Friends of the Earth Canada Submission to the '*National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries*'

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As the International Campaigner for Friends of the Earth Canada I would like to speak to the issue of financing for Canadian mining companies who are engaged in environmentally and socially destructive activities overseas. **FoE is concerned that the current level of disclosure, which is required by Canadian securities markets for companies wanting to raise money for their overseas operations, is inadequate and is serving as an impediment to the incorporation of environmental, social and governance factors by private investors.** Moreover, we feel that Canadian materiality standards, which serve as the basis for disclosure requirements, are too narrowly defined and that as a result they do not provide potential investors with the information they require to make informed or ethical investment decisions.

Over the last two years FoE has been involved with three cases in particular: Ascendant Copper's 'Junin' project which threatens a biodiversity hotspot in Ecuador; Glamis Gold's highly destructive Marlin Mine project in Guatemala; and Ivanhoe Mines Monywa project in Burma. Each of these three mining companies receives the majority of its financing through being publicly listed on securities markets. Of these markets, the Toronto Stock Exchange lists about 60% of all public mining companies in the world and represented 85% of all mining deals made in 2004. This translates to over 8400 mining projects, of which 31% are located outside of North America. Mining companies often chose to incorporate themselves in Canada for three primary reasons:
First - in order to take advantage of Canada's lower corporate tax rate (which is expected to be more than 6% lower than that of the US by 2008);
Second - to gain access to our vast pools of private capital (the TSX accounts 41% of the total equity capital raised for mining on global securities markets), and;
Third – to take advantage of the mining expertise of Canadian brokers.

This then raises some questions about what it takes for these companies to list on the TSX and what sort of accountability these companies then have to Canadian laws and values?

This is obviously a source of concern when we consider the diplomatic resources that are going to support these so-called "Canadian" companies in the development of their projects overseas. As we have found through our Access to Information requests, this is especially relevant in countries where projects are being actively resisted by communities, such as Ecuador and Guatemala – as our Canadian foreign officials are investing time and resources in promoting these companies, by writing articles in local papers and organizing meetings and mine tours to sway the opinions of local officials in favour of mining companies. **Clearly, as Canadians we expect our foreign officials to be representing our human rights and environmental protection values in all their activities overseas, and not serving as the advertising and image consultants for so-called Canadian companies whose operations are in breach of these principles and international law.**

The principle question being raised in this brief however, concerns the issue of disclosure and the level of disclosure which is required by Canadian Securities Commissions for those companies wanting to raise money for their operations on the TSX. Generally, disclosure requirements in Canada as well as other jurisdictions are activated by the presence of what is called 'material' information. What is

considered ‘material’ however varies from country to country and is the central concern of this presentation.

Although Canadian securities law is regulated provincially, the definition of what is considered 'material' information is essentially the same across the country. In Canada, material facts or material changes are those which ***“have, or are reasonably expected to have, a significant effect on the market price or value of a security".*** This standard is also known as the market impact test.

In the United States on the other hand, materiality is defined by whether or not ***"a reasonable investor would consider it important in making their investment decision"*** – also known as the reasonable investor test. (I’d like to note here that in the Roundtable Discussion paper it is the US definition that is used, which although wrong at present, is that which FoE is requesting be formally adopted.)

The materiality test is significant in that - the Canadian definition will most often, exclude environmental, social and governance factors from disclosure obligations, unless it is expected that these factors will “significantly effect” the market price of the securities that are being traded.

In other words, experience has shown that companies don’t have to disclose that the communities living in the area of a proposed mine are actively opposing the project, or, that the project will destroy an endangered ecosystem, unless of course the host government in response to these concerns decides to impose new environmental protection legislation that will ultimately cost the company more money in reclamation or in community consultations.

Clearly this is problematic, in that potential investors – especially those who are (or should be) seeking to make more informed and ethical investment choices, are not being provided with the necessary information to make their investment decisions. As an example, the *Canada Pension Plan Investment Board* which is currently invested in both Glamis Gold and Ivanhoe Mines, has recently signed on to the UN Principles for Responsible Investing. As such, they are beginning a process by which ESG factors will be more coherently incorporated in to their investment decisions. But this begs the questions - how are they to do this if information about ESG factors are not required to be disclosed by the securities commission or the TSX? NGOs simply don’t have the capacity to monitor all mining company operations and disseminate to investors what is really at risk.

The US definition of materiality on the other hand, makes ESG factors far more relevant, in that, as reasonable investors become increasingly interested in the impacts their investments are having on local environments and communities, this in turn broadens the scope of information which is required to be disclosed.

Without providing this information to investors, the principle of "the informed consumer" which is meant to ‘silently regulate’ capitalist markets cannot work effectively. If investors are not being provided with adequate information to make informed investment decisions, environmentally and socially destructive projects will continue to be falsely perceived as equals to all other possible investments – thereby preventing the market from effectively weeding out these unethical and unsustainable practices.

Friends of the Earth maintains that changing the disclosure requirements for listing on the TSX is a necessary first step in allowing for the greater incorporation of ESG factors in the investment decisions of private individuals and larger investment funds over the longer term.

This could happen by:
1) allowing investors to discriminate against companies with poor ESG practices, and by,
2) raising performance expectations for companies operating overseas - as the need to disclose more information may also encourage companies to more effectively mitigate against environmental and social impacts from the very start.

This is not a radical idea. In fact, we are echoing the recommendations of the *Five Year Review of the Ontario Securities Act* carried out in 2002, when we request that **the existing materiality standard be immediately changed under securities legislation to a reasonable investor standard.** This move would serve to align Canadian regulations with those of the US, thereby possibly attracting greater investments from south of the border, as well as open the door for private investors, including our own Canada Pension Plan to begin the transition toward the full incorporation of ESG factors in to their investment decisions.