REVENUE WATCH INSTITUTE

Dodd-Frank

The Facts About Disclosure Requirements

The U.S. Securities and Exchange Commission (SEC) is scheduled in coming weeks to release rules enforcing new requirements for oil, gas and mining companies to disclose the payments they make to governments in exchange for natural resources.

Part of the Dodd-Frank Wall Street Reform Act, the disclosure requirement is a significant step forward in the global movement for greater transparency and accountability in the oil, gas and mining industries. Opponents of the requirement, however, argue that it will have bad, unintended consequences. How do their claims compare with the facts?

Claim: The costs of complying with a new disclosure system will be significant, so much so that they will outweigh any possible benefits of this disclosure.

Fact: Compliance costs will be modest—an estimated increase of one-third of one-percent (0.33 percent) over existing professional compliance costs, according to the SEC.

Some adjustments to existing company procedures will indeed be necessary. But efficiently-run oil, gas and mining companies already maintain extensive internal records tracking information about payments to government. Some companies are also already required to report payment data to tax authorities all the way down to the project level.

Investors managing over $1 trillion in assets, eager to improve their risk analyses, have come out in support of mandatory disclosure.

Mandatory disclosure of payments to governments will undermine the Extractive Industry Transparency Initiative (EITI).

Congress passed the disclosure measure in July 2010. Since then, four countries have joined EITI, a voluntary, non-binding program for reconciling company payments with government receipts. In March 2011, at EITI's global conference, outgoing EITI board chair Peter Eigen said the new U.S. disclosure requirements are fully compatible with EITI and bolster EITI's aims. Many government and civil society speakers agreed. The only objections came from company executives.

EITI brings together representatives of industry, government and citizens in resource-rich countries. EITI's success to date in making revenues more transparent and bringing together all parties is impressive.

However, there is a long way to go in improving the quality, timeliness and consistency of EITI data. Also, only 11 of 35 EITI implementing countries comply fully with the reporting requirements. Many resource-rich countries, such as Myanmar, Iran, Turkmenistan and others, have not signed up to EITI and may never do so.

Dodd-Frank's disclosure requirements will generate detailed, standardized, comparable data. That data will put pressure on governments to improve their reporting of revenues and strengthen citizen oversight.

These disclosure requirements will force companies to release confidential information from their agreements with governments, perhaps in violation of host-country law.

There is virtually no evidence to support the claim that the disclosures required by Dodd-Frank will violate contract terms or national laws.

An evaluation of relevant legislation in over 100 countries found that not one prohibits the disclosures required by Dodd-Frank. In fact, most statutes explicitly allow it. Similarly, recent research conducted by Revenue Watch and Columbia University Law School found that it is standard for industry contracts to allow for disclosures as mandated by securities regulators.

Some companies have acknowledged this. Petrobras, the Brazilian state-owned oil company, told the SEC that out of the 30 countries it operates in, it does know of any that prohibits the disclosures required by Dodd-Frank.

But what about Angola, Cameroon, China and Qatar?

Some industry spokespeople say those countries may legally prohibit disclosure. But there is no evidence that any of them prohibit the types of disclosures required by Dodd-Frank:

Angola allows companies to disclose payment information as long as they first ask for permission from the government. Norway's Statoil-Hydro, for example, publishes the payments it makes to the Angolan government in its annual reports.

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Cameroon is an EITI implementing country, and must end any existing disclosure prohibitions—if it is to be in full compliance with EITI. Its national laws contain no ban on disclosures and the country's standard production-sharing agreement explicitly allows for disclosures mandated by stock exchange requirements.

In China and Qatar the story is even simpler: it appears that neither country has laws on the books specifically prohibiting the disclosures that will be required under Dodd-Frank. StatoilHydro publishes it payments to the government of China, as required by Norwegian law.

Won't this law affect only U.S. firms, and place them at a competitive disadvantage—especially in relation to foreign, state-owned firms?

Dodd-Frank's payment disclosure provision applies to every company listed on a U.S. exchange—a group that includes 90 percent of all major internationally operating oil and gas companies, and eight of the 10 most successful global mining companies. Only a handful of national companies compete in world markets for exploration and extraction rights and five of the eight most successful state-owned firms will be required to report under Dodd-Frank.

The governments of the UK, Germany and France have pledged that Europe will adopt disclosure requirements similar to Dodd-Frank's. Adding European exchanges, means the Dodd Frank disclosure rules will become nearly universal in coverage.

But can't competitors use Dodd-Frank disclosures to discover a firm's bidding strategy and other commercially-sensitive information?

Nothing in the legislation forces disclosure of commercially-sensitive information.

Payment data does not enable a competitor to back out underlying commercially-sensitive information.

Information on basic bidding and concession terms (such as bonus payments and royalty rates) is already widely known within industry circles, and can be found on pay-access databases, such as those maintained by Wood Mackenzie. Additionally, leases and their bid terms are made publicly available by many governments, including the United States.

REVENUE WATCH INSTITUTE

The Revenue Watch Institute promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

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