



November 18, 2010

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Attention: Ms. Elizabeth M. Murphy, Secretary

Re: Title XV - Specialized Disclosures under the Dodd-Frank Act - Section 1502 regarding Conflict Minerals (Submitted via email: rule-comments@sec.gov)

Ladies and Gentlemen:

This letter is submitted on behalf of the Information Technology Industry Council (ITI) and addresses Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) regarding conflict minerals.¹ Section 1502 of the Dodd-Frank Act added Section 13(p) of the Securities Exchange Act of 1934 (the Exchange Act), and we understand the Commission plans to propose rules under Section 13(p) in December. Our comments are intended to highlight certain matters we believe the Commission should consider in proposing its rules under Section 13(p).

ITI encourages the Commission, in crafting its rules under Section 13(p), to take account of the challenges associated with complex global supply chains involving conflict minerals, as well as ongoing international initiatives to enhance due diligence of sourcing and transparency, so that the Commission's rules are not only workable for affected companies, but also complementary to the international due diligence and transparency initiatives already underway.

We present our observations and recommendations regarding the proposed rules in the following sections:

- I. Background
- II. Existing Industry-Led Initiatives
 - A. Conflict-Free Smelter Program
 - B. The ITRI Tin Supply Chain Initiative
- III. Recommendations Regarding the Commission's Rule Under Section 13(p)
 - A. Incorporate "Reasonable Assurance" and "Materiality" Standards and a Related Safe Harbor
 - B. Consider Emerging International Frameworks for Due Diligence
 - C. Recognize Joint Activity

¹ As defined in Section 1502, "conflict minerals" means columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives and any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of Congo (DRC) or an adjoining country.

- D. Maintain Flexibility in regards to Due Diligence
- E. Permit Use of a Supplier-Based Due Diligence Approach
- F. Clarify the Scope of the Independent Audit and the Certification
- G. Exempt Recycled Materials
- H. Clarify the Relationship to State Department Initiatives
- I. Provide Guidance on the Meaning of “Directly or Indirectly Finance or Benefit”

Appendix A: Key Elements of Conflict-Free Smelter Program

Appendix B: Key Elements of the ITRI Tin Supply Chain Initiative

Attachment 1: List of ITI Member Companies

The high tech industry has led manufacturer engagement on supply chain due diligence in relation to conflict minerals, and we would welcome the opportunity to provide any additional information that the Commission may find useful as you consider the rulemaking.

I. Background

ITI is a trade association representing 45 major high-tech and electronics manufacturers in the information and communications technology (ICT) sector. (Please see Attachment 1 for a list of ITI member companies.) Our members are global leaders in all facets of ICT innovation, from hardware to services to software. ITI promotes policies that favor innovation, sustainability and open market competition.

The high tech industry supports due diligence and transparency provisions such as those included in Section 1502 of the Dodd-Frank Act, and views them as important pieces of a coordinated international solution to conflict minerals issues. Only a robust and coordinated international effort, however, can ultimately resolve the underlying political, governance and security challenges that continue to drive conflict in the region. Such a broader solution must include the State Department’s strategic plan on conflict minerals, diplomacy, ongoing public/private efforts to develop smelter validation programs, and the ultimate development and implementation of robust international due diligence guidelines. The high-tech sector continues to lead engagement throughout our supply chain and to work with all stakeholders – including governments, leading non-governmental organizations (NGOs) and the socially responsible investment community – towards the development and implementation of effective and efficient solutions.

II. Existing Industry-Led Initiatives

The high-tech industry has been working through the Electronic Industry Citizenship Coalition (EICC) and the Global eSustainability Initiative (GeSI) to improve transparency across the global supply chains for conflict minerals and to engage with a diverse group of stakeholders in these efforts. Major activities include developing and implementing a Conflict-Free Smelter (CFS) Program and working with the tin industry to support the implementation of a responsible DRC sourcing program.

A. Conflict-Free Smelter Program

The number of smelters of tantalum, tin, tungsten and gold is relatively small compared to the number of participants both upstream and downstream from this point in the supply chain. For example, there are fewer than 20 major tantalum smelters worldwide. Minerals lose their provenance (or traceability) after they are processed, as smelters combine ore from multiple sources with reclaimed materials in producing refined metals. Government, NGOs and industry all recognize that the smelters are a “pinch point” in the metals supply chain that represent an optimal site for focused auditing upstream to the origin. Accordingly, the high tech industry is developing a program to validate conflict-free mineral sourcing at the smelter level.²

The core of our current effort in this area is the Conflict-Free Smelter (CFS) Program. Through EICC and GeSI, the industry is working with the tantalum, tin, tungsten and gold supply chains to validate metals as DRC conflict free. This is being accomplished through independent third party audits to validate the origin of minerals sourced by smelters. Under this program, companies will have the option to direct their suppliers to source materials from those smelters that have been validated by independent third party auditors as DRC conflict free.

The program is being phased in by metal, starting with tantalum. The industry has agreed to audit standards for tantalum smelters and audits are currently underway and will continue into 2011. Efforts are also underway with the tin supply chain to commence audits of tin smelters in early 2011. The industry has made initial visits to tungsten and gold smelters as a first step to working with these supply chains.

The CFS Program is designed to serve as an industry-wide tool to validate upstream due diligence from the smelter to the origin. It is also designed to avoid many thousands of companies conducting their own audits of a relatively small number of smelters. For additional details regarding the CFS Program, please see Appendix A: Key Elements of Conflict-Free Smelter Program.

B. The ITRI Tin Supply Chain Initiative (iTSCi)

To allow for the ongoing shipment of legitimate minerals from Africa’s Great Lakes region, the tin and tantalum industries are working to implement a credible, reliable and sustainable tracking/tracing initiative on the ground. The electronics industry has been partnering with ITRI (formerly known as the International Tin Research Institute) to support this effort, known as the ITRI Tin Supply Chain Initiative (iTSCi). The iTSCi program has been operating at pilot sites in the DRC for several months, and the approach has also recently been adopted in Rwanda. It is the only due

² While these joint efforts are unmatched by any other industrial sector, they are still very new and flexibility is required as our industry continues to improve its programs based on experiences in implementation.

diligence tracking/tracing system recognized by international minerals processors for both cassiterite (tin) and coltan (tantalum) and by the purchasers of the resulting metals.

The CFS Program requires that materials that a smelter sources from DRC be verified through iTSCI. The iTSCi approach is also supported by the DRC and Rwandan Governments and will be part of the regional certification mechanism proposed by the International Conference on the Great Lakes Region (ICGLR). For additional details regarding the ITRI Tin Supply Chain Initiative (iTSCi), please see Appendix B for Key Elements of the ITRI Tin Supply Chain Initiative.

III. Recommendations Regarding the Commission’s Rule Under Section 13(p)

We respectfully offer the following recommendations regarding the Commission’s rulemaking under Section 13(p) of the Exchange Act:

A. Incorporate “Reasonable Assurance” and “Materiality” Standards and a Related Safe Harbor

We suggest that the Commission adopt a “reasonable assurance” standard for the key factual determinations called for by Section 13(p)(1)(A), i.e., whether a company uses conflict minerals, and if so, a description of the products manufactured or contracted to be manufactured that are not DRC conflict free; the facilities used to process the conflict minerals; and, the country of origin of the conflict minerals. Given the nature of the global supply chain and the lack of direct links among many entities in the supply chain, we think a “reasonable assurance” standard appropriately reflects a given company’s ability to verify the origin of minerals used in its products.

We also think a “reasonable assurance” standard is consistent with, and indeed follows from, the statutory language in Section 1502. This language explicitly contemplates that reporting persons will rely, in part, on the work of third parties to reach determinations regarding the use of conflict minerals in their products, as it is impractical to expect such persons to have direct or absolute knowledge of such matters. Under a reasonable assurance standard, the reporting person would (1) be permitted to conclude that it does not use conflict minerals that originated in the DRC or an adjoining country if it follows procedures that provide it with reasonable assurance as to such conclusion; or, (2) if the reporting person does use such minerals, its report covering the various factual matters regarding its use of conflict minerals would be permitted to be based on the procedures it followed to give it reasonable assurance regarding such factual determinations.

Further, we suggest that the Commission use a “materiality” standard with respect to a reporting person’s disclosures called for by Section 13(p)(1)(A). Specifically, we recommend that the Commission’s rule state that the information contained in the report under Section 13(p)(1)(A) be accurate “in all material respects.” While such a

disclosure standard may well be implicit, we urge the Commission to make such a disclosure standard explicit, given the inherent challenges of making many of the factual determinations necessary for the required report.

In tandem with the “reasonable assurance” and materiality standards discussed above, we recommend that the Commission also establish, by way of a safe harbor (or, alternatively, through Commission guidance), procedures that, if followed, would allow a company to make the necessary factual determinations regarding its use or non-use of conflict minerals at the requisite “reasonable assurance” level of comfort. Given the broad impact of these requirements on numerous industrial sectors, and the ongoing evolution of industry due diligence initiatives, we urge the Commission to provide companies with a framework of guidance as to the scope and nature of due diligence and sourcing verification procedures that should allow companies to reach the necessary determinations regarding their use of conflict minerals for purposes of the obligations called for in Section 13(p).

In this regard, for instance, the Commission could consider providing in its rule that companies that adhere to due diligence procedures for conflict minerals sourcing as may be set forth in guidance provided by the U.S. Department of State shall be permitted to rely on such procedures to attain a “reasonable assurance” level of comfort in determining whether their products use conflict minerals. Similarly, the Commission could provide that companies that adhere to an internationally-recognized protocol that has met certain due process thresholds for public review and comment would be permitted to rely on such procedures to obtain the requisite “reasonable assurance.” One example might be the OECD “Draft Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.” (Please see section III(B) below for additional information on this OECD initiative.)

Alternatively, the Commission could consider spelling out specific procedures or elements of a due diligence approach which, if followed, would permit a company to have “reasonable assurance” regarding its determination of whether its products use conflict minerals. By way of illustration, the Commission could indicate that elements of an effective due diligence protocol regarding conflict minerals may include the following:

1. The company adopts, and publishes on its website, a “DRC Conflict Free Minerals Policy.”
2. The company requires its direct suppliers to have a “DRC Conflict Free Minerals Policy.”
3. The company requires its direct suppliers to source tantalum, tin, tungsten, gold from smelters whose sourcing has been validated as DRC Conflict Free by a third party.
4. The company has instituted a process to identify and assess risk of non-conformance of its direct suppliers.

5. The company has instituted a process to respond to identified non-conformance of its direct suppliers.
6. The company's due diligence report is audited by an independent third party.
7. The company makes its SEC disclosure available to the public.

B. Consider Emerging International Frameworks for Due Diligence

In crafting proposed rules, including any standards or safe harbors suggested above, the Commission should, to the extent feasible, take account of emerging international frameworks for conflict minerals supply chain due diligence and transparency, such as, for example, the OECD "Draft Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas" and including the "Supplement on Tin, Tantalum and Tungsten." Because industry's supply chains are global, the Commission's rules under Section 13(p) should be consistent with emerging international frameworks for supply chain due diligence and transparency. The Commission has, in other contexts, permitted issuers to perform required evaluations based on frameworks established by bodies other than the Commission, as long as the framework is established by a group that follows due-process procedures such as an opportunity for broad public comment.³ The Commission should consider following a similar approach under Section 13(p).

C. Recognize Joint Activity

We believe it is critical that the Commission's rule be flexible enough to recognize and allow companies to continue collaborating on mineral supply chain transparency and due diligence initiatives. While each covered entity must independently satisfy its own disclosure, reporting and due diligence requirements, it is imperative that the Commission's rule preserve industry's ability to take coordinated action with respect to supply chain due diligence and transparency protocols and for companies to rely on industry-wide tools as part of overall due diligence. This allows companies to implement coordinated approaches that all participating companies can rely on to meet their obligations.

For example, the CFS Program described above allows numerous companies to rely on the results of the same independent third party smelter audits, rather than requiring each company to conduct its own audits on a relatively small number of smelters.

D. Maintain Flexibility in regards to Due Diligence

The conflict minerals provision of Dodd-Frank will likely impact a large number of manufacturing sectors that collectively encompass thousands of companies.

³ See Rule 13a-15(c) under the Exchange Act, addressing the requirement for management of an issuer to evaluate the effectiveness of the issuer's internal control over financial reporting, using a "suitable, recognized control framework that is established by a body or group that has followed due-process procedures..."

Different manufacturing sectors, as well as individual companies within those sectors, may have their own distinct supply chains, sourcing practices and business relationships. There is no single approach to conflict minerals due diligence that will work for every regulated company, and we thus urge the Commission to maintain flexibility in the final rule to allow for tailored due diligence and supply chain verification mechanisms.

Furthermore, we believe that the obligation of any given company under the law must be commensurate with the company's position in the supply chain and must reflect the company's ability to influence other independent actors in that supply chain. As with every other sector, we have the most influence on our direct suppliers, as we can often impose due diligence and transparency requirements as a condition of securing or maintaining our business.⁴ By definition, we have no direct business relationship with suppliers further upstream in the supply chain. While we can and are bringing what influence we can to bear on the supply chain, we do not control these independent entities (many of which are foreign entities and/or not otherwise subject to the Dodd-Frank Act). The Commission's rule should permit companies to scope their due diligence methods according to their own place in the supply chain and their ability to influence others in the supply chain.

E. Permit Use of a Supplier-Based Due Diligence Approach

Industry supply chains are comprised of suppliers: individual products do not have unique supply chains. For this reason, industry due diligence is focused on working with suppliers that provide us with materials or components. It is not effective, or practicable, for reporting persons to perform separate due diligence on each one of the thousands of materials and components in a given device.

Therefore, ITI strongly recommends that the Commission's rule recognize that the most effective path forward is a supplier-based due diligence approach that allows reporting persons to instruct their direct suppliers to take reasonable means to assure that all regulated metals in the materials or components they provide to the reporting person are sourced from a smelter that has been audited and determined to be compliant (i.e., DRC conflict free).

F. Clarify the Scope of the Independent Audit and the Certification

The statute states that a person must submit a report that includes "a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report."

⁴ This is not the case in every situation. For example, some of our members purchase discrete numbers of finished components from wholesalers or even through catalogs and thus have no direct relationship with the actual component manufacturer.

We respectfully request that the implementing regulations regarding the independent private sector audit clarify that the audit is of the issuer's report itself, not an audit of the issuer's supply chain. We also recommend that the auditor's report be defined as a statement that the auditor has reviewed the disclosures in the issuer's report and has concluded whether the report, in all material respects, accurately describes the issuer's due diligence with regards to minerals originating in the DRC or adjoining countries. As contemplated by the statute, the issuer's certification of the audit would consist of a statement that, to the best of its knowledge, its representations to the auditor, and the information provided to the auditor, have been true and correct in all material respects.

G. Exempt Recycled Metals

We recommend that the Commission's rule exclude recycled metals from the definition of conflict minerals, in order to provide sufficient clarity to filers. Large-scale smelting facilities typically combine materials from multiple sources. These materials may include not only raw ore from various origins, but also reclaimed metals (e.g., scrap generated from manufacturing parts and post-consumer recycled metal). Recycled and reclaimed metals constitute a significant input to metal production.

Recycled metal poses a significant challenge from a traceability perspective. This material re-enters the metals supply chain post consumer use, and indeed may do so multiple times. While this material can be traced back to a recycling facility, it cannot be traced back to its origin.

H. Clarify the Relationship to State Department Initiatives

Among the requirements that section 1502 imposes on the U.S. Department of State are the following (both of which must be completed within 180 days of enactment of Dodd-Frank):

1. The Secretary of State shall submit to Congress a strategy that includes, "A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations."
2. The Secretary of State shall produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries.

Since both of these items are due prior to the due date of the Commission rulemaking, we respectfully request that the Commission clearly indicate whether, and to what extent, company reporting requirements can or will be based on the

guidance to commercial entities and on the map of mineral-rich zones to be provided by the Department of State.

I. Provide Guidance on the Meaning of “Directly or Indirectly Finance or Benefit”

The statute provides that “a product may be labeled as ‘DRC conflict free’ if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.” We request that the Commission’s rule provide clear guidance as to what would be considered to directly or indirectly finance or benefit armed groups in the DRC or adjoining countries so that issuers may exercise due diligence with suppliers and report on those due diligence measures accordingly.

The Commission may consider linking the interpretation of this term to the “Conflict Minerals Map” required to be produced by the Secretary of State under Section 1502. To the extent that this map would identify conflict zones in the DRC, minerals originating from outside the designated conflict zones could be considered to be sources not directly or indirectly benefit armed groups.

We note that having a clear definition of a mineral source does not replace the need for a chain of custody tracing program within the DRC. Rather, it provides the foundation upon which such a tracing program can be built.

ITI and our members appreciate the opportunity to submit our comments on this important matter and we are available to provide any additional information the Commission might require.

Sincerely Yours,



Rick Goss
Vice President for Environment & Sustainability

APPENDIX A: Key Elements of Conflict-Free Smelter Program

- Scope:
 - The program requires validation of the origin of 100% of the smelter's raw tantalum containing material procurement for the audit period plus a review of all material currently in inventory.
 - Pre/post consumer recycled metals are excluded from the requirement to demonstrate origin.
- To comply with the audit, the smelter must have:
 - A documented and communicated conflict materials policy.
 - A mechanism in place for tracing material back to the origin.
 - Documentation demonstrating that purchased materials are from non-conflict sources per the audit guidelines.
 - To the extent that a smelter sources minerals from the DRC, this material must be verified through a credible in-region chain of custody tracing scheme (see iTSCI below).⁵
- The audits will be conducted by an independent third party auditor, which are assigned by EICC and GeSI.
- The names of the smelters that are validated as compliant with the audit will be published.
- Electronic component and final product manufacturers will have the option to direct their suppliers to source material from those smelters that have been validated by independent third party auditors as compliant.

⁵ The iTSCI program is currently in its pilot phase. Until this or a similar credible program is up and running, material sourced from DRC will not be deemed as compliant under the smelter audit program.

APPENDIX B: Key Elements of the ITRI Tin Supply Chain Initiative

ITRI is the only organisation representing the tin production and use industries and operates on a global basis. We have been considering actions to work towards formalisation, improvements and possible certification of the artisanal mine sector since 2005, with all activity focused on cassiterite in the DRC since 2008. The iTSCi proposals, widely circulated in June 2009, have been developed by the ITRI working group on the DRC; Malaysia Smelting Corporation (MSC) and Thaisarco, together with guest company Traxys. The initiative has been proposed by industry as a phased and constructive approach towards improved due diligence, governance and traceability.

The iTSCi scheme will ensure traceability so that production areas can be identified and controlled, but, it does not include any means to determine which mineral production areas or trading routes are under the influence of rebel groups or considered to be unacceptable sources for any other reason.

ITRI has requested guidance from the international community on sourcing since purchasing decisions will have significant socio-economic and security related consequences.

PHASE 1: This stage of the project has been implemented from 1st July 2009 by MSC and Thaisarco with respect to their immediate suppliers. It applies a requirement for a harmonised set of written documentation to be provided with each shipment of cassiterite originating in the DRC, whether exported directly or re-processed in neighbouring countries. Compliance with the defined Phase 1 procedures will be assessed during normal end of year independent auditing at the smelter companies and reports on compliance will be provided to ITRI.

A number of official documents are required for every shipment, the Declaration de Sortie Definitive or Certificat de Circulation des Marchandises (EUR 1) depending on province, plus the Certificate of Origin and the Fiata/Ocean Bill of Lading, while at least seven further official documents are expected to either be provided or retained by the comptoir for possible inspection. In addition, every shipment must be accompanied by an iTSCi comptoir certificate recording a written declaration of material characteristics, origin of material, supply route, supplier and buyer.

PHASE 2: This stage aims to establish a system of traceability from mine to comptoir through a system of unique numbering associated with specific mine sites. Such reference numbers are to be consolidated at each trading step as material passes up the supply chain. The approach includes suggested practical means of immediate reference number transfer as material is traded, by bag tags, stickers or certificates. This also covers the documentation that will be separately generated at each point of the supply chain for later collation, comparison and assessment. Potential cross checks for audit and control purposes are detailed, along with iTSCi and DRC official services data inputs (for example from the attestations de transport) and examples of verification.

Key checks can be automated by the use of appropriate software at the data centre. In addition, local NGOs or other independent parties can be used to assist in oversight of the system in a role of mine observers.

The approach outlines the overall process and the organisations expected to be responsible for data collection at each stage. Exact responsibilities will be confirmed during further discussions with the Government. An appropriate number of bag tags will be issued to 'approved' mines at three month intervals depending on expected site production and typical bag weights. Material without a suitable tag should not be purchased by negociants or comptoirs and various penalties may be applied for issues identified via cross checks. The system can also be independently audited at regular intervals.

PHASE 3: To allow further understanding and improvement of mine conditions once the location of production areas is established and controlled by Phase 2 traceability. Timing is dependent on successful implementation of the previous phase.



2010 Member Companies

accenture
High performance. Delivered.

Adobe



Agilent Technologies

ALTERA

AMD



APC
by Schneider Electric



APPLIED MATERIALS

Autodesk

Canon



CISCO

Cognizant

CORNING



ebay

EMC²
where information lives[®]

ERICSSON

Google



IBM



intuit

Kodak

lenovo

LEXMARK

Micron

Microsoft

monster.com

National Semiconductor

NCR

NOKIA

ORACLE

palm

QUALCOMM

RICOH



skype

SONY

symantec

SYNOPSYS

TERADATA
Raising Intelligence

TEXAS INSTRUMENTS

VeriSign