

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM INSTITUTE,
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA, and
NATIONAL FOREIGN TRADE COUNCIL,

Petitioners,

v.

UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION,

Respondent.

ON PETITION FOR REVIEW

Case No. 12-1398

STATEMENT OF ISSUES

Pursuant to the Clerk's Order of October 12, 2012, Petitioners American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, and the National Foreign Trade Council, hereby file this preliminary Statement of Issues:

1. Whether the Securities and Exchange Commission's "Extractive Industries Rule" and Section 13(q) of the Exchange Act violate the First Amendment to the United States Constitution by compelling U.S. companies to

engage in costly speech on controversial matters in order to influence political affairs in other nations.

2. Whether the Commission’s adoption of the Rule—which compels U.S. companies to publicly disclose payments under contracts with foreign governments relating to the extraction of oil, gas, or minerals—was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the Administrative Procedure Act (“APA”), because the Commission erroneously concluded that it was prohibited from adopting a less costly alternative under which companies would submit information confidentially to the Commission, which in turn would publish the data in aggregate form.

3. Whether the Commission acted in a manner that was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the APA when it declined to define the term “project”—a key term in the new regulatory program it is required to administer—and provided vague and contradictory reasons for rejecting commenters’ suggestion that “project” be defined as a geologic basin or province, which would have substantially reduced the Rule’s costs.

4. Whether the Commission acted in a manner that was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the APA when it declined to grant an exemption for public companies in cases

where the disclosures required by the Rule would conflict with legal prohibitions of foreign nations and would, as a result, impose billions more in costs on U.S. companies and shareholders.

5. Whether the Commission, which failed to determine the Rule's benefits and is prohibited by law from imposing burdens on competition that are not necessary and appropriate to further the goals of the Exchange Act, violated Section 23(a)(2) of the Exchange Act and the APA when it refused to allow confidential reporting, to define "project," and to grant an exemption for conflicts with foreign law.

6. Whether the Commission—which failed to determine the benefits of the Rule, failed to properly substantiate the Rule's compliance costs, and made no industry-wide estimate of the Rule's indirect costs, including costs to companies in countries that prohibit disclosures required by the Rule—violated Section 3(f) of the Exchange Act, which requires the Commission "to consider or determine whether an action is necessary or appropriate in the public interest," and whether the action will protect investors and "promote efficiency, competition, and capital formation."

7. Whether the Commission acted in a manner that was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the APA when it refused to allow or consider public comment on flawed

methodologies that were presented for the first time in the final Rule Adopting Release and that significantly underestimated the total costs of the Rule for public companies and their shareholders.

Dated: November 13, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November 2012, I electronically filed the foregoing Statement of Issues with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Service was accomplished on the following by the CM/ECF system:

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