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Congressional Testimony – Jenkins Statement

June 25, 2008

Mr. Chairman, [Ranking Member Bachus,] members of the Committee, Ladies and Gentlemen, good morning:

My name is Robert Jenkins. I am an American national presently based in London. I currently serve as Chairman of the Investment Management Association of the United Kingdom. The IMA is the trade body representing over 170 investment management firms operating in the United Kingdom.

I also chair F&C Asset Management plc. F&C is perhaps the oldest and certainly one of the largest asset management companies in Europe. We are London-headquartered and London Stock Exchange-listed. Finally, I am an Executive Fellow at the London Business School and Honorary Visiting Professor of Investment Management at City University London CASS Business School.

I am addressing you today primarily in my capacity as both an investment professional and as Chairman of a major investment management group.

I have four key points:

1. The investment management industry welcomes transparency
2. The transparency approach enshrined in the EITI remains the goal
3. We believe that the EITD Act will increase transparency in an important area
4. The EITD Act is in the spirit of, and complementary to, the broader EITI.

Before investing, every professional weighs (or should weigh) his potential risk versus his potential reward. The greater the uncertainty of risk, the greater the reward required. Information and transparency shape this calculation. The more transparent the information, the easier to quantify the downside. The more understandable the downside, the more confident one can be in pursuing the upside. Thus can transparency breed confidence, confidence reputation and reputation a lower cost of capital. This is true for individual companies; it is equally true for nations to which investors might wish to direct capital.

Now it happens that the extractive industries often operate in the world's riskier places. Transparency at company and country level can lower the risk, stimulate investment flows and expand opportunities generally. This is why many of the world's leading investors support the Extractive Industries Transparency Initiative. At last count, 79 pension funds, asset managers, banks and insurance companies who collectively manage in excess of $14 trillion - have signed up. Disclosure of what is paid together with transparency in what is received, promises a payoff of another kind: political accountability in resource-rich, but often standard-of-living-poor, nations. My

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view is that these two pillars, plus Civil Society monitoring, hold the key to reduced corruption, increased political stability and ultimately, greater national prosperity. This, in turn, translates into less risk for a company's foreign operations, and more and better risk / return opportunities for investors. This is the ultimate goal.

The EITD Act targets one side of the equation - but it is one worth targeting. Pitched at the level of the company, the Act will help investors better understand, and get greater comfort with, key details of the industry. But perhaps more importantly, the Act should reduce the operational and political risks run locally by the mining and extraction industries. Detailed transparency in reporting will give host nation critics little room for accusations of non-payment of tax and less room generally for claims of wrongdoing. Disclosure of payments to the authorities should therefore help shift the public spotlight away from the company and onto the host government.

Some will no doubt label this initiative as unnecessary interference: interference in company matters and interference in other nations' affairs. As a full-time capitalist and part-time lobbyist, I can sympathize. I rarely endorse, much less ask for, additional rules. No doubt the Act, as drafted, could be improved by further consultation with the industries concerned. Nevertheless, transparency is a positive. On this all parties agree. A number of competitors already embrace its essence. What harm, then, in raising to a global standard what is already for many, industry best practice. In the arena of corruption, real and implied, voluntarism does not always do the trick.

As for the charge of international interference, this is a tough one. It can certainly be misconstrued as such. It is an accusation that will have little substance, but one which you can be sure will be made. It has little substance because the simple fact is that the proposed legislation will apply to companies, both American and foreign, that are registered in this country. There is nothing extra-territorial about that. These companies have come to the US to benefit from our capital markets and financial expertise. It is perfectly reasonable for them to comply with the law of the land.

In summary, the investment world benefits from transparency. We seek transparency wherever possible - not out of moral goodness but in hard-nosed pursuit of better risk-adjusted returns. The riskier the arena, the greater the craving for transparency. Extractive industries operate in a risky arena. Though the EITD Act does not, and cannot, achieve all of the aims of the EITI, it is complementary to it and should prove supportive of it. As an investment professional and an industry spokesman, I therefore view the Act as a positive step

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Congressional Testimony – Jenkins Statement Addendum

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1. ***The Investor Case for transparency in the extractives sector[1]:***
   - Transparency is the necessary first step for building political accountability in resource-rich developing countries. By constraining opportunities for corrupt or wasteful government behaviour, transparency helps to defuse conflict and promote economic efficiency.
   - Defusing conflict reduces operating risk for extractive companies: this benefits equity investors, by lowering risk and expanding the pool of attractive investment opportunities.
   - Curbing corruption strips inefficiency out of the system and raises profitability for companies, thereby benefiting investors.
   - Cutting conflict and corruption reduces country and political risk: this can benefit sovereign debt holders by reducing risk and broadening the range of attractive Emerging Market investment opportunities.
   - Expanding range of lower-risk investment opportunities will stabilize commodities markets, helping to reduce volatility in global financial system.
   - Reducing civil conflict and corruption builds prosperity across Emerging Market economies, broadening opportunities for cross-border investment, boosting global trade and bringing down inflation.

2. ***What if companies suffer commercial disadvantage relative to competitors that are not covered by the Act?***
   - The argument that US-listed companies stand to be disadvantaged is highly speculative and at best unproven.
   - In any case, investors have a direct interest in the commercial success of the companies in which they are shareholders.
   - However, investment institutions also typically have exposure to large numbers of companies and a wide range of asset classes. They are therefore less directly exposed to the fortunes of any one particular extractive company, and can afford to take a more balanced and longer-term view regarding the effects of legislative action.
   - As a result, they are also sensitive to broader macroeconomic impacts across the extractive sector and global financial system. In particular, they understand that

[1] See the *Investors' Statement on Transparency in the Extractives Sector* – attached.

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- action to curb corruption will bring real benefits to overall investment performance by stripping out inefficiency, reducing the risk of conflict, and improving the investment climate.
- Overall, investors can appreciate that actions that may put pressure on one company in the short term can, on balance, be very good for the market as a whole and ultimately be of net benefit to investors.

3. ***As a strong supporter of the EITI, how does F&C defend the Act in light of claims that it will antagonize resource-rich countries and prompt them to withdraw from the EITI?***
   - We do not share the view that countries that are already EITI supporters will abandon the Initiative, and would suggest that this view is largely a matter of speculation. In fact, it is firmly rejected by many well-informed observers, including extractive companies, who argue that few countries will allow US law to determine whether they embrace or reject the EITI.
   - Our view is that more good will come from the Act through the momentum it will give to transparency than will be lost by upsetting some of the worst performers.
   - There is no doubt that the Act is no substitute for the EITI, as it only captures one side of the ledger, whereas both payments and revenues are needed along with active civil society engagement, to achieve the full aims of EITI. But the Act intends to complement and augment rather than replace the EITI.

4. ***Investors have backed anti-corruption initiatives, including the EITI, because they improve economic efficiency, lower risk and raise returns. Yet by applying only to US-listed companies, this legislation will also introduce unequal treatment for different companies. Isn't that inefficient?***
   - It is quite true that the Act captures some, but not all, major extractive companies. In particular, it omits all the National Oil Companies (NOCs) that operate strictly within their home countries and account for an enormous share of world production (e.g. Nigerian, Angolan, Saudi state companies), as well as some of the NOCs that operate outside their borders (e.g. CNOOC, Gazprom), and who pose a competitive threat to Western companies. It is also true that this incomplete coverage could create an un-level playing field by forcing US-listed companies to disclose information that their rivals can keep confidential.
   - To the extent that this information is genuinely commercially sensitive, it should not be released unless all companies are covered equally, and therefore all reasonable efforts should be made to ensure that the Act requires disclosures that enhance transparency without revealing compromising information. However, insofar as many companies already voluntarily release this information with no apparent difficulty, the argument that no disclosure should be required unless all companies are covered seems excessive and unnecessary.

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- To the extent that some countries may be antagonized by this legislation, it is conceivable that US-listed countries may be excluded from choice new assets, and therefore be competitively disadvantaged.
- However, there is an important distinction between NOCs with global aspirations and technical expertise, who legitimately do pose a competitive threat to US-listed IOCs, and the purely domestic, poorly-capitalized and technically weak NOCs. The latter's payments to government will not be captured by the Act, and will therefore be missing from the transparency effort, but they will not harm the commercial interests of US-listed companies.
- The NOCs with global competitive ambitions who can dodge this disclosure by not listing in the US may indeed gain an edge – ***provided host countries really do discriminate in their favor, which is a matter of dispute.*** To the extent that these companies deliberately continue to avoid a US listing with a view to courting corrupt governments and edging out US-listed companies, they may benefit commercially, and US-listed companies could suffer. This is a legitimate concern on the part of US-listed companies – though not, on its own, a reason not to back the Act, given the overwhelming benefits it presents to markets and the momentum it builds for transparency.

5. ***Why is this Act necessary when the EITI is progressing so well? With 23 countries that have achieved Candidate status, why not give the project some time?***
   - The EITI remains the standard we all seek to achieve, precisely because it achieves transparency on both sides of the ledger – payments and revenues – and even more importantly, because it actively involves civil society. Our aim is therefore to preserve and reinforce the EITI, not for this Act to substitute for it.
   - However, with $135-oil, there is a strong temptation for the many resource-rich countries that are *not* amongst the 23 Candidates to avoid engaging with the EITI – and even for some of the 23 to drag their feet and merely go through the motions.
   - Moreover, civil society pressure is becoming more effective as police states struggle to suppress debate in the age of internet. Releasing payments information can enable home-grown civil society movements to press for political accountability where foreign pressure is both politically unwelcome and ineffectual. The EITD Act enables this vital information to reach the public and stimulate further demands for fiscal transparency and political accountability.
   - Finally, all stakeholders have explicitly called for the EITI to be "mainstreamed", i.e. phased out as a stand-alone initiative and folded into standard global practice. One important way to achieve this is by integrating it into regulatory standards.

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6. ***US stock markets have already lost market share to overseas stock markets, and many observers have attributed this to the already onerous reporting provisions of Sarbanes Oxley. Wouldn't the Act risk exacerbating this differential, and prompt US-listed companies to de-list, or at the very least deter future IPOs from listing in the US?***
    - There are many factors that go into choosing a listing venue, and while the Sarbanes Oxley Act is undoubtedly one of them, it is reasonable to expect that if foreign companies are prepared to meet the SOX standards – and many companies based in countries with weak financial systems regard SOX as the gold standard – then they are unlikely to be deterred by this Act. This is especially true if, as we believe, concerns about a host-country backlash are overblown.
    - Despite the vociferous complaints about SOX, there have been extremely few de-listings, and they have all been from companies that had a very small investor base in the US, and therefore were not benefiting from the added liquidity provided by a US listing.
    - The fact is that the UK's Alternative Investment Market (AIM) has had a payments disclosure rule for extractive companies since early 2006, though it applies only at IPO time rather than being an annual requirement. This has been driven by reputational concerns following a series of unsavoury incidents with AIM-listed extractive companies.
    - While we welcome the leadership stance taken by US legislators, we would welcome similar initiatives in other key international financial markets, and expect to see these develop in due course.

7. ***Gas prices for US consumers are already at all-time highs. By putting at risk US companies' access to choice new assets, might this Act have the effect of reducing the nation's energy security and further driving up prices at the pump?***
    - These concerns are dramatically overblown: US imports are already overwhelmingly made up of oil extracted by non-US companies, and trade flows do not depend on the nationality of the producing company.
    - The best thing the US can do to improve energy security and calm overheated commodities markets (besides reducing its dependence on foreign oil by driving down demand) is to support transparency and help introduce more democratic accountability and political in the countries that hold most of the world's resources.