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3 June 2011

Marcus Stuttard
London Stock Exchange plc
10 Paternoster Square
London EC4M 7LS

Dear Mr Stuttard

Re: Complaint relating to the Central African Mining & Exploration Company plc and Seymour Pierce Limited

As part of our research programme on corporate accountability, Rights & Accountability in Development (RAID) has compiled a detailed submission on the conduct of both the Central African Mining and Exploration Company plc (CAMEC), which was traded on AIM until December 2009, and its nominated adviser, Seymour Pierce Limited.

AIM Regulation has indicated that it is receptive to ‘a complaint relating to an AIM company or a Nomad’s compliance with the AIM Rules’.¹ We believe that the concerns raised in the submission warrant scrutiny as part of AIM Regulation’s responsibility to monitor and investigate AIM companies’ compliance with the regulations.

‘Insufficient due diligence’: the allegation of the UN Group of Experts

The United Nations Group of Experts on the Democratic Republic of the Congo, in their report to the Security Council of 18 July 2006, remarked upon ‘the consequences of insufficient due diligence procedures’ when referring to CAMEC as the owner of certain mining concessions in the DRC.² The Group of Experts named an individual, Billy Rautenbach, ‘wanted by the authorities of South Africa for fraud and theft’, as a major shareholder of CAMEC. Rautenbach has subsequently been listed on US and EU sanctions lists against Zimbabwe. Another former owner of Democratic Republic of the Congo (DRC) mining concessions acquired by CAMEC, Zimbabwean John Bredenkamp, together with entities owned or controlled by him, including the Kababankola Mining Company (KMC), also appear on the sanctions lists.

Other of CAMEC’s assets were acquired from companies controlled by Israeli mining magnate Dan Gertler, an individual accused by another UN expert panel of exchanging conflict diamonds for money,

¹ <<http://www.londonstockexchange.com/companies-and-advisors/aim/advisers/aim-reg-team/aim-regulation-team.htm>>. An e-mail address is given for the receipt of complaints: aiminvestigations@londonstockexchange.com.

² UN Security Council, *Report of the Group of Experts on the Democratic Republic of the Congo in Accordance with Paragraph 2 of the Security Council Resolution 1654 (2006)*, S/2006/525, 18 July 2006, paragraph 132 and table.

weapons and military training.³ The International Finance Corporation (IFC), the UK's Department for International Development (DfID) and the United States Agency for International Development (USAID) have all withdrawn or cut funds from DRC mining projects or associated programmes subsequent to Gertler entities seeking or acquiring a stake in ownership.⁴

RAID's track record of research on corporate conduct in DRC

RAID is a research and advocacy organisation that promotes respect for human rights and responsible conduct by companies abroad. We are a longstanding contributor to the debate on corporate conduct during and after the devastating war in DRC. In 2004, at Chatham House, we launched a comprehensive report on unanswered questions arising from the work of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, filing cases on companies – including Rautenbach's Ridgepoint Overseas Developments Ltd., Bredenkamp's Tremalt/KMC and Oryx Natural Resources (Oryx) – named by the UN Panel with the UK office responsible for implementation of the *OECD Guidelines for Multinational Enterprises* (which was then based at the former Department of Trade and Industry). In January 2004, RAID raised these cases with Patricia Hewitt, the Minister of Trade and Industry; Chris Mullin, the Minister for Africa at the Foreign & Commonwealth Office; and Hilary Benn, the Secretary of State for International Development. RAID subsequently met with the Serious Fraud Office.

RAID has continued to contribute to the debate over the review of wartime contracts in DRC, producing several papers analysing the nature of joint venture agreements between the state-owned mining company, *La Générale des Carrières et des Mines* (Gécamines), and its private sector partners. In March 2006, RAID wrote to the then Foreign Secretary, Jack Straw, drawing attention to concerns over corporate transparency in Overseas Territories and Crown Dependencies, as raised by a Congolese Special Parliamentary Commission, and to an analysis of private–public mining contracts in the DRC by the legal firm Fasken Martineau DuMoulin examining, *inter alia*, British Virgin Islands-incorporated Global Enterprises Limited, a company in which Gertler was a controlling shareholder.

The acquisition of CAMEC by ENRC: why scrutiny by AIM regulation remains pertinent

CAMEC was admitted to AIM in October 2002. The acquisition of CAMEC's Congolese assets, including key mining concessions originating in wartime contracts granted to Rautenbach's Boss Mining Sprl and to Savannah Mining Sprl (formerly KMC), began in 2006, with a further consolidation in 2008. In November 2009, CAMEC gave notice of its application to cancel its admission to trade on AIM, taking effect on 8 December 2009. The cancellation followed a successful offer for CAMEC by Eurasian Natural Resources Corporation (ENRC).

Notwithstanding the takeover of CAMEC and the cancellation of its admission to trade on AIM, it remains pertinent to examine the company's conduct, for several reasons.

³ UN Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, S/2001/357, 12 April 2001, paragraphs 150 – 2. See also the Panel's report S/2001/1072, 13 November 2001, paragraphs 67 – 9 and S/2003/1027, 23 October 2003, confidential Section 5, paragraphs 32 – 5.

⁴ In September 2008, the Parliamentary Under-Secretary of State for International Development informed RAID and Global Witness, with reference 'to the ongoing uncertainty surrounding the ownership of Anvil Mining', that a proposed public–private partnership with the company had been halted. (Ms. Gillian Merron, Parliamentary Under-Secretary of State, Department of International Development, letter to RAID and Global Witness, 29 September 2008). The previous month, Catala Global Limited, a company ultimately owned by a trust benefiting the family of Dan Gertler, had agreed proposals to purchase a 25% stake in Anvil. A letter dated 22 August 2008, from Jeffrey J. Grieco, Assistant Administrator, Bureau for Legislative Public Affairs at USAID to the Chairman of the Subcommittee on State, Foreign Operations, US Senate, stated that '[i]n the case of Anvil Mining, a significant change in company ownership... raised concerns that have prompted USAID to decide to proceed with an orderly close-out of the existing program [the Extractive Industries Alliance].' Ultimately, the purchase by Catala of a stake in Anvil did not proceed.

In February 2010, the International Finance Corporation (IFC) confirmed in a letter to Amnesty International that another DRC mining company, Africo Resources Limited, was 'no longer an IFC client' stating that 'a change of ownership caused IFC to exit the investment'. (Oil Gas and Mining Department, International Finance Corporation, letter to Amnesty International, 24 February 2010). In April 2008, Camrose Resources Limited, a company majority owned by a trust benefiting the family members of Dan Gertler, had agreed to acquire a majority 60% stake in Africo.

- Different shareholders and other stakeholders will have been adversely or beneficially affected at different times depending upon the company's conduct whilst AIM-traded and it is necessary to examine its record of compliance to ensure accountability.
- Whilst CAMEC has cancelled its admission to trade on AIM, its DRC assets, which have been the subject of considerable disquiet, as detailed in the submission, are now owned by ENRC, which is incorporated and registered in England and Wales and listed on the main market of the London Stock Exchange.⁵ ENRC is currently embroiled in a controversial deal concerning further DRC mining concessions – the Kingamyambo Musonoi Tailings (KMT), stripped from Canadian miner First Quantum – due to ENRC's acquisition of KMT's new owner, Camrose Resources Limited, an entity ultimately owned by Gertler's family trust.⁶
- Material in this submission may also be pertinent to other publicly listed companies with DRC mining assets: *inter alia*, Glencore International plc – now the majority shareholder in Katanga Mining and which has longstanding and recent business links to entities associated with Dan Gertler. Glencore recently completed London's largest ever public listing. Any concerns that arise over due diligence will be raised with the relevant authorities.
- A precedent exists where the Exchange examined the conduct of and, in that case, also censured an entity – the nominated adviser, Durlacher – even though it had since merged with stockbroker Panmure Gordon and had ceased to operate as before in its own right.⁷
- Perhaps most pertinently, CAMEC's nominated adviser, Seymour Pierce Limited, continues to work as a nominated adviser for other companies on AIM and any unanswered questions that remain about CAMEC's compliance with the AIM rules may be better answered once the extent to which Seymour Pierce fulfilled its advisory and regulatory role is better understood. In the case of Crown Corporation Limited, later renamed Langbar International Limited, the company cancelled its admission to trade on AIM following suspension.⁸ The company is being investigated by the Serious Fraud Office. However, the fact that the company was no longer AIM-traded did not prevent the exchange from taking disciplinary action against Langbar's nomad, Nabarro Wells & Co. Limited

Parallel concerns: the blocking of Oryx Diamonds and the suspension from trading of White Nile

Before considering CAMEC's conduct *per se*, the submission draws attention to the blocking of another company – Oryx Diamonds Ltd., the proposed new name for the DRC diamond concessions acquired by Oryx during the war – from admission to AIM. AIM Regulation may wish to consider whether or not any parallels exist between the provenance of Oryx's DRC assets and that of the assets acquired by CAMEC.

Further attention is drawn to the fact that CAMEC's chairman, Philippe Edmonds, and its chief executive, Andrew Groves, were also, respectively, the chairman and chief executive of another AIM-traded company, White Nile Ltd., the trading of whose shares was suspended by the Exchange in February 2005 and in May 2005. The initial suspension followed White Nile's announcement of a deal with the government of Southern Sudan to acquire an interest in a disputed oil concession (also claimed by Total), which caused a 1,275% surge in the value of the company's shares. It was reported that the Exchange referred the deal to its disciplinary panel: the transaction counted as a reverse takeover, requiring the company to produce a detailed prospectus.⁹ In May 2005, the London Stock Exchange again halted trading in the company's shares, just four days after the stock had returned from suspension, fearing that there could not be an orderly market in the shares.

⁵ Under registered number 06023510. The name of the Company on incorporation was 'Eurasian Natural Resources Company plc' and on 11 December 2006, the name of the Company was changed to 'Eurasian Natural Resources Corporation plc'. See ENRC, *Prospectus*, Incorporation and Registration, p.216. The registered office and principal place of business of the Company is Second Floor, 16 St James's Street, London SW1A 1ER.

⁶ The KMT licences, held by First Quantum Minerals, had been cancelled by the DRC government in August 2009. ENRC moved to acquire the assets in August 2010, even though First Quantum and its partners, including the IFC, had commenced proceedings at the International Chamber of Commerce International Court of Arbitration in Paris against the DRC government.

⁷ The Exchange censured Durlacher in August 2005. The merger between Durlacher and Panmure Gordon had been concluded over three months previously on 26 April 2005. See Durlacher Corp plc, RNS 5561L, 'Acquisition of Panmure Gordon & Co., Limited,' 26 April 2005, available at: <<http://www.hemscott.com/news/static/rna/item.do?newsId=27193585852781>>.

⁸ Langbar International Limited, 'Cancellation of AIM listing', 11 April 2006, available at: <<http://www.investigate.co.uk/article.aspx?id=200604111702513947B>>.

⁹ Stephen Foley, 'Small Talk: LSE to set up disciplinary inquiry into White Nile,' *The Independent*, 25 February 2005.

CAMEC's conduct: principal concerns for AIM

This submission focuses on CAMEC during the period of its trading on AIM and seeks to establish the extent to which the company's transactions and conduct are governed by the AIM regulations. It is the case that CAMEC's DRC acquisitions – which occurred after CAMEC's admission to AIM and which were not deemed to constitute a reverse takeover – were not captured by, or subjected to the due diligence checks under the AIM admission rules. However, CAMEC's conduct is set forth in relation to the ongoing requirements of the AIM rules for companies: it is, of course, the preserve of the exchange to determine matters of compliance or non-compliance.

Where the provenance and ownership of CAMEC's DRC assets, or accounting practices, management or disclosure relating to these assets or specific transactions, appear to engage AIM company or nomad rules, this is highlighted in the submission by a series of questions concerning the actions of CAMEC and Seymour Pierce, which RAID trusts will be carefully considered by AIM regulation.

Provenance of the concessions (p. 26 in the Submission) – The first area of compliance concerns the provenance of both the Boss Mining and KMC/Savannah Mining concessions acquired by CAMEC and the disclosure by CAMEC of information relating to (i) the validity or otherwise of the agreements awarding the concessions to Boss Mining and KMC/Savannah and (ii) the reputations of former owners – including Rautenbach and Dan Gertler – who subsequently have become managers and/or significant shareholders in CAMEC: information should have been disclosed to investors in CAMEC to enable them to have evaluated the effect of a transaction on the company, together with information of import and/or price sensitive information.

Significant shareholder notification (p. 57 in the Submission) – A second compliance issue relates to the requirement to notify changes to significant shareholders following the settlement of part of the purchase price of Boss Mining in CAMEC shares to entities controlled by Rautenbach.

Managerial conduct: information of import (p. 60 in the Submission) – A third area of concern stems from the criticism by auditors and/or the Congolese commission set up to review mining contracts of the conflict of interest posed by the same management team managing both Boss Mining and the Rautenbach-controlled Congo Cobalt Corporation (CCC) and the '[a]bsence of any contractual framework with Congo Cobalt Corporation'. More than a year after the commencement of the acquisition of Boss Mining, CAMEC acknowledged (i) the continued key role played by Rautenbach in managing the mining and transport operations after their acquisition; and (ii) the continued contracting out of mining operations at the concessions to CCC. Given the seriousness of the managerial problems uncovered by the audits and the fact that no information relating to Rautenbach's continued key managerial role was disclosed in CAMEC's notifications concerning the acquisition, AIM rules which require that reasonable care be taken 'not to omit anything likely to affect the import of such information' should have been engaged.

Incompleteness of accounts (p. 71 in the Submission) – The fourth area of concern arises from the criticism by auditors of the incompleteness of the accounts provided by Boss Mining, KMC, Mukondo Mining and Sabot (a transport and logistics company acquired by CAMEC from Rautenbach) and hence the reliability of the required financial information about the transaction – the profits and value attributable to the assets – provided to investors. The auditor's findings may also have implications for the class tests on substantial transactions and reverse takeovers required of CAMEC: the advice of the regulator is sought on this matter.

Licence review: information of import and the effect on transactions (p. 77 in the Submission) – The Boss Mining, KMC/Savannah Mining and Mukondo Mining contracts were examined as part of the industry-wide review of ventures between private partners and Gécamines. The concern within the fifth section of this submission is to consider what action, if any, was required by CAMEC or its nomad under AIM rules to inform the market of known issues likely to give rise to findings of the Commission or of the Commission's own findings and recommendations as these became public knowledge.

Notification of price sensitive information without delay (p. 86 in the Submission) – The final issue of compliance relates to the requirement to notify price sensitive information without delay and examines CAMEC's public response, *inter alia*, to the suspension of operations at its jointly-owned Mukondo mine after the acquisition of the other 50% share by a new owner, Gertler's DGI/Prairie, in June 2006.

Sources of information

The sources for RAID's submission include a large number of official studies and reports, as well as legal and financial audits and analyses that have been carried out between 1998 and 2010 on behalf of the United Nations Security Council, the World Bank, the Government of DRC and the Congolese Parliament. Many of these have been published and others are in the public domain. The submission also draws, where appropriate, on court documents. The submission includes comprehensive references for the documents consulted in its preparation. On request, copies of the principal documents can be made available on CD.

Restoring faith in due diligence: disciplinary action and market guidance

We understand that '[t]he Exchange's approach to regulation is aimed at maintaining the integrity, orderliness, transparency and good reputation of its markets and changing behaviour in those markets where necessary' (*AIM Disciplinary Procedures and Appeals Handbook*). The UN Group of Expert's contention of insufficient due diligence must cause disquiet and, in conjunction with the material presented in this submission, the Exchange is called upon to conclude upon matters of non-compliance. We further understand that the Exchange may take disciplinary action against companies and nomads who have contravened its rules, with an option to publicly name, censure and fine the parties concerned.

Moreover, beyond specific sanction, the AIM disciplinary procedures allow for the publication of findings to further market guidance. AIM Regulation is responsible for the development of AIM rules and the Exchange may, from time to time, issue separate Notes on specific issues which may affect certain AIM companies. There must surely be a case for reviewing the rules and guidance given to companies and nomads operating in destabilised or conflict-affected countries, given the perception of insufficient due diligence that exists at the UN level.

Companies are required to exercise due diligence in their dealings in the interests of their shareholders. However, the concept is now more broadly interpreted: the OECD defines due diligence as 'the dynamic process whereby companies discharge their corporate responsibilities. Risk-based due diligence refers to the steps a company would take to detect and manage risk in order to prevent or mitigate the actual, potential or perceived adverse impacts of its operations.'¹⁰ In 2008, the UN approved a framework on business and human rights, which rested, alongside the State's duty to protect, on 'the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.'¹¹

It should be noted that the UN Panel on the illegal exploitation of natural resources in the DRC condemned 'a self-financing war economy centred on mineral exploitation' in a conflict that has cost over 3 million lives. A 2010 report on the DRC by the UN High Commissioner for Human Rights focuses on 617 of the most serious violations, detailing grave cases of mass killings, sexual violence, attacks on children, and other abuses by a range of armed actors, including foreign armies, rebel groups, and Congolese Government forces.

The Preface to *OECD Guidelines for Multinational Enterprises* makes clear that '[t]he common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise.' At the same time, an onus is placed upon governments to provide 'appropriate regulation and prudential supervision'. If the broader principles of due diligence are not met, in the first instance questions must be asked as to whether there has been compliance with existing regulations; in the second instance, should the perception of inadequate due diligence persist after such scrutiny, questions must inevitably focus upon the adequacy of the regulatory regime itself. In

¹⁰ OECD, *OECD Due Diligence Guidance For Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas*, 2010, p. 8, available at: <<http://www.oecd.org/dataoecd/62/30/46740847.pdf>>.

¹¹ United Nations, Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31, 21 March 2011, paragraph 6, available at: <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>>. The *Guiding Principles* are due for consideration by the Human Rights Council at its June 2011 session.

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making this submission to the regulator, RAID believes we have arrived at the first juncture and we await the decision of AIM Regulation in determining what action the Exchange intends to take.

We would be happy to provide any further information or clarification as required and look forward to hearing from you in the near future.

Yours sincerely

A handwritten signature in black ink that reads "Patricia Feeney". The signature is written in a cursive style with a large initial 'P'.

Patricia Feeney
Executive Director

cc. Hector Sants, Chief Executive, Financial Services Authority (FSA)
Richard Alderman, Director, Serious Fraud Office (SFO)