The Ethical Funds Company®

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Dr. John Ruggie
United Nations Secretary General's Special Representative on Human Rights & Business
Harvard University, Center for Business and Government
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Dear Dr. Ruggie,

Re: Revenue-Sharing and Fiscal Management

The Ethical Funds Company™ is Canada's leading manager of socially responsible mutual funds, with $2.2 billion in assets under management. In addition to evaluating our investments according to corporate environmental, social, and governance (ESG) performance, **The Ethical Funds Company** also engages companies in dialogue to encourage long term wealth creation in support of a more just and sustainable world. We have been working with Canadian mining and oil and gas companies on human rights issues systematically for five years. We are currently involved in the Government of Canada's National Roundtables on Corporate Social Responsibility, serving as a member of the Department of Foreign Affairs and International Trade's Advisory Group. We also co-chair the Human Rights Working Group of the Interfaith Center on Corporate Responsibility (ICCR) based in New York City.

We are writing to you today on the topic of revenue-sharing and fiscal management. Our remarks pertain most directly to the mining sector. The Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSX-V) together host over 60% of the world's publicly-traded mining companies. In 2005, the TSX and TSX-V raised more equity financing for mining companies than any other exchanges in the world. As a Canadian investment institution, our investment portfolio is heavily invested in the mining companies listed on these exchanges. Given these facts, The Ethical Funds Company believes that Canadian investment institutions have a unique responsibility to address the human rights challenges that arise in the mining sector.

These challenges are considerable. As you have noted in your March 3, 2006 speech to the World Mines Ministries Forum held in Toronto: "What is striking about [the mining sector] is how perennial the issues raised are – how, despite extensive efforts, similar challenges recur, year after year. This suggests that there are deep structural problems in this sector that haven't yet been dealt with adequately, and they include human rights."

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Revenue Transparency

The Ethical Funds Company is wholly supportive of measures to improve revenue transparency. We actively support the Extractives Industry Transparency Initiative and the Publish What You Pay campaign. We also note that mining companies listed on the TSX and TSX-V are required to disclose details about joint ventures, royalties, and payments in the Standards and Guidelines for Valuation of Mineral Properties. Further, mining companies must disclose information about capital and operating costs, contracts, taxes and royalties. Canadian oil & gas companies are also required to disclose royalties and taxes by country as part of netback calculations under National Instrument 51–101.

We view revenue transparency as a necessary – but not sufficient – condition for reducing corruption and encouraging the investment of revenues in government programs that can help alleviate poverty, reduce child mortality, improve public health, and protect the environment. Revenue transparency can help end the resource curse and contribute to the overall sustainable development of impacted communities.

Under Point 17 in the Discussion Paper on *Revenue Transparency and Fiscal Management*, responders are asked whether governments or companies should be required to disclose revenue inflows and payments made, respectively. The Ethical Funds Company believes this is not an 'either/or' question. Both governments and companies should be required to disclose revenue flows. As in the case of Canada's National Instrument 51-101, companies should be required to disclose all revenues paid to host governments by country.

Requiring both governments and corporations to disclose this information would make it possible to cross-check the numbers provided. In this way, both governments and companies would be more likely to ensure accuracy of the figures they publish. Further, requiring both governments and corporations to disclose revenues raised from corporate activity would increase the range of stakeholders able to hold these entities accountable for the decisions they make with respect to revenue disbursement and project impacts. While we agree with the oft-stated observation that states have the primary responsibility for promoting and protecting human rights we insist that impacted communities, national and international civil society organizations, corporations, and investment institutions - as "organs of society" - also have an obligation to advance human rights protections whenever and wherever possible.

Point 18 of the Discussion Paper on lobbying states that companies "can make their views known" but "should not attempt to influence how governments manage their revenues." The Ethical Funds Company believes that the UN Special Representative can help clarify and support the notion of "responsible lobbying". This can be achieved by drawing upon the analysis and conclusions provided in the publication *Towards Responsible Lobbying:*

Leadership and Public Policy, co-published by AccountAbility and the United Nations Global Compact.[1]

The Ethical Funds Company is in full agreement with the conclusions reached in this document: companies can and should align their public policy engagements with values-based frameworks such as the UN Global Compact's Ten Principles – or, in our view, the eight UN Millennium Goals. In this way, business – and mining companies in particular – can successfully build long-term relationships with the public sector, civil society, and impacted communities and take meaningful steps to ending the resource curse. Stakeholders – investment institutions in particular – can use their influence as shareholders to engage company management on the issue of responsible lobbying and, if necessary, use the shareholder proposal process to call corporations to account and to bring director attention to this critical issue.

Point 19 of the Discussion Paper asks how civil society can hold governments accountable "particularly when the worst offenders are likely to employ intimidation tactics to stifle opposition?" This question goes beyond the expertise of The Ethical Funds Company. We would observe, however, that developed country governments should consider a more aggressive application of some of the tools of influence at their disposal. These include withholding access to government-sponsored credit and risk insurance mechanisms and, in extreme cases, the use of "smart" or "designer" – *not* economic – sanctions which target economic and political elites while sparing the general public.

Beyond Revenue Transparency: Toward Impact Indicators

The Ethical Funds Company agrees with the observation provided in the discussion paper on *Revenue Sharing and Fiscal Management*, that revenue transparency alone is not enough to secure improvements in the human rights performance of companies and the conditions of impacted communities. We encourage you to consider how revenue transparency can be linked to a set of internationally agreed goals and objectives – such as the UN Global Compact Ten Principles and the eight Millennium Development Goals – to reinforce a development agenda that ends the resource curse, maximizes positive impacts, and protects the environment.

We believe that such an agenda is crucial to your inquiry and to the ability of mining companies operating around the world seeking to maintain their "social license to operate".

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[1] See: http://www.accountability21.net/uploadstore/cms/docs/Towards%20Responsible%20Lobbying%20Full%20Report.pdf#search=%22responsible%20lobbying%22

Failure to secure a license to operate can result in a failure to acquire and maintain access to resources. The evidence for this is accelerating. In recent years, several companies have seen projects slowed or forced to a halt because of community opposition. Examples include Manhattan Minerals at Tambogrande, Peru, Gabriel Resources at Rosa Montana in Romania, Inco in New Caledonia, Meridian Gold at Esquel, Argentina, Ivanhoe Mines at Oyu Tolgoi in Mongolia, and Asia Pacific Resources in Thailand, to name but a few.

In many cases, impacted communities are poor and remote. Host governments often do not have the wherewithal or the political will to provide basic social services. It is, therefore, in the interest of business to find ways to demonstrate that extractive projects can improve the socio-economic condition of the community and its surrounding ecosystem. Today, there are far too many examples where promises to do no harm to the environment and contribute to community development projects have fallen short of expectations. Communities today are demanding - and deserve - the right to share in the wealth generated via direct employment, opportunities for skills training, commitment to local procurements, revenue-sharing agreements, and in some cases, an equity ownership position.

To ensure companies contribute to poverty alleviation and sustainable development for project-impacted communities, The Ethical Funds Company recommends companies consider the following set of actions:

1. Conduct a baseline assessment of socio-economic indicators which compliment other assessments conducted such as an environmental impact assessment and/or social impact assessment. Companies may consider socio-economic indicators that correspond to the Millennium Development Goals (MDGs).

2. Companies should report annually on progress demonstrating the positive and negative impacts of company operations on these above noted socio-economic indicators.

3. Companies should consider entering into formal agreements with governments and with impacted communities codifying company commitments to support socio-economic development and laying out a monitoring mechanism to ensure compliance. Such agreements should be negotiated through free, prior, and informed consent from communities.

4. Priorities for socio-economic development should focus on training opportunities for local communities, targets for local employment, and preference for local procurement.

Baseline Socio-Economic Assessments & Reporting on Progress

This is not virgin territory. Currently, there are a number of initiatives already underway, developing methods to measure the economic progress and sustainable development benefits brought by extractives projects. For example, the World Bank has established a set of development and poverty impact indicators which consider the positive and negative project impacts on communities.[2] Direct impacts include measures such as number of jobs and payment of taxes while overall impacts consider wider community benefits such as the proportion of the community living on less than $1 per day or the proportion of children who receive schooling. Such information demonstrates the positive socio-economic impacts of extractives projects and can also help communities identify priority areas for consideration in negotiations with a company on mitigation and compensation measures.

The recently released G3 Global Reporting Initiative Reporting Framework also requires businesses to report on indicators measuring significant indirect economic impacts. These indicators are more qualitative than those of the World Bank, but nevertheless oblige reporters to account for positive and negative socio-economic benefits that are difficult to quantify. For example, reporters are asked to demonstrate evidence of enhanced skills development and knowledge acquisition among a given professional community or specific geographic region. Reporters are also asked to describe current initiatives at their organization to better understand their indirect economic impacts.

In another initiative, the World Bank Institute has partnered with InWEnt, a German consultancy, to identify and create successful business partnerships with non-governmental organizations that support the MDGs.

In establishing this initiative, the World Bank notes: "Two-thirds of the largely private sector-led participants to the 2005 World Economic Forum felt that fighting poverty is the first and most important global problem to be tackled. Nevertheless, participation of the business sector achievement of the MDGs remains modest – despite the fact that there is a clear case for its decisive role." [3]

At this time, at least one leading extractives company is using the MDG's to shape their local community development initiatives. This company has directed individual facilities to consider how their existing competencies can best support fulfillment of the MDG's at the local level.

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[2] "Introduction to the Development and Poverty Impact Indicators Template," World Bank, available at http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B563852570590053CA02/$File/povertyindicators081005.pdf

[3] http://www.businessandmdgs.net/

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Formal Agreements and Free, Prior, and Informed Consent

Central to any discussion of how business contributes to poverty reduction and sustainable development is the need for meaningful community engagement. Business can most effectively contribute to socio-economic development by seeking input and gaining the consent of project-impacted communities. Here the emerging standard of free, prior, and informed consent provides a standard of engagement that respects human rights and which is most likely to result in satisfactory agreements between business and impacted communities.

And there are a number of examples where business has responded. For example, the Diavik Diamond Mine in Canada's Northwest Territories is frequently cited for its best practices in successful community engagement. Project permitting requirements included completion of a Comprehensive Study of the project's environmental and socio-economic impacts. While the company was not required to consult with the public in fulfillment of this obligation, Diavik Diamond Mine nevertheless undertook extensive public consultation organizing approximately 300 community meetings over 18 months to gain public input on project impacts. The company also went beyond their legal obligations by negotiating a number of binding agreements. Among these is a legally-binding Socio-Economic Monitoring agreement between the company and the Government of the Northwest Territories and later ratified by five First Nations. In addition, Participation Agreements were negotiated and signed between the company and the individual First Nations. These socio-economic agreements include commitments to maintain levels of local and aboriginal employment, business development opportunities, and training programs.[4] Through the Socio-Economic Monitoring agreement a monitoring and reporting mechanism was also established and affords stakeholders, through semi-annual reporting, the ability to measure the economic impacts of the mine development.[5] It is worth noting that while the company was not legally required to enter into these agreements, the decision to do so likely expedited the regulatory process.

In another Canadian example, Falconbridge also signed a formal commitment to ensure the fair distribution of the economic benefits arising from its Raglan mine. In this case, Falconbridge entered into Impact and Benefits Agreements (IBA) with Makivik Corporation, the non-profit legal representative of the Inuit of Nunavik. In addition to commitments to hiring locally and preference for local supplier services, this IBA includes profit-sharing payments to an Inuit trust fund, which over the expected life of the mine may total more

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[4] Environmental Law Institute, *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities,* 2004.
[5] Diavik Diamonds Project Socio-Economic Monitoring Agreement available at http://www.diavik.ca/PDF/socioeconomic.pdf

than $70 million.[6] In both cases, the agreements deliver economic benefits and helped secure the free, prior, and informed consent from the impacted communities.

We recommend that the UN Special Representative consider how business can ensure that projects improve the socio-economic position of project-impacted communities. The projects outlined above represent only a handful of current best practices. We have emphasized that the extractives industries face growing challenges to their social license to operate given mounting examples of alleged human rights violations, some of a most egregious nature. Business must respond by establishing meaningful community engagement, based on free, prior, and informed consent which provides local employment, priority for local suppliers, revenue sharing, and equity ownership opportunities, where appropriate. It is equally important that business measure baseline socio-economic conditions and report to communities, investors, and other impacted stakeholders on project contributions to poverty alleviation and sustainable development.

We thank you for the efforts you are making to obtain feedback from all stakeholders on the responsibilities of business with regard to human rights. We support the mandate of the UN Special Representative on Business and Human Rights and look forward to your response to this and other submissions.

With Best Regards,

THE ETHICAL FUNDS COMPANY

Robert Walker
Vice President, Sustainability

[6] http://www.cbsr.ca/files/CaseStudy8.pdf