



The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission

28 October 2011

Dear Chairman Shapiro

The organizations submitting these comments represent the leading worldwide gold industries, from mining and refining through investment, manufacturing and retail sales. We have all previously commented upon the Commission's proposed rule, and we thank the Commission for providing an additional opportunity for comment. We believe that this new comment opportunity is an important development, because, like the Commission, we are all engaged in initiatives to remove the finance of conflict and human rights abuse from gold supply chains, and our experience in these initiatives has given us new insights that we wish to share.

Alignment with the OECD Guidance

The primary point of our comment responds to an issue raised in several Commission questions during the Roundtable: how should the Commission's final rule use or interact with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. We are among the many advocates for use of that Guidance to define due diligence under the Dodd-Frank Act. Indeed, we are already aligning our own initiatives to the OECD five step process: the World Gold Council (WGC) Conflict-Free Gold Standard and Chain of Custody Standard; the Responsible Jewellery Council (RJC) Code of Practices and Chain of Custody Initiative; and the London Bullion Market Association (LBMA) Responsible Gold Guidance.

We believe that such alignment of public and private initiatives with the OECD Guidance is important to achieve the goals of the Dodd-Frank Act. Alignment will help to bring about worldwide supply chain due diligence efforts, with focus and resources directed to common and practical solutions, and a more level playing field among competing multinational enterprises. It will reduce administrative burdens caused by disparate requirements and definitions, and free additional resources to support sustainable development. And it will help deter a flight by buyers of these minerals from conflict-affected and high-risk areas caused by initial uncertainty and actions to mitigate risk in light of this uncertainty.

You have noted, however, that while the well-considered OECD Guidance contains a detailed Supplement on Tin, Tantalum and Tungsten, a Gold Supplement now in development has not yet been issued, and the ongoing ICGLR certification system has not yet been applied to gold. The OECD Gold Supplement is not far away; we are all engaged in its development through active participation in the OECD Gold Working Group and its Drafting Committee. However, as with our own initiatives, we anticipate adoption and issuance of the Gold Supplement in early 2012, given the desire to develop this through a multi-stakeholder consensus-driven process.

This timing is problematic for Dodd-Frank Act compliance. It means that at the beginning of 2012 there will be no acknowledged and fully-developed base of guidance for gold supply chain due diligence practices upon which an audit might be performed. The audit advised by the OECD Guidance (Step 4), and contemplated by the Commission, is a performance audit;



it will determine the conformity of a gold refiner's management system (OECD Step 1) and its due diligence practices (OECD Step 2) to Dodd-Frank Act requirements. However such an audit requires a clear standard to which a management system and practices can be compared and assessed for conformity. In the absence of the OECD Gold Supplement, or the industry initiatives that are being aligned to it, full Dodd-Frank Act gold supply chain due diligence cannot yet be defined, nor achieved, and audits would seem futile outside this framework.

We therefore suggest that the Commission make the final rule applicable to gold at the beginning of an issuer's first full fiscal year following adoption and issuance of the OECD Gold Supplement, anticipated in early 2012. This would be a part of a more broadly applicable specific statement by the Commission that due diligence in conformity to the OECD Guidance and its mineral supplements would be recognized as satisfaction of the due diligence required by the final rule.

This should not be perceived as a delay in gold industry efforts to preclude finance of DRC conflict and human rights abuse from gold supply chains. We are all working diligently, together with leading NGOs, governments and the OECD Secretariat, to create a Gold Supplement, as well as on industry initiatives that can support its implementation. The LBMA Responsible Gold Guidance will require that its sixty-one accredited gold refiners, the first tier of gold refining worldwide, must agree by January 1, 2012, as a condition of continuing LBMA accreditation, to promptly implement an OECD-conforming management system to determine their sources to be conflict-free, with verification of that performance by a third party audit. The RJC Chain-of-Custody Certification standard and WGC Conflict-Free Gold and Chain-of-Custody standards initiatives are expected to be completed in early 2012, and will enable implementation by a broad spectrum of gold supply chain participants and provide confidence that the gold covered by these standards is not fuelling conflict. So a delay in the applicability of the Commission's rule to manufacturers that use gold will not delay achievement of the goals of the Dodd-Frank Act, but will instead put the Act into a consistent worldwide framework that will promote and assist in achievement of the humanitarian goals that we all support.

Recyclable Materials

The Commission asked about requirements for recyclable materials. Gold is one of the most intensively recycled materials, and more than 99.99% of most recyclable gold stocks that are presented for recycling is recovered and transformed into useful materials, for many sound reasons and beneficial effects. Legitimate recycling does not finance conflict and human rights abuse, and the Commission should not hinder such efficient use of scarce resources. Legitimate recyclable material should therefore be subject to different consideration by the Commission, and in particular should not be deemed to be suspect or contaminated with conflict-affected sources, requiring a Conflict Minerals Report. This is not to seek an exemption from due diligence, but instead guidance that a mine of origin cannot and need not be determined. Recyclable gold-bearing materials require appropriate risk-based due diligence to preclude laundering of newly-mined conflict gold through false claims of being recyclable material. There is apparent agreement upon this point in the ongoing rule-making development processes. It is also likely that this will be the guidance of the OECD Gold Supplement and industry initiatives, and the Commission should align the final rule in the same way.

Existing Stocks

The Commission asked if there should be different treatment for existing stockpiles of gold. There should, because these stockpiles cannot now be retrospectively traced back to their mining origins, cannot now finance conflict and abuse of human rights associated with those



mining origins, and should not be diminished in value. There is apparent agreement upon this point in the ongoing development of the OECD Gold Supplement and industry initiatives, with a proposed threshold date of January 1, 2012. That is, gold in existing stocks will not require determination of a mine of origin if it is verifiably in existence prior to January 1, 2012, subject to the following conditions:

- a. This treatment of existing stockpiles applies only to refined gold held in stockpiles of banks and financial repositories. Other existing gold stocks in the form of privately held gold, whether bars or jewelry or any other form, will require due diligence in the manner of recyclable materials, without regard to date of production.
- b. The date of existence must be shown by a marking in the gold itself, imprinted at the time of its production, or by inventory records of the bank or repository, made in the ordinary course of its business. The reason for a business record verification is that until recent years it was not common to imprint the year of production into gold bars, and the reserves of many governments are not so imprinted, but inventory records for such gold are common and reliable.

Existing stockpiles described above are not exempt from Dodd-Frank Act applicability and due diligence, but appropriate risk-based due diligence is directed to verify that the above-stated conditions are met. A threshold date based on inventory records for refined gold is considerably easier to determine and verify than a date of mining extraction, and logically the extraction date is prior and thus captured.

Finally, if we can be of further assistance to the Commission with regard to gold supply chains and due diligence, we would be please to respond to any questions or requests.

Sincerely,

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