Mr. Michel Barnier
European Commissioner for Internal Market and Services
European Commission BERL 10/034 B
1049 Brussels
Belgium

Subject: EU legislation re. extractives companies

September 30th, 2011

Dear Commissioner Barnier,

We the undersigned, 21 institutional investors representing over 2.1 trillion euros in assets on behalf of clients with significant investments throughout the European Union, are writing to express our support for EU legislation regarding enhanced transparency in the extractive industries.

We are pleased that the European Commission is poised to strengthen transparency by requiring extractive companies listed or operating in the EU to disclose country-by-country payments to governments. The market value of extractive industry companies listed in EU-stock exchanges exceeds €2 trillion and they are a significant component of our investment universe.

Extractive companies are exposed to a high degree of financial, political and reputational risk. They often operate in areas of the world that experience frequent political instability in which the development and maintenance of commercial relationships with host governments can be challenging. Yet there is surprisingly limited disclosure to investors about the size and nature of the financial transactions between extractives companies and host governments. As investors, we believe that improved disclosure will promote stability and transparency in the environments within which these companies operate and enhance the prospects for investment returns.

Improved disclosure will also contribute to more stable and transparent bidding markets for contracts, licences and permits, and thus lower the risk that governments will seek to renegotiate or rescind contracts or nationalise projects. This will, in turn, help to improve risk-adjusted returns for investors in the extractive sectors. We are also confident that increased revenue transparency will give civil society in host countries the tools to hold governments to account, thus enhancing the rule of law.

More stable political and financial environments will also be a positive factor for sovereign credit quality, which will lower the cost of capital, and in turn help to drive investment and economic growth. This has the potential to enable a more balanced and diversified development path that will benefit investors seeking opportunities outside the extractive sectors within these countries. New commercial opportunities can thus emerge for investors in countries that have historically been over-dependent on extractive resources.

It is also for all the above reasons that we support the Extractive Industries Transparency Initiative (EITI). We strongly value the EITI's multi-stakeholder nature, and in particular the importance given to producing countries exercising the lead role in its implementation, as well as the indispensable oversight function carried out by civil society. We recognise that a regulatory approach such as has been introduced by the US Dodd Frank Act, and is being considered by the Commission, does not achieve these important benefits. However, we see this effort as a valuable complement to, rather than a substitute for, the EITI, and for this reason, wish to emphasise that our support for Commission's proposals is intended as an expression of support for both these approaches coexisting and mutually supporting one another.

While we support the goal of increased transparency on extractive company payments to governments, we also note and sympathise with the concern expressed by a number of extractive companies that compliance with such legislation could engender significant additional cost, particularly if such reporting requirements were to apply on a per-project basis. We regard the additional benefits of project-by-project reporting over country-level reporting as insufficient to justify the incremental costs. For this reason, we favour a requirement for disclosure at country level, except in circumstances where standards on financial materiality would require project level reporting.

We also recognise that in certain countries, passage of such disclosure rules at EU level might expose affected companies to potential breaches of national law or longstanding commercial agreements. However, we also note that such inconsistencies between the legislative regimes of different countries are a not-infrequent occurrence. We would support efforts to avoid exposing companies to conflicting legal requirements.

Finally, we strongly encourage the Commission to ensure that issuers avoid unnecessary cost by structuring the disclosure regime in such a way as to allow one single worldwide, mutually-recognised reporting process across jurisdictions. In view of legislation passed last year in the United States[1] and Hong Kong[2], disclosures in Europe will, if designed correctly, serve to build consistent reporting standards across global markets, allowing the companies in which we invest to report in a consistent manner across regulatory regimes. We also believe that in certain cases, the challenges encountered by the Extractive Industries Transparency Initiative (EITI) would be useful pointers to inform the Commission's approach.

For all these reasons, we welcome initiatives that will ensure more transparency in the extractive industries and urge the EU to adopt measures mandating the disclosures of all relevant payments made by extractive industries to governments in line with the above recommendations.

Yours sincerely,

[1]Dodd-Frank Wall Street Reform and Consumer Protection Act 2010
http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@L&summ2=m&#major%20actions

[2] New listing requirements on the HKEX came into effect on June 3, 2010
http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_18.pdf