

November 17, 2010

The Honorable Mary L. Schapiro Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
Dear Chairman Schapiro

Re: SEC Initiatives under the Dodd-Frank Act – Special Disclosures Section 1502 (Conflict Minerals)  
Via email: rule-comments@sec.gov

Dear Chairman Schapiro,

In May 2010, a group of stakeholders, including companies, non-governmental organizations, socially responsible and faith-based investors, and others met in Washington, DC to discuss the issues of mineral extraction and human rights in the Democratic Republic of Congo (DRC). Funded by the mineral production in eastern DRC, the ongoing conflict has been linked to human rights violations, labor abuses and environmental degradation. The focus of the discussion was how to effectively and efficiently address these abuses.

This group agreed that a three part approach is needed to address the conflict in the DRC:

- 1) Government engagement and diplomacy;
- 2) Supply chain responsibility; and
- 3) Economic development and capacity building

Subsequent to this meeting, the Dodd-Frank Financial reform bill was enacted into law including provisions requiring disclosures to the Securities and Exchange Commission (SEC) regarding due diligence measures to identify conflict minerals in products manufactured by US public companies.

In order to provide early input to the SEC on the development of the disclosure regulation required by this new law, the group that had met in May of 2010 convened a multi-stakeholder Policy and Diplomacy Committee co-chaired by industry and NGO representatives. This committee has held numerous meetings from August through November 2010 involving a wide range of stakeholders interested in the development of this regulation. The objective of these discussions was to arrive at a series of consensus principles to guide the development of the regulation.

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

- The SEC regulation 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 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 for consideration by the SEC in developing the conflict minerals disclosure regulations. These recommendations are deliberately set out in bullet form in order to clearly convey the intent of the signers.

We appreciate the opportunity to submit comments in advance of a proposed Commission regulation, and we look forward to further participation in the rule-making process. Our coalition has contacted SEC representatives and we are arranging a meeting to discuss these matters and answer questions.

Sincerely,

Co-chairs:

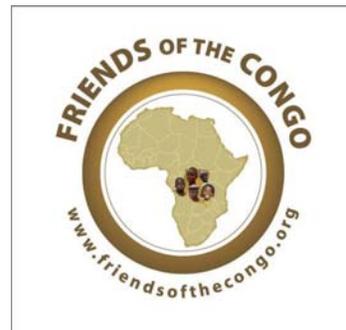
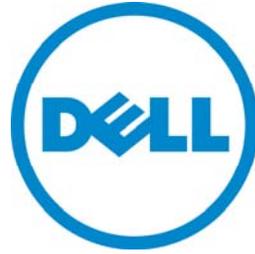
Darren Fenwick  
Senior Government Affairs Manager  
Enough Project

Tim Mohin  
Director, Corporate Responsibility  
Advanced Micro Devices

Confirmed signatures for the Multi-stakeholder letter:

Advanced Micro Devices, Inc.  
Africa Faith and Justice Network  
As You Sow  
Boston Common Asset Management  
Calvert Asset Management Co., Inc.  
Congo Global Action  
Dell Inc.  
EMC Corporation  
Enough Project  
Ford Motor Company

Friends of the Congo  
Future 500  
General Electric Company  
Hewlett-Packard Company  
Interfaith Center on Corporate Responsibility  
Jantzi-Sustainalytics  
Jesuit Conference  
Jewish World Watch  
Microsoft Corporation  
Trillium Asset Management  
Unity Minerals Inc.





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## 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 to 15 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 3<sup>rd</sup> party.

- b. When it is determined that incoming minerals originate from DRC or neighboring countries, the 3<sup>rd</sup> 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.