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March 2, 2011

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SEC Release No. 34-63547; File No. S7-40-10
Conflict Minerals

Dear Ms. Murphy:

Thank you for the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) proposed rule for *Conflict Minerals* (the Proposed Rule).

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) added Section 13(p) to the SEC's Exchange Act of 1934 and requires that an issuer provide a "Conflict Minerals Report" in its annual report if the issuer's "conflict minerals," as defined by the Act, originated in the Democratic Republic of the Congo (DRC) or adjoining countries (DRC countries) or the issuer cannot determine the origin of its conflict minerals. Our comments are limited to the audit-related aspects of the Proposed Rule and are based on our experience in performing independent audits.

We appreciate that the SEC has limited flexibility in drafting and adopting a rule to implement the provisions of the Act; however, we strongly believe the objectives and scope of the audit requirement need clarification in order to be operable.

Our comments relate primarily to the following areas:

1. Nature and objective of the audit
2. Applicable professional standards
3. Other matters



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Nature and objective of the audit

We understand in a general sense that the subject is the Conflict Minerals Report. It is unclear however, what elements of the Conflict Minerals Report would be subject to audit by an independent private sector auditor, the audit objective and the type of conclusion the SEC is expecting the auditor to express. Taken broadly, the reference to the Comptroller General establishing standards could indicate that the U.S. Government Accountability Office (GAO) will be addressing these areas. We do not believe it is the SEC's intent to allow issuers or their auditors to select the audit objective because this would preclude comparability between the audit reports and would not consistently achieve the objectives of the Act. We believe that the SEC should clearly state in the final rule the audit objective and the type of conclusion to be reached. Although there are likely to be other possibilities, we have identified the following possible audit objectives, which are not mutually exclusive. Each audit objective has its own issues and challenges.

- A conclusion as to whether the due diligence process described in the Conflict Minerals Report was in conformity with a recognized standard of due diligence. This audit objective would require a clear standard of due diligence recognized by the Commission. Footnote 145 of the proposing release indicates that the OECD is developing due diligence guidance. The OECD document "OECD Due Diligence Guidance for responsible supply chains for minerals from conflict-affected and high-risk areas" (OECD Guidance) has now been finalized; however, it does not cover all of the minerals included in the proposing release. The supplement for gold is expected to be issued later in 2011. The OECD Guidance, the related gold supplement or any other standard for due diligence would need to be evaluated to determine if they are suitable criteria for the purpose of the audit, as described below.
- A conclusion as to whether the issuer performed the due diligence procedures it describes in the Conflict Minerals Report. The complexity of this audit objective would be dependent on the complexity of the supply chain and the number of products included. It is possible that neither the issuer nor the auditor will be able to obtain evidence with respect to certain portions of the supply chain, which would limit the scope of the report and audit.
- A conclusion on the origin of the conflict minerals. This audit objective is likely to be very challenging and potentially cost prohibitive, assuming that such a conclusion could be reached and evidence is available to the auditor to support the conclusion. This audit objective also would depend on the cooperation of upstream companies, many of whom are not issuers.



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- A conclusion as to whether the products included in or excluded from the Conflict Minerals Report were appropriate. This audit objective also is likely to be very challenging and potentially cost prohibitive, assuming that such a conclusion could be reached and evidence is available to the auditor to support the conclusion.

We believe that the latter two possible objectives are the most challenging options and that it is likely that it would not be reasonable to expect issuers and auditors to be able to reach and support the corresponding conclusions. Accordingly, we recommend that the SEC carefully consider wording of any stated audit objective so that neither of these are implied or embedded within the stated audit objective.

Applicable professional standards

Footnote 101 in the proposing release indicates that staff of the GAO informed the SEC of their preliminary view that no new standards needed to be promulgated and the audit of a Conflict Minerals Report would be performed under either the provisions for Attestation Engagements or Performance Audits within Government Auditing Standards (GAGAS). These two approaches would result in different audit scopes and auditors' reports. It is unclear to us whether the SEC intends to clarify which standards are to be used, whether the SEC is deferring that decision to GAO, or whether the decision is being left to the independent private sector auditor. We believe that the SEC must determine what standards are appropriate and state that conclusion in the final rule. As more fully discussed below, each set of standards cited by the GAO has its own issues and challenges.

Attestation

Attestation standards have a standardized reporting structure which would allow for greater comparability among audit reports. However, as the SEC highlighted in footnote 101, an attestation engagement requires suitable evaluation criteria. The GAGAS standards for attestation incorporate the AICPA general standard for criteria: "The practitioner [auditor] must have reason to believe that the subject matter is capable of evaluation against criteria that are suitable and available to users."

If we assume that the adequacy of the due diligence is the subject being evaluated, reference might be made to the due diligence guidance referred to in footnote 145 as drafted by the OECD which has since been finalized. This appears to be the most standardized criteria. However, that guidance also indicates that due diligence in conflict-affected and high risk areas presents practical challenges and that flexibility is needed in the application of due diligence. This flexibility may not permit consistent assessment of the subject matter. If the Commission intends that issuers should have flexibility in applying due diligence procedures, we recommend that this be clearly indicated in any final rule.



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Performance audit

A performance audit is not intended to be a financial audit or attestation engagement. Although GAGAS indicates that a performance audit may provide reasonable assurance that the auditor has obtained sufficient, appropriate evidence to support the conclusions reached, the performance audit report is less standardized than a report under the attestation standards. This is because a performance audit provides significant flexibility with regard to the conclusions that may be subject to the audit. This might allow the auditor to provide further explanations in the auditors' report than under the attestation standards; however, comparability could substantially be less.

The issue of appropriate criteria described above for attestation standards also exists for performance audits. Although not highlighted in the footnote 101, paragraph 7.37 of GAGAS addresses the need for criteria in performance audits as follows:

“Auditors should identify criteria. Criteria represent the laws, regulations, contracts, grant agreements, standards, measures, expected performance, defined business practices and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding the findings, conclusions and recommendations included in the report. Auditors should use criteria that are relevant to the audit objectives and permit consistent assessment of the subject matter.”

Although the term “criteria” does not have the same meaning as under the attestation standards, they still must enable the auditor to consistently assess the subject matter. Accordingly, we have similar concerns related to suitable criteria under performance audits as we expressed in our comments under attestation, above.

Other matters

The Proposed Rule refers to the auditor being “independent”, but does not reference any set of independence standards. It is not clear whether the Commission intends that the auditor be subject to the SEC’s independence standards as well as those of GAGAS. The requirement to follow the SEC’s or the AICPA’s independence standards in addition to those of GAGAS would have different impacts on the pool of eligible auditors. Also if the company were required to, or chose to, make an assertion that their due diligence process as described in their Conflict Minerals Report was in conformity with the OECD Guidance, the auditor might also be subject to the independence principle described on page 31 of the OECD Guidance. That independence principle’s prohibition on the auditor having provided any other service for the auditee company within a 24 month period could significantly limit the pool of auditors.

The Burden and Cost Estimates section of the proposing release indicates that an unidentified industry group estimated that a Conflict Minerals Report audit would cost approximately



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\$25,000. In order to arrive at this estimate certain assumptions were made about the scope and objective of the audit that are not readily apparent to us. However, it appears that the estimate may depend on a company relying on an industry-wide due diligence process and that company being able to conclude that its conflict minerals did not originate in a DRC country. We are not aware of any industry-wide due diligence process in place at this time nor is there a requirement to use one. As discussed above, cost of the audit will greatly depend on the audit objective and the scope of the effort involved.

We recommend that the SEC seriously consider the concerns raised in this letter and consult with the GAO to clarify the expectations as to the nature and objective of an independent private sector audit and the auditing standards to be applied. Without this determination, the auditors will not consistently apply the rule and inconsistencies will lead to significantly different reports among auditors and ultimately confusion for the report users.

We appreciate the opportunity to submit our comments on the Proposed Rule. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Glen L. Davison, (212) 909-5839, gdavison@kpmg.com or Melanie Dolan, (202) 533-4934, mdolan@kpmg.com.

Very truly yours,

KPMG LLP

cc:

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