To: rule-comments@sec.gov
17 CFR PARTS 229 and 249 [Release No. 34-63547; File No. S7-40-10] RIN 3235-AK84
CONFLICT MINERALS
AGENCY: Securities and Exchange Commission.
ACTION: Proposed rule.

Thank you for offering the opportunity to comment on this regulation. Please accept these comments from me individually, as somebody with experience implementing regulatory supply chain compliance efforts.

I enthusiastically endorse the concept of this legislation, but I am concerned about the implementation. It must not create unreasonable financial hurdles for compliance. It must not force open reporting of material sources in such a manner as to reveal proprietary customer-supplier relationships that might damage a competitive advantage. It must fairly recognize the complexity of the supply chain and electronics manufacturing process, where some products might be DRC-free while others are not – all within the same portfolio.

I am familiar with the electronics supply chain, especially from the semiconductor "computer chip" perspective. A semiconductor manufacturer may have 10,000 to 50,000 products and dozens of factories. Each product may first be fabricated and then assembled/tested in one to three factories, often with different components & suppliers for each factory. Each product may contain five to fifty piece parts or sub-components such as die, substrate, capacitor, wire, solder, plating, etc. Each sub-component may have one to three supplier sources. Each sub-component supplier has multiple suppliers, who in turn have multiple suppliers, who eventually may use multiple sources for conflict metals.

Reading the proposed rules, I have lingering questions. Does one DRC source on one component in one product at one manufacturing site mean that an entire corporation must report as "using DRC material"? And if one of the suppliers in the chain refuses to respond or does not know its mining source, is this the same thing as "using DRC material"? If this is the case, is it easier for every company to claim that they use DRC materials and be done with the process? It would save millions per year compared to the resources necessary to monitor the entire supply chain. What is the penalty? I apologize for these skeptical views and will now address your questions.

REQUEST FOR COMMENTS

1. Should our reporting standards, as proposed, apply to all conflict minerals equally?[48]
    - I believe the standards should apply equally to all currently identified conflict minerals. I am concerned over the language that might allow the State Department further discretion to add new minerals to the list. The standard will involve a huge over-head for large, multi-national companies to contact hundreds or thousands of suppliers. Add all conflict materials to the initial implementation; please do not add subsequent materials.

2. Should our rules, as proposed, apply to all issuers that file reports under Sections 13(a) and 15(d) of the Exchange Act? If not, to what issuers or other persons should our rules apply? Should we require an issuer that has a class of securities exempt from Exchange Act registration pursuant to Exchange Act Rule 12g3-2(b)[49] to provide the disclosure and reporting requirements in its home

country annual report or in a report on EDGAR? Would such an approach be consistent with the Act?[50]

- I believe reporting should be limited to those persons described who are already required to provide reports to the SEC. Please understand that this will force all players in the supply chain to determine their sources because the OEM customers will mandate it on their suppliers. Yet, it will eliminate burdensome reporting and audits on these small companies. It will also prevent administrative burdens on SEC in trying to collect reports from non-reporting persons. And, it will add certainty to the process.

3. Should we have an alternative interpretation of a "person described?"

- I believe that "person described" might be limited by a de minimis threshold such that a company proto-typing or producing very small volumes of materials should not be required to develop the costly due diligence and annual audits. These activities should be reserved for volume producers.

4. Should our rules apply to foreign private issuers, as proposed? Should we exempt such issuers and, if so, why and on what basis? Should the rules otherwise be adjusted in some fashion for foreign private issuers?

- See question #2.

5. Would our proposed rules present undue costs to smaller reporting companies? If so, how could we mitigate those costs? Also, if our proposed rules present undue costs to smaller reporting companies, do the benefits of making their conflict minerals information publicly available justify these costs? Should our rules provide an exemption for smaller reporting companies? Alternatively, should our rules provide more limited disclosure and reporting obligations for smaller reporting companies? If so, what should these limited requirements entail? For example, should our rules require smaller reporting companies to disclose, if true, that conflict minerals are necessary to the functionality or production of their products but not require those issuers to disclose whether those conflict minerals originated in the DRC countries or to furnish a Conflict Minerals Report? Should our rules provide for a delayed implementation date for smaller reporting companies in order to provide them additional time to prepare for the requirement and the benefit of observing how larger companies comply?

- I believe the rules represent undue cost to small companies. These could be reduced by eliminating or minimizing the annual audit requirements.
- I believe the rules would be most cost effective if timelines were organized by proximity to the mine and smelting operation, not by company size. Those closest to the mines and smelters must be the first to report. Downstream users of these materials should only be required to report after the smelters have certified their results.

6. Should we require that all individuals and entities, regardless of whether they are reporting issuers, private companies, or individuals who manufacture products for which conflict minerals are necessary to the functionality or production of the products, provide the conflict minerals disclosure and, if necessary, a Conflict Minerals Report? If so, how would we oversee such a broad reporting system?

- See question #2.

7. Would requiring compliance with our proposed rules only by issuers filing reports under the Exchange Act unfairly burden those issuers and place them at a significant competitive disadvantage compared to companies that do not file reports with us? If so, how can we lessen that impact?

- I believe that companies already reporting to the SEC can add certain information to the report with limited cost – regardless of their size. The cost issue is not with reporting, but with the requirements for due diligence and audits. Every company in the electronics supply chain will calculate their conflict mineral usage, or else their customers will no longer buy from them. To reduce the cost on industry, minimize due diligence and audits.

10. Should our rules, as proposed, apply both to issuers that manufacture and issuers that contract to manufacture products in which conflict minerals are necessary to the functionality or production of those products?

- I believe the rules should also apply to issuers that contract to manufacture. Although they may not currently specify sources for conflict minerals, this could always be added. The reporting requirements for these issuers who are contracting retailers is substantially similar to others in the supply chain who design products but outsource all manufacturing.

11. Should we require a minimum level of influence, involvement, or control over the manufacturing process before an issuer must comply with our proposed rules? If so, how should we articulate the minimum amount?

- The question is perhaps flawed. It assumes that an issuer or 'person described' only produces one product. More often, they are responsible for many products. They may fully control the specification for some products, and give contract manufacturers full authority for others. This authority may change from month to month. I believe an issuer should either report or not report – as a company. It would be impossible to track and manage SEC reporting rules within a corporation by part number.

13. Is it appropriate for our rules, as proposed, to consider reporting issuers that are mining companies as "persons described" under Section 1502?

- I believe that companies involved in mining are the primary target for this reporting. As a user of their materials, I NEED to see their certification and want to know the steps they have taken for due diligence. I expect to have their assessments audited. Their data will be the basis for all other certifications throughout the supply chain.
- On the contrary, I could foresee limiting the SEC reporting requirements to ONLY those companies responsible for mining and refining conflict metals.

20. Should we delineate the phrase "necessary to the production" to mean that a conflict mineral would be necessary to a product's production only if the conflict mineral is intentionally included in a product's production process even if that conflict mineral is not ultimately included in the final product because it was removed or washed away prior to the completion of the production process?

- From a practical standpoint, I believe the reporting definition must be limited to the materials remaining within a product. Otherwise, there is no meaningful measurement capability or audit trail, especially as a product moves through dozens of suppliers in a supply chain. It would be impossible for a retailer to know whether his supplier's supplier's supplier used and washed away a conflict mineral.

21. Should we delineate the phrase "necessary to the production" so that our rules would not consider conflict minerals occurring naturally in a product or conflict minerals that are purely an unintentional byproduct of the product as necessary to the production of that product?

- I believe the answer is yes. Otherwise a company with many products would find itself in a precarious situation. I know what is necessary for production or functionality, but here is a possible situation if rules do not exclude unintentional byproducts. Product-A contains 5% intentional gold and I have traced the source. Product-B contains 1 ppm of naturally occurring gold. Product-A makes me a 'person described' and responsible for reporting. But how would I every trace the origin of the incidental 1 ppm in Product-B?

26. Should issuers with necessary conflict minerals that did not originate in the DRC countries be required to disclose any information other than as proposed? For example, should we require such an issuer to disclose the countries from which its conflict minerals originated?

- I would object to any requirement to publicly disclose the country from which a non-DRC mineral was obtained. Within the electronics industry, there may be no more than one mine or smelter in a country, so providing this information could force a company to reveal proprietary sourcing information.

29. Should we require the disclosure in an issuer's annual report to be provided in an interactive data format? (XBRL or XML)

- I would object to a dictated interactive format. First, many individuals are not able to read these formats. Second, small companies do not have the technical staff to create or manage special interactive websites. Finally, new formats arise all the time, so any current dictate would soon be obsolete. If an interactive format is mandatory, I would suggest CSV, TXT or other formats that allow for desktop manipulation by non-programmers.

33. Is a reasonable country of origin inquiry standard an appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries for purposes of our rules implementing the Conflict Minerals Provision?

- I do not believe that a 'country of origin' inquiry meets the intent of the rule. For electronics, the 'country of origin' is related to the country where the chip is fabricated (infused) rather than the location where its conflict metals were mined or smelted. Additional guidance is needed.

34. Should we not require any type of inquiry? For example, would it be appropriate and consistent with the Conflict Minerals Provision to permit an issuer to make no inquiry, so long as it disclosed that fact?

- I answer with a question…
  - If I find out that the gold in a wire comes from DRC, must I declare that the product is sourced from DRC? If so, why would I continue to investigate the other dozen components? What is the advantage?
  - If I find out that one of my products comes from DRC or from a supplier who cannot determine its country of origin, must I declare on my annual report that "I USE DRC MATERIAL"? If so, what is the advantage for investigating the thousands of other components and suppliers?

- There needs to be a reason to continue with the inquiry. I see no advantage to the process once a single item is found from the DRC.

36. Should … issuers be able to state that none of their conflict minerals originated in the DRC countries "to the best of their knowledge" or that "they are not aware" that any conflict minerals originated in the DRC countries?

- I believe the answer MUST BE '**yes**'. A supplier cannot afford to guarantee a non-use statement that is based upon certifications from other suppliers. They cannot afford the financial liability. Hence, even with reasonable assurance of DRC-free materials, many companies are likely to claim "undetermined status" instead of accepting liability for potential errors by their suppliers or suppliers' suppliers.

37. Should our rules, as proposed, require issuers that are unable to determine the origin of their conflict minerals to label their products that contain such minerals as not "DRC conflict free"?

- This question reveals a lack of understanding. Semiconductor products are often too small to label with a "D", much less "DRC conflict free". Since every chip must have identification of its part number, fabrication & assembly, products seldom have any excess space for label information. So, the answer is, "NO", the rules cannot add new label requirements.

38. … If an issuer had hundreds or thousands of products that were not DRC conflict free, would the report provide overwhelming information? Would it be unduly expensive to produce?

- I believe the answers are YES and YES.

39. Should our rules, as proposed, require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for its conflict minerals that do not qualify as DRC conflict free, and not for all of its conflict minerals?

- I believe this is a catch-22. If you require reporting for the DRC-free materials, a company will be reluctant to reveal proprietary information about their supply chain and may prefer to claim the product contains DRC material. If you require manufacturers to classify undetermined sources as DRC material, then it will be impossible to disclose the facilities & countries of origin for the DRC materials.

41. As suggested in a submission, should our rules require issuers to include information on the capacity of each mine they source from along with the weights and dates of individual mineral shipments?

- I believe this is **IMPOSSIBLE**. I have worked in the semiconductor supply chain for over 30 years, including years in procurement. I have never seen a mine. I don't know where they are or who runs them. I have never purchased ore, raw metal or ingots. Yet, this proposal would have me track the weight and date for a mineral shipment that is three to five suppliers removed from me? By the time this reporting rolls up to an automobile, the report for a single car (with thousands of components) would fill the Library of Congress.

42. … Also, if we revise our proposal to require an individual to sign, should the individual who signs the certification sign it in his or her capacity within the company or on behalf of the company? What liability should our rules assign to the individual who signs the certification?

- See question 36. If an officer must accept liability for declaring a product is or is not DRC material, every product is assured to receive an "undetermined" status. Then, at least, there is no liability in case the statement is wrong. I would expect many certifications to state:
    - Although the products are free of DRC sourced metals to the best of our knowledge, we can never be totally certain about the source for every shipment. As such, we declare the source to be unknown.   According to SEC rules, the product is therefore classified as containing DRC material.

48. … Is it appropriate <u>not</u> to have the Conflict Minerals Report subject to the Section 18 liability even if the elements of Section 18 liability can be established?

- I believe it is totally consistent for the Conflict Minerals Report to be excluded from Section 18 liability since the rules state earlier that the requirement for due diligence do not require an absolute assurance. The due diligence shall be completed good intent and to the best of knowledge at the time of submission. If an error results in liability, this cannot be the standard for due diligence.

52. Should our rules state that an issuer is permitted to rely on the reasonable representations of its smelters or any other actor in the supply chain, provided there is a reasonable basis to believe the representations of the smelters or other parties?

- I believe the answer is 'YES'. It would not be possible for an OEM manufacturer to traverse through five to ten layers of suppliers in the supply chain in order to individually obtain mine and smelter certification. On the contrary, the mines and smelters would never be able to support millions of customer inquiries from indirect / downstream customers. If direct verification were necessary, all OEM products would be classified as 'undetermined'.

55. Should our rules require that an issuer use specific national or international due diligence standards or guidance, such as standards developed by the OECD, the United Nations Group of Experts for the DRC, or another such organization?

- I believe any requirement for use of standards must prescribe the acceptable standards bodies and the acceptable standards documents. Otherwise everybody will create their own standard. If a standard is prescribed, it must explain the different types of due diligence at varying levels of the supply chain – so it cannot be exclusive to a single industry or business group. Finally, if a standard becomes a due diligence requirement, the reporting must not begin until at least a year after the standard is approved and released. Otherwise, it may be impossible to meet the standard reporting requirement for the prior year.

56. Should our rules, as proposed, require that a complete fiscal year begin and end before issuers are required to provide their initial disclosure or Conflict Minerals Report regarding their conflict minerals?

- I believe the answer is 'YES'. Otherwise, it may be impossible to meet the standard reporting requirement for the prior year which began before the reporting & collection requirements were defined or before procedures were established to collect the information.

58. Should we phase in our rules and permit certain issuers, such as smaller reporting companies, to delay compliance with the Conflict Minerals Provision's disclosure and reporting obligations until a period after that which is provided in the Exchange Act Section 13(p)(1)(A)?

- I believe the rules would be most effective if timelines were organized by proximity to the mine and smelting operation, not by company size. Those closest to the mines and smelters

must be the first to report. Downstream users of these materials should only be required to report after the smelters have certified their results.

62. Should there be a de minimis threshold in our rules based on the amount of conflict minerals used by issuers in a particular product or in their overall enterprise? If so, what would be a proper threshold amount? Would this be consistent with the Conflict Minerals Provision?

- I believe that "person described" might be limited by a de minimis threshold such that a company proto-typing or producing very small volumes of materials should not be required to develop the costly due diligence and annual audits. These activities should be reserved for volume producers.

D. Request for Comment: We request comment on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; …

- I believe the initial cost for establishing record keeping processes, staffing, and identifying the contacts throughout the supply chain will run approximately 4X the on-going annual staffing & cost for certification. This is based upon my historical knowledge of the cost for implementing EU RoHS Directive certification procedures in 2004 through 2010. In addition, software to track and retain these records for 5 – 10 years could add another 2X the annual cost for certification. Hence, year one is very expensive. Any capability to roll out the project in phases and allow users to learn from other industries might help to reduce this cost.

Regards,
Griffin Teggeman
Taylor, Texas