Investor Statement in Support of the U.S. Foreign Corrupt Practices Act

We, the undersigned institutional investors and asset managers, strongly support the U.S. Foreign Corrupt Practices Act ("FCPA") and its continued vigorous enforcement.

We believe that poor control of corruption and bribery can be an indicator of future risk at global corporations and can thereby negatively impact long-term shareholder value:

- Evidence of corruption can serve as an indicator of a corporate culture that is permissive of unethical behavior, whether it be fraud, theft of company assets or other value-destructive activities, and can be associated with broader weaknesses in corporate governance.
- Corruption undermines crucial elements of corporate value, including "staff incentive systems, procurement standards, product quality, safety, and reputation."[1]
- Bribery leaves companies vulnerable to future extortion; research has shown that firms that pay even small bribes invite more and greater demands.[2] What's more, any advantage gained is uncertain and wholly unenforceable.[3]

The FCPA and the various anti-corruption efforts it has engendered around the world impose prudent compliance requirements and the risk of costly enforcement actions on corporations. We believe that these actual and potential costs are dramatically outweighed by the benefits provided by commercial activity free of bribery and corruption to individual firms, the capital markets, and local and national economies. Bribery and corruption present significant barriers to long-term sustainable economic activity.

The recent allegations of an extensive bribery scheme by Wal-Mart de Mexico underscore the seriousness of this point. The announcement caused the share price to drop by 5% the next day and although short-term fluctuations in share price can reflect a wide range of factors, many believe the company is still at risk of fall-out from these revelations,[4] particularly as they raise questions about the ability of the company to maintain its growth momentum in light of its historic reliance on allegedly illegal means of securing permits. Wal-Mart shareholders – in particular those not directly connected with the management or controlling Walton family – clearly voiced their disapproval of these practices by voting in significant numbers against key members in management and on the board[5] and the company now faces a lawsuit from

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[1] Karina A Litvack, "Corruption and Shareholder Value: Why Should Investors Care?" (presentation, 10th International Anti-Corruption Conference, October 9, 2001).

[2] Alexandra Addison Wrage, "The High Cost of Small Bribes" (TRACE International Report, 2009) at pg. 7 (invite more and greater demands, tend to proliferate and only generate a uncertain and unenforceable advantage); Daniel Kaufmann and Shan-Jin Wei, "Does 'Grease Money' Speed Up the Wheels of Commerce?" (World Bank Institute and Development Research Group, Public Economics).

[3] Alexandra Addison Wrage, "The High Cost of Small Bribes" (TRACE International Report, 2009).

[4] Renee Montagne, "Bribery Accusations Hurt Wal-Mart's Stock Price," *NPR Morning Edition*, April 24, 2012, http://www.npr.org/2012/04/24/151261419/bribery-accusations-hurt-wal-marts-stock-price; Anne D'Innocenzio, "Wal-Mart CEO Says Co. Committed to Compliance," *The Associated Press*, June 1, 2012 (3:56 p.m.), http://www.businessweek.com/ap/2012-06/D9V4HSU00.htm.

[5] Alyce Lomax, "Shareholders Can Say Corruption Doesn't Pay," *Daily Finance*, June 5, 2012 (2:34 p.m.), http://www.dailyfinance.com/2012/06/05/shareholders-can-say-corruption-doesnt-pay/; See also, Kevin Harlin, "Wal-Mart, Chesapeake Energy Shareholders Push Back," *Investor's Business Daily*, June 4, 2012 (1:14 p.m.),

shareholders.[6] Moreover, we are concerned that Wal-Mart de Mexico's activities, if proven to be true, may have placed the company's law-abiding competitors at a significant disadvantage.

For these reasons, we concur with, and reaffirm, the International Corporate Governance Network's statement that "bribery and corruption are incompatible with good governance and harmful to the creation of shareholder value."[7] We believe it is essential to assess the effectiveness of anti-corruption and other ethics and compliance systems as part of our overall due diligence, and regularly consider allegations of bribery in our evaluation of corporations for our portfolios.[8] The current state of the global financial system demonstrates that neglect of governance indicators can lead to long-term value destruction on a systemic scale that far exceeds the short-term benefits that can accrue to individual companies engaging in high-risk behavior. A high incidence of bribery and corruption has been demonstrated to cause significant deterioration in the overall investment climate, driving up risk premiums and severely depressing investment returns on a like-for-like basis. Companies that are exposed to such markets through their operations and investments, and exacerbate the incidence of bribery and corruption through weak internal controls, thereby compromise long-term value creation and undermine efforts to drive reform that can benefit shareholders and the wider society.[9]

Thus, as broadly diversified investors, we are concerned about the impact of bribery and corruption on both individual company performance and capital markets generally.

Corruption and bribery undermine competition and inhibit the correct functioning of markets by distorting price signals.[10] These activities can result in misallocations of capital to companies that are producing illusory value, based on illegal activity, at the expense of entities

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http://news.investors.com/article/613525/201206041314/walmart-stores-chesapeake-energy-shareholders-dissatisfied.htm, ("Shareholders at Wal-Mart didn't force out any board members. But in a proxy vote, more than 13% of proxy ballots cast voted against re-electing CEO Michael Duke, and 15.6% of ballots were cast against former CEO Lee Scott.").

[6] Samuel Rubenfeld, "Wal-Mart Discloses Shareholder Lawsuits Detail," *WSJ Blog*, June 4, 2012 (1:16 p.m.), http://blogs.wsj.com/corruption-currents/2012/06/04/wal-mart-discloses-shareholder-lawsuits-detail/; "Johnson & Johnson Shareholder Derivative Suit," *Main Justice*, May 4, 2012, http://www.mainjustice.com/justanticorruption/2012/05/24/johnson-johnson-shareholder-derivative-suit/.

[7] "ICGN Statement and Guidance on Anti-Corruption Practices," (International Corporate Governance Network Report, March 2009), pg. 4.

[8] See Karina A Litvack, "Corruption and Shareholder Value: Why Should Investors Care?" (presentation, 10th International Anti-Corruption Conference, October 9, 2001) at pg. 16. (Corruption may be a material risk; it's definitely an indicator of management quality.)

[9] Alexandra Addison Wrage, "The High Cost of Small Bribes" (TRACE International Report, 2009), pg. 1. See also, Charles M. C. Lee and David Ng, "Corruption and International Valuation: Does Virtue Pay?" *Cornell University* (June 4, 2004) available at: http://ussif.org/pdf/research/Moskowitz/2003%20Winning%20Paper%20-%20Moskowitz.pdf (Using firm-level data from 43 countries, this study investigates the relation between corruption and international corporate values and demonstrates that firms from more (less) corrupt countries trade at significantly lower (higher) market multiples. Further analysis shows that this result is attributable primarily to higher required rates of equity return in more corrupt countries, and is robust after the inclusion of numerous control variables.)

[10] Francis Weyzig, "Political and Economic Arguments for Corporate Social Responsibility: Analysis and a Proposition Regarding the CSR Agenda," *Journal of Business Ethics*, 86 (2009): 417-428, doi: 10.1007/s10551-008-9855-4, pg. 425; citing, J.R. Boatright, *Ethics and the Conduct of Business*, (Prentice Hall, Upper Saddle River, 2000).

that may be better able to deliver sustainable value over the long-term. In addition to creating significant inefficiencies in the market, corruption potentially places law-abiding companies at a competitive disadvantage, and deprives consumers of the best products at the most competitive prices.[11] These practices can also induce wasteful rent-seeking activities, at the expense of broad-based wealth creation. [12] The recent World Forum on Governance has drawn a connection between the global financial meltdown and a series of failures in governance, "with corruption in its many forms being a driving force behind virtually all of them."[13]

Corruption creates problems for local economies. Countries fighting corruption incur considerable expense; the EU has lost an estimated €120 billion annually to corruption.[14] Perceptions of corruption correspond to poor economic stability and performance; Italy and Greece have two of the worst "Corruption Perception Index" scores in the EU as well as two of the most at-risk economies in the EU.[15] There is also a well-documented correlation between corruption and slowed economic development. [16] In less-developed countries with high incidence of corruption, FDI flows are reduced[17] and aid money is less effective.[18] These impacts represent real, if largely ignored, costs to investors by both increasing business risks and reducing investment opportunities.

India's predicament is but one example among many that reinforces both the importance of good governance and the costs of corruption. After near double-digit growth in the last decade, India is facing a slow-down and the prospect of a credit rating downgrade out of investment grade by Standard & Poors.[19] Corruption is cited as one of the reasons for its worsening credit outlook.[20] It betrays serious problems of mismanagement of resources and resulting inefficiencies.[21] The

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[11] "ICGN Statement and Guidance on Anti-Corruption Practices," (International Corporate Governance Network Report, March 2009).

[12] John Vickers, "Market Power and Inefficiency: A Contracts Perspective," *Oxford Review of Economic Policy* Vol.12 no. 4, (1996): 11.

[13] "Prague Declaration on Governance and Anti-Corruption" (World Forum on Governance, Brookings, March 2012), 1. http://www.brookings.edu/research/reports/2012/03/21-prague-declaration-mann.

[14] European Commission, "Fighting Corruption in the EU", (Communication from the Commission to the European Parliament, The Council and the European Economic and Social Committee, COM 308 final, 2011). http://ec.europa.eu/commission_2010-2014/malmstrom/archive/com308_corruption_en.pdf.

[15] Transparency Initiative, "Corruption Perceptions Index 2011," transparency.org, last modified 2011, http://cpi.transparency.org/cpi2011/interactive/.

[16] See "Improving Governance and Fighting Corruption for Development Effectiveness," The World Bank News & Broadcasts, December 9, 2009, http://go.worldbank.org/GK115J8GR0; Cheryl W. Gray and Daniel Kaufman, "Corruption and Development," *Finance & Development* (March 1998); Pak Hung Mo, "Corruption and Economic Growth," *Journal of Comparative Economics* 29, 66-79 (2001); Daniel Kaufmann and Shang-Jin Wei, "Does 'Grease Money' Speed Up the Wheels of Commerce?" *World Bank Institute* (December 1999).

[17] Beata Javorcik and Shan-Jin Wei, "Corruption and Cross-Border Investment in Emerging Markets: Firm Level Evidence," *Journal of International Money and Finance* Vol. 28 No. 4 (June 2009).

[18] Stefanie Teggemann, "Corruption & Development Assistance," The World Bank: Anticorruption (2011), http://go.worldbank.org/1AXCYRA5F0.

[19] Ashutosh Joshi, "Indian Shares End Lower as S&P Warns on Rating Downgrade," *Wall Street Journal*, June 11, 2012 (7:10 a.m.) http://online.wsj.com/article/BT-CO-20120611-703823.html.

[20] "Top 10 S&P Reasons Why India May Lose Investment-Grade Rating," *NDTV*, June 11, 2012 (19:17 IST), http://www.ndtv.com/article/cheat-sheet/top-10-sp-reasons-why-india-may-lose-investment-grade-rating-230097.

[21] Vikas Bajaj, "As Grain Piles Up, India's Poor Still Go Hungry," *New York Times*, June 7, 2012, http://www.nytimes.com/2012/06/08/business/global/a-failed-food-system-in-india-prompts-an-intense-review.html?_r=2&ref=global-home; see also *NDTV*.

direct impact on portfolio returns has been felt by investors in this market, and has prompted capital flight that exacerbates negative re-ratings while depriving the country of vital investment capital.

Corruption contributes to the erosion of crucial democratic institutions, the rule of law and basic human rights protections. Corruption destabilizes political processes and promotes conflict.[22] This, in turn, drives up business and investment risk and discourages direct and indirect investment flows, thereby depressing valuations and growth potential.

For these reasons, we consider corruption generally to be a matter of significant concern for long-term investment.

The leadership role played by the United States through the passage and robust enforcement of the Foreign Corrupt Practices Act ("FCPA") has been instrumental in fostering the passage of similar legislation in other jurisdictions around the world, most notably in the United Kingdom. Any step backward at this stage would send a deeply alarming signal to other enforcement authorities that seek to work jointly with the US Department of Justice, and would risk seriously undermining ongoing legislative efforts to strengthen existing anti-corruption regimes around the world.

Recently, the US Chamber of Commerce ("the Chamber") initiated an effort to amend, or seek to clarify certain key elements of the FCPA.[23] While often couched in reasonable terms, we believe that these recommendations would, if adopted, seriously undermine the Act's effectiveness and the US government's standing on this issue around the world. We believe that the Chamber's proposals[24] would, if granted, send exactly the wrong signal to corporations seeking to comply with the Act and would raise risks to businesses, investors and affected communities. We believe that the Chamber's positions on this issue seriously risk undermining the reputation and economic value-added of US-incorporated and US-listed companies that compete around the world. Notwithstanding the Chamber's assertions that these "clarifications" may enhance compliance efforts, there is little benefit to achieving excellent compliance with a weak piece of legislation.

The object of the FCPA, and of the guidance that underpins its effectiveness, is to drive superior behavior and thereby lift economic performance. This may require compliance measures that are more onerous than would be the case in less effectively-regulated environments, but the costs are justified by the benefits they afford to business and the societies in which they function.

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[22] "ICGN Statement and Guidance on Anti-Corruption Practices," (International Corporate Governance Network Report, March 2009).

[23] For a summary of the Chamber of Commerce's proposed amendments see Hamburger and Dennis, "5 Proposed Amendments to the Foreign Corrupt Practices Act," *The Washington Post*, April 25, 2012 (5:30pm) http://www.washingtonpost.com/business/economy/5-proposed-amendments-to-the-foreign-corrupt-practices-act/2012/04/25/gIQAXbuVhT_story.html.

[24] "Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act" (U.S. Chamber Institute for Legal Reform , October 27, 2010), http://www.instituteforlegalreform.com/doc/restoring-balance-proposed-amendments-to-the-foreign-corrupt-practices-act; Letter to Messrs. Breuer (DOJ) and Khuzami (SEC) from US Chamber of Commerce et al., dated February 21, 2012, http://www.instituteforlegalreform.com/doc/letter-to-the-doj-and-sec-regarding-forthcoming-guidance-on-the-foreign-corrupt-practices-act.

The undersigned investors represent more than $3 trillion in assets under management:

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August 17, 2012

**denotes an individual signing in their own capacity*
***Investor network assets not included in total.*