33–8995 (December 31, 2008), 74 FR 2158 (January 14, 2009) ("Oil and Gas Adopting Release").

[92] *See* Item 1202(a)(2) of Regulation S–K [17 CFR 1202(a)(2)].

[93] Instruction 4 to Item 1202(a)(2). In addition, a registrant need not provide disclosure of the reserves in a country containing 15% or more of the registrant's proved reserves if that country's government prohibits disclosure in a particular field and disclosure of reserves in that country would have the effect of disclosing reserves in particular fields.

rules would be appropriate for the disclosure requirements under Section 13(q).

In this regard, some commentators have stated that, should a host government prohibit the disclosure of payments made by resource extraction issuers to the host government, without an appropriate exception for that prohibition, an issuer could be compelled to select between avoiding or abandoning projects in that country and maintaining its registration under the Exchange Act. According to those commentators, such a situation would be contrary to the interests of investors and the principles of competition and comity.[94]

Request for Comment

54. Would the disclosure requirement in Section 13(q) and the proposed rules potentially cause a resource extraction issuer to violate any host country's laws? Are there laws that currently prohibit such disclosure? Would the answer depend on the type of payment or the level of aggregation of the payment information required to be disclosed? If there are laws that currently prohibit the type of disclosure required by Section 13(q) and the proposed rules, please identify the specific law and the corresponding country.

55. Should the Commission include an exception to the requirement to disclose the payment information if the laws of a host country prohibit the resource extraction issuer from disclosing the information? [95] Would such an exception be consistent with the statutory provision and the protection of investors? If we provide such an exception, should it be similar to the exception provided in Instruction 4 to Item 1202 of Regulation S–K? [96] Should we require the registrant to disclose the project and the country and to state why the payment information is not disclosed? If so, should we revise Item 1202 to require the same disclosure of the country and reason for non-disclosure?

56. Should the rules provide an exception only if a host country's statutes or administrative code prohibits disclosure of the required payment information? Should we provide an exception if a judicial or administrative order or executive decree prohibits disclosing the required payment information as long as the order or decree is in written form? Should we limit any exception provided to circumstances in which such a prohibition on disclosure was in place prior to the enactment of the Act?

57. Should the rules provide an exception for existing or future agreements that contain confidentiality provisions? [97] Would an exception be consistent with the statute and the protection of investors?

58. Are there circumstances in which the disclosure of the required payment information would jeopardize the safety and security of a resource extraction issuer's operations or employees? If so, should the rules provide an exception for those circumstances? [98]

59. Should we permit a foreign private issuer that is already subject to resource payment disclosure obligations under its home country laws or the rules of its home country stock exchange to follow those home country laws or rules instead of the resource extraction disclosure rules mandated under Section 13(q)? [99]

60. Are there any other circumstances in which an exception to the disclosure requirement would be appropriate? For instance, would it be appropriate to provide an exception for commercially or competitively sensitive information,[100] or when disclosure would cause a resource extraction issuer to breach a contractual obligation?

E. Definition of "Foreign Government"

Under Section 13(q), Congress defined "foreign government" to mean a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, while granting the Commission the authority to determine the scope of the definition.[101] For purposes of the disclosure requirement, we propose to define the term "foreign government" consistent with the statute and to specifically include foreign subnational governments in the definition to provide additional clarity regarding the definition.[102] Resource extraction issuers may be required to pay fees for permits, licenses, concessions, and other entry requirements to a variety of national and subnational foreign governments, including a state, province, county, district, municipality or other level of subnational government.[103] The proposed definition, is intended to capture payments made by resource extraction issuers to any foreign government and would not be limited to payments made to foreign national governments.[104]

Section 13(q) requires that a resource extraction issuer disclose payments to the Federal Government in addition to payments made to a foreign government. While Congress left undefined the term "Federal Government," typically that term refers only to the U.S. national government, and not to the states or other subnational governments in the United States.[105] We propose to clarify in the rule text that "Federal Government" means the United States Federal Government.[106]

Request for Comment

61. Should the definition of foreign government include a foreign government, a department, agency, or

[94] *See, e.g.,* letter from Eight Law Firms. *But see* letter from Senator Cardin, stating that "[t]he language of Sec. 1504 is very clear: there should be no exemptions for confidentiality or for host-country restrictions. It would be too easy for countries who want to avoid disclosures to simply pass their own law against disclosure. The purpose of Sec. 1504 is to not allow for exemptions for confidentiality or other reasons that undermine the principle of transparency and full disclosure.").

[95] *See* letters from API; Eight Law Firms; NMA; and RDS supporting such an exception. One commentator suggested that laws prohibiting disclosure are uncommon, but "normal exemption procedures conducted on a case-by-case basis are sufficient to deal with such conflicts." Letter from RWI. *But see* letter from Senator Cardin.

[96] *See* discussion in footnote 93 and accompanying text above regarding the exception for disclosure of certain proved reserves.

[97] *See* letter from API supporting such an exception.

[98] *See* letter from API suggesting such an exception.

[99] *See* letter from RDS suggesting such an exception.

[100] *See* letter from API; NMA; and RDS. *But see* letter from PWYP (discussing concerns regarding competitiveness and commercially sensitive information and noting a study of "over 100 oil and mining contracts between host governments and extractive companies worldwide found that 'stock exchange disclosures are a widely stated exception in confidentiality clauses and where not explicitly stated, would be interpreted to include such an exception.'") (footnote omitted).

[101] 15 U.S.C. 78m(q)(1)(B).

[102] *See* proposed Regulation S–K Item 105(b)(2), proposed Item 16I.B.(2) under Part II of Form 20–F, and proposed paragraph B.(17)(b)(2) under the General Instructions of Form 40–F.

[103] Of course, if a resource extraction issuer makes a payment (that is otherwise covered by the definition of payment) to a third party to be paid to the government on its behalf, disclosure of that payment would be covered under our proposed rule.

[104] This is consistent with the EITI, which recognizes that payments to subnational governments may have to be included within the scope of an EITI program. *See Implementing the EITI,* p. 34. We also believe this is consistent with the statutory scheme of Section 13(q), which requires an issuer to identify, for each disclosed payment, the government that received the payment, and the country in which the government is located. *See* Exchange Act Section 13(q)(2)(D)(ii)(V) [15 U.S.C. 78m(q)(2)(D)(ii)(V)].

[105] In this regard, given that the statute requires disclosure of payments made to a "foreign government or the Federal Government," we believe the term "foreign government" is meant to refer to a non-U.S. government.

[106] *See* proposed Item 105(a) of Regulation S–K, proposed Item 16I.A. under Part II of Form 20–F, and proposed paragraph B.(17)(a) under the General Instructions of Form 40–F.

instrumentality of a foreign government, or a company owned by a foreign government, as proposed?

62. We note that the definition of foreign government would include a company owned by a foreign government. We understand that in the case of certain state owned companies, the government would be a shareholder. Thus, certain transactions may occur as transactions between the company and the government and as transactions between company and shareholder. Should we adopt specific rules or provide guidance regarding payments made by state owned companies that distinguish between such types of transactions?

63. Under Section 13(q) and the proposal, the definition of "foreign government" includes "a company owned by a foreign government." We are proposing to include an instruction in the rules clarifying that a company owned by a foreign government is a company that is at least majority-owned by a foreign government.[107] Is this clarification appropriate? Should a company be considered to be owned by a foreign government if government ownership is lower than majority-ownership? Should the rules provide that a company is owned by a foreign government if government ownership is at a level higher than majority-ownership? If so, what level of ownership would be appropriate? Are there some levels of ownership of companies by a foreign government that should be included in or excluded from the proposed definition of foreign government?

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

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

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

67. Is there additional guidance that we should provide regarding the definition of foreign government? [108]

F. Disclosure Required and Form of Disclosure

Section 13(q) mandates that a resource extraction issuer disclose in an annual report the type and total amount of payments made for each project relating to the commercial development of oil, natural gas, or minerals as well as the type and total amount of such payments made to each government.[109] Section 13(q) also mandates the submission of the payment information in an interactive data format, and provides the Commission with the discretion to determine the applicable interactive data standard.[110]

1. Annual Report Requirement

Section 13(q) mandates that a resource extraction issuer provide the payment disclosure required by that section in an annual report, but otherwise does not specify the location of the disclosure, either in terms of a specific form or in terms of location within a specific form. As proposed, a resource extraction issuer would have to provide the required payment disclosure in its Exchange Act annual report filed on Form 10–K, Form 20–F, or Form 40–F. We preliminarily believe this approach is an appropriate way to implement the Act's disclosure requirements for resource extraction issuers without imposing additional burdens that might be associated with submitting a separate annual report to the Commission.[111] In addition, to facilitate investors' ability to locate the disclosure within the annual report without over-burdening them with extensive information about resource extraction payments in the body of the report, our proposed rules would require issuers to include a brief statement under a separate heading entitled, "Payments Made By Resource Extraction Issuers," directing investors to the detailed information about payments provided in the exhibits.

While Section 13(q) mandates that a resource extraction issuer provide the payment disclosure required by that section in an annual report, it does not specifically mandate the time period for which a resource extraction issuer must provide the disclosure. Given that the statute requires the disclosure in an annual report and we are proposing to require resource extraction issuers to furnish the disclosure in the annual report on Form 10–K, Form 20–F, or Form 40–F, as applicable, we believe it is reasonable to require resource extraction issuers to provide the mandated payment information for the fiscal year covered by the applicable annual report.

Request for Comment

68. Section 13(q) requires disclosure of the payment information in an annual report but does not specify the type of annual report. Should we require resource extraction issuers to provide the payment disclosure mandated under Section 13(q) in its Exchange Act annual report, as proposed? [112] Should we require, or permit, resource extraction issuers to provide the payment information in an annual report other than an annual report on Form 10–K, Form 20–F, or Form 40–F? For example, should we require the disclosure in a new form filed annually on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR")? [113] Would requiring resource extraction issuers to disclose the information in a separate annual report be consistent with Section 13(q)? Should we require an oil, natural gas, or mining company to file a separate annual report containing all of the specialized disclosures mandated by the Dodd-Frank Act? [114] What would be the benefits or burdens of such a form for investors or resource extraction issuers? If we should require, or permit, a separate annual report, what should be the due date of the report (*e.g.* 30, 60, 90, 120, or 150 days after the end of the fiscal year covered by the report)?

69. If we require resource extraction issuers to provide the disclosure of payment information in their Exchange

[107] *See* proposed Instruction to Item 105(b)(2) of Regulation S–K; proposed Instruction 2 to Item 16I.B.(2) of Form 20–F; and proposed Note 2 to Instruction B.17(b)(2) of Form 40–F.

[108] In this regard, one commentator has requested that we require an issuer to conduct an appropriate level of due diligence to determine whether a company to which it is making a payment is owned by a foreign government. *See* letter from PWYP.

[109] 15 U.S.C. 78m(q)(2)(A).

[110] 15 U.S.C. 78m(q)(2)(C) and (D).

[111] We received comment that due to the "tight annual reporting deadline," we should not require the payment disclosure to be part of the audited financial statements and that we should keep the reporting separate from annual reporting on Form 10–K and Form 20–F. Letter from API. The commentator recommended requiring the payment disclosure in a separate report with an annual deadline of 150 days following the fiscal year end. *See id.* We note that the statute does not require the payment disclosure to be part of the audited financial statements, and the rules do not propose to do so. Therefore, we preliminarily believe it could be less burdensome for resource extraction issuers, as well as more useful to investors, to provide the disclosure in a form that issuers are already required to file rather than requiring them to furnish a separate report; however, we are soliciting comment about this issue.

[112] *See* letters from Calvert and SIF and PWYP supporting that approach.

[113] *See* letters from API and NMA suggesting such an approach.

[114] *See* Sections 1502 and 1503 of the Dodd-Frank Act.

Act annual reports, should we permit resource extraction issuers to file an amendment to the annual report within a specified period of time subsequent to the due date of the report, similar to Article 12 schedules or financial statements provided in accordance with Regulation S–X Rule 3–09,[115] to provide the payment information? If so, what would be the appropriate time period (*e.g.* 30, 60 or 90 days after the due date of the report)?

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

71. Should we also require an issuer to provide the resource extraction payment disclosure in a registration statement under the Securities Act of 1933 [116] or under the Exchange Act? If so, what time period should the disclosure cover?

72. Should we require an issuer that has a class of securities exempt from Exchange Act registration pursuant to Exchange Act Rule 12g3–2(b) [117] to provide the resource extraction payment disclosure in its home country annual report or in a report on EDGAR? [118] Would such an approach be consistent with the Exchange Act? [119]

2. Exhibits and Interactive Data Format Requirement

We propose to require a resource extraction issuer to present the mandated payment information in two exhibits to its annual report on Form 10–K, Form 20–F, or Form 40–F, as applicable.[120] Specifically, the proposed rules would add new exhibits (97) and (98) to Item 601 of Regulation S–K, new paragraphs 17 and 18 to the "Instructions as to Exhibits" in Form 20–F, and new paragraph B(17) of the "General Instructions" in Form 40–F.[121] We believe two exhibits are necessary to provide investors with the information in a format that is useful to them. Resource extraction issuers would be required to file the information in HTML or ASCII format in one exhibit, which would enable investors to easily read the disclosure about payment information without additional computer programs or software. Resource extraction issuers also would be required to file an exhibit with the information electronically tagged in XBRL format and the disclosure would be readable through a viewer. As noted above, Section 13(q) requires that the rules issued pursuant to the section require that the information included in the annual report be submitted in an interactive data format. We are proposing to require resource extraction issuers to submit the mandated payment information in XBRL in an exhibit.[122] Some commentators indicated a preference for XBRL.[123]

In addition, we propose to require a resource extraction issuer to provide a statement, under an appropriate heading in the issuer's annual report, referring to the payment information provided in the exhibits to the report.[124] We believe this approach would facilitate access to the information by placing it outside the body of the annual report. By requiring resource extraction issuers to provide the payment information in exhibits to the annual report, the proposed rules would enable anyone accessing EDGAR to determine quickly whether an issuer provided disclosure in accordance with Section 13(q) and the rules issued pursuant to that section. In addition, we are concerned that presenting the information in interactive data format in the body of the annual report would not be comprehensible. Thus, we believe a brief reference in the body of the filing to the disclosure and the complete presentation in the exhibits to the filing is the most appropriate approach.

Resource extraction issuers currently are required to file their registration statements, current and periodic reports in ASCII or HTML.[125] Our electronic filing system also uses other formats for reporting related to corporate issuers, such as XML, to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under Section 16(a) of the Exchange Act,[126] and a form of XML known as XBRL to provide financial statement data.[127] As we explained in the XBRL Adopting Release and the proposing release for asset-backed securities,[128] electronic formats such as HTML, XML, and XBRL are open standards [129] that define or

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[115] 17 CFR 210.3–09.

[116] 15 U.S.C. 77a *et seq.*

[117] 17 CFR 240.12g3–2(b). A foreign private issuer may claim that exemption as long as it meets a foreign listing requirement, publishes its material home country documents in English on its Internet Web site or through another electronic information delivery system that is generally available to the public in its primary trading market, and otherwise is not required to file Exchange Act reports. A foreign private issuer typically relies on the Rule 12g3–2(b) exemption in order to establish an unlisted American Depositary Receipt ("ADR") facility for the issuance and trading of ADRs through the over-the-counter market.

[118] *See* letters from Calvert and SIF and PWYP supporting such an approach.

[119] The Commission has not considered Rule 12g3–2(b)—exempt companies to be subject to Exchange Act reporting and filing requirements. Prior to the amendment to Rule 12g3–2(b) in 2008, we required issuers claiming the Rule 12g3–2(b) exemption to furnish paper copies of their material home country documents to the Commission. The documents were deemed furnished and not filed under the Exchange Act because they were subject to their home country, and not Exchange Act, disclosure rules. (*See* the discussion of "furnished" vs. "filed" in Section II.F.3 of this release.) Since the 2008 amendment, Rule 12g3–2(b)-exempt companies do not submit or file any document with the Commission, and must comply only with the rule's Internet publishing requirement.

[120] *See* proposed Regulation S–K Items 601(a), (b)(97), and (b)(98), proposed paragraphs 17 and 18 of the Instructions as to Exhibits for Form 20–F, and proposed paragraph B.(17)(a) under the General Instructions of Form 40–F.

[121] *See id.*

[122] *See* proposed Regulation S–K Item 601(b)(98), proposed paragraph 18 under Instructions as to Exhibits for Form 20–F, and proposed paragraph B.(17)(a)(2) under the General Instructions of Form 40–F.

[123] *See* letters from API; Calvert and SIF; and PWYP. Calvert and SIF stated that XBRL "reduces the costs for investors associated with obtaining and assimilating information from issuers, and, at the same time, reduces the costs to issuers submitting data to regulators." In addition, Calvert and SIF noted that "XBRL allows far more standardization and harmonization of international business reporting standards, thereby lowering the costs of compliance and reporting for issuers, while making the information far more valuable and easily interpreted and analyzed by investors." Letter from Calvert and SIF. PWYP recommended XBRL "in order to more seamlessly integrate with existing company filings formatted in XBRL, as well as the Commission's existing XBRL reporting platform, and with external XBRL-based databases managed by private sector companies." Letter from PWYP. *Cf.* letter from NMA (stating that "issuers should be given the flexibility to disclose the data in any format that would allow users to click through the information in a standard file type (*e.g.* Microsoft Word, Web-based HTML, Microsoft Excel, or .pdf) to reach data sorted by each of the electronic tags specified in the Act." According to this commentator, while XBRL could satisfy the statutory requirement, "issuers should not be prohibited from using other formats that allow for meaningful use of 'electronic tags'.").

[124] *See* proposed Item 4(c) under Part I of Form 10–K, proposed Item 16I.A. under Part II of Form 20–F, and proposed paragraph B.(17)(a) under the General Instructions of Form 40–F.

[125] Rule 301 under Regulation S–T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.1 of the Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 under Regulation S–T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents.

[126] 15 U.S.C. 78p(a).

[127] *See Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (January 30, 2009), 74 FR 6776 (February 10, 2009) ("XBRL Adopting Release").

[128] *See Asset-Backed Securities,* Release No. 33–9117 (April 7, 2010), 75 FR 23328 (May 3, 2010).

[129] The term "open standard" is generally applied to technological specifications that are widely

"tag" data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications.

In the case of HTML, the standardized tags enable Web browsers to present Web sites' embedded text and information in a predictable format so that they are human readable. In the case of XML and XBRL, software applications, such as databases, financial reporting systems, and spreadsheets recognize and process tagged information. As noted above, some commentators have indicated we should require these data points in XBRL as we are proposing.[130]

As mandated by Section 13(q),[131] the proposed rules would require a resource extraction issuer to submit the payment information using electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the U.S. Federal Government:

- The total amounts of the payments, by category;
- The currency used to make the payments;
- The financial period in which the payments were made;
- The business segment of the resource extraction issuer that made the payments;
- The government that received the payments, and the country in which the government is located; and
- The project of the resource extraction issuer to which the payments relate.[132]

In addition, under Section 13(q), a resource extraction issuer would be required to provide the type and total amount of payments made for each project and the type and total amount of payments made to each government in interactive data format. Consistent with the statute, the proposed rules require a resource extraction issuer to include an electronic tag that identifies the currency used to make the payments. The statute does not otherwise specify how the resource extraction issuer should present the type and total amount of payments for each project or to each government. We preliminarily believe it is appropriate to require resource extraction issuers to provide the type and total amount of payments for each project and to each government in the currency in which the payments were made, as we believe it may increase comparability with disclosure provided under EITI programs in other countries.

We expect that some of the electronic tags, such as those pertaining to category, currency, country, and financial period would have fixed definitions and would enable interested persons to evaluate and compare the payment information across companies and governments. Other tags, which could include those pertaining to business segment, government, and project, would allow for issuers to enter information specific to their business.

Section 13(q) requires the Commission, to the extent practicable, to make available online, to the public, a compilation of the information required under paragraph (2)(A) of that section.[133] We request comment on the particular form, content, or time period for the compilation.[134]

Request for Comment

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

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

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

76. Section 13(q) does not require the resource extraction payment information to be audited or provided on an accrual basis.[135] Accordingly, the proposed rules do not include such requirements. Should we require resource extraction issuers to have the payment information audited or provide the payment information on an accrual basis? Why or why not? What would be the likely benefits and burdens? Would including such requirements be consistent with the statute?

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

78. Should we require that the resource extraction payment disclosure be provided in a new exhibit in HTML or ASCII, as proposed? Why or why not?

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

80. Section 13(q) and our proposed rules require a resource extraction issuer to include an electronic tag that identifies the currency used to make the payments. If the currency in which the payment was made differs from the issuer's reporting currency, should the rules require issuers to convert the payments to the issuer's reporting currency at the applicable rate? If the rules should, as proposed, require disclosure of in kind payments, should the rules require in kind payments to be converted to the host country currency?

available to the public, royalty-free, and at minimal or no cost.

[130] *See* letter from API; Calvert and SIF; and PWYP.

[131] 15 U.S.C. 78m(q)(2)(D)(ii).

[132] *See* proposed Regulation S–K Item 601(b)(98), paragraph 18 under Instructions as to Exhibits of Form 20–F, and paragraph B.(17)(a)(2) under the General Instructions of Form 40–F.

[133] 15 U.S.C. 78m(q)(3)(A). That information includes the type and total amount of payments made by resource extraction issuers to foreign governments or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals on a per project and per government basis.

[134] Section 13(q) provides that "[n]othing in [Section 13(q)(3)(A)] shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A)." 15 U.S.C. 78m(q)(3)(B).

[135] One commentator requested that we require issuers to disclose the payment information as a separate section of the audited financial statements that are filed with the Exchange Act annual report and that we require the payment disclosure on both a cash and accrual basis. *See* letter from Calvert and SIF. *See also* letter from PWYP (requesting that we require the information to be included in a separate section of the Exchange Act annual report and subject to "rigorous audit or review procedures by the company's independent external auditor").

Should the rules require in kind payments to be converted to the issuer's reporting currency at the applicable rate? Should the rules require disclosure of the in kind payments in the form in which the payments were made and also require the payments to be converted to the issuer's reporting currency? Should we require issuers to provide a conversion to U.S. dollars for payments made in cash and in kind, and to electronically tag that information?

81. Section 13(q) and our proposed rules require an issuer to include an electronic tag that identifies the financial period in which the payments were made.[136] Should we require an issuer to identify in the tag the particular fiscal year, quarter, or other period, such as a particular half-year, in which the payments were made?

82. Section 13(q) and our proposed rules require an issuer to include an electronic tag that identifies the issuer's business segment that made the payments.[137] Should we define "business segment" for purpose of disclosing and tagging the payment information required by Section 13(q)? If so, what definition should we use? Should we instead allow resource extraction issuers to disclose and identify the business segment in accordance with how it operates its business? What are the advantages and disadvantages of allowing an issuer to rely on its definition of business segment?

83. Section 13(q) and our proposed rules require an issuer to include an electronic tag that identifies the project to which the payments relate.[138] Are there some payments that would not relate to a particular project? If so, should we nevertheless require that each payment be allocated to a particular project? Should we instead permit an issuer to use only the electronic tag that identifies the government receiving the payments if those payments do not relate to, or cannot be allocated to, a particular project?

84. Section 13(q) requires an issuer to electronically tag "such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors."[139] Would it be useful to have additional information about the payments electronically tagged? If so, what additional tags should we require? Are there any other items of information that should be electronically tagged?

85. Should we permit issuers to aggregate their payments into three categories: "taxes and royalties," "production entitlements," and "other payments"?[140] Would that approach be consistent with Section 13(q)?

86. Section 13(q)(3) requires the Commission to provide a compilation of the disclosure made by resource extraction issuers. Should the Commission provide the compilation on an annual basis? Should the compilation be provided on a calendar year basis, or would some other time period be more appropriate? Should the compilation provide information as to the type and total amount of payments made on a country basis? What other information should be provided in the compilation?[141]

3. Treatment for Purposes of the Securities Act and the Exchange Act

The statutory language of Section 13(q) does not specify that the information about resource extraction payments must be "filed," rather, it states that the information should be "include[d] in an annual report[.]"[142] We are proposing that the disclosure required by Section 13(q) would be required to be "furnished" rather than "filed" and not be subject to liability under Section 18 of the Exchange Act, unless the issuer explicitly states that the resource extraction disclosure is filed under the Exchange Act. Issuers that fail to comply with the rules would be subject to violations of Exchange Act Sections 13(a) or 15(d), as applicable.[143] The disclosure would be treated in the same manner as other furnished documents, such as the certifications required to be submitted as exhibit 32[144] to Exchange Act documents under Rule 13a–14(b)[145] or Rule 15d–14(b)[146] and Section 1350 of Chapter 63 of Title 18 of the United States Code,[147] the Audit Committee Report required by Item 407(d) of Regulation S–K[148] and the Compensation Committee Report required by Item 407(e)(5) of Regulation S–K.[149]

We believe this approach is consistent with the statute. Section 13(q) does not mandate that the disclosure be included in the annual report on Form 10–K, Form 20–F, or Form 40–F.[150] In addition, we preliminarily believe this approach is appropriate in light of the nature and primary purpose of the disclosure. Section 13(q) requires the Commission, to the extent practicable, to issue rules under the section that support the Federal Government's commitment to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.[151] We believe the nature and purpose of the disclosure required by Section 13(q) is qualitatively different from the nature and purpose of existing disclosure that has historically been required under Section 13 of the Exchange Act. As a result, we preliminarily believe it is appropriate to require a resource extraction issuer to furnish the disclosure. Therefore, we are proposing new Instructions to Item 105 of Regulation S–K, Item 16I of Form 20–F, and Instruction B.(17) of Form 40–F, which would state that the disclosure provided in response to those items would not be deemed to be "filed" with the Commission or subject to the liabilities of Section 18 of the Exchange Act, and will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that

[136] 15 U.S.C. 78m(q)(2)(D)(ii)(III).

[137] 15 U.S.C. 78m(q)(2)(D)(ii)(IV).

[138] 15 U.S.C. 78m(q)(2)(D)(ii)(VI).

[139] 15 U.S.C. 78m(q)(2)(D)(ii)(VII).

[140] *See* letter from API.

[141] We received a suggestion that the compilation take the form of an online database and summary report. The online database would enable users to search by country and company, as well as by year or multiple years of reporting. The suggested summary report would list the total payments by each issuer for each government, total payments within each payment category, the total payments per project for each issuer, and project payments within each payment category. *See* letter from PWYP.

[142] 15 U.S.C. 78m(q)(2)(A).

[143] 15 U.S.C. 78m(a) and 15 U.S.C. 78o(d).

[144] Item 601(b)(32)(ii) of Regulation S–K [17 CFR 229.601(b)(32)].

[145] 17 CFR 240.13a–14(b).

[146] 17 CFR 240.15d–14(b).

[147] 18 U.S.C. 1350.

[148] 17 CFR 229.407(d).

[149] 17 CFR 229.407(e)(5).

[150] *See* letter from NMA.

[151] 15 U.S.C. 78m(q)(2)(E). In addition, an author of the legislation has noted that the purpose of the legislation is to provide information to investors. *See, e.g.,* Statement of Senator Cardin in support of Amendment No. 3732 to Restoring American Financial Stability Act (S3217), 111 *Cong. Rec.* S3316 (daily ed. May 6, 2010) (stating that "Investors need to be able to assess the risks of their investments. Investors need to know where, in what amount, and on what terms their money is being spent in what are often very high-risk operating environments. These environments are often poor developing countries that may be politically unstable, have lots of corruption, and have a history of civil unrest. The investor has a right to know about the payments. Secrecy of payments carries real bottom-line risks for investors. Creating a reporting requirement with the SEC will capture a larger portion of the international extractive industries corporations than any other single mechanism, thereby setting a global standard for transparency and promoting a level playing field. Investors should be able to know how much money is being invested up front in oil, gas, and mining projects. For example, oil companies often pay very large signature payments to secure the rights for an oilfield, long before the first drop of oil is produced. Such payments are in addition to the capital investment required.").

the issuer specifically incorporates it by reference.

Request for Comment

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

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

89. Under Exchange Act section 18, "Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to [the Exchange Act] or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading." [152] Is it appropriate not to have the disclosures subject to Section 18 liability even if the elements of Section 18 could otherwise be established? Should we require the resource extraction payment disclosure to be filed for purposes of Section 18 of the Exchange Act, but permit an issuer to elect not to incorporate the disclosure into Securities Act filings?

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

G. Effective Date

Section 13(q) provides that, with respect to each resource extraction issuer, the final rules issued under that section shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the issuer's fiscal year that ends not earlier than one year after the date on which the Commission issues the final rules under Section 13(q).[153] Because the Commission must enact final rules under Section 13(q) at the latest by April 15, 2011,[154] the statute appears to require disclosure in an issuer's annual report relating to the fiscal year ending on or after April 15, 2012.

Request for Comment

91. Should we provide a delayed effective date for the final rules, either for all issuers subject to the rules or for certain types of issuers (*e.g.* smaller reporting companies or foreign private issuers)? [155] Would doing so be consistent with the statute? Why or why not? If we should provide for a delayed effective date, should issuers be required to provide disclosure in an annual report for the fiscal year ending on or after June 30, 2012, September 30, 2012, December 31, 2012, or some other date?

H. General Request for Comment

We request and encourage any interested person to submit comments regarding:

- The proposed amendments that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

A. Background

The proposed rule and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[156] We are submitting the proposal to the Office of Management and Budget for review in accordance with the PRA.[157] The titles for the collections of information are:

(1) "Regulation S–K" (OMB Control No. 3235–0071); [158]

(2) "Form 10–K" (OMB Control No. 3235–0063);

(3) "Form 20–F" (OMB Control No. 3235–0288); and

(4) "Form 40–F" (OMB Control No. 3235–0381).

The regulation and forms were adopted under the Securities Act and the Exchange Act. The regulation and forms set forth the disclosure requirements for periodic reports and registration statements filed by companies to help shareholders make informed investment and voting decisions. The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The proposed rule and form amendments would implement Section 13(q) of the Exchange Act, which was added by Section 1504 of the Act. Section 13(q) requires the Commission to "issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals, and (ii) the type and total amount of such payments made to each government." [159] Section 13(q) also mandates the submission of the payment information in an interactive data format, and provides the Commission with the discretion to

[152] Exchange Act Section 18(a).

[153] 15 U.S.C. 78m(q)(2)(F).

[154] Section 13(q)(2)(A) requires that the Commission issue final rules under that section no later than 270 days after the Dodd-Frank Act's enactment. The Act was signed into law on July 21, 2010; therefore the Commission must enact final rules no later than April 15, 2011.

[155] One commentator has requested that we delay the effective date of the resource extraction payment disclosure rules until fiscal year 2013. *See* letter from NMA. Another commentator recommended that "first reporting be for the 2012 fiscal year in 2013." Letter from API.

[156] 44 U.S.C. 3501 *et seq.*

[157] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[158] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the disclosures in Regulation S–K and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by Regulation S–K to be a total of one hour.

[159] 15 U.S.C. 78m(q)(2)(A).

determine the applicable interactive data standard.[160]

The proposed rule and form amendments would require an issuer to provide the statutorily-mandated information about resource extraction payments in an exhibit filed in HTML or ASCII format, which would enable investors to easily read the disclosure about payment information without additional computer programs or software. A resource extraction issuer also would be required to file another exhibit with the information electronically tagged in XBRL format, which would be readable through a viewer. In addition, the proposed rule and form amendments would require a resource extraction issuer to provide a statement, under an appropriate heading in the issuer's annual report, referring to the payment information provided in the exhibits to the report.

The same payment disclosure requirements would apply to U.S. and foreign resource extraction issuers. As discussed above, we propose to add new Item 105 to Regulation S–K [161] to require a resource extraction issuer to provide information relating to any payment made by it, a subsidiary, or an entity under its control to a foreign government or the U.S. Federal Government during the fiscal year covered by the annual report for the purpose of the commercial development of oil, natural gas, or minerals. We also propose to add new Item 4(c) to Form 10–K to require a resource extraction issuer to provide a statement that the information required by Section 13(q) and new Item 105 of Regulation S–K is included in two specified exhibits.[162] In addition, we are proposing to amend Regulation S–K Item 601 to add the two new exhibits to Form 10–K. Because Regulation S–K does not apply to Forms 20–F and 40–F,[163] we propose to amend those forms to include the same disclosure requirements as those proposed for resource extraction issuers that are not foreign private issuers.[164]

Compliance with the proposed rule and form amendments by affected issuers would be mandatory. The disclosure and reports submitted by issuers would not be kept confidential, and there would be no mandatory retention period for the information disclosed.

B. Burden and Cost Estimates Related to the Proposed Amendments

The proposed rule and form amendments would require, if adopted, additional disclosure for a resource extraction issuer's annual report filed on Form 10–K, Form 20–F or Form 40–F, which would increase the burden hour and cost estimates for each of those forms. For purposes of the Paperwork Reduction Act, we estimate the total annual increase in the paperwork burden for all affected companies to comply with our proposed collection of information requirements to be approximately 52,932 hours of company personnel time and to be approximately $11,857,200 for the services of outside professionals. These estimates include the time and cost of collecting the information, preparing and reviewing disclosure, filing documents, and retaining records.

We derived the above estimates by estimating the average number of hours it would take an issuer to prepare and review the proposed disclosure requirements. In deriving our estimates, we recognize that the burdens will likely vary among individual issuers based on a number of factors, including the size and complexity of their operations. We believe that some issuers will experience costs in excess of this average in the first year of compliance with the proposals and some issuers may experience less than these average costs. When determining these estimates, we have assumed that:

- For Form 10–K, 75% of the burden of preparation is carried by the issuer internally and 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour; and
- For Forms 20–F and 40–F, 25% of the burden of preparation is carried by the issuer internally and 75% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour.

The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. We request comment regarding the allocation of the annual burden. In particular, we request comment regarding whether the proposed rules would add more internal burden hours rather than costs for outside professionals.

We have based our estimates of the effect that the proposed rule and form amendments, if adopted, would have on those collections of information primarily on our review of the most recently completed PRA submissions for the affected rules and forms as well as on PRA submissions for similar rule and form amendments. We expect that the rules' effect will be greatest during the first year of their effectiveness and diminish in subsequent years.

1. Form 10–K

For purposes of the PRA, we estimate that, of the 13,545 Form 10–Ks filed annually, approximately 861 are filed by issuers that would be affected by the proposed rule and form amendments.[165] We further estimate that the annual incremental paperwork burden for the Forms 10–K as a result of the proposed rule and form amendments would be 75 burden hours per affected form.[166]

2. Regulation S–K

While the proposed rule and form amendments would make revisions to Regulation S–K, the collection of information requirements for that regulation are reflected in the burden hours estimated for Form 10–K. The rules in Regulation S–K do not impose any separate burden. Consistent with historical practice, we are proposing to retain an estimate of one burden hour to Regulation S–K for administrative convenience.

3. Form 20–F

For purposes of the PRA, we estimate that, of the 942 Form 20–F annual reports filed each year, approximately 166 are filed by issuers that would be affected by the proposed form amendments.[167] We estimate that the annual incremental paperwork burden for the Forms 20–F as a result of the proposed rule and form amendments would be 75 burden hours per affected form.

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[160] 15 U.S.C. 78m(q)(2)(C) and (D).

[161] *See* proposed Item 105 of Regulation S–K.

[162] *See* proposed Item 4(c) under Part I of Form 10–K.

[163] While Form 20–F may be used by any foreign private issuer, Form 40–F is only available to a Canadian issuer that is eligible to participate in the U.S.-Canadian Multijurisdictional Disclosure System ("MJDS").

[164] *See* proposed Item 16I under Part II of Form 20–F and proposed paragraph (17) to General Instruction B of Form 40–F.

[165] We derived this number by determining the number of issuers that fall under all the SIC codes that pertain to oil, natural gas, and mining companies and, thus, are most likely to be resource extraction issuers, and subtracting from that figure the number of issuers that file annual reports on Form 20–F and Form 40–F.

[166] In estimating 75 burden hours, we looked to the burden hours associated with the disclosure required by the oil and gas rules adopted in 2008, which estimated an increase of 100 hours for domestic issuers and 150 hours for foreign private issuers. We preliminarily believe that the disclosure required by the proposed rules is less extensive than the disclosure required by the oil and gas rules, and therefore we have estimated 75 burden hours.

[167] We derived this number by determining the number of issuers that fall under all the SIC codes that pertain to oil, natural gas, and mining companies and, thus, are most likely to be resource extraction issuers, and that file annual reports on Form 20–F.

4. Form 40–F

For purposes of the PRA, we estimate that, of the 205 Form 40–F annual reports filed each year, approximately 74 are filed by companies that would be affected by the proposed form amendments.[168] We estimate that the annual incremental paperwork burden for the Forms 40–F as a result of the proposed form amendments would be 75 burden hours per affected form.

C. Summary of Proposed Changes to Annual Compliance Burden in Collection of Information

The following tables summarize the estimated changes in annual compliance burden in the collection of information in hours and costs for Exchange Act annual reports as a result of the proposed rule and form amendments. Table 1 illustrates the incremental annual compliance burden of the collection of information in hours and cost for our amendments.

TABLE 1

Form	Number of responses[169] (A)	Incremental burden hours/form (B)	Total incremental burden hours (C)=(A)*(B)	Incremental company (D)=(C)*0.75 (Form 10–K) (D)=(C)*0.25 (Forms 20–F & 40–F)	Incremental professional (E)=(C)*0.25 (Form 10–K) (E)=(C)*0.75 (Forms 20–F & 40–F)	Incremental professional cost (F)=(E)*$400/hr.
10–K	861	75	64,575	48,431	16,144	$6,457,600
20–F	166	75	12,450	3,112.5	9,337.5	3,735,000
40–F	74	75	5,550	1,387.5	4,162.5	1,665,000

Table 2 illustrates the totalannual compliance burden of the collection of information in hours and cost resulting from the proposed amendments. That burden was calculated by adding the incremental burdens to the existing burdens.

TABLE 2

Form	Current annual response[170]	Current burden hours (A)	Increase in burden hours (B)	Proposed burden hours (C)=(A)+(B)	Current professional costs (D)	Increase in professional costs (E)	Proposed professional costs (F)=(D)+(E)
10–K	13,545	21,363,548	48,431	21,411,979	$2,848,473,000	$6,457,600	$2,854,930,600
20–F	942	622,907	3,112.5	626,019.5	743,089,980	3,735,000	746,824,980
40–F	205	21,884	1,387.5	23,271.5	26,260,500	1,665,000	27,925,500

D. Solicitation of Comment

We request comment on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (iv) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (v) evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

In particular, we request comment and supporting empirical data for purposes of the PRA on whether the proposed rule and form amendments:

- Will affect the burden hours and costs required to produce the annual reports on Forms 10–K, 20–F and 40–F; and
- If so, whether the resulting change in the burden hours and costs required to produce those Exchange Act annual reports is the same as or different than the estimated incremental burden hours and costs proposed by the Commission.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–42–10. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–42–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if

[168] We derived this number by determining the number of issuers that fall under all the SIC codes that pertain to oil, natural gas, and mining companies and, thus, are most likely to be resource extraction issuers, and that file annual reports on Form 40–F.

[169] This number corresponds to the estimated number of forms expected to be affected by the proposed rule and form amendments.

[170] The proposed rule and form amendments would not change the number of annual responses.

OMB receives it within 30 days of publication.

IV. Cost-Benefit Analysis

We are proposing the rule and form amendments discussed in this release in order to implement Section 13(q), which was added to the Exchange Act by Section 1504 of the Act. As mandated by Section 13(q), the proposed rule and form amendments would require a resource extraction issuer to disclose in its annual report filed with the Commission certain information relating to any payment made by the issuer, a subsidiary, or an entity under the issuer's control to a foreign government or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. The statutorily required information would include the type and total amount of payments made for each project of the issuer relating to the commercial development of oil, natural gas, or minerals as well as the type and total amount of those payments made to each government. We expect that the proposed rule and form amendments would affect in substantially the same way both U.S. companies and foreign companies that meet Section 13(q)'s definition of "resource extraction issuer," which is an issuer that is required to file an annual report with the Commission and engages in the commercial development of oil, natural gas, or minerals.

We are sensitive to the costs and benefits of the proposed rule and form amendments. Section 1504 of the Dodd-Frank Act added Section 13(q) to the Exchange Act, which establishes a disclosure requirement for payments made by resource extraction issuers. The rules proposed to implement the statute largely track the statutory provision. The cost-benefit analysis that follows focuses on the benefits and costs related to the aspects of the proposed rules in which we exercised discretion, and not on the overall benefits and costs of the statutory regime for disclosure of payments by resource extraction issuers.

A. Benefits

The proposed rulemaking is intended to implement the requirements of Exchange Act Section 13(q) as set forth in Section 1504 of the Dodd-Frank Act. Overall, we expect that the proposed rules will have the benefit of furthering Congress' goal of promoting international transparency efforts.

The proposed rules would clarify that resource extraction issuers would be required to provide information about certain payments made to foreign governments, including foreign subnational governments. This clarification may reduce uncertainty about compliance for resource extraction issuers and increase transparency with regard to the payments made to foreign governments. It also may provide increased consistency in the application of the requirement across resource extraction sectors to the extent that it is more common for certain resource extraction issuers, such as mining companies, to make payments to subnational governments than national governments.

The proposed rules do not provide a definition of what "other material benefits" should be classified as payments subject to disclosure. Specifically, the Commission is not proposing that social or community payments be included in the disclosure mandated by Section 13(q).

Section 13(q) provides that the resource extraction payment disclosure must be "included in an annual report." As proposed, the rules would specify the forms in which the required payment information must be disclosed and location of the required disclosure. The proposed rules would require a resource extraction issuer to provide the required payment disclosure in its Exchange Act annual report filed on Form 10–K, Form 20–F, or Form 40–F. We preliminarily believe this approach is an appropriate way to implement Section 13(q)'s disclosure requirements for resource extraction issuers without imposing additional burdens that might be associated with submitting a separate annual report to the Commission. To facilitate investors' ability to locate the disclosure within the annual report, our proposed rules would require issuers to provide the payment information in exhibits to the annual report and include a brief statement in the body of the annual report under a separate heading entitled, "Payments Made By Resource Extraction Issuers," directing investors to the detailed information about payments provided in the exhibits.

In this regard, the proposed rules would require that the resource extraction payment disclosure be furnished with the Commission, rather than filed. As noted above, Section 13(q) provides that the resource extraction payment disclosure must be "included in an annual report," but it does not indicate whether the disclosure should be filed or furnished. Information that is furnished, rather than filed, is not subject to liability under Section 18 of the Exchange Act, although issuers that fail to comply with the rules would be subject to violations of Exchange Act Sections 13(a) or 15(d), as applicable.[171] By requiring the resource extraction payment disclosure to be furnished rather than filed, we are subjecting the disclosure to less liability than would exist if the disclosure were filed.

To meet the mandate of Section 13(q), the proposed disclosure would have to be electronically formatted using an interactive data standard. We have considered two alternative standards, XML and XBRL, for this purpose. Either standard would benefit market participants and observers, including investors, by enabling them to more easily search, retrieve and analyze the formatted information. To the extent that requiring the specified information to be presented in XBRL format may promote consistency and standardization in business reporting standards and reduce compliance costs, it could benefit both issuers and users of the information. Moreover, the proposed rule and form amendments would require a resource extraction issuer to provide the required payment disclosure in two exhibits to its Exchange Act annual report—one exhibit formatted in HTML or ASCII so that it is easily readable as text and another exhibit formatted in XBRL and providing all of the electronic tags required by Section 13(q) and the proposed rules. We believe that requiring the specified information to be presented in two separate formats will benefit users of the information by allowing them to access the information in whatever format is most useful for their purposes.

B. Costs

Section 13(q) requires the Commission to adopt rules that support the U.S. Federal Government's commitment to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.[172] Resource extraction issuers would incur costs in meeting the additional disclosure required for their Exchange Act annual reports under Section 13(q) and the proposed rule and form amendments. Those costs would include costs related to tracking and collecting information about different types of payments across projects, governments, countries, subsidiaries and other controlled entities. Those tracking and collecting costs would vary depending upon how an issuer would need to modify its existing systems to track, collect, and report the proposed payment information. While some issuers are

[171] 15 U.S.C. 78(a) and 15 U.S.C. 78o(d).

[172] 15 U.S.C. 78m(q)(2)(E).

already providing some payment information on a voluntary basis under an EITI program, others are currently not reporting any payment information. Moreover, the EITI requires the disclosure of payment information on a per country basis, and not per project. Therefore, we expect that most resource extraction issuers would incur some costs to develop disclosure controls and procedures to record, process, summarize and report the required payment information.[173] However, we believe these costs are a result of the statutory requirements that we are required to implement.

The proposed rules do not define "other material benefits" that should be considered payments subject to disclosure, which could impose some costs. First, resource extraction issuers that predominantly make payments that would be required to be disclosed pursuant to the proposed rules (*e.g.* royalties, license fees, bonuses) may be at a competitive disadvantage as compared to resource extraction issuers that predominantly make payments that are not identified in the proposed rules (*e.g.* social and community payments). Second, to the extent that other types of payments could be used to substitute for explicitly defined payments, resource extraction issuers may try to circumvent the required disclosures by shifting to other, not explicitly defined payments, and away from payments defined by the statute. This could have the effect of reducing the transparency contemplated by Section 1504 of the Dodd-Frank Act.

The proposed rules would require a resource extraction issuer to provide the required payment disclosure in its Exchange Act annual report filed on Form 10–K, Form 20–F, or Form 40–F. While we preliminarily believe that requiring resource extraction issuers to provide the information in an existing form that they already file would be less burdensome than providing the information in a new separate form, to the extent that issuers have concerns with regard to the time period in which to provide the disclosure in the existing form,[174] the proposed rules could result in increased compliance costs.

The proposed rules would require resource extraction issuers to submit the information required by Section 13(q) in two separate exhibits, one formatted in HTML or ASCII so that it is easily readable as text and another exhibit formatted in XBRL and providing all of the electronic tags required by Section 13(q). The requirement to provide two separately formatted versions of the required information will result in some increased compliance costs for issuers; however, we believe it is appropriate to require the information in readable format as text in addition to the statutorily-mandated interactive data format in order for the information to be readily accessible to different users. In addition, the electronic formatting costs would vary depending upon an issuer's prior experience with XBRL. While many issuers are already familiar with XBRL because they currently use XBRL for their annual and quarterly reports filed with the Commission, issuers not already filing reports using XBRL would incur some start-up costs associated with XBRL.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[175] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[176] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The Commission is proposing the rule and form amendments discussed in this release to implement the requirements of Exchange Act Section 13(q) as added by Section 1504 of the Dodd-Frank Act. Section 13(q) mandates that the Commission adopt rules requiring resource extraction issuers to disclose in an annual report payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. In addition, Section 13(q) requires the Commission to adopt rules that support the U.S. Federal Government's commitment to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.[177]

A commentator stated that, should a host government prohibit the disclosure of payments made by resource extraction issuers to the host government, and if the Commission does not adopt an appropriate exception for that prohibition, an issuer could be compelled to select between avoiding or abandoning projects in that country and maintaining its registration under the Exchange Act.[178] According to the commentator, such a situation would harm the competitive position of issuers and be contrary to the interests of their investors. Some commentators have further maintained that, if the Commission adopts a rule requiring the disclosure of payments without regard to the materiality of the project to which the payments relate, that rule would result in voluminous disclosures of immaterial information of little to no benefit to investors, which may harm the competitive position of affected issuers and may harm efficient capital formation.[179]

Request for Comment

We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. In particular, we request comment on the potential effect on efficiency, competition and capital formation should the Commission not adopt certain exceptions or accommodations. Commentators are requested to provide empirical data and other factual support for their views, if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed rule and form amendments to implement Section 13(q) of the Exchange Act, which concerns certain disclosure obligations of resource extraction issuers. As defined by Section 13(q), a resource extraction issuer is an issuer that is required to file an annual report with the Commission, and engages in the commercial development of oil, natural gas, or minerals.

A. Reasons for, and Objectives of, the Proposed Action

The proposed rule and form amendments are designed to implement the requirements of Section 13(q), which was added by Section 1504 of the Dodd-Frank Act. Specifically, the proposed rule and form amendments would require a resource extraction

[173] *See* 17 CFR 240.13a–15(e) and 17 CFR 240.15d–15(e).

[174] *See* letters from API and NMA.

[175] 15 U.S.C. 78w(a)(2).

[176] 15 U.S.C. 78c(f).

[177] 15 U.S.C. 78m(q)(2)(E).

[178] *See* letter from Eight Law Firms.

[179] *See* letters from API and Eight Law Firms.

issuer to disclose in an annual report certain information relating to any payment made by the issuer, a subsidiary, or an entity under the issuer's control to a foreign government or the United States Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. An issuer would have to include that information in an exhibit to its Exchange Act annual report. An issuer also would have to submit the payment information in two exhibits—one formatted in HTML or ASCII and one formatted in XBRL.

B. Legal Basis

We are proposing the rule and form amendments pursuant to Sections 12, 13, 23(a), and 35A of the Exchange Act.

C. Small Entities Subject to the Proposed Amendments

The proposals would affect small entities that are required to file an annual report with the Commission under Section 13(a) or Section 15(d) of the Exchange Act, and are engaged in the commercial development of oil, natural gas, or minerals. Exchange Act Rule 0–10(a) [180] defines an issuer to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We believe that the proposals would affect small entities that meet the definition of resource extraction issuer under Section 13(q). Based on a review of total assets for Exchange Act registrants filing under certain SICs, we estimate that there are approximately 196 oil, natural gas, and mining companies that are resource extraction issuers and that may be considered small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule and form amendments would add to the annual disclosure requirements of companies meeting the definition of resource extraction issuer, including small entities, by requiring them to provide the payment disclosure mandated by Section 13(q) in their Exchange Act annual reports. That information must include:

- The type and total amount of payments made for each project of the issuer relating to the commercial development of oil, natural gas, or minerals; and
- The type and total amount of those payments made to each government.

[180] 17 CFR 240.0–10(a).

The same payment disclosure requirements would apply to U.S. and foreign resource extraction issuers. We are proposing to amend Form 10–K and Regulation S–K to require domestic resource extraction issuers to provide the information about payments made to foreign governments or the U.S. Federal Government. Because Regulation S–K does not apply to Forms 20–F and 40–F,[181] we propose to amend those forms to include the same disclosure requirements as those proposed for resource extraction issuers that are not foreign private issuers.[182]

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe there are no federal rules that duplicate, overlap or conflict with the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(1) Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;

(2) Exempting smaller entities from coverage of the disclosure requirements, or any part thereof;

(3) The clarification, consolidation, or simplification of disclosure for small entities; and

(4) Use of performance standards rather than design standards.

Section 13(q) does not contemplate separate disclosure requirements for small entities that would differ from the proposed reporting requirements, or exempting them from those requirements. The proposed rules are designed to implement the payment disclosure requirements of Section 13(q). That statutory section applies to resource extraction issuers, regardless of size. We have requested comment as to whether we should provide an exemption or delayed compliance for smaller reporting companies and whether doing so would be consistent with the statute and the protection of investors.

The proposed rules would require clear disclosure about the payments made by resource extraction issuers to foreign governments and the U.S. Federal Government, which may result in increased transparency about those payments. The proposed requirement to disclose the payment information in exhibits to an issuer's Exchange Act annual report may simplify the process of submitting the proposed payment disclosure. In addition, the required electronic formatting of one of the exhibits would simplify the search and retrieval of payment information regarding resource extraction issuers, including small entities, for investors and other interested persons.

We have used design rather than performance standards in connection with the proposed amendments because, based on our past experience, we believe the proposed amendments would be more useful to investors if there were specific disclosure requirements. In addition, the specific disclosure requirements in the proposed amendments would promote consistent and comparable disclosure among all resource extraction issuers.

G. Solicitation of Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed amendments can achieve their objective while lowering the burden on small entities;
- The number of small entity companies that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entity companies discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[183] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;

[181] While Form 20–F may be used by any foreign private issuer, Form 40–F is only available to a Canadian issuer that is eligible to participate in the U.S.-Canadian Multijurisdictional Disclosure System ("MJDS").

[182] *See* proposed Item 16I under Part II of Form 20–F and proposed paragraph (17) to General Instruction B of Form 40–F.

[183] Public Law 104–121, Title II, 110 Stat. 857 (1996).

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment or innovation.

Request for Comment

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

• The potential effect on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries; and

• Any potential effect on competition, investment or innovation.

VIII. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 12, 13, 23(a), and 35A the Exchange Act.

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Add § 229.105 to read as follows:

§ 229.105 (Item 105) Disclosure of payments made by resource extraction issuers.

(a) Pursuant to Section 13(q) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(q)), a resource extraction issuer must include in an annual report filed with the Commission information relating to any payment made during the fiscal year covered by the annual report by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the United States Federal Government, for the purpose of the commercial development of oil, natural gas, or minerals. Specifically, the information must include:

(1) The type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(2) The type and total amount of such payments made to each government;

(3) The total amounts of the payments, by category;

(4) The currency used to make the payments;

(5) The financial period in which the payments were made;

(6) The business segment of the resource extraction issuer that made the payments;

(7) The government that received the payments, and the country in which the government is located; and

(8) The project of the resource extraction issuer to which the payments relate.

Instructions to paragraph (a).

1. The resource extraction issuer must provide the information required by this Item as specified by § 229.601(b)(97) and (b)(98) of this chapter. In addition, the resource extraction issuer must provide a statement, in an appropriately captioned section of the annual report, that the information required by Section 13(q) and this Item is included in exhibits 97 and 98 to the annual report.

2. The disclosure required by this Item and § 229.601(b)(97) and (b)(98) of this chapter shall not be deemed to be "filed" with the Commission or subject to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically incorporates the information by reference into a document filed under the Securities Act or the Exchange Act. The disclosure required by this Item need not be provided in any filings other than an annual report on Form 10–K (§ 249.310 of this chapter). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(b) For the purpose of this item:

(1) *Commercial development of oil, natural gas, or minerals* includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity.

(2) *Foreign government* means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government. As used in this item, foreign government includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.

(3) *Payment* means an amount paid that:

(i) Is made to further the commercial development of oil, natural gas, or minerals;

(ii) Is not de minimis; and

(iii) Includes:

(A) Taxes;

(B) Royalties;

(C) Fees (including license fees);

(D) Production entitlements; and

(E) Bonuses.

(4) *Resource extraction issuer* means an issuer that:

(i) Is required to file an annual report with the Commission; and

(ii) Engages in the commercial development of oil, natural gas, or minerals.

Instruction to paragraph (b)(2): For purposes of this item, a company owned by a foreign government is a company that is at least majority-owned by a foreign government.

Instruction to paragraph (b)(3)(iii)(A): A resource extraction issuer must disclose taxes on corporate profits, corporate income, and production. Disclosure of taxes levied on consumption, such as value added taxes, personal income taxes, or sales tax is not required.

3. Amend § 229.601 by adding entries (97) and (98) to the exhibit table in paragraph (a), and adding paragraphs (b)(97) and (b)(98), to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K
* * *			*			*			*			*	
(36) through (96) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(97) Resource Extraction Issuers Exhibit													X
(98) Resource Extraction Issuers Exhibit (Interactive Data)													X
* * *			*			*			*			*	

(b) * * *

(97) *Resource Extraction Issuers Exhibit.* A resource extraction issuer that is required to disclose information relating to payments made to foreign governments or the United States Federal Government under Exchange Act Section 13(q) (15 U.S.C. 78m(q)) must provide the information required by Item 105 of Regulation S–K (§ 229.105 of this chapter) in an exhibit to its Exchange Act annual report. This exhibit must be provided in HTML or ASCII format. Specifically, a resource extraction issuer must provide the following disclosure:

(i) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(ii) The type and total amount of such payments made to each government;

(iii) The total amounts of the payments, by category;

(iv) The currency used to make the payments;

(v) The financial period in which the payments were made;

(vi) The business segment of the resource extraction issuer that made the payments;

(vii) The government that received the payments, and the country in which the government is located; and

(viii) The project of the resource extraction issuer to which the payments relate.

(98) *Resource Extraction Issuers Exhibit (Interactive Data).* A resource extraction issuer that is required to disclose information relating to payments made to foreign governments or the United States Federal Government under Exchange Act Section 13(q) (15 U.S.C. 78m(q)) must provide the information required by Item 105 of Regulation S–K (§ 229.105 of this chapter) in an exhibit to its Exchange Act annual report. This exhibit must be electronically formatted using the eXtensible Business Reporting Language (XBRL) interactive data standard. This exhibit must include electronic tags that identify the following information for any payments made by a resource extraction issuer to a foreign government or the United States Federal Government:

(i) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(ii) The type and total amount of such payments made to each government;

(iii) The total amounts of the payments, by category;

(iv) The currency used to make the payments;

(v) The financial period in which the payments were made;

(vi) The business segment of the resource extraction issuer that made the payments;

(vii) The government that received the payments, and the country in which the government is located; and

(viii) The project of the resource extraction issuer to which the payments relate. Refer to the EDGAR Filer Manual (§ 232.301 of this chapter) and the corresponding technical specification for resource extraction issuers disclosure for further guidance.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.,* 7202, 7233, 7241, 7262, 7264, and 265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

5. Amend Form 20–F (referenced in § 249.220f) by adding Item 16I to Part II, and adding Instruction 17 and 18 to the Instructions as to Exhibits, of Form 20–F, to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

Part II

* * * * *

Item 16I. Disclosure of Payments Made by Resource Extraction Issuers

A. If you are a resource extraction issuer, pursuant to Section 13(q) of the Exchange Act (15 U.S.C. 78m(q)), include information relating to any payment made during the fiscal year covered by the annual report by you, your subsidiary, or an entity under your control to a foreign government or the United States Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Under the heading "Payments Made By Resource Extraction Issuers" in the annual report, provide a statement that the information concerning payments to governments required by Section 13(q) and paragraph A. of this Item is included in exhibits 17 and 18 to the annual report. Include the following information as specified in exhibits 17 and 18 to the annual report:

(1) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(2) The type and total amount of those payments made to each government;

(3) The total amounts of the payments, by category;

(4) The currency used to make the payments;

(5) The financial period in which the payments were made;

(6) The business segment of the resource extraction issuer that made the payments;

(7) The government that received the payments, and the country in which the government is located; and

(8) The project of the resource extraction issuer to which the payments relate.

B. For the purpose of this item:

(1) *Commercial development of oil, natural gas, or minerals* includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity.

(2) *Foreign government* means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government. As used in this item, foreign government includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.

(3) *Payment* means an amount paid that:

(i) Is made to further the commercial development of oil, natural gas, or minerals;

(ii) Is not de minimis; and

(iii) Includes:

(a) Taxes;

(b) Royalties;

(c) Fees (including license fees);

(d) Production entitlements; and

(e) Bonuses.

(4) *Resource extraction issuer* means an issuer that:

(i) Is required to file an annual report with the Commission; and

(ii) Engages in the commercial development of oil, natural gas, or minerals.

Instructions to Item 16I:

1. Item 16I only applies to annual reports, and not to registration statements on Form 20–F.

2. For purposes of paragraph B.(2), a company owned by a foreign government is a company that is at least majority-owned by a foreign government.

3. For purposes of paragraph B.(3)(iii)(a), a resource extraction issuer must disclose taxes on corporate profits, corporate income, and production. Disclosure of taxes levied on consumption, such as value added taxes, personal income taxes, or sales tax is not required.

4. The exhibits described in paragraph A. of this Item must meet the requirements under Instruction 17 and 18 as to Exhibits of this Form.

5. The disclosure required by paragraph A. of this Item and Instructions 17 and 18 of this Form shall not be deemed to be "filed" with the Commission or subject to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically incorporates the information by reference into a document filed under the Securities Act or the Exchange Act. The disclosure required by this Item need not be provided in any filings other than an annual report on Form 20–F (§ 249.220f of this chapter). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

17. The disclosure of payments by resource extraction issuers required by Exchange Act Section 13(q) (15 U.S.C. 78m(q)).

A registrant that is required to disclose the payments made to foreign governments or the United States Federal Government under Exchange Act Section 13(q) and Item 16I must provide the information required by Item 16I.A. in exhibit 17 to its annual report on Form 20–F. This exhibit must provide the following information in HTML or ASCII format:

(a) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(b) The type and total amount of such payments made to each government;

(c) The total amounts of the payments, by category;

(d) The currency used to make the payments;

(e) The financial period in which the payments were made;

(f) The business segment of the resource extraction issuer that made the payments;

(g) The government that received the payments, and the country in which the government is located; and

(h) The project of the resource extraction issuer to which the payments relate.

18. The disclosure of payments by resource extraction issuers required by Exchange Act Section 13(q) (15 U.S.C. 78m(q)) (interactive data).

A registrant that is required to disclose the payments made to foreign governments or the United States Federal Government under Exchange Act Section 13(q) and Item 16I must provide the information required by Item 16I.A. in exhibit 18 to its annual report on Form 20–F. This exhibit must:

(a) Be electronically formatted using the eXtensible Business Reporting Language (XBRL) interactive data standard; and

(b) Include electronic tags that identify the following information specified by Exchange Act Section 13(q)(2)(D)(ii) (15 U.S.C. 78m(q)(2)(D)(ii)) for any payments made by a resource extraction issuer to a foreign government or the United States Federal Government:

(1) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(2) The type and total amount of such payments made to each government;

(3) The total amounts of the payments, by category;

(4) The currency used to make the payments;

(5) The financial period in which the payments were made;

(6) The business segment of the resource extraction issuer that made the payments;

(7) The government that received the payments, and the country in which the government is located; and

(8) The project of the resource extraction issuer to which the payments relate.

Refer to the EDGAR Filer Manual (§ 232.301 of this chapter) and the corresponding technical specification for resource extraction issuers disclosure for further guidance.

19. through 99. [Reserved]

* * * * *

6. Amend Form 40–F (referenced in § 249.240f) by adding paragraph (17) to General Instruction B of Form 40–F to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 40–F

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information To Be Filed on This Form

* * * * *

(17) *Disclosure of Payments Made By Resource Extraction Issuers.*

(a) If you are a resource extraction issuer, pursuant to Section 13(q) of the Exchange Act (15 U.S.C. 78m(q)), disclose information relating to any payment made during the fiscal year covered by the annual report by you, your subsidiary, or an entity under your

control to a foreign government or the United States Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Under the heading "Payments Made By Resource Extraction Issuers" in the annual report, provide a statement that the information concerning payments to governments required by Section 13(q) and paragraph (a) of this Item is included in specified exhibits to the annual report.

(1) Include the following information, provided in HTML or ASCII format, in an exhibit to the annual report:

(i) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(ii) The type and total amount of those payments made to each government;

(iii) The total amounts of the payments, by category;

(iv) The currency used to make the payments;

(v) The financial period in which the payments were made;

(vi) The business segment of the resource extraction issuer that made the payments;

(vii) The government that received the payments, and the country in which the government is located; and

(viii) The project of the resource extraction issuer to which the payments relate.

(2) Include the following information, electronically formatted using the eXtensible Business Reporting Language (XBRL) interactive data standard in an exhibit to the annual report:

(i) The type and total amount of payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(ii) The type and total amount of such payments made to each government;

(iii) The total amounts of the payments, by category;

(iv) The currency used to make the payments;

(v) The financial period in which the payments were made;

(vi) The business segment of the resource extraction issuer that made the payments;

(vii) The government that received the payments, and the country in which the government is located; and

(viii) The project of the resource extraction issuer to which the payments relate. Refer to the EDGAR Filer Manual (§ 232.301 of this chapter) and the corresponding technical specification for resource extraction issuers disclosure for further guidance.

(b) For the purpose of Item 17:

(1) *Commercial development of oil, natural gas, or minerals* includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity.

(2) *Foreign government* means a foreign government, a department, agency, or instrumentality of a foreign government, or company owned by a foreign government. As used in this item, foreign government includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.

(3) *Payment* means an amount paid that:

(i) Is made to further the commercial development of oil, natural gas, or minerals;

(ii) Is not de minimis; and

(iii) Includes:

(A) Taxes;

(B) Royalties;

(C) Fees (including license fees);

(D) Production entitlements; and

(E) Bonuses.

(4) *Resource extraction issuer* means an issuer that:

(i) Is required to file an annual report with the Commission; and

(ii) Engages in the commercial development of oil, natural gas, or minerals.

Notes to Instruction B.(17)

1. Instruction B.(17) only applies to annual reports, and not to registration statements on Form 40–F.

2. For purposes of paragraph (b)(2), a company owned by a foreign government is a company that is at least majority-owned by a foreign government.

3. For purposes of paragraph (b)(3)(iii)(A), a resource extraction issuer must disclose taxes on corporate profits, corporate income, and production. Disclosure of taxes levied on consumption, such as value added taxes, personal income taxes, or sales tax is not required.

4. The disclosure required by Instruction B.(17) of this Form shall not be deemed to be "filed" with the Commission or subject to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically incorporates the information by reference into a document filed under the Securities Act or the Exchange Act. The disclosure required by this Item need not be provided in any filings other than an annual report on Form 40–F (§ 249.240f of this chapter). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

* * * * *

7. Amend Form 10–K (referenced in § 249.310) by adding paragraph (c) to Item 4 under Part I of Form 10–K to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

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PART I

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Item 4. Specialized Disclosures * * *

(c) *Disclosure of Payments Made By Resource Extraction Issuers.* If you are a resource extraction issuer, as defined under Section 13(q) of the Exchange Act and Item 105(b)(4) of Regulation S–K (§ 229.105(b)(4) of this chapter), provide a statement under the heading "Payments Made By Resource Extraction Issuers" that the information concerning payments to governments required by Section 13(q) and Item 105 of Regulation S–K (§ 229.105 of this chapter) is included in exhibits 97 and 98 to the annual report.

* * * * *

By the Commission.

Dated: December 15, 2010.

Elizabeth Murphy,

Secretary.

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