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February 28, 2011

VIA EMAIL AND DELIVERY

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Attention: Ms. Elizabeth M. Murphy, Secretary

Re: Comments on Proposed Rules relating to the Dodd-Frank Act
Release No. 34-63547; File Number S7-40-10 – Section 1502 Conflict Minerals
Release Nos. 33-9164 and 34-63548; File Number S7-41-10 – Section 1503 Mine Safety Disclosure
Release No. 34-63549; File Number S7-42-10 – Section 1504 Disclosure of Payments by Resource Extraction Issuers

Ladies and Gentlemen:

These comments are being submitted in response to Release No. 34-63547 (the "Conflict Minerals Release"), Release Nos. 33-9164 and 34-63548 (the "Mine Safety Release") and Release No. 34-63549 (the "Transparency Release") in which the Securities and Exchange Commission (the "Commission") solicited comments on its proposed rules relating to conflict minerals, mine safety disclosure and payments by resource extraction issuers, respectively. These proposed rules are intended to implement Sections 1502, 1503 and 1504, respectively, of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

These comments are submitted on behalf of Barrick Gold Corporation. Barrick is the world's largest gold producer and the gold industry leader, with 25 operating mines and a pipeline of projects located across five continents. These include four producing gold mines in northwest Tanzania – North Mara, Bulyanhulu, Tulawaka and Buzwagi – which are held through our majority-owned subsidiary, African Barrick Gold plc (which is listed on the London Stock Exchange). These also include eight producing mines located in the United States – Goldstrike, Round Mountain, Bald Mountain, Cortez, Turquoise Ridge, Golden Sunlight and Ruby Hill – as well as development projects and exploration activities in Nevada, Alaska and other States.

Barrick is a Canadian company headquartered in Toronto, Ontario and listed on the Toronto Stock Exchange and the New York Stock Exchange, having a market capitalization of approximately US$47 billion. Barrick is a foreign private issuer and uses the forms and rules designated for foreign private issuers under the U.S.-Canadian Multi-Jurisdictional Disclosure System.

Barrick is committed to corporate social responsibility. We have been ranked as a world leader in corporate social responsibility by the Dow Jones Sustainability Index for the past three years and we have been ranked among the top 100 companies in the world for our sustainability reporting and performance by the NASDAQ OMX CRD Global Sustainability Index. We are proud to be the first Canadian mining company to join the Voluntary Principles on Security and Human Rights.

Barrick supports the policy goals of Sections 1502, 1503 and 1504 of the Act. We are opposed to activities that promote armed conflict in the DRC, and elsewhere, and contribute to human rights abuses. We believe that increased transparency with respect to the benefits provided by mining activities will provide useful information to local residents in the countries where mining activities are conducted, and also will assist investors and the general public to better understand the important role of mining companies in international development. We also believe it is important that the laws and regulations addressing these issues be drafted in a way that reflects the practical issues associated with implementation, do not create confusion in the marketplace or unnecessary and costly duplication of efforts, and minimize the potential unintended consequences of such laws and regulations.

## PART I: CONFLICT MINERALS

In this part, the term "Proposed Rules" refers to the rules proposed in the Conflict Minerals Release.

### Terminology Concerns

We object to labelling gold generally, or even all gold produced in the DRC and adjoining countries (collectively, "DRC countries"), as a "conflict mineral". Only about 0.2% to 0.3% of annual international gold production comes from the DRC. Treating all gold as a conflict mineral confuses gold that has been mined in a responsible manner with gold extracted in circumstances that contribute to armed conflict.

We submit that Section 1502 of the Act and the Proposed Rules are intended to deter the use of minerals that directly or indirectly finance or benefit armed groups. Please refer to "Focus on Financing or Benefiting Armed Groups" below. In that vein, gold should be not be labelled a "conflict mineral" until it is determined that (1) the mineral's origin was in a DRC country, and (2) the mineral directly or indirectly financed or benefited armed groups in the DRC countries.

In the context of public disclosure documents we are concerned that the term "conflict mineral" could incorrectly indicate there are conflict-related concerns with both minerals sourced outside of DRC countries or minerals sourced from DRC countries that did not finance armed conflict, which could lead to an unnecessary and inappropriate stigma on gold. Furthermore, we note that there are many legitimate, responsible mining activities undertaken in DRC countries. Using the term "conflict mineral" in a manner that taints even legitimately-produced gold will have a negative impact not only on the companies active in the area, but also on their local employees and on the communities surrounding their operations that thrive in partnership with the mining operations.

We further submit that reporting companies should have greater flexibility to use more accurate terminology in order to avoid creating investor confusion. For example, where a reporting company has used minerals that did not directly or indirectly finance armed conflict in DRC countries, the company should be able to use an appropriate heading for the relevant disclosure in its annual report, such as "Country of Origin Disclosure" rather than the more pejorative heading "Conflict Minerals Disclosure" required by the Proposed Rules. Similarly, where a reporting company is unable to determine the origin of the relevant minerals, the issuer should be permitted to use an alternative phrase to describe those minerals, such as "Conflict Free Status Uncertain" rather than labelling them as "Not DRC Conflict Free" where that may not be accurate. We believe the term "Not DRC Conflict Free" is, in any event, a very confusing label and should be avoided.

**Gold Companies as Manufacturers of Gold**

The Commission has requested comment (Request for Comment 13) on whether the extraction of conflict minerals from a mine constitutes "manufacturing" or "contracting to manufacture" a "product", with the result that mining issuers would be subject to the Proposed Rules. We submit that such an interpretation is incorrect and inappropriate for a variety of reasons and, therefore, that mining issuers should not be deemed to be engaged in manufacturing for purposes of the Proposed Rules.

Inconsistent with Plain Meaning

We respectfully submit that interpreting the term "manufacture" to include gold mining is not within the plain meaning of the definition of the word "manufacture". Manufacturing involves taking raw materials and combining them to create a product.[1] Gold bullion is a raw material. It is a naturally occurring mineral, not something created by mining companies, and the mining of gold is the extraction, not manufacturing, of that element.

We note that in many other contexts, mining is distinguished from manufacturing. The Standard Industrial Classification system, used by the Commission, uses separate and distinct major divisions for mining and manufacturing. More recently, the U.S. Economic Classification Policy Committee, Statistics Canada and Mexico's Instituto Nacional de Estadistica y Geografia jointly developed the North American Industry Classification System (NAICS). These standards are the result of more than a dozen years of work by these agencies. NAICS is the standard used by U.S. federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS also has separated mining and manufacturing into different sectors.

NAICS Sector 31-33 (Manufacturing) includes the following description of the manufacturing sector:

> The Manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.

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[1] The definition of "manufacture" from Merriam-Webster dictionary refers to "something made from raw materials by hand or by machinery".

Further, NAICS distinguishes manufacturing from mining and other activities that generate the raw materials used in manufacturing:

> The materials, substances, or components transformed by manufacturing establishments are raw materials that are products of agriculture, forestry, fishing, mining, or quarrying as well as products of other manufacturing establishments. (Emphasis added)

We submit that the NAICS description of manufacturing is consistent with the plain meaning of the term and that the term "manufacturing" in the Proposed Rules should be interpreted in a manner consistent with the NAICS description.

Inconsistent with Legislative Intent

We submit that the legislative intent of Section 1502 of the Act is to impose reporting requirements on companies *using* minerals in their products, and, contrary to the Proposed Rules, not mining companies that extract those minerals. This legislative intent is apparent from the legislative record surrounding the Act and surrounding predecessor legislation.

*Congress Intended to Address Manufactured Products that Use Gold and Other Minerals*

In the Congressional proceedings relating to Section 1502 of the Act, the legislators were focused on the use of conflict minerals in the manufacture of products, referring to items such as cell phones and automobiles,[2] which are clearly manufactured products within the plain meaning of those words. Congress intended that Section 1502 of the Act would ensure that companies using conflict minerals source them responsibly.[3]

Requiring disclosure by mining companies involved in extracting the minerals does not further that objective – gold mining companies do not "source" or "use" gold. We do note, however, that Section 1502 will require mining companies to co-operate with the efforts of manufacturing companies to conduct due diligence on the geographic source of their product so that these users can comply with their own obligations under Section 1502 the Act.

*Earlier Proposed Legislation Indicates Difference Between Mining and Manufacturing*

Section 1502 includes provisions from the proposed Congo Conflict Minerals Act of 2009 (the "CCMA"), S. 891, but includes deliberate "modifications based on discussions with representatives from industry, U.S. Government agencies and the [Senate] Banking

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2 "Most people probably don't realize the products we use every day – from automobiles to cell phones – may use one of these minerals from this area of conflict..." Senator Durbin (IL). "Restoring American Financial Stability Act of 2010." Congressional Record 156:74 (May 17, 2010) p. S3817.

3 "It is a requirement that if a company registered in the Untied States *uses* any of a small list of key minerals from the Congo – minerals known to be involved in the conflict areas – then such *usage* must be disclosed in that company's SEC disclosure. ...it encourages companies *using* these minerals to *source* them responsibly." (Emphasis added) Senator Durbin (IL). "Restoring American Financial Stability Act of 2010." Congressional Record 156:74 (May 17, 2010) p. S3817.

Committee".[4] The CCMA had proposed to require reporting from persons engaged in the activities described in paragraph (3) of the then proposed new Section 13(m) of the Securities Exchange Act of 1934 (the "1934 Act"), which read as follows:

> (3) ACTIVITIES DESCRIBED.—An activity described in this paragraph is—
>
> (A) the commercial exploration, extraction, importation, exportation, or sale of columbite-tantalite, cassiterite, or wolframite; or
>
> (B) the use of such minerals, derivatives of such minerals, components that include such minerals, or components that include derivatives of such minerals in the *manufacture of a product* for sale. (Emphasis added)

The proposed CCMA (from which, as noted, Section 1502 was derived) distinguished between the extraction of minerals and the use of minerals in the manufacture of a product. The language of the CCMA clearly indicates that when Congress refers to the manufacture of a product in the context of conflict mineral disclosure, it views the manufacture of a product as distinct and different from mineral extraction and related activities. On this basis, we submit that the manufacturing of a product referred to in Section 1502 of the Act does not include extractive activities relating to the relevant minerals.

We further submit that the omission of a reference to the extraction of minerals in Section 1502 (in contrast to the inclusion of a reference to extraction activities in the proposed CCMA) further indicates a clear legislative intent not to include the extractive industry within the scope of Section 1502.

We also note that, in his remarks, Senator Feingold indicated that Section 1502 "was narrowly crafted".[5] We submit that interpreting the manufacture of products so broadly as to include extraction of gold is inconsistent with Congress' deliberate, more narrow approach, particularly in light of the fact that Congress itself had distinguished in related legislation the manufacturing of a product from the extraction of minerals and in light of the legislative history of Section 1502, which clearly focuses on manufacturing and the "use" of conflict minerals.

Inconsistent with the Specific Requirements of the Proposed Rules

While the Proposed Rules are meaningful for manufacturing companies, in light of the differences between mining minerals and using those minerals in a manufacturing operation, the Proposed Rules lead to disclosure that is either not meaningful or inapplicable in the context of a gold mining company. For example:

- Proposed General Instruction B(16)(a)[6] would require disclosure of whether conflict minerals originated in the DRC countries: We note that gold mining companies already

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[4] Senator Feingold (WI). "Restoring American Financial Stability Act of 2010." Congressional Record 156:76 (May 19, 2010) p. S3976.

[5] *Ibid.*

[6] As Barrick files its annual report on Form 40-F, in this letter we have referred to the proposed changes to Form 40-F contemplated by the Proposed Rules.

disclose in their annual reports the locations of their mines and the amount of gold produced by each such mine. It is not clear what additional useful information is required by this proposed instruction in the context of a gold mining company. The concept of a reasonable country of origin inquiry would not be meaningful in the context of gold companies because the mine site locations are known and disclosed.

- Proposed General Instruction B(16)(b) would require the furnishing of a Conflict Minerals Report that would include a description of the measures taken to exercise due diligence on the source and chain of custody of the gold. This disclosure is focused on supply chain diligence, a concept that has meaning in the context of a user of raw materials who is investigating the source of those raw materials. It is unclear how to interpret and apply this requirement in the context of a gold mining company, where the company itself is the source of the raw materials.

Fails to Further the Objectives of Section 1502 of the Act

The principal concern of Section 1502 of the Act is the use of conflict minerals that directly or indirectly financed or benefited armed groups in the DRC countries. In their letter to the Commission dated October 4, 2010, Senator Durbin and Congressman McDermott indicated that one of the goals of Section 1502 is to "reduce the demand for (and therefore the price of) black-market conflict minerals". Gold produced by publicly-traded, reporting gold mining companies is not black market gold. The proceeds from the gold sold by these companies does not directly or indirectly finance or benefit armed groups in the DRC countries – it accrues for the benefit of public shareholders.

Gold produced by responsible businesses including public gold mining companies is the preferred source of gold. In order to reduce demand for black market gold, the key is requiring users of the mineral to ensure that the gold they use has a legitimate source. This objective does not require gold mining companies to be subject to the disclosure requirements of the Proposed Rules.

Avoiding Duplication and Appropriate Role for Gold Mining Companies

It is clear that Section 1502 of the Act and the Proposed Rules will impose obligations on manufacturers to conduct diligence regarding the source of the product that they use and, where required, to prepare a Conflict Minerals Report and obtain an independent audit. If these obligations were to be imposed on mining companies as well, it would result in a duplication of efforts, including duplicative disclosure and overlapping audits, without yielding any additional information for the marketplace. We submit that such duplication is burdensome and unnecessary.

Mining companies will have a role in the implementation of Section 1502 of the Act. Specifically, mining companies, smelters, refiners and others in the supply chain will need to co-operate with the efforts of manufacturers to identify and audit the source of the gold that they purchase and use. We submit that this is the appropriate role for mining companies, as suppliers of raw materials.

Beneficiation

We submit that beneficiation activities undertaken by gold mining companies should not be considered manufacturing. We note that NAICS includes beneficiation activities within the scope of mining. NAICS Sector 21222 includes the following description of gold ore and silver ore mining:

> This industry comprises establishments primarily engaged in developing the mine site, mining, and/or beneficiating (i.e., preparing) ores valued chiefly for their gold and or silver content. Establishments primarily engaged in the transformation of the gold and silver into bullion or dore bar in combination with mining activities are included in this industry.

Although mining and beneficiation may produce one or more by-products, including sludges, slimes, flue dust, carbon fines, slag and other by-products, we do not believe that a mining company should be seen as manufacturing those by-products. The by-products are directly associated with mining and beneficiation, and in many cases the by-products are themselves primary metals.

**Due Diligence Standard**

There are a number of practical issues associated with implementation of the Proposed Rules by gold mining companies (in addition to those noted above under the heading "Inconsistent with the Specific Requirements of the Proposed Rules"):

- Once product is delivered by a mining company to a smelter or refinery, the mining company no longer has control over the product (although it will generally retain title to the product until it is refined into gold bullion and sold by the mining company).

- Product from many mines is commingled at the smelter or refinery. Once commingled, it is impossible to identify the specific mine that was the source for specific smelter or refinery output (and it is most likely that the output incorporates product from more than one mine).

- After a refinery refines a mining company's gold doré into bullion, the mining company's account at the refinery is credited with the applicable amount of bullion. Specific gold bullion bars are not allocated to the mining company. When the mining company sells its gold, the transfer is recorded through credits and debits in electronic accounts. Again, specific gold bars are not allocated.

Because the mining company does not have physical control over the gold doré when it is delivered to the smelter or refinery and ultimately sells unallocated gold, any reporting obligations on a mining company, if imposed, should terminate at the point at which product is delivered to the smelter or refinery.

**Gold in Copper Concentrate**

We note that copper is not a conflict mineral under Section 1502 of the Act. Gold and copper often occur together naturally in a deposit. In some cases, the product from such a mine takes

the form of copper concentrate, which contains both copper and gold and potentially other minerals. The copper concentrate is then shipped to a smelter to separate the copper, gold and other marketable minerals. The gold is not necessary to the functionality of the copper or other minerals in the copper concentrate. We ask the Commission to clarify that there is no obligation on a mining company to report in respect of gold contained in copper concentrate produced by a mine.

**Content of Conflict Minerals Reports**

We believe that a reasonable country of origin inquiry standard is the appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries. (Request for Comment 33)

We agree with the requirement for issuers to disclose the facilities, countries of origin and efforts to find the mine or location of origin for conflict minerals that do not qualify as DRC conflict free. To require this disclosure for all other conflict minerals would be unduly burdensome and the additional disclosure is not required to further the legislative intent of Section 1502. (Request for Comment 39)

We strongly disagree with the suggestion that disclosure of the location of origin "with the greatest possible specificity" should be required and that the capacity of each source mine along with the weights and dates of individual mineral shipments should be disclosed. (Request for Comment 40 and 41) This would be very detailed and burdensome disclosure and we fail to see the significance of this excessively detailed disclosure. We submit that disclosure of the approximate geographic location within a country should be considered sufficient.

In addition, requiring excessive detail in the Conflict Minerals Report has the potential to expose sensitive information about, among other things, transportation routes and storage facilities, which raises serious security concerns and could put staff of the mining company, smelters and refineries and others at risk. This risk is particularly acute in the case of gold, given the high value of this commodity. We submit that reporting companies should be permitted to redact the portions of the Conflict Minerals Report that contain this sensitive information from the document furnished to the Commission. A full copy of the Conflict Minerals Report could be made available for inspection by the Commission.

As discussed in greater detail below under the heading "Focus on Financing or Benefiting Armed Groups", to the extent that the Commission believes that more extensive or more detailed disclosure is required, we submit that such additional disclosure should be imposed only where the manufacturer has determined that the minerals necessary to the functionality or production of its product both (i) originated in a DRC country, and (ii) directly or indirectly financed or benefited armed groups in a DRC country. To do otherwise would penalize companies that use minerals extracted on a legitimate basis from DRC countries, which in turn would have an unnecessary and inappropriate negative impact on mining companies who operate in DRC countries as well as their staff and local community.

With respect to certification of the audit forming a part of the Conflict Minerals Report, we support the view that such certificate should address the fact that the audit was obtained. We

agree with the Commission's proposal that the certification not be signed by any person, either in his or her own capacity or on behalf of the reporting company. (Request for Comment 42)

**Focus on Financing or Benefiting Armed Groups**

We are concerned that the Proposed Rules place undue emphasis on the location of origin of the minerals and not on whether the particular conflict minerals directly or indirectly finance or benefit armed groups. This is the most important determination to be made by reporting companies – indeed, by all companies.

Notwithstanding that the focus is, or should be, on minerals that directly or indirectly finance or benefit armed groups, the Proposed Rules impose significant disclosure obligations on companies that purchase any minerals produced from a DRC country, even where the mineral is DRC conflict free. We are particularly concerned about the following potential impacts of the Proposed Rules:

- Because extensive reporting obligations are imposed on manufacturers who use any gold from DRC countries, even gold that is DRC conflict free, purchasers may avoid purchasing gold mined in Tanzania and other countries adjoining the DRC by responsible businesses ("Legitimate DRC Country Gold"). Reduced demand for Legitimate DRC Country Gold will have a negative impact not only on mining companies, but also on their local employees and on the communities surrounding their operations that thrive in partnership with the mining operations. We submit that the presence of responsible businesses contributes to economic development and brings prosperity and opportunity, and thereby stability, to the area. Any negative impact of the Proposed Rules on these legitimate activities would be antithetical to the objectives of Section 1502 of the Act.

- Because products from many sources are commingled at refineries and smelters, refineries and smelters may refuse to process Legitimate DRC Country Gold in order to ensure that the purchase of their product will not result in the imposition of extensive reporting obligations on the purchaser.

We submit that to the greatest extent possible the Proposed Rules should not impose a burden on companies that are using minerals that are DRC conflict free. As a result, we do not believe that reporting companies should be required to disclose the facilities, countries of origin and efforts to find the mine or location of origin for minerals that the issuer has determined to be DRC conflict free (Request for Comment 39).

We support requiring reporting companies that use minerals which directly or indirectly financed or benefitted armed groups (or reporting companies that cannot reasonably conclude that the minerals used did not directly or indirectly finance or benefit armed groups) to prepare and file a Conflict Minerals Report. We do not, however, believe that such an obligation should be imposed on those who use Legitimate DRC Country Gold. We are very concerned that burdens of this nature imposed on those who use Legitimate DRC Country Gold could reduce demand for Legitimate DRC Country Gold, thereby negatively impacting local communities. While we recognize that the Act requires a Conflict Minerals Report from this broader group of companies, we submit that this requirement is overbroad, does not further the objectives of the Act and, in

fact, may harm economic development in the area, and the prosperity and improved stability that come with that development.

**Independent Audit**

We are concerned about the lack of information and clarity regarding the audit to be included in the Conflict Minerals Report, including in respect of the auditing standards that would apply and the content of the report to be furnished to the Commission.

Section 1502 indicates that the Comptroller General will establish the auditing standards. We are not aware of any specific standards being established to date. To the extent that existing standards are to be used, we believe that there may be confusion regarding the application of those standards to this unique audit requirement.[7] Without clear guidance in this area, it will be impossible for companies to establish appropriate systems in advance in order to ensure compliance with the Proposed Rules.

With respect to the content of the audit report, we are concerned that it has the potential to expose sensitive information about, among other things, transportation routes and storage facilities, which raises serious security concerns and could put staff of the mining company, smelters and refineries and others at risk. This risk is particularly acute in the case of gold, given the high value of this commodity. We submit that reporting companies should be permitted to redact the portions of the report containing such sensitive information. A full copy of the report could be made available for inspection by the Commission.

**Location of Disclosure**

We submit that foreign private issuers should be entitled to furnish all of their disclosure required by the Proposed Rules annually in a separate report on Form 6-K, or, if they so elect, as part of an annual report on Form 20-F or Form 40-F. (Request for Comment 49) The policy rationale for the conflict mineral disclosure is different from the rationale for the balance of the information contained in the annual report, making a separate disclosure document appropriate if the issuer so elects to prepare a separate report for its disclosure about conflict minerals. We believe that permitting foreign private issuers to furnish the disclosure required by Section 1502 in a separate document on Form 6-K would satisfy the policy rationale behind Section 1502 in a manner that is consistent with the Commission's general approach to disclosure required of foreign private issuers and would also avoid the potential for disclosure confusion in the issuers' home jurisdictions.

The Commission has historically regulated foreign private issuers differently from U.S. domestic issuers, in part in recognition of the fact that a foreign private issuer is subject to the rules and regulations of its home country, and, from a policy perspective, to encourage foreign private issuers to list their securities in the United States. The Commission has sought to balance these factors with its mandate to protect U.S. investors and has made available to foreign private

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[7] We note that in footnote 101 of the Conflict Minerals Release the Commission indicates that Staff of the Government Accountability Office has (i) advised that they preliminarily believe no new standards need to be promulgated and (ii) not indicated whether and, if so, what evaluation criteria are required for the standards that are proposed to apply. Until these issues have been fully considered and a definitive view reached, there remains uncertainty regarding the applicable auditing standards.

issuers a number of important exceptions to the rules and regulations applicable to U.S. domestic issuers.

In particular, a number of the Commission's disclosure rules for foreign private issuers have been developed in light of the home country regulations and disclosure requirements to which foreign private issuers are subject. For example, foreign private issuers are not required to file quarterly reports under the Exchange Act or current reports on Form 8-K. Rather, they are permitted to furnish continuous reporting information with the Commission under cover of Form 6-K. Additionally, foreign private issuers are not required to comply with the Commission's proxy rules that govern issuers whose securities are registered under the Exchange Act; they are not required to comply with Regulation FD; they are exempt from a number of the requirements found in the Sarbanes-Oxley Act; and they are subject to scaled-down executive compensation disclosure. These examples are illustrative of the deference the Commission pays to the regulations of an issuer's home country and its recognition that foreign private issuers would be at a competitive disadvantage *vis-à-vis* their competitors in their home country if they were required to comply with rules designed primarily for U.S. domestic issuers.

We believe that the disclosure requirements related to an issuer's use of the minerals identified in Section 1502 should be applied to both domestic issuers and foreign private issuers. However, we believe that, with respect to foreign private issuers, the disclosure goals of Section 1502 would be accomplished by permitting foreign private issuers to disclose such information in a Form 6-K, rather than in the issuer's annual report on Form 20-F or 40-F, if the foreign private issuer so elects.

There are a number of advantages to permitting foreign private issuers to furnish the disclosure required by Section 1502 on Form 6-K. Information included in a Form 6-K is considered to be "furnished," rather than "filed," for purposes of 1934 Act liability, which the Commission has recognized in the Proposed Rules as the proper approach to attaching liability to the information required to be disclosed by Section 1502. In addition, the disclosure would be filed in a separate report and would not be subsumed within an issuer's annual report.

Permitting the required Section 1502 disclosure to be furnished in a Form 6-K would also avoid potential sources of confusion to a foreign private issuer's home country investors and regulators. Foreign private issuers often prepare one annual report to meet the obligations of both the home country disclosure regime and also their United States reporting obligations. We submit that requiring issuers to include conflict mineral disclosure in such a single disclosure document would make that document more confusing for users in the issuer's home country. In addition, including the conflict minerals disclosure in the disclosure document that is also used for home country purposes could result in confusion as to whether such disclosure is to be included, through incorporation by reference, in home country offering disclosure documents. For these reasons we suggest providing foreign private issuers with the option of including their conflict minerals disclosure directly in their annual report or a separate document filed on Form 6-K.

**Liability for Disclosure**

We agree that the Conflict Minerals Report, including the audit report, should be furnished and not filed for purposes of the 1934 Act. (Request for Comment 46) In that regard, we also agree that the Section 1502 disclosure should not be subject to liability under Section 18 of the 1934

Act unless the issuer explicitly states that the disclosure is filed under the 1934 Act and that these documents should not be considered incorporated by reference into any filing, except to the extent that an issuer specifically incorporates them by reference. As the Commission has stated, the nature and purpose of this disclosure is qualitatively different from the other disclosure required under Section 13 of the Exchange Act. For these purposes, furnishing the information to the Commission should be sufficient. We note that any such information so furnished to the Commission would be subject to liability under Section 10(b) of the 1934 Act in circumstances where such disclosure violated Section 10(b).

**Timing**

As discussed above under the heading "Independent Audit" there is a lack of information and clarity regarding the audit to be included in the Conflict Minerals Report. In addition, Section 1502 calls for the development of a strategy to address linkages between human rights abuses, armed groups, mining and commercial products and a "Conflict Minerals Map". Reporting companies will need to have the opportunity to review and evaluate these documents in order to assess their relevance to the implementation of the Proposed Rules and in particular their relevance to the analysis to be undertaken pursuant to the Proposed Rules. We submit that the Commission's rules in respect of Section 1502 should not be imposed until the reporting company's first full financial year after these items have been addressed.

**Burden Imposed**

In light of the uncertainties regarding the application and implementation of the requirements of the Proposed Rules, at this stage we have been able to undertake only a preliminary assessment of the expected compliance costs. It is our view that the cost estimates contained in the Conflict Minerals Release significantly understate the true cost of compliance. When the various uncertainties surrounding the Proposed Rules are resolved, then it will be possible to formulate a more specific cost estimate.

**PART II: MINE SAFETY DISCLOSURE**

In this part, the term "Proposed Rules" refers to the rules proposed in the Mine Safety Release.

**Mines Requiring Reporting**

We agree with the approach of applying the disclosure requirement to mines that are subject to the Mine Act. (Request for Comment 2) This approach is consistent with the legislative intent of the Act which refers specifically to orders, violations and citations (collectively, "Safety Orders") under the Mine Act. As indicated in the Mine Safety Release, there are other reporting obligations to address material health and safety related issues at other mines.

We also agree that the disclosure should be provided for each mine. (Request for Comment 5) Although the Proposed Rules are not explicit on this point, we would interpret a "mine" in this context to be consistent with a group of operations considered a "mine" for purposes of Mine Act reporting. Maintaining consistency between reporting units under the Mine Act will reduce the administrative burden associated with collecting and presenting the required information.

**Contractors**

Contractors are often used in connection with mining operations, in some cases to operate an entire mine and in some cases for more limited functions. The contractor is responsible for the activities within its control. From a Mine Act perspective, the contractor will have its own identification number – a Contractor ID – and any Safety Orders given to the contractor will be recorded against that Contractor ID. On the other hand, Safety Orders given to the mining company are recorded against the mining company's MSHA Mine ID for the mine. We ask that the Commission confirm that the Proposed Rules require disclosure of Safety Orders given to the mining company – i.e., based on MSHA Mine ID – and not Safety Orders given to contractors. In this way, the information contained in the mining company's public disclosure document will be consistent with the information available on the MSHA website based on the MSHA Mine ID number or mining company name. Safety Orders given to contractors would be included in the public filings made by the contractor.

**Orders, Violations and Citations that are Reduced**

We do not agree with the proposal that Safety Orders received during the time period covered that are subsequently dismissed or reduced to below a reportable level must be disclosed. (Request for Comments 13) Where the Safety Order was dismissed or reduced to below a reportable level before the applicable report is filed, there should be no obligation to disclose that Safety Order. Where the Safety Order was dismissed or reduced to below a reportable level after the applicable report is filed, the reporting company should have an opportunity to update that prior disclosure.

While most MSHA inspectors are highly professional and very qualified at their jobs, as in all professional and law enforcement endeavours, they are not always correct in their reading of the law or in their assessment of conditions in the widely varied and complex operations that make up the United States mining industry. Also, there are opportunities for inspectors to inconsistently and incorrectly assess the severity and degree of negligence, which has substantive ramifications for the alleged violator. When they wrongly issue a citation, or as is in our experience is more frequently the case, incorrectly assess the severity or degree of negligence, the alleged violator has a due process right to protect itself. Indeed, various aspects of citations are frequently challenged and overturned on appeal.

We submit that where it is established, before the applicable periodic report is filed, that a Safety Order should not have been issued or should have been less severe such that it falls below a reportable threshold, the reporting company should not be required to disclose that Safety Order. Disclosure in these circumstances serves no rational policy objective and denies the reporting company its due process.

We are supportive of giving reporting companies the ability to include additional information with respect to Safety Orders, including the ability to indicate that a previously disclosed Safety Order was overturned or reduced if applicable (but subject to the proviso that where the change to the Safety Order occurred prior to filing of the applicable periodic report, the preceding paragraph should instead apply – i.e., the Safety Order should not be required to be disclosed if it is withdrawn, overturned or reduced to below the reportable threshold).

**Reporting of Fatalities**

We agree with the proposal that the disclosure of mining-related fatalities encompasses fatalities at mines that are subject to the Mine Act. (Request for Comment 17) This approach is consistent with the other aspects of mine safety disclosure required by the Proposed Rules.

We also agree with using the MSHA regulations to define what constitutes a mining-related fatality, and specifically that fatalities that have been determined to be "non-chargeable" to the mining industry be excluded. (Request for Comment 18)

## PART III: DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS

In this part, the term "Proposed Rules" refers to the rules proposed in the Transparency Release.

**Exclusion of Downstream Activities**

We submit that the required disclosure should be limited to "upstream" activities, including processing conducted by mining companies themselves. (Request for Comment 7, 9 and 11) Transport, third party refining and other downstream activities should not be covered by the Proposed Rules. The purpose of the Proposed Rules is to address payments made in connection with the commercial development of minerals, which is generally understood to be limited to "upstream" activities.

**Payments to be Disclosed**

We believe that the disclosure required by the Proposed Rules is intended to provide information and transparency with respect to the total economic benefits derived by governments from the commercial development of minerals. We are concerned that the definition of "payment" in the Proposed Rules is unduly narrow and will not yield a complete picture of those benefits. (Request for Comment 12-25) Limiting the payments to those that directly further the development of minerals may exclude several types of payments that would not be received by governments if the development activities were not taking place. By way of example:

- Infrastructure investments that will benefit the host jurisdiction (either immediately or in the future) constitute an important benefit to the host jurisdiction. (Request for Comment 22)

- Social and community payments (whether mandatory or voluntary) are important benefits, in particular in less economically developed jurisdictions. (Request for Comment 23)

- Some countries require a minimum ownership interest be given to the government or a state-owned enterprise, and in some cases this ownership interest is a free carried interest. The dividends paid on these interests can be significant and represent important economic benefits to the host country. (Request for Comment 21)

- Similarly, employer paid social security, worker-based contributions and similar amounts should also be included as "payments".

- With respect to taxes, we submit that a broader range of tax payments should also be disclosed, including value added taxes, sales taxes, consumption taxes, commodity taxes, excise taxes, customs duties, import duties, export duties, withholding taxes (on dividends and interest) and similar charges. (Request for Comment 13) These can represent important sources of revenue to the host country and thus this information is required in order to understand the full picture of economic benefits associated with the development activities. Furthermore, disclosure of corporate income tax and production taxes alone may present a distorted picture of the benefits received by the host country, in particular in the early years of a mine's operation when income taxes are usually low due to tax deductions arising from the capital costs of construction.

We are also concerned that excluding significant types of payments may make comparisons between jurisdictions difficult. The types of benefit streams used differ among foreign jurisdictions – for example, some jurisdictions may rely more heavily than others on excluded items. In fact, there is a risk that exempting large categories of payments from disclosure may encourage governments to rely more heavily on those exempt categories to raise revenue, thereby defeating the transparency objective of the Proposed Rules.

We recognize that we are suggesting disclosure of a broader range of payments than would be required by EITI. However, we believe that this broader approach will yield a more complete picture of the economic benefits derived by foreign governments from mining activities. To the extent that the Proposed Rules require disclosure of only more limited types of payments, companies should be free to disclose additional information beyond what is mandated.

To assist users of this disclosure, we believe that the reporting company should separate the payment and benefit disclosure into broad categories and describe each such category.

In the interests of capturing the full range of benefits, we agree that both cash and in-kind payments should be included. (Request for Comment 14)

**"Not *De Minimus*" Threshold**

We agree that the "not de minimus" threshold is different from a materiality standard and we submit that this new standard should be defined in order to provide reporting companies with clarity regarding their obligations and to provide consistency with respect to the minimum reporting standards. (Request for Comment 26 and 27).

We submit that "not de minimus" should be defined as the lesser of: (i) two percent (2%) of the reporting company's consolidated expenditures, and (ii) US$1 million, and this definition should be applied to assess whether the payments of a particular nature in a country are not de minimus. A definition of this nature reflects the size of the reporting company but still ensures that significant payments by a larger company will be disclosed.

Notwithstanding such threshold, we submit that companies should be free to use a lower de minimus standard or to report amounts below the de minimis threshold if the company deems it to be appropriate, provided that if a company uses a lower de minimis threshold it should disclose the lower threshold that it is using and apply that threshold consistently across all jurisdictions in respect of which the company is making disclosure for the period.

**Treating Operations Within a Country as a Project**

We submit that companies should be permitted to report payments on an aggregate basis at a country level. (Request for Comment 44 and 48) From the reporting company's perspective, this would simplify the data collection process. From the investors' perspective, the disclosure will provide information about the types of expenses and jurisdictions where the reporting company is spending its money. In addition, this approach will provide information about total payments and benefits to assist citizens seeking to hold their government accountable for extractive revenues. We believe that any incremental information benefits from disaggregating payments would be minimal. A summary of the total payments made in a country, together with a list of the relevant projects in that country, should be sufficient to meet the objectives of the Act. We note that EITI disclosure is made at the country level.

To the extent that aggregation at the country level is not permitted for all payments, we submit that, at a minimum, payments that are not otherwise allocated to a particular operation should be reportable on an aggregate basis at the country level. There may be other payments as well that are not associated with a particular operation. Requiring issuers to formulate an allocation is burdensome, in particular where any incremental information benefits from allocating payments of this nature would be minimal.

**Definition of Control**

Projects Controlled by a Single Issuer

Where an entity is consolidated in the reporting company's financial statements, we agree that payments and benefits should be reported by that company on a 100% basis. This information will already be collected and reported on that basis in the reporting company's financial statements, which will facilitate the collation of the required data.

The reporting company should further identify the specific projects to which their disclosure relates and their ownership interest in each project. The reporting company should also be required to identify any "non-controlling" interests held by it in the applicable country for which no disclosure on government payments is provided. This additional disclosure will ensure that the information presented by reporting companies does not overstate or understate the proportionate contributions of such companies to foreign governments and/or the governments of the United States.

To the extent that there is another participant with a smaller interest in the project (even if that participant has "significant influence" over the project but so long as that participant does not have joint control) who accounts for its interest using the equity method, that partner likely does not have access to sufficiently detailed, timely information to make the disclosures required. In this scenario, we would not expect that the other participant would have any obligation to report payments or benefits to foreign governments.

With the consolidating entity reporting payments and benefits on a 100% basis and the other participant not reporting any payments or benefits, there is accurate aggregate disclosure without duplication.

Projects Under Joint Control

For operations subject to joint control (whether accounted for using proportionate consolidation or the equity method), each participant with joint control should report its *pro rata* share of the payments and benefits made to foreign governments. Because each participant would report its share of the payments and benefits, there would be accurate aggregate disclosure without duplication.

**Restrictions on Disclosure under Host Country Law**

In some cases, host country law may prohibit public disclosure of the payments or other benefits paid to or received by the host country. We submit that in these circumstances the reporting company should not be required to provide the disclosure otherwise required by the Proposed Rules. The Commission should not put reporting companies in a position where they have to breach local laws in the area of their operations in order to comply with the Proposed Rules. In many cases, a mining company's right to operate will be governed by a contract with the host government. Putting the mining company in a position where it would be required to breach that contract could threaten the mining company's right to operate, which in turn could have serious adverse consequences to the mining company.

**Sub-national Governments**

We agree that the definition of a "foreign government" should encompass all levels of government in a particular jurisdiction, as well as companies owned or controlled by foreign governments. (Request for Comment 61) This will ensure that all payments and benefits are captured so that there is disclosure of the total economic benefits derived by governments from the commercial development of minerals.

We submit that in the case of the United States, the Proposed Rules should also capture payments and benefits to state governments and all other levels of government within the United States. (Request for Comment 66)

**Annual Report and Data Format**

We submit that an issuer should not be required to disclose the information required by Section 1504 in its annual report on Form 10-K, Form 20-F or Form 40-F, as the case may be, but rather that the issuer should be permitted to furnish a separate report containing the Section 1504 disclosures at any time during the ensuing fiscal year. (Request for Comment 68 and 70) We are concerned that it may be difficult to gather and sort the information required by Section 1504 within the required timeframes for the annual report, and that waiting for this information to be available may lead to delay in filing the annual report and disclosing the other important information contained in that document. Furthermore, the policy rationale for Section 1504 disclosure is different (as is its time sensitivity) from the policy rationale for the disclosure currently required to be included in annual reports, and there is no need to link the time for filing the Section 1504 information with the time for filing the annual report.

Foreign private issuers should be permitted to furnish Section 1504 information to the Commission on Form 6-K. For the reasons discussed above under the heading "Location of Disclosure" in our comments on the proposed rules in the Conflict Minerals Release, we believe

that permitting foreign private issuers to furnish the disclosure required by Section 1504 in a separate document on Form 6-K would satisfy the policy rationale behind Section 1504 in a manner that is consistent with the Commission's general approach to disclosure required of foreign private issuers and would also avoid the potential for disclosure confusion in the issuers' home jurisdictions. We believe the reasons for permitting foreign private issuers to furnish the Section 1502 disclosure on Form 6-K apply equally to the required Section 1504 disclosure and submit that foreign private issuers should be permitted to furnish the required Section 1504 disclosure on Form 6-K as well.

We submit that issuers should be given flexibility to determine the precise format for including interactive data in the Section 1504 disclosure. (Request for Comment 78 and 79) The Act requires only the use of "electronic tags". To that end, we believe that any format that would allow users to click through the information in a standard file type to reach data sorted by each of the electronic tags specified in the Act should be acceptable. We note that XBRL conversion of data can be time consuming and result in delay. Giving issuers flexibility will enable them to determine the most effective way to deliver on the Act's requirements with respect to electronic tags.

**Liability for Disclosure**

We agree with the approach that the disclosure required by the Proposed Rules would be furnished, and not filed, for purposes of the 1934 Act. Accordingly, we also agree that such disclosure should not be subject to liability under Section 18 of the 1934 Act unless the issuer explicitly states that the disclosure is filed under the Exchange Act and that this disclosure should not be considered incorporated by reference into any filing, except to the extent that an issuer specifically incorporates it by reference. (Request for Comment 87 and 89) As indicated in the Transparency Release, the nature and purpose of this disclosure is qualitatively different from the other disclosure required under Section 13 of the Exchange Act. For these purposes, furnishing the information to the Commission should be sufficient. We note that any such information so furnished to the Commission would be subject to liability under Section 10(b) of the 1934 Act in circumstances where such disclosure violated Section 10(b).

**Effective Date**

In light of the need to implement systems and processes to capture, review and report the data subject to disclosure, it would be useful to delay the effective date until fiscal year 2013. (Request for Comment 91) This is particularly the case if the requisite information will need to be gathered and sorted in time to be included in the issuer's annual report.

**Burden Imposed**

We believe the Commission is significantly underestimating the cost of compliance with the reporting requirements, particularly for large multinational companies such as Barrick. We estimate the initial set up time and costs associated with making the required changes to our internal books and records and processes to be approximately 500 hours, as well as US$100,000 in IT consulting/training/travel costs. On an ongoing basis, we estimate that compliance will require an additional 500 hours a year, including time spent to review each payment to determine if it is covered by the reporting requirements and ensure it is coded to the appropriate ledger accounts. In addition, the disclosure and the Conflict Minerals Report will have to be reviewed

by several different groups within the company, at both the regional and corporate level, to ensure its completeness and accuracy. These processes will require a significant amount of management effort and time.

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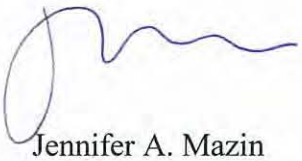
We appreciate the opportunity to submit our views on the various Proposed Rules to the Commission. We would also like to note that we have reviewed the comment letters submitted or to be submitted by the World Gold Council (WGC) and the National Mining Association (NMA) and we are supportive of the comments expressed therein, expect to the extent that they are inconsistent with the views expressed in this letter.

If you have any questions regarding the contents of this letter, please feel free to contact me.

Yours truly,



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