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February 7, 2012

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: File Number S7-40-10, Section 1502 of the Dodd-Frank Act

Ladies and Gentlemen:

This letter is submitted on behalf of the International Human Rights Committee of The Association of the Bar of the City of New York (the "Association") regarding the proposed changes to the annual reporting requirements of issuers to implement Section 13 (p) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which was added by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The Association is an independent non-governmental organization with more than 23,000 members in over fifty countries. The Association has a long history of dedication to human rights, most notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, and has frequently commented on matters relating to the Exchange Act and other securities laws through its Securities Regulation and Financial Reporting Committees. We previously commented on what we consider the most significant portions of Section 13 (p)¹ in response to your request for comments on December 15, 2010 and will not repeat our earlier comments.

¹ Letter to Elizabeth C. Murphy, Secretary of the SEC from the Chair of the Association's International Human Rights Committee dated January 31, 2011.

We do, however, wish to reiterate that, as the UN Group of Experts has emphasized, the importance of the Commission's publishing its rules expeditiously in order to encourage responsible commercial actors to begin purchasing minerals again from the Democratic Republic of the Congo (the "DRC").²

Since the promulgation of your regulations is reportedly due shortly, we hope you will give particular consideration to our suggestions concerning the following:

(a) Covered Companies: We believe a reporting firm is covered by Section 13 (p) if it manufactures or contracts to be manufactured products that contain conflict minerals, as defined in Section 1502 of the Dodd-Frank Act and that the rules should apply, as the Commission intends, to reporting firms selling generic products under their own name or a separate brand name, but not to retailers who do not do so and have no influence over the manufacturing of products they sell.

In determining covered firms, we do not think the term "manufacture" has to be defined, other than to make clear that the term includes persons who either mine conflict minerals or contract for the mining of such minerals, and that those firms that mine do not have to engage in any additional processes or make other changes to the mineral's basic composition to be covered.

(b) Materials Necessary to the Functionality or Production of Merchandise: We agree with the Commission's proposal not to include a materiality threshold or a de minimis rule in the reporting requirements. As to which minerals are necessary to the functionality or production of an issuer's merchandise, we suggest that minerals that are "naturally occurring" and "unintentionally included" in a product should be exempted, provided, they are not intentionally included in either the production process or the end product (even if they are not used in the end product), and, if so, they should be included as "conflict minerals."

We also suggest that the Commission regard a component in a product necessary to its functionality if it is needed for either its basic function or another commercially valuable function of that product. We do not believe that "basic function" in this regard needs to be defined since it will differ for each product.

(c) Country of Origin: We believe that a reasonable country of origin inquiry standard is a necessary measure for determining whether a firm's conflict minerals originated in the DRC's neighboring countries. We suggest that the Commission provide additional guidance about what would constitute a reasonable country of origin inquiry,

² Steve Hege, in charge of armed groups for the Expert Group, in a letter to Jason Stearns of Congo Siasa, January 6, 2012.

and urge the Commission to adopt a supplier declaration approach³ that consists of supply chain entities declaring the reasonable efforts they have taken to ensure that all conflict minerals in their materials and products are sourced from a “compliant smelter.” A smelter would be compliant if it meets the requirements of an independent and competent individual or industry-wide audit process.⁴ The audit should comply with the criteria of the Organization for Economic Cooperation and Development (the “OECD”) for transparent third-party audits of smelter’s due diligence practices.⁵

(d) Due Diligence with Respect to Supply Chains of Conflict Minerals: We suggest that the proposed rules should indicate the standard for this required supply chain due diligence, and we recommend the rules require use of the specified due diligence standard and guidelines for supply chain determinations as set forth by the Expert Group and the OECD,⁶ as the DRC’s Minister of Mines requested the SEC to do.⁷ These require documentation and verification of the firm’s information and establishment of supply chain mechanisms of control and transparency.

To provide uniform control and transparency, the rules should require due diligence mechanisms at least equal to those established by the Expert Group and the OECD for both “upstream” supply chain (i.e., from mines to the smelters) and “downstream” supply chain (i.e., from smelters to the consumers) documentation and verification. The rules should require reporting firms that cannot, after due diligence, determine the origin of the materials used in their products to submit a Conflict Minerals Report and an independent audit of such report to ensure such issuers cannot easily avoid their obligations and disclosure requirements prescribed by the rules. All audit reports should be carried out by auditors who have an expertise in conflict minerals and sourcing and meet the requirements of the OECD’s criteria for the competence of auditors.⁸

(e) Armed Groups: We suggest that the Commission include the Congolese military (FARDC) in its definition of “armed group” because of widespread evidence that its members have committed war crimes, attacked villages and raped and killed

³ Such an approach has been suggested in a letter dated November 17, 2010 submitted to the Commission by Patricia Jurewicz (the “Multi-Stakeholder Group Letter”), *available at* <http://www.sec.gov/comments/df-titlexv/specializeddisclosures-67.pdf>.

⁴ *See id.* at paragraph 8 a. of Consensus Recommendations for the SEC Conflict Minerals Resolution.

⁵ *See* United Nations Security Council Resolution 1896 (2009) [S/RES/1896 (2009)] and OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2010), *available at* <http://www.oecd.org/dataoecd/62/30/46740847.pdf>.

⁶ *See* S/2010/596, pages 87-96 and *See id.* at footnote 4., pages 10-16 and 19-42.

⁷ United Nations Group of Experts Report to the Security Council, paragraph 376, dated 29 November 2011.

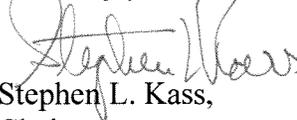
⁸ *See id.* at footnote 4, A. 3 b., page 32.

civilians.⁹ Government soldiers, who are supposed to be maintaining law and order in the DRC, have also been implicated in extracting conflict minerals¹⁰ and select military officers have been involved in smuggling ores.¹¹

(f) **DOJ Referrals:** We also recommend that, since there is no identified mechanism in the Conflict Minerals rules to punish firms that violate the rules, that the Commission include in its rules a reference to the Commission's ability to refer to the Department of Justice those firms that either breach material provisions of the rules or repeatedly violate the rules. It is not always sufficient to rely on the enforcement provisions of subsection 32 (a) of the Exchange Act.¹²

We appreciate your consideration of these and our earlier comments on the implementation of Section 13 (p) and would be happy to discuss any of these suggestions in greater detail if the Commission's staff would find that useful.

Sincerely yours,



Stephen L. Kass,
Chair

⁹ See e.g., Human Rights Watch, DR Congo: Hold Army to Account for War Crimes, May 19, 2009, available at <http://www.hrw.org/en/news/2009/05/19/dr-congo-hold-army-account-war-crimes>.

¹⁰ Taylor Toeka, Illegal Mining Fuels DRC Conflict, Relief Web, January 12, 2010.

¹¹ Congo Siasa, a Blog on Congo, its Politics and Tribulations, January 6, 2012.

¹² 15 U.S.C. section 78ff(a).