September 13, 2010

By e-mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Dodd-Frank Wall Street Reform Act
Title XV – Miscellaneous Provisions; Conflict Minerals

Ladies and Gentlemen;

The following views are submitted jointly by the undersigned trade associations ("Associations") regarding the "conflict minerals" provisions in the Dodd/Frank Wall Street Reform and Consumer Protection Act ("Wall Street Reform Act"). Members of the Associations include gold jewelry manufacturers, wholesalers, distributors, precious metal refiners, fabricators and retailers. The Associations appreciate the opportunity to share their perspective with the Commission in advance of its official comment period.

Introduction

The Associations condemn the use of minerals to fund conflict in the Democratic Republic of the Congo (DRC), in adjoining countries or anywhere in the world. Given our trade, the Associations' concern is with one mineral in particular – gold. The Associations have been engaged for some time on the issue of "conflict gold" and are communicating with NGO's and government agencies active in this field. This is an important issue of consumer confidence in our products and an important issue to the industry on which we will continue to engage.

Using the regulatory authority of the SEC to impact the use of raw materials that are not otherwise restricted by any lawful sanctions or embargos is troubling, and perhaps the wrong approach. However, through no fault of the SEC, the law has been enacted in its present form, and we now turn to the matter of implementation.

Due to the extraordinary complexity of the gold supply chain, the application of this law to the gold supply chain may present an insurmountable challenge. The supply chain for gold often starts with newly-mined gold, but can also start with recycled gold. Gold is an effective store of value and it does not ordinarily get spoiled, wasted or destroyed. Thus, the supply chain is likely to begin with bullion produced by a refiner incorporating both newly mined gold and recycled gold. Moreover, the amount of gold currently estimated as being sourced in the DRC is quite small and the regulatory burden (and expense) to address this supply far overweighs the supply actually in the market.

The impact of any regulatory system on the mining community in the DRC and other artisanal production locales and on international trade must also be contemplated in any regulatory scheme. Trade obstructions that result in blocking an economic activity that benefits local communities that legitimately mine these minerals should be avoided. A regulatory system that presents barriers to international commerce is not in the best interests of anyone. A regulatory system that adds unwarranted administrative expense to the industry should also be avoided.

These preliminary comments will provide background information, as well as suggest ways forward for rule-making efforts on the part of the SEC. The Associations seek a limitation of the rules implementing this law to newly extracted or mined gold. As always, we stand ready to assist in the design of a regulatory system that achieves the goals of the law, but does not result in unwarranted trade obstructions.

Gold Mining in the DRC

Gold sourced from the DRC accounts for only a tiny portion of mined gold in the international supply chain: in fact, only 0.3% of global gold mine production in 2009 came from sources in the DRC according to the GFMS Gold Survey, 2010.[1] It is acknowledged that there is no current industrial level production there. The small scale production of artisanal sources is largely unregulated. Establishing a system of traceability for gold supply from this region is therefore made even more challenging by the characteristics of the environment itself.

The literature on the subject on the status of gold mining in the DRC, the financial support of the rebel factions and the impact on the surrounding region is voluminous. It is not possible in the context of these comments to provide a full

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[1] GFMS is the world's foremost precious metals consultancy, specializing in research into the global gold, silver, platinum and palladium markets. http://www.gfms.co.uk/whoweare_background.htm.

picture of the current status of the gold mining sector in the DRC. However, it remains an important developing area, and strong efforts are underway to improve the transparency, sustainability and development potential of the gold mining sector in the DRC.

The International Gold-Supply Chain

Gold is relatively scarce in the environment and geographically dispersed, with mining in many countries, including the United States, Canada, New Zealand, Indonesia, Russia, Australia, China, Finland, and several African nations, including South Africa, Ghana, Tanzania, Mali and the DRC.

Gold production and trading is global and multi-party. For example, mined gold from South Africa may be sold to a refinery in Dubai, to be combined there with mined gold from Indonesia and scrap gold from India. The bullion the Dubai refiner produces could be traded at the Dubai Commodities Exchange and then exported to the United States. There it could be acquired by an American bank, and sold to a manufacturer in New York City. The manufacturer, who has no way of knowing the sources of the gold in the bullion, uses it to create, for example, 14 karat gold bracelets. The fact that gold is a *de facto* currency only further complicates the supply chain.

The international supply chain for gold for jewelry manufacture is anything but linear. Once in the marketplace, gold is sold in many forms, recycled and re-sold several times, since it does not lose value. The physical gold may or may not actually move as a result of these transactions – often gold "pool" accounts allow gold purchased in one country to be physically acquired in a country where the purchaser needs it through pre-arranged credit facilities, without moving the actual product across borders.

Gold jewelry is often produced in stages, as materials are converted into the components – such as settings, chains and clasps – that comprise an end product. A single piece of jewelry often contains gold from more than one manufacturer often located in more than one country.

According to the GFMS Gold Survey 2010, recycled gold accounted for 39% of the supply of gold to the world market. Recycled gold is produced by refineries from scrapped gold jewelry or other gold-containing products. Newly mined gold on its own is not produced in sufficient quantities to meet the global demand for gold for all its uses, including jewelry, investment, industrial and medical purposes. Recycled gold addresses this demand.

Retailers, wholesalers and gold buy-back operations buy gold jewelry from consumers and sell the jewelry to refiners along with their unsold gold jewelry inventory. Manufacturers and wholesalers also return gold left over from the manufacturing process and unsold gold jewelry in finished or semi-finished states. The original source of the gold used in this jewelry that is re-sold to retailers is unknowable. Many small jewelry manufacturers obtain gold for their products from small local refiners who use scrap only, and not mined gold, in their refining process. It should be noted that gold recovered from scrap by secondary refining is indistinguishable from newly mined and refined gold of commercial grade, both of which enter the market on an equal basis.

Thus, while the original gold supply chain begins at a mine when the gold is extracted, the supply chain for gold used in jewelry manufacturing is almost as likely to begin at a refinery that has recycled previously extracted gold. There, large quantities of pre-owned gold are co-mingled with other secondary sources of gold or newly mined gold to produce bullion, or other forms of gold, which are then used to make new gold jewelry. Jewelry containing gold is most often made of less than pure gold in the form of alloys in varying karatage, or the gold may be thinly plated or mechanically bonded over base metal or sterling silver.

The links in the gold-supply chain thus include mines, refineries (large, small, and artisanal), bullion banks, gold exchanges, alloy processors, manufacturers, importers, wholesalers, fabricators, retailers and consumers. Progress through the chain is never routine. For example, manufacturers may on some occasions acquire gold directly from a bullion bank and on other occasions from a refiner. As mentioned, the sources of the gold used in this recycled jewelry are unknowable. A consumer is often not the final link in the chain, but just a stop on a return trip to the gold supply chain.

Gold is a chemical element - its properties are identical regardless of its source. Consequently, there is no test to determine the country of origin of gold. Therefore, establishing provenance outside of a reliable chain-of-custody record is not possible. Establishing a chain-of-custody record of country of extraction and/or the mine of origin for gold already in the marketplace, including recycled gold, cannot be done.

For further information on gold production, the gold supply chain and for useful statistical information, we recommend that you visit www.gold.org – the very information-rich web site of the World Gold Council. For your further information, we attach a flow chart describing the gold supply chain.

Implementing the Wall Street Reform Act

Because gold is perhaps the world's ultimate recycled material (a byproduct of the metal's great desirability and intrinsic value) one of several challenges to implementation of the new law is created. The industry practice of combining gold from many sources into bullion and the length and multi-party nature of the supply chain means that manufacturers may not be able to ascertain with the certainty required for a report or for auditors whether or not the gold they use originated in the DRC or an adjoining country. If the sources of the gold cannot be determined, this may have the unintended consequence of removing a large quantity of gold from the marketplace since its origins cannot be identified to a level of confidence necessary to make a report on origin. Efforts to engage in this tracking of all gold used in manufacturing to country of extraction and/or mine of origin, could have the negative impact of creating trade barriers for a large segment of the industry, not only publicly traded manufacturers. It may also have severe unintentional consequences for small-scale and artisanal miners operating legally in a supply chain at risk, thereby increasing their hardship.

The SEC rules, and the due-diligence standards, if implemented, should thus create a mechanism by which entities can make a disclosure stating “no evidence of DRC or adjoining country origin”, even when they cannot determine with a high degree of certainty the origin of the gold used in their manufacturing process, and there is no evidence that the gold did originate in the DRC or an adjoining country.

Given the complexities of the supply chain, the Commission should also consider applying the rules to only that sector of the trade that produces newly extracted or mined gold, and to their direct customers, exempting from reporting requirements any and all above ground stocks currently held outside of the DRC and exempting from reporting requirements those manufacturers using recycled gold. Nothing in the legislation as written would appear to prevent this limitation.[2] This could have the impact of allowing “non-conflict” mines in the DRC and surrounding region to document their supply chain to their customers, thus supporting efforts to develop the mining industry in the region. Other international mining companies, if required to do so, could document chain-of-custody methods for their gold at the source to their customers, thus permitting free trade in the next steps of the supply chain in the newly mined product since their customers could make efforts to segregate this gold in their inventories. On this basis, the disclosures and reports required by the Wall Street Reform Act could be more easily developed.

We offer the following suggestions as means for the SEC to implement the relevant Wall Street Reform Act provisions in the context of the many uncertainties in the gold supply chain.

<u>Defining “Person Described”</u>

- *“Person required to file reports” §1502 (p) (2) (A)*

As written, it is unclear who is covered by the new law, although it appears that the legislation was intended to apply solely to persons who file periodic reports under Section 13(a) (2) of the Securities and Exchange Act of 1934. The rules

[2] A similar mechanism has been employed in the diamond industry, where controls on rough diamonds at point of export has a “domino” effect in ensuring from mine to consumer that diamonds are not traded to fund conflict. See: The Clean Diamond Trade Act of 2003 and Executive Order 13312; www.state.gov/e/eeb/diamonds

should make plain that the disclosure and reporting obligations of the law apply only to companies that are listed on a U.S. stock exchange.

- *"[N]ecessary to functionality or production of a product manufactured by such person*" *§1502 (p) (2) (B)*

A person is covered by the legislation if they are required to file reports pursuant to section (2) (A), above, and "conflict minerals are necessary to the functionality or production of a product manufactured by such person." The rules should include benchmarks as to when the "necessity" standard has been met. They should also clarify whether there is a *de minimis* threshold under which disclosure is not required.

Moreover, the term "manufacture" is not defined in the law, although the legislative history indicates that it applies only to companies using conflict minerals in the manufacture of their products. The rules should make clear that the mining, processing, refining, alloying, fabricating, importing, exporting or sale of gold does not constitute "manufacture." Further, those manufacturers that only engage in jewelry repairs or refurbishment, those setting or re-setting diamonds or gemstones into mountings or those retailers who manufacture individual custom jewelry pieces should not be included in the definition of "manufacturer" for the purpose of the implementation of this law.

<u>Component Parts and other Gold Jewelry Products</u>

In the jewelry industry a large manufacturer often buys pre-fabricated gold parts – such as clasps and ear wires, known as "findings" – from numerous suppliers in many countries to later produce a single item of jewelry. Findings produced by third parties that are incorporated into a manufacturer's finished product should not be subject to this law. To require this further application of the rule makes an already complex task additionally complicated. Further, many items of gold jewelry are manufactured using methods to plate or mechanically bond gold over base metal or sterling silver (gold filled, gold plate, gold electroplate or vermeil). These items should also be exempted from this law. To apply the rules to small findings and to these low gold volume production methods using very little gold is to burden a large additional portion of the jewelry manufacturing sector whose gold use is disproportionately small when weighed against the complexities and expense of determining and reporting gold sources.

<u>Disclosing and Reporting</u>

The new legislation, at §1502 (p) (1) (A), requires described persons to disclose whether conflict minerals originated in the DRC or an adjoining country are used in their manufacturing process. Under our suggested change in the rule, this would only apply to persons using newly extracted or mined gold from the DRC or an adjoining country. In those cases in which newly mined gold used in the manufacturing process originates in one of those countries, the described person making such a disclosure must, among other things, submit an audited, certified report to the SEC regarding due diligence on the source and chain-of-custody of the conflict minerals. Beyond this, there should be no additional reporting or disclosure requirements.

Additionally, we propose that the SEC rules for manufacturers covered under the rules should:

a. Allow covered entities that are using newly mined gold for which, despite their best efforts can discover no evidence that the gold did originate in the DRC and/or adjoining countries but cannot determine with a high degree of certainty the country of extraction and/or mine of origin of the gold used in their manufacturing process, to make a disclosure stating "no evidence of DRC and/or adjoining countries origin"; and
b. In those cases in which newly extracted or mined gold used in the manufacturing process is known by an entity to originate in the DRC and/or adjoining countries, the described person making such a disclosure must submit an audited, certified report to the SEC regarding due diligence on the source and chain of custody of the gold from those sources.

In the cases where manufacturers are only using newly extracted or mined gold from sources known to be other than the DRC or adjoining countries, there should be no additional reporting requirements of any kind. The rules should further confirm that firstly, if the initial disclosure is that the gold used in the manufacturing process did <u>not</u> originate in the DRC or an adjoining country, or secondly, if the initial disclosure is "No evidence of DRC or adjoining country origin" as per the requested mechanism above when manufacturers cannot determine with a high degree of certainty the origin of the gold, the basis for these assertions can be on a "best efforts" basis. No audited, certified report to the SEC regarding due diligence on the source and chain-of-custody should be required. This is necessary since any other basis for making the "no conflict gold" assertion is not possible in light of the realities of the supply chain as described above.

Nothing in the legislation as written would appear to prevent the SEC from adopting these suggestions.

It should be noted that efforts to research potential chain of custody models for the gold supply chain are underway, but will require further study and analysis. We would welcome the opportunity to discuss this research with the SEC.

<u>Phasing-in the New Legislation as to Newly Mined Gold</u>

The realities and complexities of the gold-supply chain must inform any rule making and ultimately, must be accounted for in the implementation requirements. Establishing known, auditable supply lines will require significant changes within the industry that will take a substantial period of time, perhaps years. Further, creating mechanisms within the industry presents an additional expense in terms of information sharing among traders, record keeping, filing reports, engaging auditors, due diligence among traders, etc. A phase-in component of the Rules should reflect this fact.

Liability and Penalties

The jewelry industry has no interest in acquiring gold that has been traded to fund conflict in the DRC, or anywhere in the world. This is a matter of upholding the trust that consumers have in our industry and in the products we produce. Given the uncertainties demonstrated above in determining gold provenance, due consideration should be applied to the difficulties in the implementation of this law. The liability standards that will apply and penalties for non-compliance should be minimal to take this into account.

We would welcome an opportunity to discuss this submission and to provide you with additional information at a meeting with representatives of the below named associations at your convenience.

Thank you for your consideration of these preliminary comments and views. We look forward to future opportunities to contribute to the rulemaking process.

Sincerely,

Cecilia L. Gardner, Esq.
President, CEO and General Counsel Jewelers Vigilance Committee

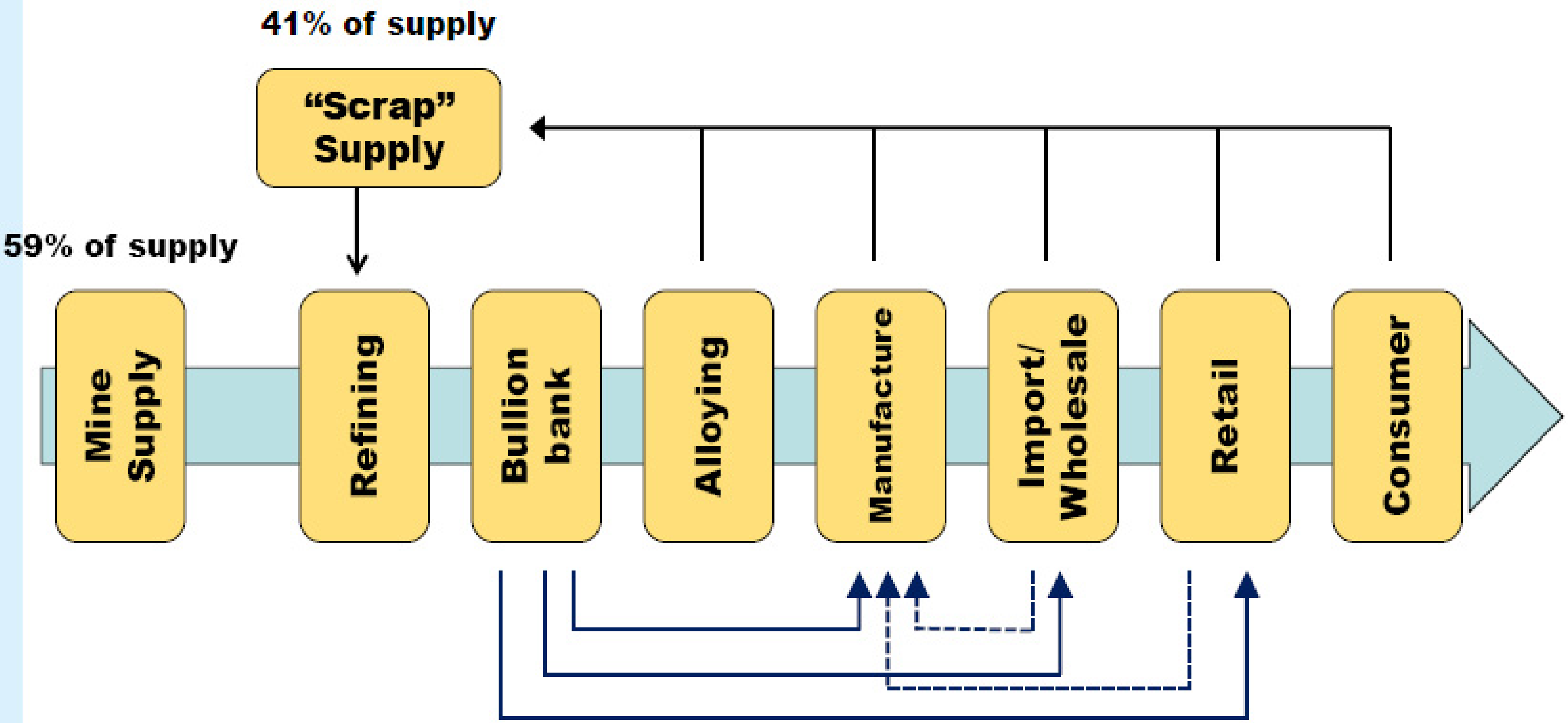
Ruth Batson
Exec. Dir & CEO
American Gem Society

David W. Cochran
President & CEO
Manufacturing Jewelers & Suppliers of America

Matthew A. Runci
President
Jewelers of America

Michael Rae
Chief Executive Officer
Responsible Jewellery Council

Gold supply chain is not linear



Gold can be owned and supplied by multiple participants in the supply chain. This also makes the supply chain non-linear.

"Unallocated" bullion can be sold, leased, loaned, swapped etc.