By email: 10 December 2015

Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Michael Piwowar
Commissioner Kara Stein

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090 USA

Dear Chair White and Commissioners:

My name is Dotun Oloko and I am a Nigerian anti-corruption activist who has been working on corruption cases involving oil companies and financial intermediaries, acting in concert with corrupt Nigerian public officials. Many of these entities are Securities and Exchange Commission (SEC)-registered.

I am writing further to the civil society – United States meeting in July with Chair Mary Jo White and her colleagues. I am grateful for the opportunity to have spoken at that meeting, and would like to follow up on the matters we discussed regarding Nigeria and its extractives sector.

I first became a whistleblower when I supplied evidence regarding the activities of Emerging Capital Partners (ECP), a US private equity fund that is registered with the SEC as an investment adviser. ECP had been implicated in the corrupt activities of James Ibori, the ex-Governor of Delta State, in Nigeria, who has now been convicted and is presently serving a thirteen year sentence in the UK for money-laundering and corruption. I have since become an anti-corruption campaigner working in Nigeria and the UK.

I am working to investigate the corrupt acquisition of the Nigerian oil prospecting licence known as OPL 245 by two SEC-registered companies, Eni and Shell, and I am an official complainant in the Milan Public investigation into the case.[1] I have also provided evidence for ongoing multi-jurisdictional investigations into the corrupt acquisition of oil mining licences ("OMLs") by the SEC-registered natural resources firm Erin Energy and others.

This submission focusses on Nigeria's oil industry, which is notoriously corrupt and opaque. The evidence from the high profile cases that are cited below suggests that the non-disclosure of payments made to acquire oil rights in Nigeria was a necessary and critical facilitator of these corrupt transactions. Occasionally, payments (or non-payments in some

[1] Reuters, 3 October 2014, "Italian Authorities accuse Eni of Bribery", http://www.iol.co.za/business/international/italian-authorities-accuse-eni-of-bribery-1.1759414#.VdyY9_lVhuA

instances) are disclosed, often by those that were not parties to the transactions. Such inadvertent disclosures have prompted multi-jurisdictional investigations because of their egregious nature. These investigations are now threatening the finances and reputations of the implicated SEC-registered companies and their investors.

The evidence therefore suggests that disaggregated project by project payment disclosure, on a contract basis, under Section 1504 could deter SEC-registered companies and financial intermediaries from engaging in corrupt deals surrounding the acquisition of oil and mineral rights. As you know, the opportunities for corporate and government malfeasance increase exponentially in developing countries, and it is therefore imperative that SEC adopt a rule that will protect US investors from being implicated in foreign corruption.

Oil Prospecting Licence OPL 245

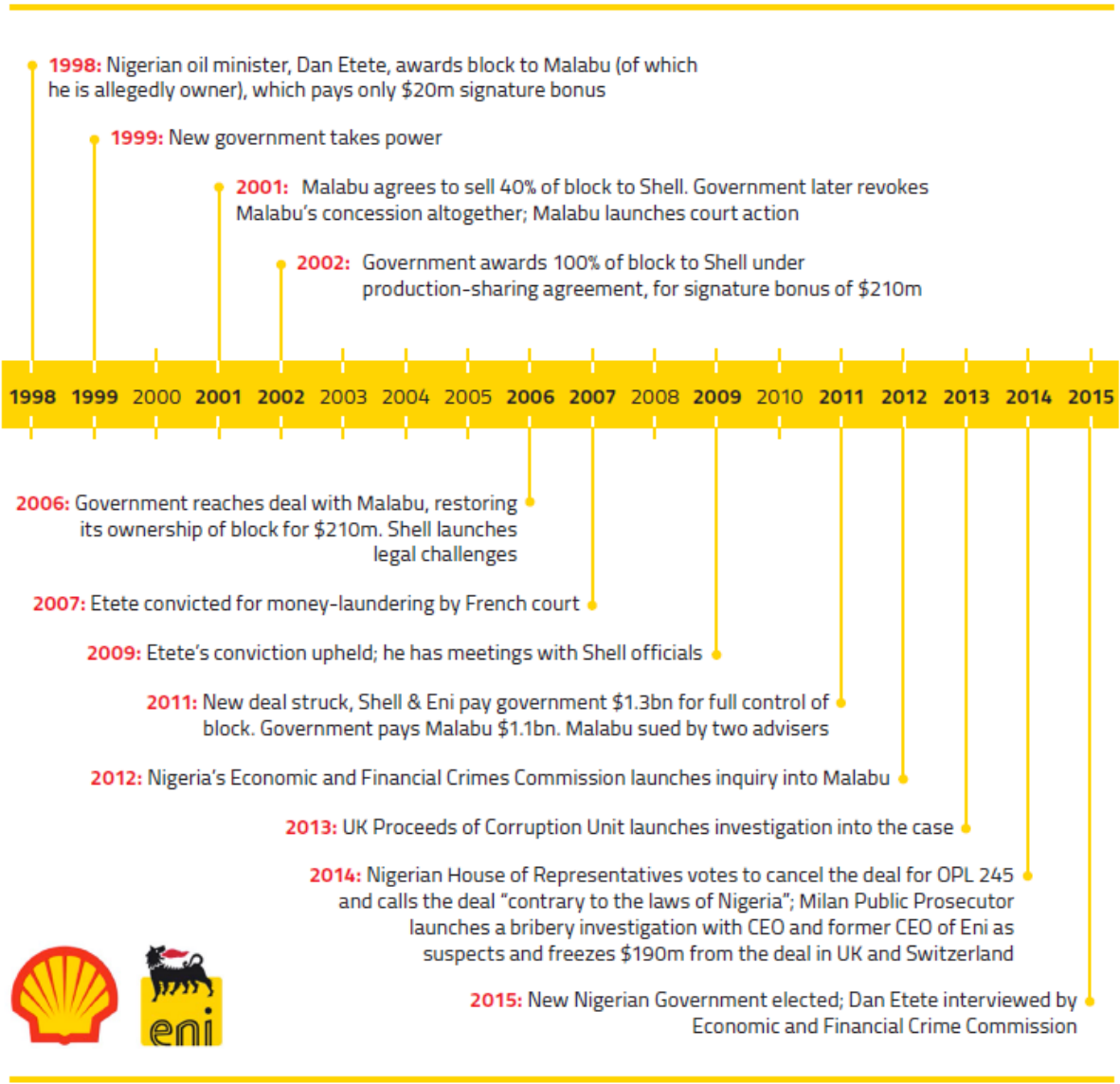
In 2011, Shell and Eni acquired an oil license located off Nigeria's coast, named OPL 245, through a series of back-to-back agreements that were secretly executed between the Shell and Eni consortium, high level government officials representing the Federal Government of Nigeria (FGN), and a Nigerian company called Malabu Oil and Gas.

The oil block had first been allocated in 1998 when Nigeria's Oil Minister, Dan Etete, unlawfully awarded it to Malabu for $20 million during the military dictatorship of Sani Abacha. Malabu's whose beneficial owners at outset were, Mohammed Abacha (Sani Abacha's son) and Dan Etete himself, had no staff or resources and had only been incorporated five days earlier. Malabu's interest in OPL 245 from the outset was therefore unlawful for a variety reasons including the fact that as Minister of Petroleum, Etete abused his office by awarding OPL 245 to himself through his company Malabu, contrary to Para 1, 6(1) and 9 of the Fifth Schedule Part 1 on the Code of Conduct for Public Officers contained in the 1979 Constitution of the Federal Republic of Nigeria and section 98 of the Criminal Code Act of Nigeria.

Despite its unlawful interest in OPL 245, Shell initially went into business with Malabu in March 2001, to develop the block, but the new civilian administration of President Obasanjo took the block away from Malabu in July 2001 and gave it to Shell. The block was purportedly returned to Malabu in 2006, in breach of Nigeria's laws and constitution. In 2011, Shell teamed up with Italian oil giant Eni and agreed to buy out Malabu for $1.3 billion despite Dan Etete being the owner of Malabu and Mohammed Abacha, claiming that he too owned a stake in Malabu.

After intense negotiations between Shell, Eni, Malabu and representatives of the Nigerian Government, an agreement was reached wherein the Nigerian government would re-take control of OPL 245 from Malabu and then sell the block to Shell and Eni for $1.3 billion. After the Nigerian government took a $210 million signature bonus, it would transfer the remainder –$1.1 billion – to Malabu.

The deal for OPL 245 would have remained a secret if middlemen who were involved in the deal had not sued in London and New York courts claiming unpaid commissions from Malabu. The evidence from the courts and from our own investigations has shown that Shell and Eni had known Etete's role in Malabu and had paid the former minister Dan Etete and his associates over a billion dollars for stolen property.



The execution of this deal depended on the non-disclosure of the payment made to the FGN and was therefore cloaked in secrecy. In the first instance, the secrecy surrounding the deal was in breach of the open and competitive bidding policy of the FGN.[2] This secret deal also relied on the non-disclosure of the payment made by Shell and Eni so that the monies could be secretly and unlawfully transferred to Malabu in breach of the Nigerian constitution. The onward transfer to Malabu of the $1.1bn that Shell and Eni paid to the FGN to purportedly acquire OPL 245 was in breach of the Nigerian constitution which required that the money be paid into a specially designated account known as the Federation account and form part of the aggregated revenues to be shared between the three tiers of government namely federal, state and local according to a prescribed formula.[3] Had Shell and Eni been required to declare their payments to the Nigerian Government, it would have exposed the failure of the money to flow on to the public budget and they would not have executed the deal, knowing that the suspect payments would have been brought to light, enabling watchdogs and investigators to follow the money.

Significantly, the secret and corrupt OPL 245 deal was executed on 29 April 2011, within days of the deadline for the implementation of Section 1504 of the Dodd-Frank Act. However, in the absence of a strong 1504 requirement, the project payment was not required to be disclosed by other international transparency regimes, such as Extractive Industries Transparency Initiative (EITI). Although Nigeria is an implementing EITI country, reporting at project level is not required as part of Nigeria's implementation of the global EITI standard, until the SEC adopts a rule that is consistent with the European requirements.[4]

Critically, the details of the payment only became public following the publication of a US court ruling on a dispute over fees between Malabu and a middleman that it had contracted to sell the licence. The subsequent furore prompted the various parties to the transactions to make conflicting and damning statements about the payments. The US court found that the FGN had acted as the *"proverbial straw man"* to pass the US$1.1bn that Eni paid to the FGN

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[2] Section 5 of the guidance note for prospective bidders states that "*Concessions shall be allocated to operators based on Open Competitive Bidding process"*. - Guidance Information for Prospective Bidders of the Year 2005 Licensing Round, available online at https://www.indigopool.com/nigeria/channel/pdf/GUIDANCENOTESFORMarch-2005Rev.pdf

[3]Section 162 (1) of the 1999 constitution of Nigerian states that, *"The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja"*. available online at http://www.assetrecovery.org/kc/resources/org.apache.wicket.Application/repo?nid=98a176e0-6e8f-11dd-9b9d-b7c0585fc33c

Section 162 (3) of the 1999 constitution states that *"Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly."*

[4] EITI Standard 5.2e, https://eiti.org/files/English_EITI_STANDARD.pdf "Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements."

in purported acquisition of the licence on to Malabu.[5] A UK court ruling on a separate but related dispute over fees between Malabu and another middleman also reached the same conclusion.[6] The Nigerian Attorney General who brokered the deal has also publicly stated that Shell and Eni agreed to pay Malabu using the FGN as an *"obligor"*.[7] However, in an astonishing contradiction, Shell and Eni have denied paying money to Malabu, even though the consortium had - immediately prior to the FGN deal - been negotiating to buy the licence directly from Malabu.[8]

The US court revelations prompted an investigation by the Nigerian House of Representatives which subsequently voted to cancel the deal on grounds including corruption.[9] The revelations also prompted criminal investigations in Italy, UK and Nigeria with Eni, its CEO and former CEO under formal investigation by Italian authorities who reportedly view the inter-related agreements as a ruse designed to mask the payments of bribes to Nigerian government officials so that OPL 245 could be awarded without a competitive bid and the revenue from the deal diverted away from the State purse.

Eni's share price fell when news of the Italian investigation broke and could fall further in the event of a successful prosecution.[10] Shell and Eni's share prices are also threatened by the recommendation of the Nigerian House of Representatives which was ignored by the previous administration that had executed the deal. However, there is now a new administration in place with a strong anti-corruption mandate, which has vowed to revisit the OPL 245 deal.

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[5] *"While it does appear that the FGN was indeed the proverbial "straw man" holding $1.1 billion for ultimate payment to Malabu, the name of the holder of the London account is and has always been the FGN, even if Malabu has a contractual or equitable right to those funds."* Excerpt from Bernard J Fried in the Matter of International Legal Consulting Ltd. v Malabu Oil & Gas Ltd, Justia available at http://law.justia.com/cases/new-york/other-courts/2012/2012-ny-slip-op-50546-u.html

[6] *"What was not in dispute, however, was that, after the intervention of the Attorney-General of the FGN, Malabu, ultimately, on 29 April 2011, disposed (to use a neutral word) of the OPL Assets, in return for the receipt of the sum of $1,092,040,000. This transaction was effected by the execution of three inter-related agreements as between two or more of variously Malabu, the FGN, NAE and the two Shell companies, SNEPCO and SNUD, respectively."* Excerpt from Royal Courts of Justice Case No: 2011 FOLIO 792 between Energy Venture Partners Limited and Malabu Oil and Gas Limited, Paragraph 44

[7] "*In furtherance of the Resolution Agreement, SNUD and ENI agreed to pay Malabu through the Federal Government acting as an obligor, the sum of US$ 1,092,040,000 Billion in full and final settlement of any and all claims, interests or rights relating to or in connection with Block 245 and Malabu agreed to settle and waive any and all claims, interests or rights relating to or in connection with Block 245 and also consented to the re-allocation of Block 245 to Nigerian Agip Exploration Limited (NAE) and Shell Nigeria Exploration and Production Com-pany Limited (SNEPCO)."* Adoke Explains $1bn Malabu Oil Deal, 28 May 2012 available at http://www.thisdaylive.com/articles/adoke-explains-1bn-malabu-oil-deal/116749/

[8] "*UK police probing Shell, ENI Nigerian oil block deal"* 24 Jul 2013, Reuters available at http://uk.reuters.com/article/2013/07/24/uk-shell-eni-nigeria-idUKBRE96N0L020130724

[9] In 18 February 2014 the Nigerian House of Representatives voted on the recommendation of an investigation into the deal, calling for the deal's cancellation and criticised the deal for being contrary to the laws of Nigeria; House of Representatives Federal Government of Nigeria, Votes and Proceedings, 18 February 2014, p994.

[10] "*Eni chief under investigation by prosecutors over Nigerian oil deal",* 11 Sep 2014, Reuters available at http://uk.reuters.com/article/2014/09/11/eni-corruption-nigeria-idUKL5N0RC17F20140911

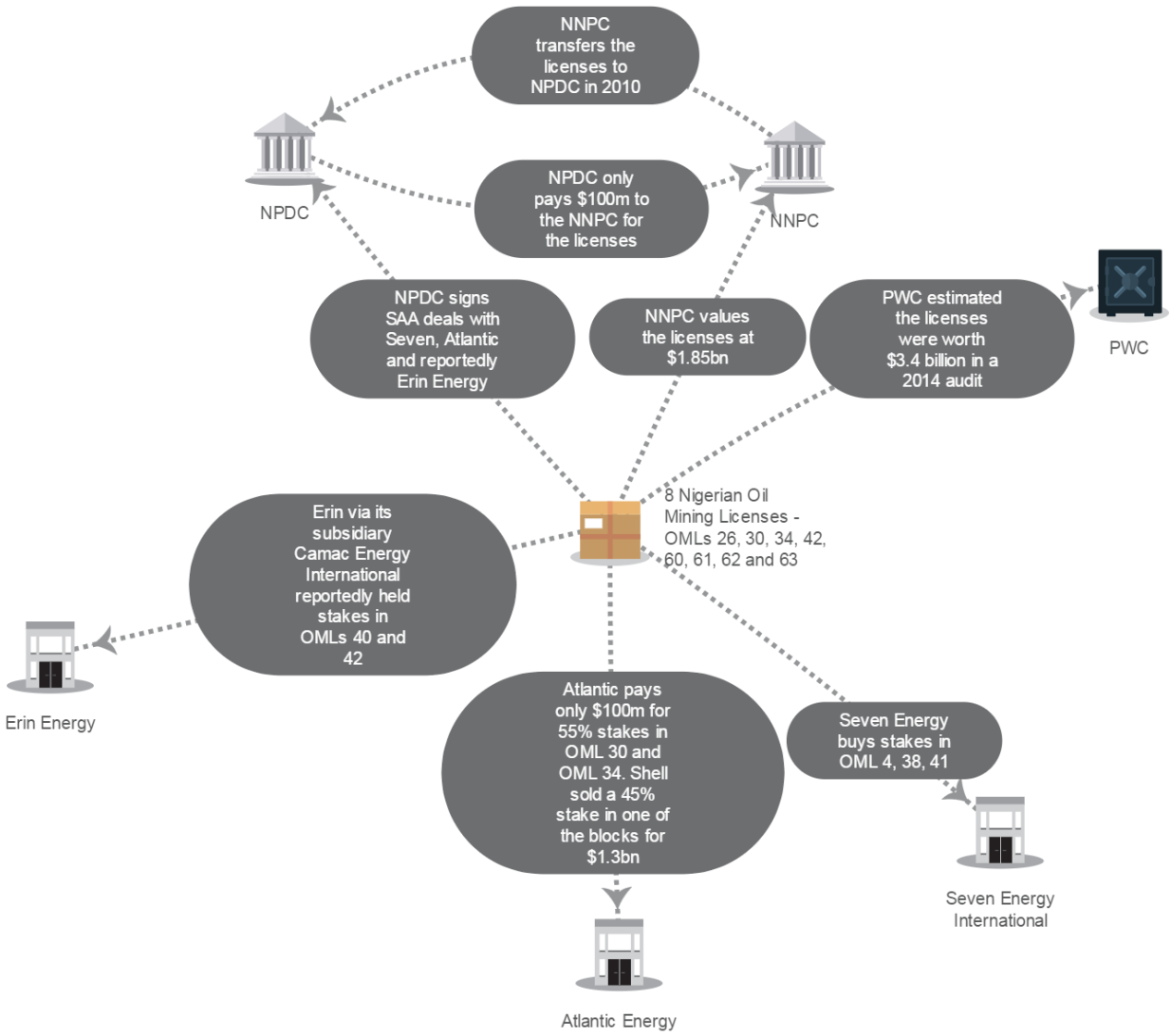
Nigeria's Strategic Alliance Agreements (SAAs)

Another case that illustrates the need for a strong disclosure standard, that includes disaggregated project by project reporting, concerns alleged corruption involving the Strategic Alliance Agreements (SAAs) which the Nigerian state-owned and Oil Minister-controlled Nigerian National Petroleum Corporation (NNPC) executed with certain Nigerian companies and involved 8 oil mining licences (OMLs).[11]

Starting in 2010, the NNPC assigned its 55 percent equity in eight onshore blocks to subsidiary Nigerian Petroleum Development Company Limited (NPDC). The NNPC had valued its stakes in these blocks at $1.85bn. The NPDC then signed strategic alliance agreements (SAAs) for the eight assets with Seven Energy International and with Atlantic Energy and reportedly with a subsidiary of the US-listed Erin Energy. Under the SAAs, the companies are supposed to fund NPDC's 55 percent share of operating costs in exchange for rights to lift parts of the oil produced from the blocks.[12]

[11] The Federal Republic of Nigeria, Senate Notice Paper, Tuesday 24th September 2013 available at http://www.placng.org/new/proceedings/3632.pdf

[12] Sanusi Senate Submission presentation p.10; Reuters, "Nigerian lawmakers to probe state oil firm deals without tenders, " May 3, 2013, available at: http://www.reuters.com/article/2013/05/03/nigeria-oilidUSL6N0DK3GU20130503



"Entrance fees" of only $50m were reportedly paid for 55% stakes in OMLs 30 and 34 in sharp contrast to the $1.3bn a 45% stake in one of these fields sold for in an open and competitive bidding process run by Shell.[13] The total $100m paid for these blocks was even more remarkable in contrast to NNPC's valuation of the stakes blocks at $1.85bn and even more so when compared an estimate of $3.4 bn made by PricewaterhouseCoopers in its 2014 forensic audit of the case. It therefore appears that the Nigerian people missed out of potentially billions through this deal due to the NNPC selling these blocks for a fraction of their market value.

As was the case with OPL 245, the process was not open and competitive and therefore in breach of Nigerian government policy and law, including the Public Procurement Act 2007.[14]

[13] Last minute oil deals that cost Nigeria dear, 12 June 2011, http://www.premiumtimesng.com/news/headlines/191159-the-great-oil-robbery-under-diezani-alison-madueke.html This article was reprinted by Premium Times on 8 October 2015, under the heading, The Great Oil Robbery under Diezani Allison-Madueke.

[14] Legal opinion provided in Appendix 17 of the CBN memorandum

The payments made by the companies to the NPDC, a Nigerian state owned enterprise, were also undeclared.

The Nigerian Senate also undertook an investigation and its preliminary finding was that the eight licences had been granted to Seven Energy which is an investee company of the SEC-registered private equity firm Actis, its sister company Atlantic Energy and a third company Camac Energy International Ltd, which is a subsidiary of the SEC-registered issuer Erin Energy. The Nigerian Senate also found that Erin Energy's subsidiary executed the SAAs in respect of OMLs 40 and 42.[15] However, Erin Energy's stakes in these blocks have not been disclosed in SEC filings or recorded elsewhere and, controversially, Atlantic has asserted that it entered into the SAAs in respect of four OMLs including OML 42.[16] Erin Energy's role is unclear, but if they had made payments for these blocks these would have been required to be disclosed under Dodd Frank Section 1504.

The SAAs are now a focus of multi-jurisdictional criminal investigations in the UK and Nigeria. I would submit that SEC-registered Erin Energy could have been deterred from executing the SAAs had it been required to disclose payments made for these deals, and Erin Energy investors would not now be at risk should the criminal investigations find corporate malfeasance has taken place.

The SAAs were also a focus of investigations by the then highly respected Governor of the Central Bank of Nigeria (CBN) and now Emir of Kano. The CBN is responsible for the Federation Account into which the oil revenues that should have accrued from the State's interest in the OMLs should have been paid when they were in fact not paid. The CBN investigation concluded that the SAAs were a ruse to unlawfully divert oil revenues due to the Nigerian State and *"contravened the constitution by effectively transferring control of revenues and profits on state-owned assets to private companies"*.[17]

The CBN found that Seven Energy was a "front" company with hidden owners which did not have the requisite financial and business background to have reasonably been expected to fulfil the obligations under the SAAs and had in effect been used to unlawfully divert oil revenues due to the Nigerian state. This CBN finding is a shocking indictment of the Seven Energy due diligence conducted by Actis. It should be noted that the Nigerian oil minister who presided over the SAA deals, Diezani Alison-Madueke, was recently arrested by British police

[15] The Senate Federal Republic Of Nigeria Notice PAPER Tuesday 24th September 2013 http://www.placng.org/new/proceedings/3632.pdf

[16] Appendix 11 of the CBN memorandum
Atlantic Energy website at http://www.atlanticenergy.com/frequently-asked-questions-regarding-atlantic-energys-business-model-2

[17] Nigerian bank governor alleges oil subsidy racket, FT http://www.ft.com/cms/s/0/6c4aea72-93cd-11e3-a0e1-00144feab7de.html#axzz3PXnf6NGf
CBN Memorandum available at http://www.premiumtimesng.com/news/154699-download-cbn-governor-lamido-sanusis-full-memo-senate.html

on suspicion of bribery and money laundering. The British authorities have also requested the extradition of a principal of Seven Energy and Atlantic Energy, Kola Aluko, currently residing in Switzerland.[18] Another principal of Seven Energy and Atlantic Energy, Jide Omokore, was reportedly questioned by Nigerian police.[19]

Significantly, to date Seven Energy has failed to disclose the individual payments made to the FGN for each licence and has instead repeatedly provided aggregated figures purportedly representing the amounts paid for all the licences and the amounts paid in fulfilment of its obligations under the licences. This clearly demonstrates that aggregated figures can be used to conceal evidence of wrongdoing which disaggregated project by project reports would otherwise expose.

Conclusion

Publishing a strong rule for Section 1504 of Dodd-Frank which stipulates project by project identifiable payment information would significantly enhance the protection available to investors from corporate malfeasance, especially when SEC-registered companies are routinely operating in developing jurisdictions where laws and institutions are weaker than those in the United States. This will make the US capital markets fairer and safer for investors.

A strong rule will also ensure citizens of Nigeria will be able to access the information they need to hold our government accountable.

Yours sincerely,

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[18] http://www.punchng.com/news/diezanis-ally-kola-aluko-faces-extradition-to-uk-%E2%80%A2switzerland-gets-britains-request-to-probe-oil-baron/
[19] http://saharareporters.com/2015/10/06/nigerian-oil-baron-jide-omokore-quizzed-efcc-released