United States House of Representatives
Washington, DC 20515

[cc: Members of the U.S. Senate and the U.S. House of Representatives]

January 12, 2012

Dear Representative,

We, the undersigned civil society organizations and investors, submit this letter to indicate our strong opposition to current efforts to amend the Foreign Corrupt Practices Act ("FCPA"). The United States has led the global fight against the scourge of corruption – it would be devastating for the Congress to now signal retreat in that fight.

The FCPA provides a strong and effective mechanism to prosecute companies and individuals that make corrupt payments to foreign officials and to combat financial fraud. Congress initially enacted the FCPA to end such practices and to restore public confidence in the integrity of the American business system. Thus, the anti-bribery provisions of the FCPA make it unlawful for a U.S. person and certain foreign issuers to make corrupt payments to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. Since the enactment of implementing legislation in 1998, the FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the U.S.

The FCPA promotes economic growth by ensuring a fair and competitive business environment. When bribery is involved, companies compete based on the amount of the bribe they are willing to pay rather than on the quality of their work or product and its price. In addition, bribery undermines the rule of law, creating unstable business environments that lead to increased risk, which, in turn, raises the cost of procuring capital. Bribes themselves create an external cost of doing business that cannot be accurately budgeted, and demands for bribes, once indulged in the first instance, are likely to increase over time. Some companies view the FCPA as an insurance policy, protecting them from having to pay bribes and engage in corrupt or other illegal activities. It is critical to U.S. businesses operating in the global business environment that corporate liability under the FCPA remains a credible threat and that effective enforcement of anti-bribery standards occurs in the United States and globally.

We believe that any amendments to more narrowly define key terms of the FCPA would constrain the ability of the Department of Justice and the Securities and Exchange Commission to effectively enforce the FCPA, limit the potential liability of companies violating the FCPA to a greater degree than is already provided under the maximum sentencing provisions of the Act, and thereby significantly undermine the statute as a tool to curb corruption.

Further, efforts to weaken the FCPA could severely hamper U.S. standing on this issue and send a damaging signal to the world that the U.S. is retreating from its leadership role in curbing corruption both at home and abroad. This would harm our ability to bring other nations up to the emerging global standard set forth in the United Nations Convention Against Corruption, a standard that has arisen in part because of the FCPA itself. Such amendments would also have the effect of negatively impacting democratic principles and human rights in countries around the world as the fight against corruption is also a fight to ensure the promotion and protection of human rights. United Nations Treaty bodies and

special procedures have noted this link, stating that where corruption is widespread, human rights are subject to abuse.[1]

We note the recent announcement of Assistant Attorney General Lanny A. Breuer stating that new guidance will be issued on the FCPA's criminal and civil enforcement provisions. We believe this effort may produce many of the outcomes that the proposed amendments to the FCPA seek to achieve, without risking the erosion of this important statute.

Our constituencies are strongly opposed to any effort to open up this legislation. Even the perception that the U.S. commitment to combating bribery is waning would weaken the global fight against corruption. As leaders in the public interest community dedicated to advancing human rights and curbing corruption, we therefore urge you to halt any attempt to introduce amendments to the FCPA. If you are interested in more information about this landmark piece of anticorruption legislation, please contact Amol Mehra (amol@accountabilityroundtable.org), Heather Lowe (hlowe@gfintegrity.org) or Stefanie Ostfeld (sostfeld@globalwitness.org).

Thank you for your commitment to this important issue.

Yours sincerely,

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[1] See International Council on Human Rights Policy, *Corruption and Human Rights: Making the Connection,* 23 fn. 33 (2009) (quoting Committee on Economic, Social and Cultural Rights as stating that "states face serious problems of corruption, which have negative effects on the full exercise of rights covered by the … [ICESCR]" and quoting the Committee on the Rights of the Child as stating that it "remains concerned at the negative impact corruption may have on the allocation of already limited resources to effectively improve the promotion and protection of children's rights, including their right to education and health") (internal citations omitted).

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