May 9th, 2014

By email: chairmanoffice@sec.gov

Ms Mary Jo White
Chair
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
USA

Re: Section 1504 of the Dodd–Frank Wall Street Reform and Consumer Protection Act

Dear Chair White,

We write in relation to the comment recently submitted by Allianz Global Investors *et al*, and endorsed by 34 investment institutions (hereinafter referred to as the "Allianz GI *et al* letter"), regarding the specific implications for investors of Section 1504 of the Dodd Frank Act.

The undersigned signatories strongly support the Extractive Industries Transparency Initiative (EITI). As such, we not only welcome the US's involvement as an EITI Supporting Country since the Initiative's inception in 2003, but are particularly pleased to note its recent admission as an EITI Candidate Country. We regard the United States' decision as instrumental in establishing the *de facto* global standard for transparency in the extractives sector, and see the steady progress being made as a critical factor in helping to reduce volatility in the oil and other vital hard commodity markets, with beneficial impacts on global financial markets and the real economy.

We wish to emphasise that we fully and unreservedly support the recommendations contained in the above-noted submission; however, we also take this opportunity to bring to your attention the following additional considerations that we believe merit further clarity. These relate to:

1) Certain points made in an earlier investor submission, dated September 30th 2011, to EU Commissioner Michel Barnier, regarding the then-prospective EU Transparency and Accountability Directives, and endorsed by 21 investment institutions collectively representing US$3 trillion in assets under management (attached) and additional points made in a supplementary letter submitted to EU Commissioner Barnier by RPMI and SNS Asset Management, also signatory to the letter at hand, dated October 3rd 2011 (attached);

2) The statement submitted on April 15th 2014 by the American Petroleum Institute (API), of which we only became aware after the Allianz GI *et al.* investor comment had been produced and circulated for investor approval. As such, we wish to provide additional clarity on how the position contained in the Allianz GI *et al* comment specifically addresses important points raised by the API.

1) Letters to EU Commissioner Michel Barnier: EU Legislation re Extractives Companies

Our letter of September 30th 2011 to EU Commissioner Barnier stressed the importance investors place on a consistent global standard of reporting and strongly supported the European Commission's intention to make this mandatory. As such, we called on the

European Commission to structure the disclosure regime in such a way as to avoid unnecessary cost for companies by seeking to build a common set of consistent reporting standards across global markets. The letter also observed that it was important to avoid placing companies in the difficult position of having to cope with conflicting legal disclosure requirements in major jurisdictions.

The supplementary letter then submitted by two signatories of the group Barnier letter, SNS Asset Management and RPMI Railpen, followed up with the point that the European Commission should not allow exemptions where the laws of the host country prohibit disclosure and to stress (as they did in a similar letter to the SEC and to NRCan) that an exemption on these grounds would undermine the original legislative intent. Otherwise this would strengthen the so-called tyrant's veto.

SNS Asset Management and RPMI Railpen also pointed out that that such statutory prohibition in foreign law is in fact rare. For example, they noted that Royal Dutch Shell, which has operations in over 90 countries worldwide, in its own response to the SEC consultation in 2011 identified only three jurisdictions in which it operates, namely Cameroon, China and Qatar, where disclosure is prohibited under the laws of the host country. This suggests that an outright conflict of law is not likely to occur in practice in much of the world.

Companies acknowledged that there is a separate issue in respect of the breach of non-disclosure clauses in existing agreements which can potentially raise the prospect of damaging litigation under civil law. However, many resource extraction agreements would have boilerplate legal language to make an explicit exception for information that must be disclosed by law. This should provide significant protection to reporting companies.

2) Investor response to API submission:

Although we welcome the concern shown by our colleagues in the Oil & Gas industry for the specific interests that we as investors must safeguard and defend on behalf of our own clients and stakeholders, we would also respectfully note that the API's characterisation of investor interests is in certain cases overly narrow, and as such, fails to capture the full scope of what we consider to be appropriate regulatory policy. Whilst we do not dispute API's standing as a voice of its own members, it is not in any sense an investor representative body and it is not appropriate for it to purport to speak on behalf of investors.

That being said, we nevertheless agree with the API that SEC regulation should not be used to promote socio-political aims *per se*, but rather should strictly serve the interests of investors through the safeguarding of transparent and efficient markets, in a manner that properly balances costs and benefits.

In this respect, we confine ourselves in this and our companion Allianz GI *et al* letter to a discussion of Section 1504, and do not propose to conflate the merits or otherwise of this provision with those of Sections 1502 or 1503, which are material for a separate discussion and industry sector.

Where we differ with the API, and this is emphasised in the Allianz GI *et al* submission, is that while we do not argue that granular project-level payments data are essential to individual stock selection or voting decisions (and accept the API's contention that they are not), we do very much regard the full public disclosure of such data as playing a vital role in indirectly enhancing overall *systemic* stability, to the great benefit of investors.

In this respect, it is our contention that Section 1504 is fully aligned with the mission of the SEC, just as the broader aim of the Dodd Frank Act has been to remediate the failures in financial markets regulation by addressing the cumulative impacts of individual financial

institution behaviour to the extent that they create systemic risks that threaten value for all market participants.

Therefore, although we accept, in principle, the API's argument that the compliance costs occasioned by the application of Section 1504 will impose certain additional costs on individual extractive companies, we regard these as the acceptable costs of doing business in an environment where sound regulation delivers wider benefits to investors through lower risk exposure, lower volatility and enhanced investment climates in the markets where these disclosures have impact. As such, contrary to the API position, which seeks to relate the direct costs of additional disclosure to the direct benefits to each issuer's individual equity valuation, we weigh the compliance costs to issuers against the broader benefits that we believe will be felt across a wide range of investments.

Moreover, it is important to note that while the compliance costs of Section 1504 will narrowly affect the issuers of listed equities, the benefits that are afforded through better transparency and accountability, particularly of government entities in resource–dependent nations whose tax revenues will become far more transparent, will accrue across several assets classes, including equities, sovereign and quasi-sovereign debt and commodities. In this respect, it is important therefore to note that the financial interests of API members are not strictly identical to those of their shareholders, precisely because of the latter's exposure to a much broader range of investments.

We also note that the API cites compliance costs numbering in the "billions", an estimate that we consider exaggerated and alarmist. Throughout discussions held between market participants, industry and regulators regarding the specific definition of project, whether at the EU level, in the US or Canada, it has consistently been our view that pragmatism should prevail to the greatest extent possible, subject to achieving the stated aims of the regulation and not subverting them through excessive restrictions. This largely means basing the definition of reporting entities on pre-existing definitions that industry already uses for internal control purposes, through a constructive dialogue with industry that focuses on arriving at such a workable definition of "project", rather than eliminating public disclosure altogether. Such has been the example set by the Resource Revenue Transparency Group, led by the Mining Association of Canada, the Prospectors and Developers Association, the Revenue Watch Institute and Publish What You Pay-Canada. This collaborative, multi-stakeholder approach to resolving the practical challenges of project definition sets an excellent example for how the concerns of industry can be accommodated while delivering on the aims of the regulation.

The API expresses concern that Section 1504 "Risks Harming Investors By Inundating Them With Unhelpful Information", and "bury(ing) shareholders in an avalanche of trivial information - a result that is hardly conducive to informed decisionmaking (sic)". Appreciative though we are of the concern the API has shown for the plight of investors in confronting information overload, we are confident that we have the ability to identify which data are immediately relevant to our investment analysis and which can be regarded as serving a broader compliance purpose, particularly if we can work constructively with industry and regulators to agree disclosure frameworks that avoid the "burying" of decision-critical data within other information. With goodwill and pragmatism, such as that displayed by our Canadian colleagues, we are confident such a disclosure regime can be achieved.

We note the API's proposed alternative disclosure framework, whereby data would be aggregated across several reporting companies so as to present them by type of payment, government payee and project, but stop short of breaking them out by payer; and further, that the API rightly highlights that the Commission is "prohibited from imposing burdens on competition that are unnecessary to further the purposes of the Exchange Act".

While we acknowledge the API's motivation for advocating this alternative approach, which is rooted in concerns about disclosure of confidential information and therefore impaired competitiveness, we refer you to the argument we make in the Allianz GI *et al* letter to the effect that 1) such payment details are largely available anyway to those who can afford to pay private consultants to obtain them (i.e. the very commercial competitors the API is most concerned about), albeit not the civil society actors that the regulation is intended to inform; and most of all that 2) as investors, we are far less concerned about the potential loss of a temporary commercial negotiating advantage by one company or another in our portfolios than we are about the overall risk-increasing and wealth-destroying effect of opacity, corruption and instability.

More practically, we are concerned that the API's insistence on an alternative disclosure framework, at a time when both the EU and Canada have now announced their clear intention to proceed with a common approach that is aligned with the standard embodied in the original language of the Dodd Frank Act, undermines one of the key planks of investor-friendly regulation, i.e. inter-jurisdictional consistency. As investors, we expect that the companies in which we invest would value the efficiencies that derive from one common reporting and compliance framework, so that the additional cost and administrative burdens of this new regulation - which we accept will be meaningful until fully embedded in routine reporting systems, though in our view highly unlikely to be in the billions of dollars cited by the API - be kept to a minimum.

Yours sincerely,

- *AP1/Första AP-Fonden (The First Swedish National Pension Fund), Ossian Ekdahl, Head of Communication and ESG*
- AP2/Andra AP-Fonden (The Second Swedish National Pension Fund), Ulrika
- Danielson, Head of Communications and HR and Coordination Corp. Governance
- *AP3 Tredje AP-fonden (The Third Swedish National Pension Fund), Peter Lundkvist, Head of Corporate Governance*
- *AP4/Fjärde AP-Fonden (The Fourth Swedish National Pension Fund), Arne Lööw, Head of Corporate Governance*
- Element Investment Managers, David Couldridge, Senior Investment Analyst
- F&C Management Ltd, Matthias Beer, Associate Director, Governance and Sustainable Investment
- Legal & General Investment Management, Sacha Sadan, Director of Corporate Governance
- *Natixis Asset Management and Mirova, Hervé Guez, Director of Responsible Investment Research*
- *OPSEU Pension Trust, Enrique Cuyegkeng, Managing Director, Public Market Investments*
- *RPMI Railpen Investments, Frank Curtiss, Head of Corporate Governance*
- *SNS Asset Management, Jacob de Wit, Chief Executive Officer*

CC.

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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,

Institution	Country	Signatory	Title	Email	Contact	Title	Email
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[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

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Mr. Michel Barnier

European Commissioner for Internal Market and Services
European Commission BERL 10/034 B
1049 Brussels

Belgium

Our reference	EC_Barnier_03102011.doc	Date	3 October, 2011
Your reference	-		
Subject	EU legislation re. extractives companies		

Dear Mr Barnier,

We are writing to you in order to express our support for forthcoming EU legislation regarding enhanced transparency in the extractive industries. SNS Asset Management (SNS AM) and RPMI Railpen Investments hold similar views on this subject and work together on taking forward our position on this.

By way of introduction, SNS Asset Management (SNS AM) is the investment manager of the Dutch financial services group SNS REAAL, a bank-insurance company in the Netherlands. SNS AM has total assets under management of approximately EUR 45 billion and is a pioneer in the area of responsible institutional asset management. This management is based on a number of fundamental principles that are applied across all assets and asset classes. The principles are derived from international treaties, guidelines and codes of best practice and cover a range of ethical as well as social, environmental and (corporate) governance issues.

RPMI Railpen Investments is the investment monitoring arm of the Railways Pension Trustee Company Limited, the corporate trustee of various UK railway pension funds with approximately EUR 20 billion in assets under management and 350,000 beneficiaries. Railpen is a long term investor and asset owner with a long term commitment to pay pensions and it follows that the long term sustainable performance of portfolio companies is important to it and its beneficiaries. Railpen believes that a responsible investment approach is important in securing sustained performance and shareholder value. Railpen is a long standing supporter of better corporate governance for nearly 20 years and was one of the first UK pension funds to adopt an active UK corporate governance and voting policy in 1992.

As major institutional investors with this background, SNS AM and Railpen have a long standing interest in better corporate reporting on payments, including those in the extractives sector. 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 EUR 2 trillion and they are a significant component of our investment universe. We are therefore one of the investor supporters of the Extractive Industries Transparency Initiative (EITI), having consulted closely on the matter at hand with our peers.

We refer to the EITI joint investor letter of 30 September 2011 which we have co-signed. However, we wish to make separate representations on the issues of per-project reporting, exemptions for certain countries, and conflicting laws.

We would suggest the European Commission to take an approach similar to that of the proposed rules for Disclosure of Payments by Resource Extraction Issuers pursuant to Section 1504 of the United States' Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to discourage jurisdiction shopping aimed at avoiding the spirit of the legislation. We would like to mention that we have communicated our views regarding the Dodd-Frank Act to the US Securities and Exchange Commission (SEC) earlier this year through a formal consultation letter.

We believe that investors have a strong direct interest in country by country disclosure of material payments to governments. This holds all the more in the case of specific investment decisions in relation to exposure to smaller companies that have concentrated assets in a small number of countries or to sovereign debtors that rely heavily on extractive revenues. We therefore support the SEC's proposal to require disclosure by all resource extraction issuers without exceptions for broad categories of issuers (based on the size of the issuer, or whether the issuer is a US or foreign entity). This would be consistent with the EITI approach, and also with the positions that are likely to be taken by other regulators in other jurisdictions and will help to create a level playing field.

At the same time, we also note 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. However, we regard the additional benefits of project-by-project reporting supplementing country-level reporting as sufficient to justify the incremental costs.

We consider that neither the SEC nor the European Commission should allow exemptions where the laws of the host country prohibit disclosure, as this would undermine the original legislative intent. We hold the view that it is precisely in these countries, which prevent transparency and disclosure of information, where the greatest investment risk lies. Such an exemption would create an incentive for certain countries to create such laws, thereby

undermining the purpose and intent of the statute to provide information to investors and promote international transparency.

We understand that such statutory prohibition in foreign law is in fact rare. For example, we note that Royal Dutch Shell, which has operations in over 90 countries worldwide, has in its recent response to the SEC identified only three jurisdictions in which it operates, namely Cameroon, China and Qatar, where disclosure is prohibited under the laws of the host country. This suggests that an outright conflict of law is not likely to occur in practice in much of the world.

We acknowledge that there is a separate issue in respect of the breach of non-disclosure clauses in existing agreements which can potentially raise the prospect of damaging litigation under civil law. However, we would expect that many resource extraction agreements would have boilerplate legal language to make an explicit exception for information that must be disclosed by law. This should provide significant protection to reporting companies.

We welcome the initiative taken by the United States of America (and recently also the Hong Kong Stock Exchange), and are pleased to see the European Union strive to creating a level playing field on a global basis. We consider that the broadest possible base of extractive industry companies that are required to report their payments to governments will help deliver more of the benefits envisaged by revenue transparency initiatives. If designed properly, this will help establishing a level playing field so that neither the competitive position of extractive industry companies is impacted by their payment disclosure obligations nor unnecessary cost is imposed. Structuring the disclosure regime in such a way as to allow one single worldwide, mutually-recognised reporting process across jurisdictions will serve to build consistent reporting standards across global markets. We therefore encourage the Commission to strive for a close alignment with other regulators worldwide.

We hope these comments are helpful and please contact us (through SNS AM, see letter head) if you require any further elaboration on any aspect. In closing we would add that we have shared this response with other institutional investors in order to seek their comments and to encourage them to submit their views to the Commission.

Yours sincerely,

Manuel Adamini

Head of ESG-research
SNS Asset Management

Frank Curtiss

Head of Corporate Governance
RPMI Railpen Investments