Social Investment Forum

November 18, 2010

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Via email: rule-comments@sec.gov

Re: SEC Initiatives under the Dodd-Frank Act – Special Disclosures Section 1502 (Conflict Minerals)

Dear Chairman Schapiro,

I am writing on behalf of the members of the Social Investment Forum (SIF), the U.S. membership association for professionals, firms, institutions and organizations engaged in socially responsible and sustainable investing or "SRI." SIF recently published the 2010 edition, the ninth in the series, of its flagship *Report on Socially Responsible Investing Trends in the United States*, which found that SRI assets in the United States topped $3 Trillion or nearly one out of every eight dollars under professional management in the United States at the end of 2009. Since 2005, SRI assets have increased more than 34 percent, while the broader universe of professionally managed assets has increased only 3 percent.

This research clearly demonstrates that investors increasingly use sustainability information and are demanding more reliable and comparable corporate environmental, social and governance or "ESG" data to implement investment strategies. SIF's members have been advocating for mandatory disclosure of more robust "ESG" information for several years. While falling short of our goal of mandatory ESG disclosure, SIF nevertheless has welcomed the new disclosures required by the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, including the conflict minerals provisions.

As the SEC staff is working on implementing this section of the *Dodd-Frank Act*, we would like to give some input on the substance of the pending rule. SIF members have been meeting with other concerned stakeholders, including civil society organizations, corporations and investors, on this topic. The group formed a multi-stakeholder Policy and Diplomacy Committee in May, which held numerous meetings from August through November 2010 to arrive at a series of consensus principles to guide the development of regulations surrounding Section 1502 of the *Dodd-Frank Act.*

Guiding principles: As a general matter, these stakeholders recommend that the SEC rulemaking be guided by the following principles:

- The SEC rule should support meaningful reporting and transparency that drives ethical behavior for the sourcing of minerals from the DRC;

- The SEC should coordinate with other multilateral processes in the effort to address financing of the conflict in the DRC;

- Acting within the statute and Congressional intent, the SEC should allow for appropriate adjustments to the SEC rules to maintain consistency with widely endorsed international

910 17th Street, NW
Suite 1000
Washington, DC 20006
T 202 872 5361
F 202 775 8686
www.socialinvest.org

standards, guidelines and industry processes;

- The SEC should coordinate with the State Department on options for implementing more robust accountability and reporting mechanisms with key stakeholders - in particular, the State Department's progress on diplomacy under The Democratic Republic of Congo Relief, Security, and the Democracy Promotion Act (PL 109-456); and

- Although not fully within the purview of the SEC, extreme violations of human rights, including slavery and sexual violence should be eliminated. In furtherance of this objective, we implore the U.S. government to proactively contribute to resolving the underlying sources of conflict in eastern DRC. We hope to see mineral extraction contribute to the real development of communities in eastern Congo. Joint action by the DRC government, influential governments like the United States, industries and international and Congolese civil society is needed to end conflict-related abuses, slavery and other human rights violations.

As a result of the work of this committee, appended below are specific consensus recommendations and proposed working definitions, which have SIF's endorsement, for consideration by the SEC in developing the conflict minerals disclosure regulations.

Types of issuers: Section 1502 requires issuers to publish reports annually on a public website, but it does not indicate in which, if any, SEC filings the issuers must include the information. It also is unclear which types of filers will be required to comply with these disclosures. SIF recommends that disclosure should be required of those entities that file an annual report using forms 10-K, 20-F or 40-F, as well as entities with Over-The-Counter American Depository Receipts (OTC ADRs) that file an annual report with the SEC using the form Annual Report to Security Holders (ARSs) or any other annual report pursuant to Section 12g3-2(b) of the Exchange Act.

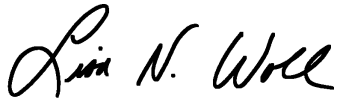
Securities filings: Furthermore, the disclosures required under Section 1502 of the *Dodd-Frank Act* should be included in these statutory annual filings with the SEC—forms 10-K, 20-F, 40-F, etc.

Data tagging: On data tagging, we endorse the SEC using eXtensible Business Reporting Language or (XBRL), which is a variant of eXtensible Markup Language (XML). While using XML is a great start, as it allows data to be tagged and easily identified by users, XBRL provides even greater capabilities to investors, issuers and regulators in defining the meaning of data and text associated with business reporting. Of course, both XML and XBRL have several important capabilities. They both enable organizations to exchange data easily independent of the technology platforms that each uses, and both also reduce barriers to businesses reporting continuously. Investors have a keen interest in the proliferation of such real-time reporting.

However, XBRL also offers at least two other significant benefits to investors, issuers and regulators, such as the SEC. First, it reduces the costs for investors associated with obtaining and assimilating information from issuers, and, at the same time, reduces the costs to issuers submitting data to regulators. At the same time, regulators are able to avoid having to reenter information or expend resources grappling with problems arising from incompatibilities between information technology platforms, while at the same time being able to disseminate more widely information in a more usable format. Second, XBRL allows far more standardization and harmonization of international business reporting standards, thereby lowering the costs of compliance and reporting for issuers, while making the information far more valuable and easily interpreted and analyzed by investors.

We appreciate the opportunity to submit comments in advance of the SEC's rulemaking, and we look forward to continuing to offer input into this important process.

Sincerely,



Lisa N. Woll
CEO, Social Investment Forum
910 17th Street, NW, Suite 1000
Washington, DC 20006
e-mail lisa@socialinvest.org
p 1+202-872-5358

cc: Commissioner Luis A. Aguilar
Commissioner Kathleen L. Casey
Commissioner Troy A. Paredes
Commissioner Elisse B. Walter

Consensus Recommendations for the SEC Conflict Minerals Regulation

1. Where a Person required to make a disclosure under the statute ("Person") is unable to determine the origin of minerals specified in the statute after making reasonable inquiry, the Person should be required to submit a report pursuant to15 U.S.C. Section 78m(p)(1)(A)(i).
2. A reasonable inquiry into the origin of minerals should include a stated basis for any determination that the source and origin of the mineral(s) was not in the DRC or an adjoining country. Covered Persons should be required to maintain auditable business records to support a negative determination in accordance with SEC recordkeeping requirements.
3. A supplier declaration approach is preferable in place of a product-based or materials declarations approach. The supplier declaration approach would consist of having direct and component suppliers and others in the supply chain take reasonable means to assure that all the tin, tantalum, tungsten, and/or gold in their materials/products are sourced from a compliant smelter.
4. "Recycled" tin, tantalum, tungsten and/or gold that is reclaimed end-user or post-consumer products, or scrap metals should be exempt from this rule. Minerals partially processed, unprocessed or a bi-product from another ore are not considered recycled [1].
5. A Person is responsible for its own due diligence, however such Person may rely on an industry wide process where applicable and appropriate.
6. Whether through an independent or industry wide process, a due diligence process for minerals sourced in the DRC and/or adjoining countries containing the following elements and demonstrating a reasonable standard of care, is presumed to be reliable if the disclosing Person's disclosure to the SEC includes:
    a. A conflict minerals policy;
    b. A supply chain risk assessment procedure that includes "upstream" and "downstream" due diligence, which includes a description of efforts made and the result of efforts to obtain information outlined in items 7 and 8 below;
    c. A description of the policies and procedures to remediate instances of non-conformance with the policy;
    d. An independent third party audit of the Person's due diligence report, which includes a review of the management systems and processes; and
    e. The results of the independent 3rd party smelter audit detailing (8)(b)i-x; or the inclusion of a link to the published smelter audit reports made available via the Person's website or publicly available website detailing (8)(b)i–x; with due regard taken of business confidentiality and other competitiveness concerns [2].
7. **Reliable due diligence of "downstream"** suppliers includes taking reasonable means to assure that direct and component suppliers and others in the supply chain, are only sourcing refined metals from compliant smelters.
8. When tin, tungsten, tantalum and/or gold mineral ore originates in the DRC and/or adjoining countries, **due diligence of "upstream" suppliers** is presumed reliable if the following elements are performed to a reasonable standard of care:
    a. Smelter auditing protocol performed by an independent 3rd party.
    b. When it is determined that incoming minerals originate from DRC or neighboring countries, the 3rd party audit in (8)(a) would additionally include:

i. An on-the-ground assessment (including site visits and consulting with local NGOs where possible) of the mine of origin;
ii. Documentation of all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals;
iii. Documentation of any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals;
iv. Books and records that accurately and fairly record any informal transactions, including all taxes and other payments made to military or other armed groups;
v. Identification of the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers.
vi. Identification of the mine of mineral origin;
vii. Documentation of quantity, dates and method of extraction (artisanal and small-scale or large-scale mining);
viii. Documentation of locations where minerals are consolidated, traded, processed or upgraded;
ix. Identification of all upstream intermediaries, consolidators or other actors in the upstream supply chain, including;
x. Identification of transportation routes of ore from mine to smelter.

Consensus Working Definitions for Possible Use in the SEC Conflict Minerals Regulation

1. **Compliant Smelter**: A smelter is considered "compliant" if it meets the requirements of an individual or industry wide audit process that stipulates the collection, disclosure, and efforts made to obtain the information collected under paragraph 8 above (if it is processing tin, tantalum, tungsten or gold from the DRC and/or adjoining countries).

2. **Upstream:** The mineral ore supply chain from mine to smelters/refiners. "Upstream Suppliers" include miners (artisanal, small-scale or large-scale producers), local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners.

3. **Downstream:** The processed metals supply chain from smelters/refiners to retailers. "Downstream companies" include metal traders and exchanges, component manufacturers, product manufacturers, original equipment manufacturers (OEMs) and retailers.

4. **Necessary**: A conflict mineral is considered necessary when:

    a. The conflict mineral is intentionally added to the product; or
    b. The conflict mineral is used by the Person for the production of a product and such mineral is purchased in mineral form by the Person and used by the Person in the production of the final product but does not appear in the final product; and
    c. The conflict mineral is essential to the product's use or purpose; or
    d. The conflict mineral is required for the marketability of the product

[1] Facilities using recycled materials may also be smelters of unprocessed ore (no matter how small the quantity) and therefore subject to due diligence requirements outlined in this document.

[2] Business confidentiality and other competitive concerns means price information and supplier relationships subject to evolving interpretation.