# Sustainable and Ethical International Investment Network feature articles

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### Sustainable and Ethical International Investment Network feature articles


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### Extracting the Bank from the Extractives

## by Leif Brottem

# May 7, 2002

Opaque financial transactions in the oil industry recently made headlines again when Global Witness, a UK-based NGO, revealed that nearly a third of Angola's state revenue in 2001 -up to US$1.4 billion- is unaccounted for. According to the Washington Post, a few companies such as British Petroleum are increasing the transparency of their Angola operations. Others such as ChevronTexaco and ExxonMobil continue with the status quo and thus help perpetuate a corrupt system that keeps three-quarters of Angolans living in absolute poverty.

At a time when world leaders are touting the role of private investors in helping the poor and pledging more money for development; the behavior of oil and gas companies that invest in poor countries is coming under close scrutiny. The Washington Post noted that if transactions between oil companies and host governments were transparent and accountable, there would be much less need for increasing publicly funded development assistance,

Scrutinizing its own role in the oil, gas, and mining sectors, the World Bank began a review process late last year which intends to address a complicated question: Can extractive industries contribute to the Bank's mission of poverty alleviation and sustainable development or should the Bank pull out of them entirely? The question is important for two reasons. Although extractive industries only comprise a small fraction of the World Bank's total lending, it facilitates projects that private companies would not otherwise undertake.

Many NGOs argue that the World Bank has no business in the oil and sector s because global climate change demands a rapid shift to renewable energy sources. International Financial Institutions (IFIs) such as the World Bank are well positioned to facilitate such a transition through innovative cofinancing and financial guarantees for clean energy. Oil and gas exploration increasingly occurs, often without local consent, in remote and often pristine territories where indigenous people live. Moreover, many critics cite a growing body of evidence that extractive industries in general work against the World Bank's mission by worsening poverty and exacerbating conflict in poor countries.

Yet, as oil, gas, and mining companies fan out across the developing world to the open embrace of host governments, the World Bank might find a new role to play. The Bank could use its leverage to nurture corporate social responsibility and accountability within extractive industries.

First of all, the World Bank needs a clear transition strategy in its own portfolio from fossil fuels towards a renewable portfolio standard. This should include a deadline by which time its energy portfolio is predominantly comprised of renewable sources. Secondly, the Bank should require government borrowers to develop national plans for clean energy development. Third, energy companies that benefit from World Bank projects should be required to increase their investments in renewable sources. A case in point is the Chad-Cameroon pipeline. While the Bank takes pride in the measures of transparency it achieved in the project, one of its main beneficiaries, Exxon-Mobil, continues to hold a retrograde position on climate change and is very slow to invest in renewables. The pipeline itself carries significant social and environmental costs as it will open new regions to more resource exploitation and human settlement.

Friends of the Earth argued in its recent report, Dubious Development, that the World Bank should cease financing with poor environmental and social records until they change their practices. As the fourth prong of a commitment to clean energy, the Bank should set a high standard for social and environmental performance for all energy investments, both fossil fuel and renewables. Well-established guidelines for such as Social Accountability 8000, the OECD Guidelines for Multinational

Enterprises, and ISO 14001 for environmental management as well as the Global Reporting Initiative (GRI) for disclosure should be adopted for their worldwide operations, not just projects where the World Bank is present. Multinational corporations that cannot comply with these requirements should not qualify for lucrative World Bank project tenders.

If the World Bank Extractive Industry Review is to be successful, private companies must buy in to the fact that they are partners in furthering the World Bank's mission. This requires a vision that goes beyond the bottom line and a strategy to realize that vision. The tools are available. What is needed is the will to change.

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### Leveraging Public Pension Funds: Towards sustainable and responsible corporate governance

## by Sandy Buffett, the Nautilus Institute
## March 22, 2002

US public pension funds--the sleeping giants of Wall Street-- are stirring. Pension funds now represent the third largest pool of capital invested in global markets and a powerful force in corporate decision-making. In the wake of the Enron debacle and the ensuing pressure by shareholders for increased disclosure, pension funds are reexamining two key questions: What are the precepts of "good corporate governance"? And what should be the role of institutional investors be in promoting it?

The Enron case has made it clear that corporate governance and disclosure needs strengthening. In response to its $62 million loss in the Enron collapse, CalPERS, the California Public Employees Retirement System--formed a task force to recommend and lobby for more rigorous corporate governance standards and disclosure rules. As the nation's largest public pension fund with approximately $151 billion under management, CalPERS is an influential voice. On February 22nd, one CalPERS board member stated in the press:

"We have huge leverage in our portfolios. I would like to see us really emerge with some new, forceful ideas and get them implemented…. It's time to tighten the screws."

The recent Hewlett Packard (HP)- Compaq merger also highlights the increasing shareholder muscle of pension funds. While these major institutional investors have always held the "power of the proxy," for the most part, pension funds have been dormant as shareholder activists. Now, in the HP - Compaq case, the votes from pension funds, which voted in remarkable numbers against the recommendation of HP management, could sway the outcome of a controversial corporate merger.

CalPERS made waves in the financial press last month with its announcement of a human rights screen for its overseas public equity investments. The screen, which applies to only about $1 billion of CalPERS' holdings, creates an exclusionary list of countries deemed to have poor labor standards, a lack of democratic principles, and a lack of transparency. Excluded countries include China, Russia, Thailand, and Malaysia.

The screen may signal a willingness of US public pension funds to consider broader issues of 'corporate social responsibility'. However, the screen is 'country-based' rather than 'firm-based" and

does not apply to multinational corporations (MNCs). Moreover, by screening countries rather than firms, which is the preferred method of most socially responsible investment firms, CalPERS penalizes entire countries, rather than channeling capital to more progressive firms in developing countries. It also removes the leverage CalPERS wields as a shareholder and neglects the obvious need to also hold MNCs accountable for their practices overseas. Nevertheless, the new CalPERS screen indicates that pension funds are willing to consider non-financial "ethical" criteria as part and parcel of good corporate governance.

The key question is whether a sustained effort by NGOs, labor, and the SRI community can press CalPERS and other institutional investors towards demanding sustainable and responsible corporate governance within its core holdings. The Dutch APB pension fund, the world's largest, has already created a test portfolio with sustainability criteria. Legislation has been passed in France and Norway that requires their pension funds to be managed using environmental criteria.

US public pension funds could develop far-reaching environmental and social standards and investment policies that provide clear expectations for multinational corporations in order to "move the markets" towards greater corporate accountability. This will require making the case that demanding sustainable and responsible corporate governance is integral to their "fiduciary responsibility."

With Enron and other corporations in the "hot seat" and shareowner activism on the rise, the time is ripe for activists, citizens, and pension beneficiaries to demand that public pension money be invested responsibly. As the CalPERS board member stated, its time to tighten the screws.

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### Financing For Development: Caught Between Polyanna and Cassandra?

## by Christine Ahn, Sandy Buffett and Lyuba Zarsky, the Nautilus Institute
## February 4, 2002

In his opening remarks to the General Assembly last week, U.N. Secretary-General Kofi Annan made a pitch for the latest global effort to help close the yawning gap between the world's rich and poor. According to Anan, the International Conference on Financing for Development, slated for March 2002 in Monterey, Mexico, poses a unique opportunity to boost global environment and development goals.

From January 16 to 25, the Financing for Development (FFD) effort held its fourth and final Preparatory Committee meeting (PrepCom) before the March conference. The flurry centered on a draft document that spells out the potential "Monterey Consensus". As with all UN efforts, consensus on any issue is no small feat; given the deep global divides that exist, especially between North and South. But there was great hope that a meaty consensus could be found, especially ahead of the World Summit for Sustainable Development in Johannesburg later this year.

The starting point of the FFD effort is the recognition that, in the 1990s, the private sector surpassed-by far-Official Development Assistance as the primary source of foreign capital for developing countries. The goal of the Monterrey Consensus is to stimulate more widely distributed private investment as a way to "eradicate poverty, achieve sustained economic growth and promote

sustainable development as we advance to a fully inclusive and equitable global system."

It is not clear, however, that the draft Monterey Consensus document is yet up to the task. The tired section on investment flows places the onus once again on host countries to liberalize capital markets and to work with multilateral financial institutions to create an investor-friendly climate. With the right "US-style"--policies and institutions in place, the Consensus seems to assert that capital flows to poor countries would be abundant.

But being investor-friendly is not enough, either to attract and sustain private investment or to ensure that it serves environmental and social goals. We need only look at the unfolding Enron scandal to know that the embrace by developing countries of American standards of corporate accounting, disclosure, and transparency will, at the least, increase financial instability and jeopardize social welfare. Without new obligations on the terms, commitments, and "quality" of investment, creating a stable investment climate is not sufficient to reverse growing inequality and degradation of the earth's ecosystems.

There is little doubt that access to capital is a fundamental requirement of social and economic development. For developing countries and poor communities around the world, exclusion from capital markets, especially 'greenfield' investment in new business, makes a better life an elusive or even impossible dream. Indeed, the motto of the National Community Reinvestment Coalition in the US is "Access to credit and capital is a basic civil right." The fact that three quarters of world investment flows between the largely affluent OECD countries; while Africa, the poorest region of the world, gets around 1 percent of global foreign direct investment; is an ethical travesty.

However, under current international rules-or the lack of them-global capital flows have often wreaked havoc on developing countries. Southeast Asian countries have still not recovered from the devastation wrought by the sudden turnaround in short-term capital flows that triggered the Asian crisis in the late 1990s. Communities and NGOs throughout the developing world lament widespread environmental degradation, rise of sweatshops, and contraction of democracy and human rights, which have at times accompanied the rise of foreign investment.

The governance issues surrounding investment, in short, go beyond the need to make the world safe for investors. Private capital markets can and indeed must be harnessed to promote global equity and sustainability and even security. The question is whether the FFD process will be able to mobilize investors to make meaningful and measurable commitments to development.

The January Consensus draft contains only one paragraph on responsibilities of corporate investors and private financial institutions, using language such as "In this spirit…we encourage good corporate citizenship…" As a conference premised on mobilizing the private financial sector for sustainable development, this falls embarrassingly short of the need to move beyond ineffective pledges on corporate citizenship towards substantive commitments on corporate social responsibility.

What is unclear is whether the FFD process has the momentum to move beyond platitudes to a clear and fulsome vision of how corporations and financial institutions can promote sustainability and equity through global investment. Optimistic Polyannas point towards the very fact of the process-the willingness of governments, businesses and NGOs to engage-as a baby step in the right direction. Skeptical Cassandras conclude that progress so far has been little indeed and that, given the power of corporate and financial capital, little can be expected. Perhaps most appropriate is a humble view which recognizes the enormity of the task and continues to press for change day-t--day, including in the FFD.

On the road from Monterrey to Johannesburg and beyond, the agenda is clear: investment must be governed in ways that not only protect investors but promote social and environmental responsibilities.

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### Review: "Pollution and capital markets in developing countries"

## by Leif Brottem, Globalization and Governance Program Officer, the Nautilus Institute
## January 14, 2002

Not long after the Chilean electrical company Chilgener released a toxic cloud over Santiago, it lost 5% of its market value in April 1992. Five months later, the company announced an investment of $115 million to control air pollution. According to a recent study in the Journal of Environmental Economics and Management, capital markets in developing countries appear to respond-and respond quickly--to the environmental performance of firms. The importance of this discovery is that it offers a way for developing countries to improve environmental protection without the costly burden of command and control regulation and enforcement. The key is to harness the power of the market with information disclosure

Undertaken by Susmita Dasgupta and Benoit Laplante, the study focused on cases in Argentina, Chile, Mexico, and the Philippines. The first of its kind conducted in developing countries, the study applied its methodology to positive and negative environmental events to measure how these impact stock performance during a given time window. Events ranged from the release of an NGO polluter blacklist to investments in recyclable products and new pollution abatement technologies. Firms who received official recognition for superior environmental performance saw market values increase by more than 20% over the event window. This points to a potential disclosure framework that could further enable community organizations to protect their local environment from firms seeking to take advantage of weak official oversight. It also provides a strong incentive for environmental leadership in the private sector.

Information itself, however, is not a silver bullet. The study emphasizes the continued importance of strong government regulation. Information must be subject to credible third-party verification. Moreover, to be effective in changing market and company behavior, information must be put in the hands of a strong civil society. Without NGOs and other civil society groups who are capable of mobilizing public reaction and engaging with companies, information is tossed to the wind. The study also points out that not all firms are necessarily responsive to public pressure concerning their environmental performance. In addition, improvements in firm performance will not be sufficient to address many of the highly complex environmental problems that communities face in developing countries.

There is a role for international civil society in framework as well. Institutional investors in the U.S. and elsewhere that are seeking to shift to more socially responsible investments would benefit greatly from greater information disclosure in emerging markets. Activists will gain considerable leverage vis-à-vis companies with emerging market investments that may be environmentally damaging. NGOs around the world are seeking to level the playing field with stronger disclosure laws. The California Global Corporate Accountability Project is exploring a campaign in the state to

extend U.S. right-to-know laws to include the international operations of US multinational companies. As the Dasgupta and Laplante study reveals, the increase of credible information will help communities around the world who are seeking a cleaner environment.

This feature was a summary and analysis of: Susmita Dasgupta and Benoit Laplante Nlandu Mamingi "Pollution and capital markets in developing countries" Journal of Environmental Economics and Management42 (3, 2001) : 310-335

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### Sustainable and Ethical Investment for China's New Era

## by Leif Brottem, Globalization and Governance Program Officer, the Nautilus Institute
## December 20, 2001

The accession of the People's Republic of China into the World Trade Organization on December 11 was a watershed event for the world. China, the sleeping giant of the global economy, could very well wake up to be the 'factory of the world,' to use the words of one enthusiastic government official. In another less reported but important story, Vietnam amended its national constitution to put the private sector on equal footing with state-owned enterprises as part of its free trade agreement with the United States. As corporations move to take advantage of investment opportunities in these countries, the issue of what is accepted and required as 'responsible' corporate governance must be addressed.

China is already far and away the largest recipient of foreign direct investment (FDI) among developing countries. This trend will only increase as WTO membership makes it easier for manufacturers to produce their goods in China far more cheaply than current locations such as Mexico or Malaysia. The rules for how Gap Inc. produces its clothes and how BP produces its oil in China will be affected by future WTO negotiations.

As part of its Doha Declaration last month, the WTO put investment on the agenda as a future negotiation item. A future WTO agreement on investment would grant foreign investors a series of rights and protections to guarantee fair and equitable treatment in host countries. An open question is whether investor responsibilities will be part of this agreement. Will the WTO agreement reflect principles of responsible corporate governance such as information disclosure and reporting? Will textiles producers be compelled to recognize the core labor standards of the International Labour Organization and will energy companies be required to use advanced technologies for cleaner production as required in their home countries?

These are issues that are recognized in voluntary measures such as the OECD Guidelines for Multinational Enterprises but there are so far no binding mechanisms to enforce them. If the WTO helps China become the factory of the world, there must be rules to ensure that this occurs with a new acceptance of investor responsibility for sustainable and ethical corporate governance. The agreement that established the WTO recognizes sustainable development in the first paragraph; it is reasonable to expect that its rules on investment reflect it as well.

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**Investment after Doha: time to sow?**

# By Lyuba Zarsky, Globalization and Governance Program Director, the Nautilus Institute
# November 21, 2001

The agreement to begin WTO negotiations on investment should serve as a call to action for NGOs, socially responsible business leaders, and others who seek to promote the global public interest. Now more than ever, it is time to mount a proactive advocacy effort based on a positive vision of what constitutes 'sustainable and ethical' investment rules.

Pundits and analysts are "spinning" the Doha agreement in different ways. US Trade Representative Robert Zoellick calls Doha a "big win" for the US. Mike Moore, Director General of the WTO, credits delegates for "saving the WTO." The Financial Times praises Washington's "conciliatory style" but wonders if it reflects "fundamental shifts" that would make the WTO more manageable. NGO analysts think not and call Doha a "Pyrrhic victory" and a "massive defeat for poor people around the world".

The reality is that there are deep divisions between the US and the EU, and between developed and developing countries, especially on "issue creep" -the tendency to stake out more and more market territory to fall under WTO disciplines and dispute resolution. At Doha, much arm-twisting was needed to get agreement to the broad concept that there would be negotiations--and only after the Fifth Ministerial in 2003. Between now and then, the Working Group would discuss all other issues, including the modality, scope, definition, and mechanism of dispute settlement on the Relation Between Trade and Investment.

The governance of investment strikes at the heart of sustainable and equitable development. The rules and practices surrounding investment decisions affect both access to capital and a broad range of social and environmental impacts. "Quality" investment is crucial for the development of cleaner technologies, for sustainable resource management, for human and environmental infrastructure of all kinds. According to UNCTAD's 2001 World Investment report, about 75% of global foreign investment flows between the thirty rich countries of the OECD. Africa gets less than 1%.

Global investment rules could potentially help to redress this imbalance. Better protection for foreign investors against expropriation and unfair treatment could encourage more greenfield investment in poorer countries and communities. Freer access to investment opportunities in developing countries could also increase foreign investment, though potentially at the cost of domestic companies.

The problem is that investment rules that protect only foreign investors--and nobody else--undermine the will and capacity of nations to regulate in the public interest. Sustainable development requires corporate and state governance mechanisms that expressly embrace environmental, social and development objectives. If global rules don't raise the bar for all, then the effects of competition for investment will keep national standards "stuck in the mud". Even the most socially responsible companies can only go so far in voluntarily improving their environmental and social performance before they hit the realities of market competition.

Moreover, if global investment rules skew local growth opportunities in favor of foreign companies, they can also fuel political resentments. In the aftermath of September 11, American companies

have already been the targets of "anti-imperialist" demonstrations around the world.

To date, investment rules in regional and bilateral agreements have strengthened investor rights without specifying social and environmental obligations either of private investors or governments. NAFTA's Chapter 11 goes even further, allowing corporations to successfully challenge the rights of states to regulate in the public interest.

A 'sustainable and ethical' approach to investment rules would, first of all, affirm the rights of states to regulate. It would also spell out positive obligations, such as for investors to undertake environmental impact assessments and to maintain environmental and social management systems as part of good corporate governance; and for states to embrace and enforce global human rights, labor, and environmental agreements. Finally, it would create a balanced dispute settlement mechanism, accessible to both citizens and investors and offering protection for both investors and the public interest.

Without exception, NGOs with missions to promote global sustainable and poverty-reducing development opposed the launch of WTO negotiations on investment. Their fear was that the WTO would squeeze the complex, ethical and environmental issues surrounding the governance of investment into a narrow "liberalize-at-all-costs" formula aimed at increasing market access and protection for rich country corporations.

Now that the WTO has decided to launch negotiations, it is time to ratchet up advocacy on investment based on a positive vision. Two tasks are urgent. The first is to figure out what the content of a 'sustainable development' framework for investment rules would be. The second is to coalesce on a feasible implementation strategy. The record of the WTO inspires little confidence that it can carry such an agenda.

A more fertile institutional arena is the Earth Summit, which will take place in Johannesburg next September. The Summit could launch a Working Group on Sustainable Investment to complement and feed into the WTO or even to work towards a stand-alone framework agreement. UNEP, the ILO, the Commission on Sustainable Development, UNDP and the UN's Financing for Development Initiative could all play a part. But only the NGO community, both North and South, can provide the trigger and, with business, the muscle. Now is the time to sow.

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### Disconnect at Doha

## By Lyuba Zarsky, Globalization and Governance Program Officer, the Nautilus Institute
## November 9, 2001

September 11 might have been a wake-up call for millions of Americans but trade negotiators have slept on. As the WTO ministerial gets underway in Doha, Qatar, the "Quad" countries-the US, Japan, the EU, Canada-are pressing a new trade round with a single-mindedness worthy of the Terminator. Back in the early 1990s, then US Trade Representative Carla Hills claimed she would open foreign markets to US commerce 'with a crowbar' if necessary. Carla has faded from the scene but the crowbar remains in use.

Never mind the mounting evidence that globalization, as currently structured, is driving a deep wedge between wired-in, urban elites and a disenfranchised rural poor in many developing countries--including South and Central Asia. Never mind the warnings that the fundamentalism found throughout the world is rooted in this soil of poverty, despair and global exclusion. And never mind the fact that two of our strategic allies in pursuing the 'war against terrorism', India and Pakistan, are among the most vociferous opponents of a new trade round. Indeed, the entire bloc of developing countries, by far the majority in the WTO, are opposed because, they fear, it will widen the gap between global rich and poor.

Given the extraordinarily high stakes involved should the war in Afghanistan escalate, as well as the debacle at the last WTO ministerial in Seattle, one might expect that the centerpiece of the Doha agenda would be institutional reform. The first lesson of Seattle was that the business-as usual approach at the WTO, essentially behind-the-scenes negotiations by the Quad countries, undermines a global trading regime.

The sad fact is that, rather than institutional reflection and reform in this time of economic recession and threats to security, the Doha agenda is largely more of the same. This time, the 'new issues' are investment, competition policy, and government procurement. Of these, investment has become a lightning rod not only for developing countries but for a broad array of human rights, environment, and development groups from both developed and developing worlds, including the US.

Many progressive constituencies reject any attempt to negotiate formal rules on investor rights, arguing that national governments must maintain the right to regulate for the public good. The current formulation of investor rights, such as NAFTA's Chapter 11, allows investor-to-state arbitration whenever a foreign corporation feels its "right to profit" is hindered by host country environmental and labor laws. For example, California's ban of the gasoline additive MTBE, a groundwater pollutant, has been challenged under Chapter 11 by the Canadian Corporation Methanex.

But a better approach would be to press for investment rules which balance private investor rights with social purpose-human rights, equity, economic development for the poor, environmental sustainability. Global capital flows, especially foreign direct investment, must be a key part of an overall strategy to enhance global security and sustainable development. Negotiating multifaceted investment rules which define investor obligations should be high on the global agenda.

The disconnect at Doha is thus multi-dimensional--between US commercial and security objectives, between free traders and proponents of 'ethical trade,' between Quad and developing countries, and between investor rights and investor obligations. In such a context, the launch of a new round is likely to be a Pyrrhic victory.

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### Shining light on investment governance-- The Sudan Peace Act

## By Leif Brottem and Sandy Buffett, The Nautilus Institute October 19, 2001

It has often been said, "sunlight is the best disinfectant." In the financial markets, that sunlight is disclosure. Yet, the governance of the global financial system fails to provide adequate transparency

and disclosure mechanisms needed to inform investors of environmental, human rights, and security risks. The current system enables criminal networks to launder money and corporations that drill for oil amidst slavery and repression to raise capital on the New York Stock Exchange. In the wake of September 11th, the Bush Administration's sudden after-the-fact awakening to the need for financial transparency has been to freeze the assets of terrorists. This is the financial equivalent of launching a missile-- both are crude, blunt instruments whose purpose seems more to demonstrate tough action than to accomplish meaningful change. The U.S. Congress and the Bush Administration are now faced with the chance to make a first step towards meaningful disclosure and transparency in the U.S. financial markets in a groundbreaking provision of the proposed Sudan Peace Act.

A version of the Sudan Peace Act that contains capital market disclosure provisions passed the House of Representatives by a vote of 422-2 and is now at the Senate Committee on Foreign Relations. The provisions within the bill prohibit any foreign oil companies that do business in Sudan from listing or trading their securities on U.S. financial exchanges. All companies that do business in the country will be compelled to provide significant disclosure to investors and the public via the Securities Exchange Commission or face a similar prohibition. The disclosure requirements would include the relationship of their commercial activity to human rights and religious freedom in Sudan, and the use of proceeds from capital raised in US markets to the contribution of these activities. U.S. oil companies are already prohibited by sanctions from investing in the country.

Human rights groups and Christian organizations are the primary backers of the capital markets provisions that they see as key to ending the country's18-year long civil war between the Muslim dominated central government and the Christian dominated South. The Sudanese coffers are filled with oil revenue from sources developed with foreign investment and there is speculation that recent government campaigns are intended to assert control over new oil developments in the South. The most prominent investors in Sudan are Talisman Energy, a Canadian firm, the state-owned China National Petroleum Corp. and the Swedish firm Lundin Oil AB.

If the threat of exclusion from the NYSE spurs companies such as Talisman to leave the Sudan, it could make oil companies worldwide think twice about investing in countries where the government commits human rights abuses. The disclosure provision could also prove to be a powerful tool to this end, especially if it is eventually expanded beyond the borders of the Sudan. In May of this year, Laura Unger, then acting chairman of the SEC expressed support for this kind of measure when she stated in a memo that overseas companies seeking to raise money in US capital markets should disclose if they do business in countries recognized by the US as "states of concern" such as Burma and Sudan. Unger wrote, "Our aim is to make available to investors additional information about situations in which the material proceeds of an offering could-- however indirectly-- benefit countries, governments, or entities that, as a matter of US foreign policy, are off-limits to US companies."

Opponents to the capital markets provisions of the Sudan Peace Act see them as a slippery slope in a policy area where the SEC should not tread. The State Department spokesman recently told journalists: "Prohibiting access to capital markets would run counter to global US support for open markets, would undermine financial market competitiveness, and could end up impeding the free flow of capital worldwide".

Such disclosure and reporting requirements, it is believed, would effectively bar foreign companies from listing on US markets. Indeed, the threat of increased transparency and reporting led Russia's Lukoil to list on the London Stock Exchange rather than the NYSE.

Wall Street interests, particularly the Securities Industry Association and Goldman Sachs Inc., underwriter for the hotly protested PetroChina IPO, are lobbying to have the capital markets

provisions removed from the final bill. A final debate on the capital markets sanctions provisions has been delayed.

The September 11th tragedy showed, however, that the current opacity of capital flows has a profound effect on foreign policy and that the governance of finance requires greater transparency and disclosure. As much as the US wants to preserve the status quo of the international financial system that it currently dominates, it cannot be denied that changes are due. Let the sun shine in.

We encourage your comments and feedback on this issue.

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### Can California lead the way on ethical investment rules?

## by Sandy Buffett of the Nautilus Institute Globalization and Governance Program
## October 1, 2001

Californians have found themselves reacting to ill-conceived and non-transparent investment rules. In Sacramento, Legislators have recently formed the Senate Select Sub-Committee on International Trade Policy and State Legislation. The Committee seeks to inform residents of the impacts on state-level environmental and labor laws as a result of a result of international trade and investment agreements such as the FTAA and NAFTA's Chapter 11 dispute settlement mechanism.

The currently formulated rights provided in investment agreements, such as Chapter 11, allow investors to arbitrate whenever a foreign corporation feels it has not been treated "fairly and equitably. In effect, if a company's " right to profit" is hindered by state-promulgated environmental and labor laws, it is viewed as "expropriation." For example, California's ban of the gasoline additive MTBE, a groundwater polluter, has been challenged under Chapter 11 by the Canadian Corporation Methanex. (For further analysis, see IISD 's paper "Private Rights, Public Problems: A Guide to NAFTA's Chapter on Investor Rights"

As the sixth largest economy in the world, could California emerge from a reactive stance into a proactive leader to define ethical and transparent investment rules? Indeed, it is already happening. Phil Angelides, California's state treasurer, has advocated for increased social criteria in California pensions' international portfolio holdings. Calpers, the California Public Employees Retirement System, which is the second largest pension fund in the world, has become a signatory to the Global Sullivan Principles.

The International Investment Rules Project is examining the benefits and limitations of sub-national governance of investment. California could serve as a "point of entry" for inserting new rules which bind investors, both foreign direct investors (FDI) and portfolio investors, to higher standards of environmental and social performance through increased disclosure and transparency. Potential policy recommendations include a California version of the "International Right to Know" law, requiring California corporations to disclose environmental and social performance information for their worldwide operations and supply chains. We will also look at mechanisms for elevating ethics via California's institutional investors, such as recently passed pension legislation in the U.K and France which requires public pension funds to disclose whether and if they use environmental and social criteria in their stock-picking criteria.

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