

Overcoming a key barrier to stakeholder empowerment in the extractive industries



Columbia Center
on Sustainable Investment

by Tom Mitro,
with Cielo Magno and Jeremy Weate
December 2020

INTRODUCTION

When it comes to extractive industries (EI), who will benefit and how will be significantly determined on the informational playing field. In turn, this playing field is profoundly influenced by, and influences, power dynamics and interests among private, public, and social actors. Those who have the best access to and understanding of relevant information, and even the power to control what information others can access, will tend to emerge as the ones whose interests are best served.

Extractive industry firms considering investments in developing economies typically have sufficient resources and information to make well-informed decisions: to thoroughly investigate the economic opportunity, evaluate a range of potential costs and benefits, and analyze the political risks associated with those investments prior to making the investment decision. By contrast, in most cases, host communities and governments tend to have insufficient access to data, awareness of what information is publicly available, and tools to analyze relevant information about the foreign firms prior to having to decide whether to grant them the license to operate or how to regulate and monitor those investors. This imbalance in access to and understanding of company track record information early on in the extractives development process can result in greater incidence of lop-sided deals, human rights breaches, environmental degradation, corruption, non-compliance, and even civil conflict.

Various international actors have tried to address different aspects of these informational challenges. Some organizations working on these issues, such as the Columbia Center on Sustainable Investment (CCSI), Natural Resource Governance Institute (NRGI), and Chatham House, offer general assistance to governments by providing analytical tools, resources, databases of available agreements, trainings, and standards that can be utilized to analyze publicly available information. Others, such as Global Witness or PWYP, issue periodic *ad hoc* reports on individual company or government actions in specific countries. In addition, others, such as EITI or IPIECA, develop common processes or standards, including many addressing the production of specific information, that aim to generate better outcomes for host countries. *Despite these efforts, political factors can still constrain the actual quality/usefulness of the information that is available, who has access to it, and what can be done with it.* Information on the social and environmental track record of companies is a particularly salient and impactful example of this.

By acknowledging the interests and power dynamics that underlie access to information needed to recognize development consequences from EI, there is an opportunity to level the playing field by identifying and producing information, in a strategic and targeted way, explicitly intended to redress these imbalances. However, as decades of work on various aspects of EI trans-

parency have shown, information on its own is not enough to empower key stakeholders. Therefore, alongside making the case for a mechanism that provides more available credible information on company track record, the authors will also consider the circumstances under which this information might be deployed to empower host governments and communities to improve development outcomes from EI.

"imbalance in access to and understanding of company track record information early on in the extractives development process can result in greater incidence of lop-sided deals, human rights breaches, environmental degradation, corruption, non-compliance, and even civil conflict."

EI COMPANIES AND THE POLITICS OF DATA PRODUCTION

Most EI projects cannot proceed without the financial, technical, and information/data resources EI companies bring to the table, especially in developing countries. As a result of their ability to shape what information is made available and how, EI companies are often in powerful positions to manipulate a variety of conditions and outcomes according to their preferences. These preferences are, in many cases, served by maintaining informational asymmetries between themselves and host governments and communities, which makes it easier for EI companies to pursue their own interests without significant challenge. Thus, in service of their commercial interests, they can draw on substantial and sophisticated public affairs and lobbying resources to emphasize the positive aspects of their performance while glossing over any negative impacts of their operations, past or present, in other locations.¹ In short, they can use their power to determine what data/information is, and is not, available in ways that serve their own interests but not necessarily those of other stakeholders. Global actors, including international NGOs, academics, and donors, currently working on these issues are often constrained in their ability to redress these asymmetries, i.e. to extract significant information from companies, particularly information that companies deem sensitive. Moreover, when these global actors do overcome these constraints, the information they produce is often undercut by companies claiming that such assessments are biased or misrepresent their performance. Therefore, host governments and communities, facing powerful company interests, are typically forced to settle for using only the information that the companies deem fair and unbiased, i.e. the information produced by the companies themselves.

Some of the most sensitive information in this regard pertains to companies' past and current social and environmental track records, that executives fear will be deployed against them,

which is why companies often undermine INGOs' and CSOs' representations of this information through claims of bias, political motivation, or misunderstanding.² Thus, companies work to ensure that primacy is given to what is voluntarily, and selectively, made available by themselves on these issues—information on company policies, intentions, or participation in processes (see for instance IRMA or RMI)—with scant details to illuminate what they actually do, or have done, in practice. At best, information on actual past and present track record can only be compiled

in a piecemeal fashion or on an anecdotal basis from alternative sources such as [Corpwatch](#) and [Business and Human Rights Resource Center](#), providing little basis for well-informed engagement by actors beyond the companies themselves. Thus, data and information production is highly political: those with power over what is, and is not, produced or released, and those influencing perception of information produced by others, will tend to skew these data and information toward their own interests.

"those with power over what is, and is not, produced or released, and those influencing perception of information produced by others, will tend to skew these data and information toward their own interests."

ADDRESSING THE POLITICS OF COMPANY TRACK RECORD INFORMATION PRODUCTION

In order to contribute to levelling the informational playing field and, by extension, to creating a more equitable distribution of power across companies, host governments, and communities, actors in the GEI field would need to either gather information that cannot be disputed by companies or address company fears regarding intended data use, so companies are comfortable releasing more information themselves. There are a number of challenges with the latter, such as the perception by intended audiences—host governments and communities—of capture by the companies as well as companies potentially trying to preclude certain uses, thereby compromising the credibility of whatever information is produced and constraining its deployment. However, there may be an opportunity to undertake the former: the use of a third party to compile relevant information produced by companies in fulfillment of legal requirements to institutional authorities, such as the SEC, and documented violations of laws, such as the FCPA. This proposed tool would thereby make more information on company track record available to host governments, civil societies, and communities without relying on company acquiescence or "packaging" to produce it. By third parties simply aggregating sources of relevant information disclosed by companies themselves, this tool would avoid the challenges of "cherry-picking" or claims of political bias by companies, while giving host governments and

communities access to a much fuller picture of company track records to inform their decision-making.

A TOOL FOR LEVELING THE INFORMATIONAL PLAYING FIELD ON COMPANY PERFORMANCE

The first step toward empowering host governments, communities, and civil society vis-a-vis the EI companies in addressing the problems above is filling in part of the important gap on neutral information on company track records. This task is not only pressing but also quite plausible. In actuality, there is a great deal of publicly available and undisputed data about company performance (see in Annex). This data not only includes information about financial history and current financial situations, but also details environmental and anti-corruption violations, civil lawsuit awards and settlements, employment practices, safety records, and beneficial ownership. However, this data is scattered through a range of sources. Scanning, extracting, and analyzing data from these reports requires a certain amount of financial, legal, and IT expertise which may make it prohibitive for host governments or communities to effectively do so.

The tool proposed below will identify, aggregate, and make this data publicly available in a standard format that is understandable to a wide audience of actors. In doing so, it could serve the needs of local communities and host governments while at the same time being accepted by industry as a fair and impartial standard and be seen as a basis for dialogue. This tool would feature company operators' track records, purely as measured by standard data from recognized institutional sources, in an attempt to generate a more focused and informed dialogue among parties on more equal footing about whether the company coming to invest has the strategies, objectives, and standards in place to continue a positive performance or remedy past weaknesses. It should be noted that whilst the data to be made available in this project would typically not address past performance in the specific country/community planning to utilize it, the dialogue would be predicated on the assumption that past track record elsewhere is probably a very solid indicator of future performance in any locale. The tool would not rank companies or make judgements. As such, it would have the potential to minimize the adversarial dynamics among companies, NGOs, governments, and communities and, instead, lead to a more fact-based dialogue among these actors.

The usefulness of a tool of this kind is evident in the Philippines. There, existing laws and policies allow for the participation of different stakeholders in the licensing process of large-scale mining companies. In ancestral domains, the law protects Indigenous communities' right to Free Prior and Informed Consent (FPIC). Companies are required to present data and information regarding the potential impacts of their operations to the communities. Communities can outrightly reject extractive

projects if they are not consistent with communities' objectives and goals. The availability of independent data and information has helped communities better vet companies and validate the information presented, enabling communities make truly informed decisions. In non-ancestral domain areas, companies must obtain approval from the local government councils before licenses can be issued. Communities have lobbied their local councils more effectively when information and data have been available regarding the track record and performance of companies applying for licenses.

"By acknowledging the interests and power dynamics that underlie access to information needed to recognize development consequences from EI, there is an opportunity to level the playing field"

POTENTIAL SOURCES OF DATA

As mentioned above, this tool will leverage sources of data that companies would have disclosed themselves to various institutions and, therefore, would be unable to dispute. These institutions typically sit in home countries that have established regulations and requirements for the release of standardized data, mostly in an attempt to protect the interests of investors in publicly traded companies. Examples are the U.S. Securities and Exchange Commission, the U.K. Companies House, and, in the case of Europe as a whole, the EU Transparency Directive. More specifically, sources would include:

- U.S. Securities and Exchange Commission filings, such as 10Ks, which include audited financial data such as balance sheets, financial ratios, debt, defaults, bankruptcies, effective tax rates, capital spending, contingent liabilities, provisions for tax and environmental claims and lawsuits, number of employees, countries of operation and regional experience, acreage under lease, wells drilled, rate of dry holes, discoveries, new projects, and senior management make-up and compensation. The European Union and the U.K. Companies House have available similar information about publicly traded companies registered in those jurisdictions.
- U.S. Department of Justice and SEC reports on violations of Foreign Corrupt Practices Act, including details by companies, individuals, and the countries in which the infractions occurred. (Additionally, Stanford University issues its own summaries of these findings.) The European Union and the U.K. issue similar reports on violations of their own anti-corruption laws.
- U.S. Department of the Environment issued reports on fines and penalties imposed for environmental regula-

tions.

- SEC data including information on company ownership and management structure, such as diversity of representation (e.g. percentage of women and minorities in management or on boards). Other organizations, such as U.S. Treasury, U.K. Anti-Fraud Office, U.K. Anti-Money Laundering: Financial Action Task Force, and others, issue information on Politically Exposed Persons, country of incorporation, use of tax havens, etc.
- Annual corporate sustainability reports issued by most major companies, which can be found on the company's website, that include data about emissions, spills and leaks, safety incidents, and local employment and local content. In addition, these reports often reference the specific objectives and standards applied by the company. Typically, these reports follow specific standards established by IPIECA, International Oil and Gas Producers, and API, and are independently audited and certified by Lloyd's Registers Quality Assurance.

BOLSTER IMPACT: POTENTIAL USES AND REQUISITE ENABLING CONDITIONS

Access to information and data regarding companies' track records has the potential to greatly reshape how stakeholders participate in various decision-making processes regarding the extractives sector and what they get out of these. However, the extent to which this potential will be realized depends on the desire for this information and the nature and availability of opportunities for the different stakeholders to participate in decision-making processes throughout the lifetime of the project:

- Prior to a license award (the pre-qualification phase)**, the tool could be deployed to **vet the companies that are being short-listed to assure their past track record meets the host country's standards** with respect to financial resources, technical experience, and legal compliance. At this stage, the tool can be equally used by *government ministries, the press, local communities, and civil society* who might be interested in this information, as long as they have a meaningful outlet or opportunity for using it, e.g. a more-than-cursory participatory role in decision-making around licenses.
- Used **before a Free Prior and Informed Consent (FPIC) or Social and Environmental Impact Assessment (ESIA) consultation process**, to make these more genuine opportunities for meaningful participation and voice, the tool could **help communities develop more informed positions by examining a company's past track record** with respect to environmental compliance, community involvement, local

content, or closure in other locations. The tool could also be used at this stage by *government ministries, the press, local communities, and civil society* to **conduct informed discussions about what specific measures the company will agree to take** in order to prevent the violations or shortcomings committed in other jurisdictions from occurring in the future in their community. *Local community leaders* can also use this information to more tightly **focus company/community meetings on specific topics and pose more credible and pointed questions**, such as, “If your company paid fines for polluting the streams in country X, what has changed in your company policies or practices that would ensure that does not happen in our community?”

- c. **When renewing, transferring, or extending a license**, company track record data and information could be used to **determine whether the company, based on its record within the country and in other locales, would still be the best choice to continue to operate long-term in this country**. Again, for the value of this possibility to be realized, the users need a voice in relevant decisions and would have to perceive the possibility of alternatives to the status quo as feasible.
- d. **Prior to approving a Plan of Development (PoD)**, the *appropriate government ministries* could **examine the company’s past track record in other jurisdictions** applying for the PoD approval, in order to **establish conditions** with respect to reporting and compliance for environmental, tax, local content, or community engagement programs.
- e. **Prior to the pre-qualification or award of major subcontracts** to perform work under the license, the *government ministries, local communities, or civil society*, who have an opportunity to weigh in on such decisions, could **examine the past track record of potential contractors to either eliminate some candidates or impose specific conditions on the selected contractor**.
- f. **During a government’s tax, environmental, or local content compliance audit of a company**, the tool could be used to **identify past violations in other countries** which would enter the audit risk assessment and help focus areas where the audit might concentrate.
- g. **After an environmental, tax, or corruption violation has taken place**, the responsible *government ministry* could use this information to **understand the violators’ past performance risks in a more global context**, in order to guide the establishment of enhanced reporting or performance conditions on the violating company.
- h. **Whenever a license holder plans to farm-out or**

sell part of its equity interest, the *host government* typically has the right to approve the new company entrant. This tool, along with other data, can assist in **making an informed decision and satisfy the standard requirement that the government’s approval not be unreasonably withheld**.

- i. Whenever a company currently operating in a country or community **makes public statements about its strategies or practices**, *local press*, **wishing to verify or check their statements against performance in other jurisdictions or information disclosed to shareholders in other media**, could utilize this tool.

As with all information, this tool will not necessarily be equally valuable for improving outcomes in all situations, for all actors, or in all settings. The desire for the information coupled with opportunities to use it in meaningful ways (the nature of enabling political conditions on the ground) will determine the likely utility and overall impact of the tool in particular settings and should guide efforts to deploy it.

POTENTIAL RISKS AND CONSTRAINTS

The aforementioned sources of data are often only consistently publicly available for those companies that are incorporated or registered in North America or Europe. In most cases, all non-public, privately held companies are not required to file reports with the SEC. Public companies from North America and Europe could end up arguing that any reports based entirely on this public data will end up disadvantaging those that are compliant and advantaging those that do not comply. The specific type of data and its definitions may change and evolve over time, making historical comparisons obsolete; this also raises the challenge to develop a basis for users to determine how company track record compares to a norm or benchmark.

Moreover, the information and data is only useful if it can be compiled, understood, interpreted, and applied prior to a specific decision on company selection or start of work. Any project must address both this timing element and the extent to which civil society or government reformers have the freedom to intervene in pursuit of their interests at an effective time.. Even if data and the skills to interpret it are available, communities rarely have the statutory power to question or change a potential investment decision—typically, itself a highly politicized outcome of more powerful actors side-lining these voices in order to advance their own interests. Thus, to be successful in addressing asymmetries across stakeholders, generating information is only a first step. The next step will be addressing how to enable the use of information in such ways that empower communities to leverage whatever power they do have, e.g. publicity, withholding of access rights, public demonstrations, labor actions etc. Host governments and host communities/civil society may

well have different (and incompatible) interests regarding the use of the information; this could potentially lead to dispute and, at least initially, a more challenging social license to operate for the companies involved.

NEXT STEPS

Piloting the tool in a handful of cases would allow us to understand: the timeframe and specific resources required to produce such company performance reports; who might be best positioned to produce these reports; and the circumstances under which they are most useful. All of these, in turn, would provide the basis for making requisite refinements to the proposed tool. Such pilots should be relatively low-cost and subject to reasonably quick turnaround times once specific potential users, projects, and companies involved have been identified. Insights from these pilots would allow us to adapt the tool to maximize its utility to different actors moving forward.

ANNEX: LIST OF USEFUL TOOLS AND SOURCE OF DATA

Most of these sources would be ones that have free access on the web and would not require paying a subscription. With paid subscriptions more information is accessible.

1. U.S. Department of Justice FCPA Enforcement Actions
<https://www.justice.gov/criminal-fraud/related-enforcement-actions>

RELATED ENFORCEMENT ACTIONS

Alphabetical List

A	B	C	D	E	F	G	H	I	J	K	L	M
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

Chronological List

2018	2017	2016	2015	2014	2013	2012
2011	2010	2009	2008	2007	2006	2005
2004	2003	2002	2001	2000	1999	1998
1997	1996	1995	1994	1993	1992	1991
1990	1989	1988	1987	1986	1985	1984
1983	1982	1981	1980	1979	1978	1977

2. Trace International Compendium Searchable Data Base of Anti-corruption Enforcement Actions
<https://www.traceinternational.org/compendium>

Search the TRACE Compendium

Keyword Search

Case Name

Date Range

Nationality of Government Officials

Corporate Headquarters

Industry

Enforcement Agency

Enforcement Month

Enforcement Category

Issue Category

DOJ Opinion Procedure Releases

Search

3. U.K. Serious Fraud Office Cases re U.K. Anti-Bribery Act
<https://www.sfo.gov.uk/our-cases/>

A-E

ABB Ltd	Afren Plc
Airbus Group	Alexander and others
Amec Foster Wheeler PLC	Arboretum Sports (UK) Ltd
Arck LLP	Axiom Legal Financing Fund
Balli Group	Barclays PLC and Qatar Holding LLC
British American Tobacco	Capita Oak Pension, Henley Retirement Benefit and Westminster Pension scheme and Trafalgar Multi Asset Fund

4. Stanford Sullivan & Cromwell FCPA Data base
<http://fcpa.stanford.edu/>

Search Enforcement Actions

Recent Enforcement Actions

Recent Opinion

Heat Maps

SULLIVAN & CROMWELL LLP
S&C Research & Reports

FOREIGN CORRUPT PRACTICES ACT ARTICLE
August 27, 2018

FOREIGN CORRUPT PRACTICES ACT ALERT
July 26, 2018

TAX EVASION

1. U.S.. Department of Justice Tax Compliance Search Engine
<https://www.justice.gov/tax/offshore-compliance-initiative>

OFFSHORE COMPLIANCE INITIATIVE

Offshore Compliance Initiative News
Indictments, Pleas, Sentencings, and Other Developments

September 11, 2018
Former Executive of Loyal Bank Ltd Pleads Guilty to Conspiring to Defraud the United States by Failing to Comply with Foreign Account Tax Compliance Act (FATCA)

August 30, 2018
Los Angeles Man Pleads Guilty to Not Reporting Over \$1 Million Held in Israeli Offshore Accounts

June 5, 2018
California Resident Convicted Of Tax Crimes

May 11, 2018
Canadian Man Pleads Guilty To Conspiracy And To Making A False Claim Against The United States

SEARCH TAX DIVISION

GENERAL INFORMATION
TAX DIVISION

LEADERSHIP
Richard E. Zuckerman
Principal Deputy Assistant
Attorney General

CONTACT
Tax Division
(202) 314-9991

2. Open Sanctions

<https://www.opensanctions.org/#downloads>

Downloads

The datasets below are offered under the terms of a [CC-BY 4.0 License](#), which allows free re-use of the data. If you notice any mistakes or inaccuracies in the data, please let us know.

Politically Exposed Persons

Datasets that contain details about politicians, members of cabinet or their families and associates.

World Presidents Database

Current world leaders, presidents, prime ministers and dictators.

Publisher WorldPresidentsDB.com
CSV worldpresidentsdb.csv, ..._addresses.csv, ..._aliases.csv, ..._nationalities.csv, ..._identifiers.csv, ..._birth_dates.csv, ..._birth_places.csv
Developer [Scraper code](#)

CIA World Leaders

An index of most national-level cabinet members in world governments that is publicly maintained by the CIA

3. U.S. Federal Financial Institutions Examination Council Anti-Money Laundering Information Base

<https://www.ffiec.gov/enforcement.htm>

FFIEC FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL
 Providing uniformity and consistency in the supervision of financial institutions

Ask a Question
 Get answers from

[Home](#) [Site Index](#) [Disclaimer](#) [Privacy Policy](#) [Accessibility](#)

About the FFIEC
[Contact Us](#)
[Search](#)
[Press Releases](#)
[Enforcement](#)
[Actions](#)
[What's New](#)
[Consumer Compliance](#)
[Reports](#)
[Consumer Help Center](#)
[Financial Institution Info](#)
[Examiner Education](#)
[Supervisory Info](#)
[Cybersecurity Awareness](#)

Enforcement Actions and Orders

Enforcement actions and orders against institutions or their affiliated parties can be found at the website of the institution's regulator:

[Board of Governors of the Federal Reserve System \(FRB\)](#)

- State member banks
- Bank holding companies
- Nonbank subsidiaries of bank holding companies
- Savings and loan holding companies
- Edge and agreement corporations
- Branches and agencies of foreign banking organizations operating in the United States and their parent banks
- Officers, directors, employees, and certain other categories of individuals associated with the above banks, companies, and organizations (referred to as "institution-affiliated parties")

[Federal Deposit Insurance Corporation \(FDIC\)](#)

- Insured State chartered banks that are not members of the Federal Reserve System (State nonmember banks)
- Insured branches of foreign banks
- Officers, directors, employees, controlling shareholders, agents, and certain other categories of individuals (institution-affiliated parties)

4. U.K. Financial Conduct Authority

<https://www.fca.org.uk/firms/financial-services-register>

Home / Firms / Financial Services Register

Financial Services Register

First published: 29/04/2016 | Last updated: 13/02/2018

The Financial Services Register is a public record of firms, individuals and other bodies that are, or have been, regulated by the PRA and/or FCA

Getting the most from the Register

You can [search the Register](#) for information on a firm, individual or financial services product by entering its name, reference number (FRN) or postcode. You can also search for certain investment exchanges.

5. U.K. Financial Conduct Authority

<https://register.fca.org.uk/>



The Financial Services Register

Search the Financial Services Register

Search by company, person, product, reference number or postcode

[Search the Register](#)

[Advanced Search](#) (by business type and current status) [Common Searches](#) (e.g. exchanges, markets, prohibited individuals and Open Banking services) [Downloads](#)

[Find a financial advice firm near me](#)

[About the Register](#) [About the FCA/PRA](#) [Beware of financial scams](#)

Contact us

[Contact the FCA](#) for firm or consumer queries and Register help.

[Contact the PRA](#) for prudential queries about banks, building societies, credit unions, insurance firms.

The Financial Services Register is a public record that shows details of firms, individuals and other bodies that are, or have been, regulated by the [Prudential Regulation Authority \(PRA\)](#) and/or the [Financial Conduct Authority \(FCA\)](#). It also has information on firms regulated by the Financial Services Authority that had cancelled or stopped being regulated before April 2013.

Why search the Register?

You can search the Register to find out whether a firm you are using, or plan to do business with, is authorised or by the PRA and/or FCA, or is exempt. You can also see if a consumer credit firm has interim permission to provide consumer credit.

Other information you can see about a firm or individual includes:

6. U.S. SEC 'EDGAR' Search for Beneficial Ownership Schedule 13

<https://www.sec.gov/edgar/searchedgar/companysearch.html>

U.S. SECURITIES AND EXCHANGE COMMISSION

Search SEC.gov

[COMPANY FILINGS](#) [MORE SEARCH OPTIONS](#)

[ABOUT](#) [DIVISIONS](#) [ENFORCEMENT](#) [REGULATION](#) [EDUCATION](#) [FILINGS](#) [NEWS](#)

EDGAR Search Tools

Latest Filings

Company Filings

Mutual Funds

Variable Insurance Products

Daily Filings by Type

Boolean Archive Search

Full Text (past 4 years)

CIK Lookup

Confidential Treatment

EDGAR Company Filings

Free access to more than 21 million filings

Company Name

Company Name

[More Options](#)

Fast Search

Ticker or CIK

[Ticker or CIK](#) is the fastest way to find company filings.

Guides

How to Research Public Companies

Learn how to quickly research a company's operations and financial information with EDGAR search tools.

Form Types

Review reference versions of EDGAR forms filed by companies, funds, and individuals.

Search Tools

CIK Lookup Tool

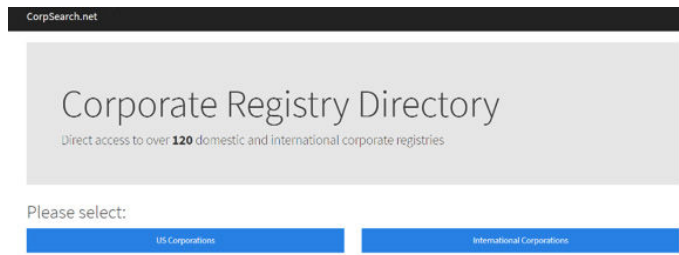
Look up the central index key (CIK) of an EDGAR filer. Searching by CIK is the most accurate way to view filings.

Save Your Search

Want to get updates on new filings? Learn how to save your search by subscribing to EDGAR RSS feeds.

Overcoming a key barrier to stakeholder empowerment in the extractive industries

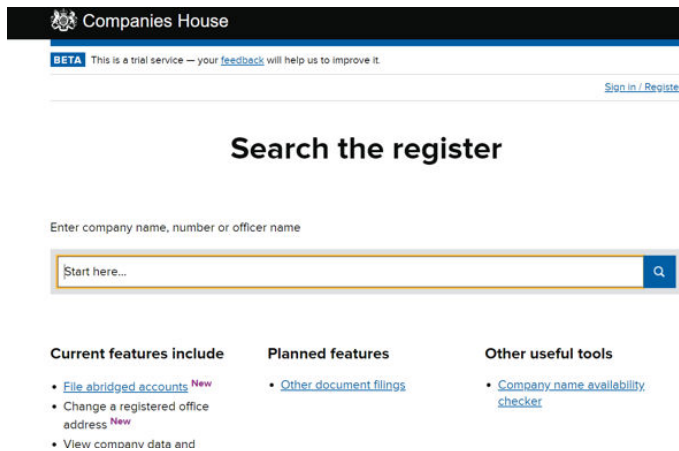
7. Corporate Registry Directory <http://corpsearch.net/>



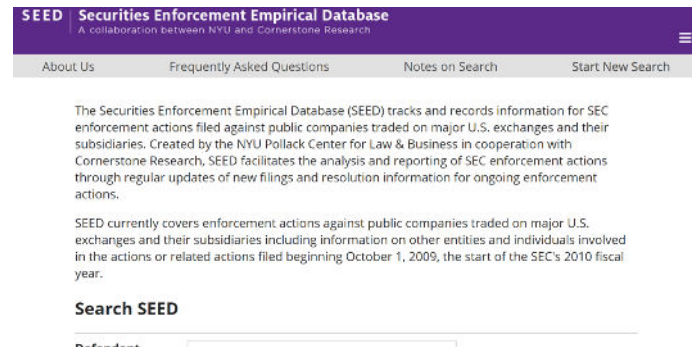
8. World Bank and UNODC Stolen Asset Recovery Initiative Corruption Cases Database <http://star.worldbank.org/corruption-cases/?db=All>



9. U.K. Companies House Disqualified Directors List <https://www.insolvencydirect.bis.gov.uk/eiir/>

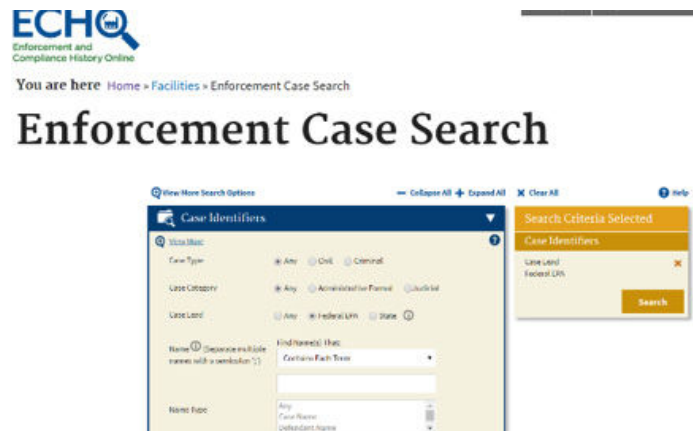


10. Securities Enforcement Empirical Database by New York University and Cornerstone Research <https://research.seed.law.nyu.edu/>



ENVIRONMENTAL VIOLATION ENFORCEMENTS

1. U.S. Environmental Protection Agency Enforcements and Violations Data Base <https://echo.epa.gov/facilities/enforcement-case-search>



WORKER SAFETY BENCHMARK

1. U.S. Bureau of Labor Statistics Table SNR05 on Occupational Injury Rate by Industry
https://www.bls.gov/web/osh/snr05_00.xlsx

TABLE SNR05. Incidence rate¹ and number of nonfatal occupational injuries by industry and ownership, 2016

Industry ²	NAICS Code ³	Incidence rate	Number of cases (thousands)
All industries including private, state and local government ⁴		3.0	3351.2
Oil and gas extraction	211	0.9	1.5
Oil and gas pipeline and related structures	23712	0.7	1.1
Support activities for oil and gas operations	213112	1.1	2.9
Oil and gas field machinery and equipment	333132	1.0	0.7

*The incidence rates represent the number of injuries per 100 full-time workers and were calculated as: $(N/EH) \times 200,000$, where, N = number of injuries, EH = total hours worked by all employees during the calendar year 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year)

2. U.S. Department of Labor Occupational Safety and Health Administration (OSHA) inspection Enforcement Data Base
<https://www.osha.gov/pls/imis/establishment.html>

FINANCIAL BANKRUPTCY

1. Haynes and Boone OilPatch Bankruptcy Monitor
http://www.haynesboone.com/-/media/files/energy_bankruptcy_reports/2018/oil_patch_bankruptcy_monitor_09102018.ashx?la=en&hash=38FD1D14161D203D2B9AA2F-3970C1E2728142BFE

COMPLETE LIST OF NORTH AMERICAN BANKRUPTCIES 2015-2018* 2015 BANKRUPTCIES

FILING DATE	COURT	CASE NUMBER	DEBTOR	SECURED	UNSECURED	TOTAL
1/15/2015	W.D. Tex.	15-10004	WYB ENERGY PARTNERS	\$ 43,947,379	\$ 3,275	\$ 43,950,653
2/2/2015	Canada		IRVING ENERGY INC.	\$ 17,236,443	\$ 80,218,069	\$ 97,454,512
3/3/2015	W.D. Tex.	15-10336	DUNE ENERGY INC.	\$ 107,981,306	\$ -	\$ 107,981,306
4/3/2015	S.D. Tex.	15-80016	BPZ RESOURCES, INC.	\$ -	\$ 238,571,868	\$ 238,571,868
5/31/2015	D. Del.	15-10585	QUICKSILVER RESOURCES	\$ 1,098,174,135	\$ 976,022,953	\$ 2,074,197,088
6/3/2015	Canada		LARICINA ENERGY	\$ 122,113,986	\$ 11,261,847	\$ 133,375,833
7/4/2015	Canada		SHORELINE ENERGY	\$ -	\$ 17,388,040	\$ 17,388,040
8/4/2015	N.D. Tex.	15-31858	ERG RESOURCES, LLC	\$ 400,000,000	\$ 1,624,304	\$ 401,624,304
9/5/2015	D. Colo.	15-15073	AMERICAN EAGLE ENERGY CORP.	\$ 181,517,589	\$ 12,090,524	\$ 193,608,113
10/5/2015	N.D. Tex.	15-15981	DUER WAGNER OIL & GAS	\$ 125,071,039	\$ 2,171,700	\$ 127,242,739
11/5/2015	D. Colo.	15-15610	SUN RIVER ENERGY	\$ 10,412,000	\$ 1,240,160	\$ 11,652,160
12/5/2015	W.D. Tex.	15-81396	PRIMERA ENERGY	\$ 975,082	\$ 6,226,931	\$ 7,202,013
1/6/2016	W.D. La.	15-50748	SARATOGA RESOURCES (HARVEST OIL & GAS)	\$ 199,207,911	\$ 6,872,097	\$ 206,080,008
1/6/2016	Canada		SEFTON RESOURCES**	\$ -	\$ -	\$ -
1/7/2016	W.D. Tex.	15-70098	ARABELLA PETROLEUM	\$ -	\$ 18,225,398	\$ 18,225,398
1/7/2016	D. Del.	15-11520	MILAGRO OIL & GAS, INC.	\$ 417,508,106	\$ 685,226,617	\$ 1,102,734,723
1/7/2016	S.D. N.Y.	15-11835	SABINE OIL & GAS	\$ 1,659,821,675	\$ 1,201,384,671	\$ 2,861,206,346
1/8/2016	W.D. Tex.	15-70104	AMERICAN STANDARD ENERGY CORP. A DELAWARE CORP.	\$ 38,363,938	\$ 136,000	\$ 38,499,938
1/9/2016	S.D. Tex.	15-34221	LUCA INTERNATIONAL GROUP LLC	\$ 16,331	\$ 2,828,437	\$ 2,844,768
2/9/2016	W.D. La.	15-60986	SAMCO OIL LLC	\$ 536,190	\$ 393,315	\$ 929,505
2/11/2016	S.D. Tex.	15-34287	BLACK ELK ENERGY OFFSHORE	\$ 68,567,000	\$ 76,166,489	\$ 144,733,489
2/22/2016	Canada		WALDRON ENERGY	\$ 5,818,501	\$ -	\$ 5,818,501
2/23/2016	Canada		WINDFIRE RESOURCES	\$ 666,955	\$ 601,422	\$ 1,268,377
2/24/2016	N.D. Tex.	15-33460	SABINE OPERATING COMPANY	\$ 13,522,258	\$ 3,914,954	\$ 17,437,212
2/25/2016	Canada		COG LIMITED PARTNERSHIP	\$ 25,480,465	\$ -	\$ 25,480,465
2/26/2016	E.D. La.	15-12229	AMERICAN NATURAL ENERGY CORPORATION	\$ 3,663,925	\$ 19,047,525	\$ 22,711,450
2/27/2016	E.D. Tex.	15-11561	ARMADA OIL INC.	\$ 1,265,352	\$ 1,840,992	\$ 3,106,344
2/28/2016	D. Mass.	15-13441	BUCKINGHAM OIL INTERESTS, INC.	\$ 2,940,267	\$ 615,009	\$ 3,555,276
2/29/2016	E.D. Tex.	15-41607	CONTINENTAL EXPLORATION, LLC	\$ 1,692,770	\$ 2,646,800	\$ 4,339,570
3/9/2016	D. Del.	15-11934	SAMSON RESOURCES CORPORATION	\$ 1,953,122,364	\$ 2,378,653,125	\$ 4,331,775,489
3/11/2016	Alaska	15-00236	MILLER ENERGY RESOURCES, INC.	\$ 192,725,976	\$ 22,821,741	\$ 215,547,717
3/22/2016	N.D. Tex.	15-34245	AIX ENERGY INC.	\$ 23,087,667	\$ 11,733,586	\$ 34,821,253
3/23/2016	S.D. Tex.	15-35615	RAAM GLOBAL ENERGY COMPANY	\$ 304,135,336	\$ -	\$ 304,135,336
3/24/2016	W.D. Tex.	15-82837	REPUBLIC RESOURCES, LLC	\$ 725,845	\$ 10,489,364	\$ 11,215,209
3/25/2016	D. Colo.	15-23395	ESCALERA RESOURCES CO.	\$ 36,575,050	\$ 3,306,459	\$ 42,881,509
3/26/2016	D. Del.	15-12263	PARALLEL ENERGY LP	\$ 163,522,337	\$ 5,425,931	\$ 168,948,268
3/27/2016	Canada		HYPERION EXPLORATION CORP.	\$ 13,368,865	\$ 296,112	\$ 13,664,977
3/28/2016	Canada		SPYGLASS RESOURCES CORP.	\$ 129,370,633	\$ 8,158,626	\$ 137,529,259
3/29/2016	N.D. Tex.	15-44931	ENERGY & EXPLORATION PARTNERS, INC.	\$ 776,515,825	\$ 412,848,397	\$ 1,189,364,222
4/2/2016	N.D. Tex.	15-34996	TRANSCOASTAL CORPORATION	\$ 21,586,821	\$ 481,150	\$ 21,867,971
4/11/2016	D. Del.	15-12500	CUBIC ENERGY, INC.	\$ 96,550,563	\$ 22,558,725	\$ 119,109,288
4/21/2016	D. Del.	15-12533	MAGNUM HUNTER RESOURCES CORPORATION	\$ 419,291,793	\$ 680,208,903	\$ 1,099,500,696
4/21/2016	D. Del.	15-12566	NEW GULF RESOURCES, LLC	\$ 418,000,000	\$ 187,722,584	\$ 605,722,584
4/21/2016	D. Del.	15-12670	SWIFT ENERGY COMPANY	\$ 324,900,000	\$ 908,122,422	\$ 1,233,022,422
TOTAL 2015				\$ 8,428,934,657	\$ 7,848,644,822	\$ 17,377,579,479

2. U.K. Insolvency Service
<https://www.insolvencydirect.bis.gov.uk/eiir/>

Individual Insolvency Register (IIR)

The IIR is an amalgamation of the individual insolvency, bankruptcy restrictions and debt relief restrictions registers. The Insolvency Service is required by statute to maintain these registers, keep them up to date and make them available for public inspection.

The IIR contains details of:

- bankruptcies that are current or have ended in the last 3 months
- debt relief orders that are current or have ended in the last 3 months
- current individual voluntary arrangements (IVAs) and Fast-Track voluntary arrangements (FTVAs), including those that have ended in the last 3 months
- current bankruptcy restrictions orders or undertakings (BROs/BRUs) and interim bankruptcy restrictions orders (IBROs)
- current debt relief restrictions orders or undertakings (DRROs/DRRUs) and interim debt relief restrictions orders (IDRROs)

For more information about the IIR please read the [guidance](#) or our [frequently asked questions](#).

Unless stated otherwise all proceedings are Main proceedings under Article 3(1), Council Regulation (EC) 2015/948 on insolvency proceedings ('EU Regulations 2015')

Search the IIR

Please choose how you wish to search the Register.

By NAME Details

By TRADING NAME Details

CORPORATE FINANCIAL REPORTS FILED TO REGULATORS

1. Canadian Securities Administrators Data Base
https://sedar.com/search/search_en.htm

NEW FILINGS SEARCH DATABASE ISSUER PROFILES WEB LINKS ABOUT SEDAR SITE HELP SEDAR RELEASE

Use of this site is subject to, and your continued use constitutes your express agreement to be bound by the [Terms of Use](#) and [Privacy Statement](#). Any unauthorized use of this site is strictly prohibited.

XBRL Voluntary Filing Program
Visit the [CSA's XBRL website](#) for information about XBRL and the voluntary program.
[Click here](#) for information about XBRL, software and viewing XBRL financial statements.

SEARCH FOR COMPANY DOCUMENTS

Company Name
All (or type a name)

Industry Group
All

Document Type
All

Date of Filing ...
From April 15, 2018
To October 15, 2018

Sort documents by ...
☒ Company Name
☐ Document Type
☐ Date of Filing

Search Clear

SEARCH HELP

HOME SITE MAP

Canada's official site that provides access to most public securities documents and information filed by issuers with the thirteen provincial and territorial securities regulatory authorities ("Canadian Securities Administrators" or "CSA").

2. U.K. Companies House
<https://www.gov.uk/get-information-about-a-company>

Companies House incorporates, dissolves limited companies, registers the information companies are legally required to supply, and makes that information available to the public.

Get information about a company

You can get some details about a company for free, including:

- company information, for example registered address and date of incorporation
- current and resigned officers
- document images
- mortgage charge data
- previous company names
- insolvency information

You can also set up free email alerts to tell you when a company updates its details (for example, a change of director or address).

[Start now](#)

Other ways to apply

You can still use the [WebCheck service](#). You'll need to register, and it costs £1

Related content

[Search the bankruptcy and insolvency register](#)
[Search for disqualified company directors](#)

Explore the topic
[Business debt and bankruptcy](#)
[Setting up](#)

3. U.S. Securities and Exchange Commission (SEC)

The SEC requires certain information, for companies publicly listed in the U.S., to be disclosed to investors in their filings. The 10-K is an annual filing that includes a description of the company's business, including its main products and services, what subsidiaries it owns, and what markets it operates in. The 10-K also includes detailed audited consolidated accounts, but also includes descriptions of their risks, liabilities and exposures, tax situation, environmental exposures, and significant claims and violations. A company's 10-K can be located either on the company's official website or on the SEC website.

Specific sections that may be of value:

Management Discussion and Analysis or Strategic Report – Examples of Typical Content

- Principal Risks and Uncertainties – Describes their main business and the general and specific business risks faced.
- Greenhouse Gas Emissions – Some may include information on this.
- Political Donations – Describes their policies and where they make donations.
- Worker Health and Safety – Discusses their safety and health programs, training, and track record.
- Code of Business Conduct – Describes their corporate views on how they want to do business.
- Legal Proceedings – Describes lawsuits and prosecutions that involve them or affiliates.
- *Independent Auditors Report*
- Includes a description of any significant internal control weaknesses or financial exposures.

Notes to the Consolidated Accounts – Examples of Typical Details

- Credit Risk Analysis – Who owes them money and is it collectible?
- Debt and Liquidity – How indebted are they? Short term or Long-term?
- Provisions for Liabilities – What exposures do they recognize for fines, penalties, claims?
- Commitments and Contingent Liabilities – What exposures do they have that have not yet developed into a claim?
- Obligations, Guarantees and Other Contingencies – Have they provided assurances or guarantees to other governments, partners, lenders?
- Indemnifications – What exposure do they face where they have indemnified a customer, supplier or partner?
- Income Taxes – Details of tax disputes and claims and controversial tax positions taken

- Investigations and Litigation – Who has sued them? What governments are investigating them?
- Environmental Matters – What exposures do they face for past spills, emissions, etc.

a. SEC Edgar Data Base of Company Filings

<https://www.sec.gov/edgar/searchedgar/companysearch.html>



b. Chevron Corporation (Example)

<https://www.chevron.com/-/media/chevron/annual-report/2017/2017-Annual-Report.pdf>

c. Exxon Mobil (Example)

<http://www.annualreports.com/Company/exxon-mobil-corporation>

d. Shell (Example)

<https://www.shell.com/investors.html>

ALL-ENCOMPASSING CORPORATE MISCONDUCT IN THE U.S.

Violation Tracker

<https://www.goodjobsfirst.org/violation-tracker>



Discover Which Corporations are the Biggest Regulatory Violators and Lawbreakers Throughout the United States

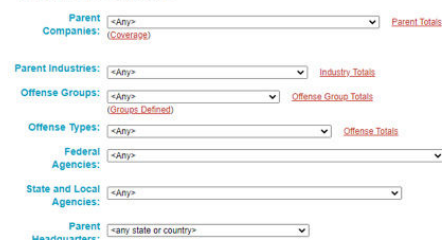
Violation Tracker is the first wide-ranging database on corporate misconduct. It covers banking, consumer protection, false claims, environmental, wage & hour, safety, employment discrimination, price-fixing, bribery and other cases resolved by over 50 federal regulatory agencies and all parts of the Justice Department since 2000 – plus cases from state AGs and selected state regulatory agencies as well as employment-related class actions. In all: 437,000 civil and criminal cases with penalties of \$627 billion. Violation Tracker is produced by the Corporate Research Project of Good Jobs First.

[Agency Data Sources](#) | [User Guide](#) | [Update Log](#) | [Corporate Research Project analyses of Violation Tracker data](#)

Send questions or comments to [Philip Mattera](#) of the Corporate Research Project of Good Jobs First.

The Violation Tracker site was built with the help of Rich Puchalsky of [Grassroots Connection](#).

Option 1: View Summaries



Violation Tracker is the first wide-ranging database on corporate misconduct. It covers banking, consumer protection, false claims, environmental, wage & hour, health, safety, employment discrimination, price-fixing, bribery, and other cases resolved by more than 50 federal regulatory agencies and all parts of the Justice Department since 2000, plus state AG and local DA cases and selected class action lawsuits. In all: 412,000 civil and criminal cases with penalties of \$616 billion are documented here and other types of corporate misconduct information will come later. Violation Tracker is produced by the Corporate Research Project of Good Jobs First.

COMPANY CORPORATE SOCIAL RESPONSIBILITY, CORPORATE CITIZENSHIP OR SUSTAINABILITY REPORTS

These are voluntary and may go by different names. They are typically issued annually and are available on the company's official website. The reports contain statements about the company's policies, business practices, makeup of workforce, and projects to support to local communities.

These reports include specific performance data that, in many cases, is independently verified, such as:

Overcoming a key barrier to stakeholder empowerment in the extractive industries

- Safety Performance (Rates of Lost time and serious incidents),
- Environmental Performance (spills and leaks, flaring, greenhouse gas emissions, discharges, fines and penalties), Local Content (spend with local or minority suppliers),
- Community Projects (donations, schools, clinics, job programs),
- Local community Relations (training of security personnel, compliance with standards, awareness training),
- In some cases, may include voluntary disclosures of payments to governments and petroleum agreements.

1. Example from Chevron's 2017 Sustainability Report on Health and Safety Performance Indicators:³

Health and safety performance ¹⁸	2017	2016	2015	2014	2013
Total Recordable Incident Rate (incidents per 200,000 work-hours)¹⁹					
Workforce	0.13	0.14	0.18	0.18	0.21
Benchmark	0.26	0.26	0.23	0.33	0.35
Employees	0.09	0.10	0.10	0.10	0.15
Benchmark	0.23	0.24	0.24	0.28	0.29
Contractors	0.15	0.16	0.20	0.21	0.23
Benchmark	0.28	0.27	0.22	0.36	0.38
Lost-Time Incident Frequency (Days Away From Work incidents and fatalities per million work-hours)¹⁹					
Workforce	0.09	0.10	0.10	0.11	0.13
Benchmark	0.25	0.28	0.28	0.36	0.38
Employees ²⁰	0.08	0.10	0.10	0.06	0.14
Benchmark	0.28	0.32	0.38	0.39	0.42
Contractors	0.10	0.11	0.10	0.12	0.12
Benchmark	0.23	0.25	0.23	0.35	0.36
Days Away From Work Rate (incidents per 200,000 work-hours)¹⁹					
Workforce	0.016	0.017	0.019	0.021	0.020
Benchmark	0.048	0.051	0.054	0.070	0.072
Employees ²⁰	0.012	0.018	0.020	0.011	0.026
Benchmark	0.054	0.063	0.075	0.077	0.083
Contractors	0.018	0.016	0.018	0.023	0.018
Benchmark	0.045	0.044	0.044	0.067	0.067
Number of work-related fatalities					
Workforce	6	10	3	3	16
Employees	2	1	0	0	2
Contractors	4	9	3	3	14
Work-related fatal accident rate (work-related employee or contractor fatalities per 100 million work-hours)¹⁹					
Workforce	1.32	2.03	0.51	0.49	2.71
Benchmark	0.85	2.23	0.63	0.78	1.84
Employees	1.77	0.82	0.00	0.00	1.44
Work-related fatal incident rate (work-related incidents with employee or contractor fatalities per 100 million work-hours)					
	1.32	0.81	0.51	0.49	1.02
Motor Vehicle Crash Rate (workforce vehicle incidents per million miles driven)²¹					
	0.04	0.03	0.02	0.04	0.04
Number of process safety Tier 1 events (ANSI/API Recommended Practice 754 guidance)^{22,23}					
	22	22	29	19	36
Upstream	14	16	18	15	22
Downstream and chemicals	7	6	10	3	10
Midstream	1	0	1	1	4

ENDNOTES

- 1 From a company standpoint, this is reasonable. The extractives sector has had a long history of opacity motivated by its interest in maximizing competitive advantages and profits while minimizing regulatory obligations/burdens. For instance, details about geology, technical patents, individual well results, interpretation of data, and assessment of reserves are viewed as key to distinguishing any company from its competitors. Companies often argue that if this proprietary technical information would be publicly released, it could erode a company's competitive advantage and unduly influence stock market prices. In other cases, they argue that information, without the requisite technical background to fully assess it and put it into perspective, may lead to false or incomplete interpretations. This culture of technical secrecy has, in the past, often been reflected in commercial dealings resulting in agreements with strong confidentiality clauses; in some cases, there is no real commercial driver, but rather, a fear that further disclosure of data will lead to further government regulation or public scrutiny.
- 2 Companies fear how this information will be used, i.e. that these global actors, alongside host governments and/or communities, will use it to critique, shame, or oppose industry behavior or interests. Moreover, because of concerns over public criticism and negative impacts on stakeholder views, international extractives companies and global actors in the GEI field end up in opposition to each other and disputing even the basic facts and how they should be interpreted. Even when the facts do not seem particularly problematic to the companies themselves, many nonetheless fear that information on social and environmental track records will be taken out of context, without appropriate benchmarks, potentially leading to unfavorable conclusions. For example, all companies aim for zero safety or environmental incidents, but in reality, end up with some number of these incidents. But, a difficult question to answer is that, for a company the size of, say, Exxon Mobil, compared to competitors, is 10 incidents too many? 100? 1,000? Again, in an effort to protect their reputations and business interests in the face of such ambiguous or even more damaging information, companies end up either trying to maintain opacity or, when this is not possible, casting doubts on the accuracy and fairness of independent civil society NGOs and watchdogs.
- 3 <https://www.chevron.com/-/media/shared-media/documents/2017-corporate-responsibility-report.pdf>



ccsi.columbia.edu

Columbia Center on
Sustainable Investment

Jerome Greene Hall
435 West 116th Street
New York, NY 10027
Phone: +1 (212) 854-1830
Email: ccsi@law.columbia.edu

The Columbia Center on Sustainable
Investment is a leading applied research
center and forum dedicated to the study,
discussion and practice of sustainable
international investment.